

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

WRIT PETITION NO. 14799 of 2021

Amol Pandurang Godbole,
Age : 35 years, Occu. Agriculture & Sarpanch,
R/o. Balirampur, Tq. Nanded,
Dist. Nanded.

...Petitioner

Versus

1. The Collector, Nanded,
Dist. Nanded.
2. The Tahsildar,
Nanded, Dist. Nanded.
3. Talathi, Balirampur, Tq. Nanded,
Dist. Nanded.
4. Gramsevak, Gram Panchayat,
Balirampur, Tq.Nanded, Dist. Nanded.
5. Vijay Yashwant Hatkar
6. Dhammadeep Rama Engade
7. Ashok Ananda Waghmare
8. Anuradha Kishan Gavhane
9. Shuddhodhan Nivrutti Engade
10. Indrajit Jalba Panchal
11. Sheikh Salim Sheikh Rajesab
12. Madhukar Ganpat Aadhav
13. Sagarbai Madhav Jadhav

14. Prayagbai Kishan Dhotare
15. Gunabai Sambhaji Pandit
16. Umila Ganesh Jindam
17. Ranjanabai Sanjay Sonkamble
18. Radheshyam Govind Sunkewar
19. Sagarbai Vitthal Waghmare
20. Malubai Babu Waghmare
21. Vyankubai Gangaram Waghmare

Respondent no. 5 to 21

All Age : Major, Occu. Agriculture and

Members of Village Panchayat,

R/o. Balirampur, Tq. Nanded, Dist. Nanded.

...Respondents

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Mr. Umakant B. Deshmukh, Advocate for the petitioner

Mr. K. B. Jadhavar, AGP for respondent nos. 1 to 3

Mr. A. N. Nagargoje, Advocate for respondent no. 9

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CORAM : BHARATI H. DANGRE, J.

DATE : JANUARY 12TH, 2022

ORAL JUDGMENT : -

1. The petitioner, who is directly elected as Sarpanch from the persons whose names are included in the list of voters of village Balirampur, is aggrieved by no-confidence motion passed against him

and by rejection of his appeal before the Collector, Nanded by order dated 13.12.2021.

. The petitioner question the legality and validity of the resolution dated 03.09.2021 passed in the special meeting of the Village Panchayat, Balirampur and the resolution dated 16.09.2021 passed in the special meeting of the Gram Sabha under Section 35 of the Maharashtra Village Panchayats Act, 1958. Since the Collector upheld the resolutions of no-confidence passed against the petitioner and dismissed his appeal, the present writ petition is instituted.

2. The facts in background of the action impugned, can be briefly summarized as under : -

. The petitioner is a directly elected Sarpanch of Village Panchayat, Balirampur, being elected in the general election of 2017 on a post reserved for Scheduled Caste. It is worth to mention that by the Maharashtra Village Panchayats (Amendment) Act, 2017 (Mah. Act No. LIV/2018), a novel provision in form of Section 30A-1A is introduced, providing for election of Sarpanch, who shall be elected by persons whose names are included in the list of voters for village under Section 12 and the petitioner came to be elected as a Sarpanch in a process undertaken simultaneously with the general

elections of the Village Panchayat of Balirampur. The method of his election being newly introduced as per the amending Act of 2017, give rise to distinct questions, since not only his election but the manner in which the no-confidence motion is to be carried out against a directly elected Sarpanch is the question which arise for determination in the present petition.

3. While the petitioner was officiating as Sarpanch of Village Panchayat, Balirampur, which comprised of 18 members, on 30.08.2021, 14 members submitted a requisition to the Tahsildar, Nanded for initiating a no-confidence motion against the petitioner. A copy of the said requisition signed by 18 members is placed on record as Exh. A to the petition.

. Upon a requisition being moved, the Tahsildar, convened a special meeting on 03.09.2021 after issuing notices on 30.08.2021 for the meeting to be held on 03.09.2021. The contention of the petitioner is to the effect that he was not served with the said notice and fraudulent panchanama is created to establish the service of notice upon him. It is the claim of the petitioner that the notice of meeting was not served upon him and some of the members

supporting him could not remain present in the meeting. Consequently, in the meeting held on 03.09.2021, a resolution came to be passed by 14 vs. 00 against the petitioner and the Tahsildar declared that out of the 18 members eligible for voting, the 14 members who were present, voted in favour of the resolution of no-confidence and hence the motion being passed by 3/4th majority in terms of the Maharashtra Village Panchayats (Amendment) Act, 2017, the no-confidence motion was declared to have been granted. By concluding the special meeting held for the said purpose, the no-confidence resolution passed in the meeting was forwarded to the Collector.

