

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11708 OF 2021

1. Jijabai Parasram Aatram,
Age : 55 years, Occu : Agriculture
& Sarpanch, R/o. Dhamandari,
Tq. Kinwat, Dist. Nanded. **...Petitioner.**

Versus

1. The Collector, Nanded,
Dist. Nanded.
2. The Tahsildar, Kinwat,
Dist. Nanded.
3. Talathi, Dhamandari,
Tq. Kinwat, Dist. Nanded.
4. Gramsevak, Gram Panchayat,
Dhamandari, Tq. Kinwat, Dist. Nanded.
5. Nandkumar Nagorao Karhale,
6. Lata Suhas Rathod,
7. Devrao Ranu Aade,
8. Sulochana Jayantu Sidam,
9. Vilas Rajaram Kumare,
10. Samudrabai Gajanan Atram
11. Yashodabai Pandu Gade,

Respondent No. 5 to 11,
All Age : Major, Occu. Agriculture,
and Members of Village Panchayat,
R/o. Dhamandari, Tq. Kinwat,
Dist. Nanded.

....Respondents.

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Mr. V.B. Deshmukh, Advocate for petitioner.

Mr. S.N. Morampalle, AGP for respondent Nos. 1 to 3.

Mr. P.B. Rakhunde, Advocate for respondent Nos. 4, 6 to 9 & 11.

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CORAM : SMT. BHARATI H. DANGRE, J.
DATED : 10/02/2022

ORAL JUDGMENT :

1. The petitioner, a directly elected Sarpanch, of village Panchayat Dhamandari, is aggrieved by her removal from the said post in the wake of no confidence motion passed in special meeting of the Gram Panchayat and its ratification in special Gram Sabha and the order passed by the Collector, declaring her to be disqualified to hold the post of Sarpanch.

2. Heard learned advocate Mr. Umakant B. Deshmukh for the petitioner, learned A.G.P Mr. S.N. Morampalle for respondent Nos. 1 to 3 and learned advocate Mr. P.B. Rakhunde for respondent Nos. 4, 6 to 9 and 11.

3. The petitioner came to be elected as a Sarpanch directly from the villagers to occupy the seat reserved for Scheduled Tribe Woman. On her election, she continued to discharge her duties as Sarpanch.

During her stint as Sarpanch the respondent Nos. 6 to 12 who are the members of the Gram Panchayat moved a no confidence motion against her on 4.5.2021 before the Tahsildar Kinwat. The motion being signed by six members alleged that they have lost confidence in the Sarpanch and requested for appointment of new Sarpanch.

Upon receipt of the requisition Tahsildar, Kinwat scheduled a special meeting of the Gram Sabha on 11.5.2021 and intimated the members of the Gram Sabha Dhamandari about the special meeting to be held for processing the requisition of no confidence. The meeting was accordingly held on 11.5.2021 which was presided by the Tahsildar Kinwat and the motion of no confidence came to be passed by majority of 6:2 (six in favour of motion and two against).

The proceedings of the meeting in which motion of no confidence are placed on record along with the petition. At the end of the meeting the Tahsildar declared that the requisition of no confidence has been passed by majority and since in terms of section 35 of the Maharashtra Village Panchayat Act, 1958 (for short 'the Act') it is held to have been passed by 3/4th majority. The proceedings were concluded.

4. Being aggrieved by the decision of Tahsildar in special

meeting, the petitioner rushed to the Collector Nanded by filing an appeal by invoking section 35 of the Act and requested him to stay further process of removal and appointment of new Sarpanch. In the interregnum the meeting of the special Gram Sabha came to be held on 18.6.2021 and where the motion came to be ratified by simple majority. This exercise was undertaken in the wake of the amended provision i.e. Section 35 (1A) of the Act in respect of no confidence motion being moved against a Sarpanch directly elected under Section 30A-1A. On following the procedure of secret ballot, the votes came to be counted and 344 villagers voted in favour of the motion whereas 273 voted against it and 28 votes were found to be invalid. It was declared that the no confidence motion was held to be ratified.

5. The petitioner again filed an appeal before the Collector challenging the said action and the Collector by order dated 25.8.2021, dismissed the appeal and held that the resolution in the special meeting of Gram Panchayat dated 18.6.2021 was validly passed and the grievance of the petitioner did not warrant any consideration.

6. Being aggrieved, the present writ petition is filed.

Learned counsel for the petitioner Mr. Deshmukh has raised four points in support of the petition and I will deal with them

in seriatim.

The no confidence motion passed in the Special Gram Sabha is passed only by simple majority and not by 3/4th majority is the first contention of Mr. Deshmukh.

