

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

WRIT PETITION NO.11712 OF 2021

Smt. Shantabai Babu Sagat,
Age: 68 years, Occu: Sarpanch of village
Panchayat Manewadi, Tal. Tuljapur,
Dist. Osmanabad

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through the District Collector,
Osmanabad, Dist. Osmanabad
2. The Tahsildar,
Tahsil office, Tuljapur,
Tal. Tuljapur, Dist. Osmanabad
3. Mahaveer Rama Sagat,
Age: Major, Occu: Member of village
Panchayat, Manewadi, Tal. Tuljapur,
Dist. Osmanabad
4. Vijaya Shivaji Deokar,
Age: Major, Occu: Member of village
Panchayat Manewadi, Tal. Tuljapur,
Dist. Osmanabad
5. Shahaji Dnyanoba Hakke,
Age: Major, Occu: Member of village
Panchayat Manewadi, Tal. Tuljapur,
Dist. Osmanabad
6. Swati Suresh Mane,
Age: Major, Occu: Member of village
Panchayat Manewadi Tal. Tuljapur,
Dist. Osmanabad
7. Kavita Tukaram Hakke,
Age: Major, Occu: Member of village

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Panchayat Manewadi, Tal. Tuljapur,
Dist. Osmanabad

8. Shalubai Sharanappa Barve,
Age: Major, Occu: Member of village
Panchayat Manewadi, Tal. Tuljapur,
Dist. Osmanabad

9. Manohar Yashwant Mane,
Age: Major, Occu: Up Sarpanch of village
Panchayat Manewadi, Tal. Tuljapur,
Dist. Osmanabad

...RESPONDENTS

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Mr V. S. Undre, Advocate for petitioner;

Mr K. B. Jadhavar, A.G.P. for respondent Nos.1 & 2

Ms. Sheetal V. Salunke, Advocate for respondent Nos.3 to 8

WITH
WRIT PETITION NO.11726 OF 2021

Shahaji s/o Dnyanoba Hakke,
Age: 32 years, Occu: Member of Grampanchayat,
R/o. Manewadi, Tq. Tuljapur,
Dist. Osmanabad

VERSUS

1. The State of Maharashtra,
Through Secretary,
Rural & Urban Department

2. The Collector, Osmanabad,
Tq. & Dist. Osmanabad

3. Returning Officer/Tahasildar,
Tuljapur, Tq. Tuljapur,
Dist. Osmanabad

4. Manohar s/o Yashwant Mane,
Age: 35 years, Occu: Upsarpanch,
Tal. Tuljapur, Dist. Osmanabad

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5. Mahavir s/o Rama Sagat,
Age: 40 years, Occu: Grampanchayat Member,
R/o. Manewadi, Tuljapur,
Tq. Tuljapur, Dist. Osmanabad
6. Swati Suresh Mane,
Age: 35 years, Occu: Grampanchayat Member,
R/o. Manewadi, Tuljapur,
Tal. Tuljapur, Dist. Osmanabad
7. Vijaya Shivaji Devkar,
Age: 45 years, Occu: Grampanchayat Member,
R/o. Manewadi, Tuljapur,
Tal. Tuljapur, Dist. Osmanabad
8. Kavita Tukaram Hakke,
Age: 55 years, Occu: Grampanchayat Member,
R/o. Manewadi, Tuljapur,
Tal. Tuljapur, Dist. Osmanabad
9. Shalubai Sharanappa Barve,
Age: 55 years, Occu: Grampanchayat Member
R/o. Manewadi, Tuljapur,
Tal. Tuljapur, Dist. Osmanabad

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Ms Sheetal V. Salunke, Advocate for petitioner;
Mr K. B. Jadhavar, A.G.P. for respondent Nos.1 to 3
Mr V. S. Undre, Advocate for respondent No.4

CORAM : SMT. BHARATI DANGRE, J.

DATE : 24th February, 2022

PER COURT:

1. By an order dated 29/11/2021, both the writ petitions were taken up for hearing and notices came to be issued to the respondents.

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Considering the commonality in the two petitions, both the petitions revolving around the motion of 'no confidence', carried out against the Sarpanch/Upsarpanch of the village panchayat Manewadi, Tq. Tuljapur, the petitions are heard together and disposed of by this common order.

2. Writ Petition No.11712/2021 is filed by the Sarpanch of the village panchayat Manewadi, who was removed from the post of Sarpanch on a 'no confidence' motion being passed in the special meeting of the village panchayat, dated 13/08/2020 and she being ousted by majority. The no confidence motion was ratified in the Gramsabha and the appeal filed by her came to be rejected on 31/12/2020 by upholding the action of no confidence motion.