4. Being aggrieved by the said action initiated against him in the special meeting dated 03.09.2021, the petitioner preferred an appeal before the Collector and the allegation levelled against the respondent no.1-Collector in the petition is, that without proceeding with the said appeal, the respondent no.1-Collector directed the Tahsildar to convey the special meeting of Gram Sabha vide his letter dated 06.09.2021, which is in utter violation of Government Resolution dated 15.01.2021. Pursuant to the direction issued, the respondent no. 2 convened the special meeting of the Gram Sabha on

16.09.2021 after issuing notice of the said meeting of special Gram Sabha on 12.09.2021.

. As regards the said meeting the grievance raised in the petition is, that the notice of special Gram Sabha was not issued to the petitioner and it was not communicated to all the voters of the village panchayat in the manner provided under the rules for conduct of meeting and the Government Resolution, resultantly in the special Gram Sabha all the voters could not participate. Another grievance of the petitioner is, that though the notice prescribed the location of the Gram Sabha meeting as the Zilla Parishad school, the coupons for attending the meeting were distributed on the ground of Gram Panchayat and since the supporters of the petitioner were waiting in the Zilla Parishad for getting a coupons, they could not procure the coupons to attend the meeting and could not remain present in the meeting which took place in the office of Grampanchayat, which is situated at quite a distance. The result was obvious and the counting of secret ballots concluded at 06:30 pm and it was declared that 1011 votes were cast in favour of the motion of no-confidence and 840 votes were against the motion and 133 votes were declared invalid. The outcome of Special Gram Sabha meeting was declared, as the motion being passed.

5. The petitioner thereafter preferred a fresh appeal before the Collector on 22.09.2021, against the resolutions passed in the special meeting of the Village Panchayat dated 03.09.2021 and the resolution passed in the meeting of Special Gram Sabha held on 16.09.2021 on various factual and legal grounds. The contesting respondents, being the elected members of the Grampanchayat, who were impleaded as respondents in the said proceedings, contested the appeal and urged that there was no infirmity or irregularity in the no-confidence motion, which was validly carried and passed. The Tahsildar also joined the members of the village panchayat in opposing the appeal of the petitioner which resulted in the Collector passing the impugned judgment and order on 13.12.2021 holding that both the resolutions are validly passed and do not call for any interference. Conclusively, he confirmed the resolutions and rejected the appeal of the appellants. The copy of the impugned order was received by the petitioner on 20.12.2021 and he instituted the present writ petition seeking the relief to which a reference has been made in the primary part of the judgment.

6. In support of the petition, I have heard learned Counsel Shri. Umakant B. Deshmukh for the petitioner and learned Advocate

Shri. A. N. Nagargoje representing the respondent no. 9. The State authorities i.e. respondent nos. 1 to 3 are represented by the learned AGP Shri. K. B. Jadhavar.

7. The parties expressed consensus that the petition deserves to be heard finally at the stage of admission and the learned AGP as per the directions issued by this Court also produced the original record of the proceedings of the special meeting of the village Panchayat and/or Gram Sabha as well as the record of the Collector. In the wake of the aforesaid, issue **RULE**. Rule is made returnable forthwith. Heard finally by consent of the parties.

8. The learned Counsel Shri. Deshmukh assertively submit that the impugned order passed by the Collector is *devoid* of any reasons and while upholding the resolutions passed by the Village Panchayat and the Gram Sabha, without disclosing any reasons, by merely recording that on perusal of the said resolutions, in furtherance of Section 35 of the Maharashtra Village Panchayats Act, 1958 and the letter of the Rural Development Department dated 15.1.2020, the resolutions are held to be valid. The ld. Counsel Mr.Deshmukh is extremely critical of the unreasoned order passed by the Collector.

9. Another submission of the learned Counsel is to the effect that since the action of passing no-confidence motion against the Sarpanch, who is specially elected directly from the members of the Gram Sabha by secret ballot, is a serious business and, therefore, before passing the no-confidence the adherence to the provisions contained in the Maharashtra Village Panchayat Act and the meeting rules of Grampanchayat and Village Panchayat formulated under the said Act must be strictly followed/adhered to. The submission advanced is any infraction of the the requirements prescribed thereunder should be viewed with utmost seriousness and breach of procedure, causing prejudice to the petitioner who was sought to be removed must be construed seriously.

