

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

WRIT PETITION NO.10679 OF 2022

Sushama Wasudeo Patil,
Age; 46 years, Occ; Social Work &
Household,
R/o; Dahiwad, Tq. Amalner
District; Jalgaon.

...PETITIONER

V E R S U S

1. The Collector, Jalgaon,
District; Jalgaon.
2. The Tahsildar, Amalner,
Tq. Amalner, District; Jalgaon.
3. The Block Development Officer,
Panchayat Samiti, Amalner,
Tq. Amalner, Dist. Jalgaon.
4. The Village Development Officer,
Gram Panchyat, Dahiwad
Tq. Amalner, District; Jalgaon.

...RESPONDENTS

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Advocate for Petitioner : Mr. V.D.Hon (Senior Counsel) I/by Mr. A.V. Hon
AGP for Respondents-State : Mr. K.B.Jadhavar
...

CORAM : SANDEEP V. MARNE, J.

DATE : 13.10.2022.

ORAL JUDGMENT : (PER SANDEEP V. MARNE, J.)

1. Rule. Rule made returnable forthwith. With the consent of the learned Counsel for the parties, heard finally at the stage of admission.
2. The petitioner is directly elected Sarpanch. For removal of directly elected Sarpanch following provision is made under **Section 30A - 1A of the Maharashtra Village Panchyat Act, 1958** (for short 'the Act') which read as under :

“(1) After the date of commencement of the Maharashtra Village Panchyats (Amendment) Act, 2017 in respect of the panchyat to which the general election is to be held, subject to provisions of sub-sections (4), (5) and (6) of section 30, every panchyat shall have a Sarpanch who shall be elected by the persons whose names are included in the list of voters for village under section 12.

(2) Election of the Sarpanch shall be held simultaneously with the general elections of the panchyat and the procedure regarding holding of elections to the panchyat shall, mutatis mutandis, apply to such election.

(3) If at an election, no Sarpanch is elected, a fresh election shall be held to elect a Sarpanch, and if there is a failure to elect a Sarpanch at the fresh election, such vacancy may, notwithstanding anything contained in this Act, be filled by election by the elected members from amongst themselves and the term of Sarpanch elected under this sub-section shall be co-terminus with the term of members of the panchyat.

(4) Any person elected under Sub-Section (3) shall be deemed to be duly elected at an election under this section.

(5) If, in the election of the Sarpanch, there is an equality of votes, the result of the election shall be decided by lots to be drawn by the State Election

Commissioner or the officer appointed by him for the purpose.

(6) In case of a dispute regarding election of the Sarpanch, the provisions of section 15 shall, mutatis mutandis, apply.”

3. The Sarpanch who desires to dispute the validity of the motion or ratification under Section 3 has a remedy by referring the dispute to the Collector under Section 3-b of Section 35 of the Act.

4. In the present case, no confidence motion was adopted against the petitioner in the meeting conducted on 20.07.2022. Aggrieved by that resolution, the petitioner filed a dispute before the Collector which was numbered as Appeal No. 96 of 2022. That dispute was decided by the Collector by order dated 30.08.2022, directing convening of a special meeting of Gramsabha for conducting ratification process. This is how the petitioner's Application No. 96 of 2022 came to be disposed of.

5. Now in the special Gramsabha conducted on 12.09.2022 a resolution is adopted ratifying the earlier resolution of Gram Panchyat. Aggrieved by that ratification petitioner has filed appeal before the Collector on 19.09.2022 under Section 3-b of Section 35 of the Act, which has been turned down by the Collector by a communication dated 22.09.2022. The Collector has held that petitioner's earlier appeal No. 96 of 2022 is already been decided by the Collector and since his grievance relates to special meeting of Gramsabha held on 12.09.2022, the same is

judicial in nature, therefore, the petitioner should approach to the appropriate forum.

6. In my opinion, the decision of the Collector in communication dated 22.09.2022 appears to be erroneous. Under provisions of Sub Section 3-b of Section 35 of the Act, a dispute can be referred in respect of entire process covered by Sub Section 3. For an elected Sarpanch, the process under Sub Section 3 involves both no confidence motion of Grampanchayat as well as ratification of special Gramsabha. It cannot be said that the Collector would entertain the dispute only in respect of no confidence motion adopted by the Gramsabha and not in respect of ratification process in special Gramsabha. In fact, the petitioner ought not to have filed appeal challenging no confidence motion adopted in the meeting of payment on 20.07.2022. He ought to have adopted complete process envisaged under Section 3 for directly elected Sarpanch. Be that as it may. Just because petitioner erroneously preferred an appeal before completion of entire process envisaged under Sub Section 3 of Section 35 of the Act, it may not mean that as statutory rights to refer the dispute to the Collector under the Provisions of Sub Section 3-b of Section 35 of the Act would be fortified. In my opinion, the petitioner is entitled to raise the dispute in respect of the entire process covered by Section 35 (3) of the Act, which obviously included the provision of ratification to special Gramsabha. Therefore, the impugned communication of the Collector dated 22.09.2022 deserves set aside.

7. In his appeal dated 19.09.2022, the petitioner has challenged both no confidence motion adopted in the meeting of Grampanchyat on 20.07.2022 as well as ratification to special Gramsabha on 12.09.2022. As observed above petitioner's earlier Application No. 96 of 2022 challenging no confidence motion in the meeting of 20.07.2022 ought to have been entertained or file and therefore, it is appropriate that while deciding the petitioner's appeal dated 19.09.2022, the Collector decides the entire appeal comprehensively and deal with both aspects of legality of no confidence motion adopted in Grampanchyat meeting dated 20.07.2022 as well as ratification of special Gramsabha dated 12.09.2022. I therefore, proceed to pass following order :

ORDER

- a) The impugned communication of the Collector Jalgaon, dated 12.09.2022 is set aside.
- b) The Collector, Jalgaon is directed to decide the petitioner's appeal/dispute dated 19.09.2022 on its merits without being influenced by any of the observations made in this order.
- c) The Collector, Jalgaon shall consider and decide the appeal comprehensively both in regard to legality of no confidence motion adopted in the meeting of Grampanchyat dated 20.07.2022 as well as ratification to special Gramsabha in its meeting dated 12.09.2022.
- d) The Collector, Jalgaon is directed to decide the appeal of the petitioner as expeditiously as possible and preferably within a period of four weeks from today.
- e) Till the decision of the petitioner's appeal by the Collector, no meeting of Grampanchyat be

convened for the election of any other person as Sarpanch.

- f) The Writ Petition is allowed in above terms.
- g) Rule is made absolute.

(SANDEEP V. MARNE)
JUDGE

mahajansb/