In a writ petition filed before this Court vide WP No.214/2021, the order passed by the Collector was set aside and the matter was remanded for a fresh decision and ultimately, the District Collector Osmanabad, by an order dated 05/10/2021, rejected the claim of the petitioner and has confirmed her expulsion as Sarpanch, on the basis of the no confidence motion, validly passed.

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3. Writ Petition No.11726/2021 is filed by a Member of the Grampanchayat, who along with others had moved a requisition for a no confidence against the Sarpanch as well as Upsarpanch and his grievance is, though the Resolution against Upsarpanch came to be passed in the special meeting of the Grampanchayat, held on 13/08/2020 and the appeal filed by the Upsarpanch before the Collector was rejected, on remand of the proceedings to the Collector, pursuant to a direction issued by the High Court in Writ Petition No.223/2021, the appeal filed by the Upsarpanch has been allowed and he has been retained as the Upsarpanch of the Grampanchayat Manewadi.

4. Some facts are common to these two petitions and let me foreground them at the outset, before I delve into their effect in law.

The election to the Grampanchayat Manewadi were held in November 2017 and Smt. Shantabai Sagat (petitioner in Writ Petition No.11712/2021) came to be directly elected as Sarpanch and she assumed charge of the said post w.e.f 21/11/2017. Shri. Shahaji Hake (petitioner in Writ Petition No.11721/2026) came to be elected as Upsarpanch amongst the members and he resumed

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the charge along with the Sarpanch. The said Upsarpanch, however, resigned and resultantly, a new Upsarpanch Shri. Manohar Yashwant Mane came to be elected, who assumed the charge of the post, on 03/06/2019.

5. Six members of the Grampanchayat moved a motion of no confidence simultaneously against the Sarpanch and the Upsarpanch and accordingly, one common notice and two separate notices were filed by the members before the Tahsildar Tuljapur on 07/08/2020. Pursuant to the requisition, respondent No.3 issued notices for the special meeting to be held on 13/08/2020 and in the said meeting no confidence motion was passed against Sarpanch as well as Upsarpanch by majority. Out of 8 members, 6 members voted in favour of the no confidence by raising their hands and the report of the special meeting placed on record reflect the process that was followed in conducting the procedure of no confidence motion against the Sarpanch as well as the Upsarpanch.

6. This action led to filing of distinct appeals by the duo before the Collector, Nanded, the respondent No.2, resulting in a direction being issued by him, that since motion of no confidence

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was passed in a special meeting, it requires ratification of special Gramsabha and therefore, it was directed to conduct a meeting of Gramsabha under the Chairmanship of the Block Development Officer, Panchayat Samiti, for ratification of the Resolution of no confidence passed against the Sarpanch as well as Upsarpanch in meeting of Grampanchayat. The Collector relied upon the provisions of amended Section 35(3) of the Maharashtra Village Panchayats Act and recorded a finding that the ratification in the special meeting of Gramsabha is mandatory. As far as the order passed on an appeal filed by the Sarpanch, the Collector has recorded that Sarpanch has completed a period of two years from the day on which she was elected as Sarpanch.

7. Being aggrieved by the said decision of the Collector, the Sarpanch as well as Upsarpanch approached this Court, by filing Writ Petitions vide WP No.214/2021 and WP No.223/2021, respectively. Both writ petitions were decided under common order dated 23/02/2021.

This Court recorded that the petitioner Sarpanch, who was directly elected in terms of the provisions of amended clause (B) of sub-section 1(A) of Section 35 of the Maharashtra Village

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Panchayats Act, can be removed only by following the procedure prescribed in the amended section, contemplating the motion of no confidence to be carried out by majority of not less than $\frac{3}{4}$ of the total members, who are for the time being entitled to sit and vote at any meeting of panchayat, the Sarpanch or the Upsarpanch, as the case may be, and ratified before the special Gramsabha by the secret ballot in the presence and under the Chairmanship of the Officer appointed for the said purpose by the Collector. It was held that the said amendment is applicable to the Sarpanch, who is directly elected and not to the Upsarpanch, who was elected amongst the members, and therefore, in his case the ratification in the Gramsabha is not unnecessary.

8. During the pendency of the petitions, the Block Development Officer conducted the special meeting of the Gramsabha and the majority of the members of the Gramsabha ratified the no confidence motion passed in the Grampanchayat meeting against Sarpanch/Upsarpanch.

The objection before the Court was premised on the ground, that no confidence motion was moved before two years of their election and it was sought to be canvassed that Sarpanch and

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Upsarpanch had taken charge on 21/11/2017 and the no confidence motion was moved on 07/08/2020, and as such, the respondent Nos.3 to 8, the Members who moved the requisition submitted that it was after completion of period of two years.