. The learned Counsel would submit that his election as a Sarpanch directly by the persons is a novel mechanism introduced by the Maharashtra Village Panchayats (Amendment) Ordinance, 2017 which has come into force w.e.f. 19.07.2017. It is submitted that the said Act which introduced Section 30A-1A, containing a provision for direct election for Sarpanch, Section 35 of the principal Act was also amended, prescribing a distinct procedure for removal of the Sarpanch, which is directly elected and apart from the majority of not

less than $3/4^{\text{th}}$ of the total number of members entitled to sit and vote in any meeting of the panchayat, the procedure prescribed contemplated ratification before the special Gram Sabha by the secret ballot in the presence and under the Chairmanship of the Officer appointed for the purpose by the Collector. The submission advanced is the special mechanism has been prescribed by keeping in mind the intention of the legislature in introducing provision for direct election of Sarpanch by the amending Act, which was a novel provision, which contemplated a unusual way of his removal by a no-confidence motion, distinct from the removal of the Sarpanch who was earlier elected by the members of the Village Panchayat and who could be removed by $2/3^{\text{rd}}$ members of the Village Panchayat voting and passing the resolution. By laying emphasis on the amending Act of 2017, it is submitted that, the procedure to be adhered to in passing the said resolutions in the Village Panchayat as well as Gram Sabha meeting for ratification, the meetings must be validly convened as per the prescribed rules.

10. By relying upon the Bombay Village Panchayats (Gram Sabha Meetings) Rules, 1959, it is submitted by the learned Counsel for the petitioner that the meeting of the Gram Sabha in which the

ratification was to be accorded must be held in accordance with the Rules, 1959 and when Rule 5 of the said rules prescribed that the notice of an extraordinary special meeting of the Gram Sabha shall be given at least four clear days before the date of such meeting, and when sub-section 1A of the rules define clear days to mean exclusion of the day of the issuance of a notice or intimation and the day of the meeting, the notice issued in the present case for holding the meeting of special Gram Sabha, did not comply the aforesaid mandate, since the notice of the special Gram Sabha was issued by the Naib Tahsildar (Election) on 12.09.2021 and the meeting was held on 16.09.2021. The submission advanced is, the ratification contemplated to the resolution passed in the special meeting of the village panchayat, in the special meeting of Gram Sabha held on 16.09.2021 is illegal as there was no clear four days notice of the special meeting of Gram Sabha and, therefore, the action taken in the said meeting of ratification of the no-confidence motion passed by the village panchayat is not valid in law.

11. The learned Counsel for the petitioner asseverate that the provision of four days clear notice as contemplated under the Bombay Village Panchayat (Gram Sabha Meetings) Rules, 1959 shall

be construed as mandatory and its infraction must vitiate decision in the meeting.

. In support of his submission, the learned Counsel placed reliance on the decision of Orissa High Court in the case of **Akrura Dehury Versus State of Orissa and others** reported in 2006 (Supp.-i) OLR 1009, a decision of Patna High Court in the case of **Nagendra Prasad Singh Versus State of Bihar** reported in 2004 1 BLJR 316.

. The submission advanced is, the aforesaid decisions are delivered in the wake of a similar provision contained in the panchayat rules for no-confidence against the Pramukh of Panchayat Samiti which stipulated notice to be given for 7 and 15 clear days, respectively and the provision for 'clear days notice' has been interpreted.

12. The petition is opposed by Advocate Shri. A. N. Nagargoje by submitting that the provision introduced in the Maharashtra Village Panchayat Act for direct election of Sarpanch is subsequently deleted by the Maharashtra Village Panchayat (Amendment) Act of 2020 and published in the Maharashtra Government Gazette on 05.03.2020, by which the provision introduced in the form of Section 30A-1A has been declared to cease to apply and every panchayat, by