The said contention do not warrant any merit in the wake of the amended provision of section 35(1A). By the Maharashtra Amendment Act No. 54 of 2018, w.e.f. 19.7.2017 the provision for direct election of Sarpanch came to be inserted in the Act by introducing section 30A-1A which provide for a Sarpanch to be elected directly from the villagers. Corresponding amendment is effected in section 35 of the Act, which is a provision for motion of no confidence and in sub-section (1), which provided for motion of no confidence to be moved by not less than 'one-third' of the total member of the members, who are for the time being entitled to sit and vote at any meeting of the panchayat against the Sarpanch, the term 'one-third' came to be substituted by the votes of 'two-third'. Sub-section (1A) which came to be inserted after sub-section (1) of section 35, directed that the provision in the existing section shall apply with certain modification in respect of the panchayat to which the Sarpanch is directly elected under section 30A-1A.

In sub-section (3), the following provision is inserted : -

“if the motion of no confidence is carried by a majority of not less than three-fourth of the total member of the who are for the time being entitled to sit and vote at any meeting of the panchayat, the Sarpanch or the Up-Sarpanch as the case may be ratify before the special Gram Sabha by the secret ballot in the presence and under the chairmanship of the person appointed for the purpose by the Collector shall forthwith stop exercising all the powers and perform all the functions and duties of the office and thereupon such powers, functions and duties shall vest in Up-Sarpanch in case the motion is carried out against the Sarpanch”.

Reading of the above provision, as inserted by the Amending Act, the contention advanced on behalf of the learned counsel for the petitioner is become disagreeable, since the said provision clearly prescribe for the majority of three-fourth in the meeting of the panchayat, but the ratification before the special Gram Panchayat by secret ballot do not prescribe the same fraction of majority, instead the legislature permitted the ratification before the special Gram Sabha by simple majority.

7. It is undisputedly the duty of the Court to give full honour and true effect to the intention of the legislature and the Court cannot look into the consequences which might arise when the language of the statute is plain and do not involve any ambiguity. It is the safest

rule of interpretation of statutes because the intention of the legislature is deduced from the words and language used. The settled position of law is that the provision must be read as it is and it is not permitted for the Court to add or delete any words and even when it result in any harsh consequences, for which the remedy shall be sought and worked out by the legislature.

The legislature has specifically chosen not to prescribe the same fraction which is prescribed in the earlier part of the sub-section for the meeting of special Gram Panchayat for passing of the no confidence motion, which is carried by majority of not less than three-fourth of total member of the members who are for the time being entitled to sit and vote at meeting of the Panchayat. It is not permissible to read these words in the said provision, and hence in respect of meeting of Gram Sabha, the said contention deserves to be rejected.

8. The second ground urged by learned counsel, Mr. Deshmukh is to the effect that the notice of the special meeting of the Gram Panchayat was issued by the Tahsildar on 4.5.2021, and the meeting was convened on 11.5.2021 in which the no confidence motion was passed against the petitioner, Sarpanch. The learned

counsel would submit that section 35, sub-section (2) provide that within seven days from the receipt of notice/requisition for the motion of no confidence, by the Tahsildar, he shall convene a special meeting of the Panchayat for considering the motion of no confidence, at the office of Panchayat, at the time appointed and he shall preside over such meeting.

The submission advanced is, from 4.5.2021 to 11.5.2021 the period of seven clear days has not passed.

Even this argument of the learned counsel do not hold any merit, since the meeting of the Village Panchayat are governed by the Bombay Village Panchayat (Meeting) Rules 1959 and the meeting in which no confidence motion is to be taken for consideration, shall be a special meeting, since section 35 (2) of the Act had required the Tahsildar to convene a special meeting for considering the motion of no confidence. For the said purpose, the Bombay Village Panchayat Sarpanch and Up-Sarpanch (No Confidence) Rules, 1975 are framed in exercise of powers conferred by clause (vi) and (xlvii) of sub-section (2) of section 176 of the Act. Sub Rule (3) of Rule 2 of said Rules read as under :-

“(3) The Tahsildar shall, immediately on receipt of notice under sub-rule (1), satisfy himself that the notice has been given by not less than one-third of the total

member of members (other than associate members) who are for the time being entitled to sit and vote at any meeting of the panchayat and then convene a special meeting for the purpose within seven days from the date of receipt of such notice.”

The aforesaid provision contemplate when notice of motion of no confidence is moved under section 35 (1) of the Act. The Tahsildar shall convene a meeting within seven days from the date of receipt of such notice. Section 35 (2) of the Act provided the starting point for counting seven days by use of word ‘from’ and use of this particular word as general rule excludes the day from which the time is to be reckoned except where the context require contrary. As per section 9 of the General Clauses Act, 1897, use of the word ‘from’ would exclude first in a series of days or any other period of time and would include the last in a series of days or any other period of time if word ‘to’ is applied. In sub-section (2) of section 35, the legislature has made use of term ‘from’ and therefore, the day on which the notice is received by the Tahsildar has to be excluded while computing the period of seven days.