Taking note of the amended provision and specifically sub-section (B) of Section 1A of Section 35, which was applicable only to the Sarpanch, who is directly elected, this Court arrived at a conclusion that the ratification in terms of the amended provision of sub-section 1A of Section 35 is necessary only in case of Sarpanch, who is directly elected and not in respect of Upsarpanch and despite this, the Collector had issued a direction for conducting special Gramsabha meeting in respect of Upsarpanch also. However, by referring to sub-section 3-B of Section 35, the Division Bench recorded that if the Sarpanch, or as the case may be, the Upsarpanch desire to dispute the validity of motion carried under sub-Section (3), he shall within 7 days from the date on which motion was carried, refer the dispute to the Collector who shall decide it as far as possible, within 30 days from its' receipt.

Recording that the Collector, instead of deciding that dispute, directed the holding of special Gramsabha and which was in fact conducted under the Chairmanship of the Block Development Officer, where the motion came to be ratified by the majority of villagers and further recording that, if the no confidence was defeated, it would have resulted in confusing situation, the matter was relegated back to the Collector for deciding dispute as made to him under Section 35 (3-B) of the Maharashtra Village Panchayats Act, after affording necessary opportunity. As far as Upsarpanch was concerned, the Court specifically issued a direction to the Collector to decide the dispute on its own merits, irrespective of ratification by the Gramsabha, which was not a legal requirement for passing of no confidence motion against Upsarpanch.

The facts narrated above till now, are common to both the petitions i.e. the involving the Sarpanch and Upsarpanch.

Two distinct orders, however, came to be passed by the Collector on remand of the proceedings by the High Court, on 05/10/2021, one in case of the Sarpanch, Smt. Shantabai Bapu

Sagat and another in case of Upsarpanch Shri. Manohar Yashwant Mane.

9. Taking the case of the Upsarpanch first i.e Writ Petition No.11726/2021, where the petitioner, member of Grampanchayat assail the said order passed by the Collector, who allowed the application of the Upsarpanch Manohar Mane, the impugned order would disclose that the Collector made reference to Section 35 (1A) as inserted by the Maharashtra Village Panchayats (Amendment) Act, 2017 in respect of the panchayat, to which the Sarpanch is directly elected under Section 30A-1A. The proviso appended to the said Section, provide that no such confidence motion shall be moved within period of two years from the date of election of Sarpanch or Upsarpanch and before six months preceding the date on which the term of Grampanchayat expire, and a further proviso to the effect that, if the no confidence motion fails, then no motion shall be moved within next two years from the date of failure of no confidence motion.

By making reference to the direction issued by introducing direct election, the State Government in the wake of the amendment in the provision of a Sarpach, on 15/01/2020, when such no confidence motion has to be passed, the clarification

issued is to the effect that while counting the period of two years, the date on which the charge is assumed by the Sarpanch/Upsarpanch, shall be considered as the relevant date. By making reference to the aforesaid provisions and the directions issued by the State Government, the Collector deduced a conclusion that the Upsarpanch Manohar Yashwant Mane has not completed two years from the date of assuming the charge of the said post and therefore, the no confidence motion moved against him in the special meeting of Grampanchayat, stands nullified. He also nullified the Resolution in the special meeting of Gramsabha which had ratified the Resolution of the Grampanchayat.

This order is challenged by the petitioner/member and I have heard the learned Counsel Ms. Sheetal Salunke for the petitioner and Shri. V. S. Undre for the Upsarpanch along with Shri. K.B.Jadhavar, learned A.G.P. for respondent Nos.1 to 3.

10. The learned Counsel for the petitioner do not dispute the fact that Manohar Mane took charge of the post of Upsarpanch on 03/06/2019 and the requisition of no confidence motion was moved on 07/08/2020 and the meeting for the said purpose was convened on 13/08/2020, in which the motion was passed. The

contingency contemplated in the proviso, which prohibit a motion of no confidence to be moved within period of two years from the date of election of Sarpanch/Upsarpanch is attracted and in case of Upsarpanch, since the no confidence motion against Upsarpanch is brought within two years from the date of his election, the order passed by the Collector has rightly held that the embargo posed, nullify the motion of confidence and do not warrant any interference.

The learned Counsel Ms. Sheetal Salunke, however, is apprehensive about the future course of action, whether a fresh no confidence motion can be again moved against Upsarpanch, since the proviso appended to Section 35 permit it to be moved before six months preceding the date of the term of the Grampanchayat expire. She submits that the second proviso which stipulate that if no confidence fails, then no motion shall be moved within next two years from the date of the failure of the no confidence motion and whether this proviso would detain the members from bringing a fresh no confidence motion. I do not deem it appropriate to comment upon the same at this stage. The learned Counsel placed reliance upon a decision in case of Ramesh Vs. Sheshrao, 1998 (9) SCC 113, which stipulate that if the earlier motion has not

been moved or has been defeated on some technical ground like want of requisite majority, the bar of bringing the second motion will not come into play.