insertion of Section 30A-1B shall have a Sarpanch who shall be elected under Section 30 and provisions of Section 33 are declared to be made applicable to his election. It is sought to be argued by him that while the provision was introduced in the Act for direct election of Sarpanch by the 2017 amending Act, for removal of doubts, the State Government had issued certain clarifications in view of Section 22 of the amending Act which empowered the State Government to make provisions not inconsistent with the provisions of the said Act, if any difficulty arises in giving effect to the provisions of the Maharashtra Village Panchayats Act, as amended by the amending Act, for the purpose of removing the difficulties. The clarification issued by the Dy. Secretary of the Rural Development Department on 15.01.2020 which has been annexed with the petition at page 48, is argued to be one such order issuing clarification and the clause 5 of the said communication, in which the Special Gram Sabha Meeting was contemplated is relied upon. According to the learned Counsel, after the resolution is passed in the special meeting of the Village Panchayat approving the no-confidence motion and upon the report being received by the Collector, immediately on the next day the Collector shall issue orders for holding special Gram Sabha and within a period of 10 days from the orders of the Collector, the

special meeting of the Gram Sabha shall be held by an officer not below Grade 'B' in status. The said communication from the State Government also clarify that in the special meeting of the Gram Sabha, the no-confidence motion to be passed against Sarpanch/up-sarpanch shall be the only subject on agenda. Paragraph no. 5 of the said communication is pressed into service to submit that it provides that the notice of special Gram Sabha shall be issued minimum three days before (including the date of issuance of the notice and the date of its execution). The said clause also contemplated that for the purposes of effecting the notice on the voters in the Gram Panchayat, by giving publicity of the said notice in the office of Gram Panchayat, or by beat the drum publicly, the notice shall be communicated. Clause '9' of the said communication is also relied upon by Advocate Nagargoje, which stipulates that the resolution will have to be passed by a simple majority of the members present and voting in the meeting of the special Gram Sabha and upon such resolution being passed, it shall be presumed that the no-confidence motion has been passed. It is also clarified that if the no-confidence motion is rejected in the special Gram Sabha and even if the resolution has been passed by 3/4th majority of the members of the Grampanchayat in the special meeting or even by majority exceeding the said figure, it shall be

presumed that the no-confidence motion is not passed and the person shall continue on the post of Sarpanch/up-sarpanch.

13. The learned Counsel, Shri Nagargoje would submit that the provision of four clear days notice as sought to be relied upon by the learned Counsel for the petitioner is merely a directory provision and it's non-compliance will not vitiate the meeting in which the resolution of no-confidence is passed on 16.09.2021.

. The learned Counsel placed reliance on the decision of the Apex Court in the case of K. Narasimhiah Versus H. C. Singri Gowda and others reported in AIR 1966 SC 330, which has been followed by this Court in the case of Pravin Shripati Yadav vs. Grampanchayat, Minche and others reported in [2013(2) Mh.L.j. 934]. The learned Counsel would also place reliance upon the full bench decision of this Court in the case of Viswas pandurang Mokal Versus Group Gram panchayat Shihu & Ors reported in 2011 (3) Bom. C. R. 495, in support of his submission that for carrying out a no-confidence motion against a Sarpanch/up-sarpanch, the provisions of the Bombay Village Panchayat Act (meeting) Rules, 1959 are applicable and in particular, provision contained in Rule 17 of the said Rules

apply to a meeting convened under Section 35 of the Village Panchayat Act. He would also rely upon a decision of the Division Bench of this Court in the case of Chandrakala w/o Vaijanathrao Ghatul vs. Kathalu s/o Maroti Hatagale and others reported in 2009(3) Mh.L.J. 55, where it has been held that the notice of meeting of no-confidence would not be clamped as illegal unless the appellants show that prejudice was occasioned either to the Sarpanch or up-sarpanch and it has been held that while construing the rules of procedure, the Courts normally will read them as directory and not mandatory unless the context otherwise require.

. By referring to the general principles applicable to every democracy, the learned Counsel would ultimately submit that the petitioner who has lost support cannot be allowed to continue as such and any relief granted in his favour in exercise of writ jurisdiction of this Court would be travesty of democratic process as the petitioner has lost confidence of the villagers and do not deserve continuation any further since he does not command confidence of majority. The argument advanced is, the decision taken by the majority in passing the resolution of no-confidence, cannot be permitted to be defeated on technical grounds since ultimately the question as to whether the statute is mandatory or directory depend

upon the intention of the legislature and not upon the language in which the intent is clothed.