In the present case, the Tahsildar received the notice on 4.5.2021 and he convened and hold the meeting on 11.5.2021, strictly

adhering to the time line prescribed in sub-section (2) of section 35.

9. Another flaw, in the proceedings conducted against her, pointed out by the learned counsel Mr. Deshmukh, which once again is without any merit and misconceived one and by relying upon the clarification issued by the Deputy Secretary, State of Maharashtra to the Collectors dated 15th January 2020, in the wake of the Maharashtra Village Panchayats (Amendment) Ordinance, 2017 and by relying upon the procedure set out in the said communication it is sought to be argued that after no confidence motion is passed before the Tahsildar within seven days he shall convene the meeting of the Special Gram Sabha. By relying upon Advisory, it is sought to be canvassed that, if the motion is passed in the special meeting of Gram Panchayat, the Tahsildar shall forward the report of the meeting on the same day or immediately on the next day, without any delay (excluding the day of holiday) to the Collector. The Collector on receipt of the No Confidence Motion, which has been passed in the Gram Panchayat shall issue orders for convening the special meeting of the Gamsabha not later than one day and in terms of the order of the Collector, the officer not below the rank of Group B shall convene the special meeting of the Gram Sabha within a period of ten days.

By relying upon the aforesaid schedule set out in the said

communication the learned counsel has made feeble attempt to argue that no confidence motion was passed by the Gram Panchayat in the special meeting held on 11.5.2021, but the special Gram Sabha is held on 18.6.2021 which is beyond the time limit set out in the said communication.

10. It is worth to note that no such time line has been provided in the amended sub-section (3) of Section 35, as substituted by sub (1A) in respect of Directly elected Sarpanch. If the legislature intended, that ratification in the special Gram Sabha of the resolution of no confidence approved in the Gram Panchayat is to be obtained within a particular time limit, the legislature would have included such provision, but in it's absence the time line prescribed by Deputy Secretary of the State of Maharashtra, which is neither in form of a G.R. nor has any binding effect of law, will not govern the time lines and therefore, merely on the ground that Gram Sabha meeting has not been held within the time set out in communication dated 15th January 2020, when the Amended Provision do not impose any embargo on the period, when the Special Gram Sabha has held for any ratification of the resolution passed in special meeting of the Gram Panchayat, the said contention of the petitioner is also rejected.

11. The last contention advanced on behalf of the petitioner is

in respect of Rule 6 of the Bombay Village Panchayats (Gram Sabha Meetings) Rules, 1959 which reads thus :-

“6. A notice of a meeting either ordinary or extraordinary, of the Gram Sabha shall be published.-

- (a) by affixing it at the office of the Panchayat and the village *chavdi* or *chora* and in the absence of a village *chavdi* or *chora* at any other conspicuous place or places on the village, and
- (b) by making an announcement by a beat of drum on the fourth day, and also on the day immediately preceding the date of the meeting.”

12. The petitioner allege that the aforesaid procedure was not followed.

When the counsel for petitioner is particularly asked as to on what basis he make such allegation and whether he has produced on record any evidence to establish the failure of the machinery to adhere to this requirement, the learned counsel states that he is saying so because he he has noted so. This argument is unacceptable since the Gram Sabha conducted it's special meeting and villagers participated in the meeting, voted in or against the motion and if the procedure was not adhered to, the villagers would not have participated. In this case the petitioner has lost the motion by small margin and 273 villagers voted in her favour whereas 344 voted against her. The

petitioner is looking at the entire proceedings with a jaundiced view, since she has been eliminated out of the office, by following the procedure and she suspect flaw in every action initiated against her.

In absence of any material on record to demonstrate that there was no procedure followed as prescribed under Rule 6 of the Bombay Village Panchyats (Gram Sabha Meetings) Rules 1959 even this argument deserves to be rejected and is accordingly rejected.

13. In the light of above, all the four contentions raised by the learned counsel in support of the petitioner, do not justify any interference in the action initiated against the petitioner Sarpanch, resulting in her exit from the post on account of loss of confidence, both by the members of Gram Panchayat and also by the residents of the village. The Collector upheld the successful action of no confidence against the petitioner in appeal filed under section 35 (3-B) (iii) and has dismissed the same by holding that the motion of no confidence was validly passed in the Special Meeting of Gram Panchayat and ratified in the Special Gram Sabha held on 18.6.2021.

Upholding the impugned order, the writ petition is dismissed.

[SMT. BHARATI H. DANGRE, J.]