Leaving the liberty open to the petitioner to move a motion of no confidence against the Upsarpanch, if permissible in law, Writ Petition No.11726/2021 is dismissed by upholding the impugned order.

11. As far as Writ Petition No.11712/2021, which is filed by the Sarpanch, is perused, it can be seen that on remand of the matter, the Collector passed a detailed order on 05/10/2021, which is impugned in the present writ petition, and under the impugned order, the application filed by the Sarpanch is rejected.

The issue that arose for consideration before the Collector in the wake of the directions issued by the High Court, came to be formulated as under:

- (a) Whether the notice of no confidence was given within period prescribed; and
- (b) Whether the Sarpanch has completed period of two years as contemplated in the proviso appended to Section 35(3), which do not permit a no confidence motion to be moved

within period of two years from the date of election of the Sarpanch.

12. In the background of the scheme introduced by the amendment inserted by Maharashtra Act No.54 of 2018 w.e.f. 13/08/2018, the Collector analysed the facts placed before him and arrived at a conclusion that the Sarpanch assumed the charge of the post on 21/11/2017 and the no confidence motion has been moved on 07/08/2020 and came to be passed in a special meeting held on 13/08/2020, and therefore, period of two years have passed from the date of election of the Sarpanch, when the no confidence motion was moved. About the notice of the special meeting proposing the no confidence motion being issued within stipulated period, the Collector arrived at a conclusion that it is within period of 7 days the meeting has to be summoned since the notice of meeting is issued on 07/08/2020 and the meeting was held on 13/08/2021, the objection raised, do not warrant any attention.

13. On the aforesaid reasoning, being recorded and appreciated in the light of the provision of Section 35-1A of the Maharashtra Village Panchayats Act, the impugned order do not warrant any interference.

The motion of no confidence against Sarpanch has been brought after two years from her election/the date from assumption of charge i.e. 21/11/2017. The motion of no confidence moved in the Grampanchayat has been ratified in the Gramsabha as contemplated under the amended provision and therefore, no flaw can be found in the entire action initiated against the petitioner/Sarpanch, which would warrant for any interference at the instance of this Court. The impugned order rightly appreciate the procedure followed for passing of no confidence motion against a directly elected Sarpanch in terms of the amended Section 35(1-A) which set out the procedure for moving of no confidence motion against the directly elected Sarpanch.

14. The submissions advanced by the learned Counsel for the petitioner Shri. Undre, that there were no separate notices issued for bringing the no confidence motion against the Sarpanch/Upsarpanch, and therefore, the whole process is vitiated, do not hold any water. The record reveal that proposers moved requisition signed by six members to the Tahsildar on 07/08/2020, proposing a motion of no confidence against Sarpanch as well as Upsarpanch by issuing two separate notices.

The proceedings of the special meeting of the Grampanchayat held on 13/08/2020, disclose that the Tahsildar carried the proceedings separately and one by one, he put the motion to vote and the proceedings clearly record that the motion was allowed against the Sarpanch and Upsarpanch, by majority.

The submission of Shri. Undre to the effect that since the action against the Upsarpanch has failed, therefore, the Sarpanch also deserve to be spared, is also not worth consideration. The action against the Upsarpanch has failed on account of the fact that the motion has been moved within period of two years of his election, which is specifically prohibited as per the proviso appended to subsection (3) of the Section 35, which impose an embargo upon no confidence motion to be moved within a period of two years from the date of election of Sarpanch or Upsarpanch. The benefit which has gone to the Upsarpanch, do not necessarily flow to the Sarpanch, since as against her, the motion of no confidence is moved after expiry of a period of two years from the date her election or from the date of assumption of charge of the office by her.

15. The Sapanch, who is directly elected by the people under the new provision inserted in the Maharashtra Village Panchayats

Act, has lost the confidence of the Grampanchayat as well as Gramsabha and the no confidence carried out against her by majority of the members is ratified by the Gramsabha, where the maximum number of villagers voted against her. If the villagers have lost their confidence in a Sarpanch, whom they had elected by democratic process, she has no right to clinch on the said post. She must remove herself on the no confidence motion being passed as per the law and she must give way to a new Sapanch.

Necessarily, upholding the impugned order passed by the Collector, the writ petition is dismissed.

(SMT. BHARATI DANGRE, J.)

sjk