14. The learned AGP join Advocate Nagargoje in this submission to oppose the petition and would submit that the Collector has rightly construed the provisions of the Act and the Rules of 1959 and dismissed the appeal filed by the petitioner, since it is found to be in consonance with the mandate of law and in absence of any prejudice being demonstrated, the submission of the learned AGP is that ultimately the duty of the State authorities is to ensure democratic functioning of the local institutions and when a decision is required to be taken with the powers vested in them in removal of the office bearers who do not command confidence of majority, the technical pleas sought to be advanced by the petitioner do not deserve any consideration and the petition deserves a dismissal is the submission.

15. In the wake of the rival contentions, I have perused the Record & Proceedings and appreciated the submissions advanced. The Maharashtra Village Panchayats Act, 1958 contain a provision in the form of Section 30 which provide for election of Sarpanch and

prior to its amendment by the amending act of 2017, it provided that every panchayat shall be presided over by a Sarpanch who shall be elected by and from amongst, the elected members thereof and the election to be held in the first meeting after every general election. The Sarpanch so elected under Section 30 was liable to be removed under Section 35, in case a motion of no-confidence was moved, a mechanism provided under Section 35 was stipulated and it contemplated a motion of no-confidence being moved by a particular fraction of members who are entitled to sit and vote at any meeting of panchayat, after giving notice to the Tahsildar as may be prescribed. The section contemplates a special meeting to be convened by the Tahsildar for considering the motion of no-confidence and the provision contemplates removal of Sarpanch/up-sarpanch if the motion is carried by a majority of not less than $2/3^{\text{rd}}$ of total members entitled to sit and vote in such a meeting.

. The aforesaid two provisions underwent a change in the wake of, ordinance being promulgated on 19.07.2017, which was subsequently replaced by the continuous ordinance 2018 on 20.01.2018. The said ordinance was replaced by an act of legislature known as Maharashtra Village Panchayats (Amendment) Act, 2017 and a substantial change was brought in the enactment for election of

Sarpanch to be directly elected by the persons who are voters in the village. Section 30A-1A was introduced by the amending Act, which reads thus : -

“30A-1A. (1) After the date of commencement of the Maharashtra Village Panchayats (Amendment) Act, 2017 in respect of the panchayat to which the general election is to be held, subject to provisions of sub-sections (4), (5) and (6) of section 30, every panchayat 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 panchayat and the procedure regarding holding of elections to the panchayat 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 panchayat.

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

(5) & (6)

. Corresponding amendments were also effected in Section 7, Section 10 and Section 13, section 33 and also Section 35, which contained a provision for no-confidence. Sub-section 1A came to be inserted to the effect that in respect of the Sarpanch who is a directly elected, the provisions of Section 35(1) shall apply with the modification of "1/3rd of the total number of members who are for

the time being entitled to sit and vote at any meeting of the panchayat to be substituted "2/3rd". Further, in sub-section 3, the following was substituted.

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

16. The amending Act introduced the new mode of election of a *Sarpanch* directly in contrast to the existing manner of election of Sarpanch from amongst the members of the Grampanchayat, for a special reason, which can be discerned from the statement and objects of reasons accompanying the bill and the perusal of the said statement reveal as under : -

STATEMENT

1. As per the existing provisions of the Maharashtra Village Panchayats Act (III of 1959), the Sarpanch is elected from amongst the elected members of the Panchayat for which the candidate contesting the election for the post of Sarpanch requires the majority votes amongst them. Existing provisions of the said Act, provides that the motion of no confidence may be moved by not less than one-third of the total number of members. Consequently, the members move such no confidence motion frequently,

which affects the efficiency of the Sarpanch and cause the disturbances in smooth functioning of Panchayat.

2. Therefore, after due deliberation it is considered necessary to adopt a system of direct election for the post of Sarpanch of panchayat from the public which will give stability in the functioning of the Panchayat. It is, therefore considered expedient further to amend provisions of the Maharashtra Village Panchayats Act 9III of 1959) Act, suitably, so as to strengthen the post of Sarpanch for effective functioning and development of the panchayat.
3. The salient features of the proposed amendments are as under : -

(i) It is proposed to provide that the Sarpanch shall be elected through the secret ballot by qualified voter of the panchayat.

(ii) It is proposed to provide that the Sarpanch shall be the Chairman of all the Gram Sabhas and Village Development Committees of the panchayat.

(iii) It is proposed to provide that the no-confidence motion against the Sarpanch if passed by the panchayat shall be kept before the Gram Sabha, for ratification.

(iv) The responsibility of preparing the budget is proposed to be given to the Sarpanch.

(v) The Sarpanch so elected will be directly accountable to the public of his village.

4.”

17. The amendment so introduced was done away by the subsequent amendment i.e. Maharashtra Village Panchayat (Amendment) Act, 2020 (Mah. Act. No. II of 2020) and the effect of

Section 30A-1A was scored out by inserting Section 30A-1B, which restored the position of election of Sarpanch in the manner prescribed under Section 30 and provisions of sub-section 33 were made applicable. Simultaneously, in Section 35, in respect of the motion of no-confidence, the word 1/3rd in sub-section (1) was replaced by the word 2/3rd and in sub-section 3, the word 2/3rd came to be replaced by the word 3/4th. The effect of amendment of 2020 is to do away with the appointment of Sarpanch in a direct manner and whatever provisions introduced in the Act in relation to the election of a direct Sarpanch were done away with.

. Section 12 of the amending act of 2020 provided for removal of doubts and sub-section 1 and 2 read thus : -

“12. Removal of doubts : -

(1) Notwithstanding anything contained in section 30A-1B of the principal Act, if any order in respect of election or bye-election of a *panchayat* is issued or any procedure for election of or bye-election of the panchayat is commenced, before the date of commencement of the Maharashtra Village Panchayat (Amendment) Act, 2020, such election shall be held as per the provisions of section 30A-1A.

(2) Notwithstanding anything contained in second proviso to sub-section 91) of section 43 of the principal Act, as amended by this Act, if any order in respect of filling of casual vacancy of directly elected Sarpanch is issued or any procedure for filling of casual vacancy of directly elected Sarpanch is commenced, before the date of

commencement of the Maharashtra Village Panchayats (Amendment) Act, 2020, such election shall be held as per the provisions of the second proviso to sub-section (1) of section 43, as it existed before the commencement of this Act.

18. Pertinent to note that the provision introduced by the amending act of 2017 by inserting the mechanism of removal of the carrying out the motion which was substituted by providing for passing of a no-confidence motion being carried by majority of not less than 3/4th members and the provision for ratification before the special Gram Sabha by secret ballot is, however, not deleted by the amending act of 2020. Thus, for a Sarpanch, who is directly elected pursuant to the amending act of 2017, shall be removed by the procedure prescribed in Section 35 of the said Act as prescribed by sub-section 1A, which came to be inserted by the amending act which provide a special mechanism in case motion of no-confidence is to be passed against the Sarpanch, who is directly elected.

. This background of the statutory scheme will have to be kept in mind while construing the provisions for holding of the meeting of the Gram Sabha for the purpose of ratification and in construing whether the provision is to be construed as mandatory or directory.

19. The necessary question which arise for consideration in the facts of the present case is, whether the mandate of notice of extraordinary special meeting of the Gram Sabha to be given “at least four clear days” before the date of such meeting, as contemplated in Rule 5 of the Bombay Village Panchayats (Gram Sabha Meetings) Rules, 1959 is mandatory or directory.

20. Whether a provision in the statute is mandatory or directory will have to be discerned from the intention of the legislature and the language invoked. The Bombay Village Panchayat (Gram Sabha Meetings) Rules, 1959 framed in exercise of powers conferred under Section 176 of the Village Panchayat Act, is to be read along with the parent statute. Section 7 of the Act provide for meetings of Gram Sabha and contemplate four meetings of the Gram Sabha to be held every financial year in the manner prescribed. The proviso appended to Section 7 prescribe for meeting to be held by the Sarpanch at his own motion and on requisition of the Standing Committee, Panchayat Samittee and the Chief Executive Officers within the period specified in the requisition, necessarily indicating that the meetings of the Gram Sabha is either an ordinary meeting or

an extraordinary/special meeting. Rule 3 of Rules 1959 prescribe for holding of the ordinary meetings under sub-rule (i), (ii) and (iii). Sub-rule (iv) is in the form of provision for calling an extraordinary meeting when the Sarpanch may, at any time, on his own motion and shall, if required by the Standing Committee, Panchayat Samittee or the Chief Executive Officer, call for such a meeting. Rule 5 stipulate as under :

"The notice of ordinary meeting of the Gram Sabha shall be given at least seven clear days before the date of such meeting and in case of extraordinary meeting, at least four clear days before such meeting."

21. The question that arise for consideration is whether an extraordinary meeting held in violation of the requirement of four clear days is invalid, and answer to the said question would depend upon whether the provision is mandatory or directory. Rule 1A by clause B define the term 'clear days' to mean, in relation to the notice of the intimation of a meetings means days exclusive of the day of issue of a notice or intimation and of the day of the meeting.

. The Counsel for the petitioner would argue that the sub-rule is mandatory whereas the Counsel for the respondent has submitted that the said rule is directory in nature and in absence of any prejudice being demonstrated by reason of lack of four clear days

notice, the resolution passed at the meeting held pursuant thereof is valid.

22. In K. Narasimhiah (supra), the Hon'ble Apex Court while dealing with the provisions of Section 27(3) of the Mysore Town Municipalities Act, 1951, which required that for meetings of the municipal councillors "seven clear days notice" of an ordinary general meeting and "three clear days notice" or in case of great urgency, notice of shorter period as is reasonable should be given. The Hon'ble Apex Court has observed in paragraph nos. 12, 14, 15 and 20, as under : -

12. The question then is: Is the provision of three clear days' notice mandatory i.e. does the failure to give such notice make the proceedings of the meeting and the resolution passed there invalid? The use of the word "shall" is not conclusive on the question. As in all other matters of statutory construction the decision of this question depends on the ascertainment of the legislature's intention. Was it the legislature's intention in making the provision that the failure to comply with it shall have the consequence of making what is done invalid in law? That is the question to be answered. To ascertain the intention the Court has to examine carefully the object of the statute, the consequence that may follow from insisting on a strict observance of the particular provision and above all the general scheme of the other provisions of which it forms a part.

13.

14. It is necessary also to remember that the main object of giving the notice is to make it possible for the Councillors to so arrange their other business as to be able to attend the meeting. For an ordinary general meeting the notice provided is

of seven clear days. That is expected to give enough time for the purpose. But a lesser period-of three clear days'-is considered sufficient for "special general meetings" generally. The obvious reason for providing a shorter period for such meetings is that these are considered more important meetings and Councillors are expected to make it convenient to attend these meetings even at the cost of some inconvenience to themselves. Where the special general meeting is to dispose of some matter of great urgency it is considered that a period ,of even less than three clear days' notice would be sufficient.

15. A consideration of the object of these provisions and the manner in which the object is sought to be achieved indicates that while the legislature did intend that ordinarily the notice as mentioned should be given it could not have intended that the fact that the notice is of less than the period mentioned in the section and thus the Councillors had less time than is ordinarily considered reasonable to arrange his other business to be free to attend the meeting, should have the serious result of making the proceedings of the meeting invalid.

20. We are therefore of opinion that the fact that some of the Councillors received less than three clear days' notice of the, meeting did not by itself make the Proceedings of the meeting or the resolution passed there invalid. These would be invalid only if the proceedings were prejudicially affected by such irregularity. As already stated, nineteen of the twenty Councillors attended the meeting. Of these 19, 15 voted in favour of the resolution of no-confidence against the appellant. There is thus absolutely no reason for thinking that the proceedings of the meeting were prejudicially affected by the "irregularity in the service of notice."

23. In **Sharif-Ud-din Vs. Abdul Gani Lone**, reported in (1980) 1 SCC 403, the Hon'ble Apex Court while considering the requirement of Section 89(3) of the Jammu & Kashmir Representation of the People Act which provided that an election petition which is intended for service on the respondent should be attested by the petitioner

under his own signature was a mandatory requirement and whether it's non-compliance would result in dismissal of election petition, has recorded in paragraph nos. 8 and 9 as under : -

8. The crucial part of section 89(3) of the Act with which we are concerned provides that "every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition" and the critical words in this part are "under his own signature". The case of the respondent is that the requirement of section 89(3) of the Act that the copy of the election petition should be attested by the petitioner under his own signature is a mandatory one. It is his further case that the language of section 89(3) of the Act does not permit of any other mode of compliance and, therefore, the attestation made by the counsel for the petitioner filing the election petition is no compliance with that provision. It is, therefore, contended by him that the petition is liable to be dismissed as required by section 94 of the Act. On the other hand, the appellant's case is that since the copies of the petition had been signed by his advocate who had been empowered to act for him in the case it should be treated as substantial compliance with section 89(3) of the Act which having regard to its object must be considered to be directory.
9. The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter, substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Certain broad propositions which can be deduced from several decisions of courts regarding the rules of construction that should be followed in determining whether a provision of law is directory or mandatory may be summarised thus: The fact that the statute uses the word 'shall' while laying down a duty is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation, the Court has to ascertain the object which the provision of law in question is to subserve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law

relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one. Where however, a provision of law prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one. A procedural rule ordinarily should not be construed as mandatory if the defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by according such permission to rectify the error later on, another rule would be contravened. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow.

. Conclusively, it was held that failure to give three clear days notice to some of the councillors did not affect the validity of the meeting or the resolution of the no-confidence passed against the appellant.

24. The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Certain broad propositions which can be deduced from several decisions of the

Courts regarding the rules of construction that should be followed in determining whether provision in a statute is a directory or mandatory would lead to the position of law being more or less settled to the effect; the fact that the statute uses the word "shall" while laying down the duty is not conclusive on the question whether it is mandatory or directory. In order to ascertain the true character of the legislation, the court has to ascertain the object which the provision of law in question is to sub-serve and its design and the context in which it is enacted. If the object of the law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any duty and the invalidation of any Act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time, who have no control over the performance of the duty, such provision should be treated as directory one.

25. Where, however, a provision of law is prescribed i.e. certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another, when such act is not done in that

manner, the former has to be regarded as mandatory. A procedural rule ordinarily should not be construed as mandatory if the defect in act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at subsequent stage unless by according such permission to rectify, the error later on, another rule would be contravened. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lay down the failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequences should not follow.

. The Supreme Court held the requirement to be mandatory construing the object of the provision being that the petitioner should take full responsibility for the contents of the petition.

. The statutory construction 'by Crafford' has summarized the principle in the following words.

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision but also by considering its nature, its design and the consequences which would follow from construing it in one way or the other. No hard and fast text or invariable formula can be laid to determine whether a particular provision in a statute is mandatory or directory. The broad purpose of the statute or a provision must be

kept in mind. The weighing of the consequence of holding a provision to be mandatory or directory is vital and more often than not determinative of the very question whether the provision is mandatory or directory and at times, the prejudice caused is also a relevant consideration.

26. It is well established that wording of any provision was not determinative of whether it was absolute or directory and even the absence of penal provision for non-compliance did not every time lead to an inference that it was only directory. The Court has to get to the underlined idea and ascertain the purpose to be achieved, notwithstanding the text of the provision. In the wake of the aforesaid position of law, when Rule 5 is looked from the lens of the legislature, which contemplated a notice of at least four clear days before holding an extraordinary meeting and the legislature took the pains to define the term "clear days", by excluding the day of issuance of a notice and the day of the meeting, the intention of the legislature must be given it's due weightage. Section 35 which is a provision for bringing a motion of no confidence against Sarpanch/Up-sarpanch, contemplate a motion to be moved by a specified fraction of the members and on a requisition/notice being forwarded to the Tahsildar, pursuant to which a meeting shall be convened and the motion be tabled. For passing a motion of no-confidence, a

particular majority as is prescribed, must vote in favour of the motion and in view of the amended provision for bringing a no-confidence motion against a directly elected Sarpanch, apart from the said procedure, the ratification before the special Gram Sabha by secret ballot is an additional protection available to a Sarpanch. The Sarpanch appointed directly by the members, thus enjoy the benefit of the dual process to be followed, a motion of no-confidence being passed in the special meeting of the panchayat and ratification before the special Gram Sabha. The rules of 1959 contemplate that a notice of the extraordinary Gram Sabha, which is akin to a special meeting of the Gram Sabha by affixing a notice in the office of the Panchayat and the Village Chawadi or any other conspicuous place of the village and making announcement by beat of drums on the fourth day and also on the day immediately preceding the day of the meeting as specified by Rule 6. On the special meeting of the Gram Sabha being organized for ratification of the no-confidence motion passed in the special meeting of the panchayat, the Gram Sabha meeting will have only one agenda, indicating the significance of this special meeting convened for the purpose of a ratification of the resolution passed in the special meeting of the Panchayat. Section 35 in it's amended form applicable to the directly elected Sarpanch is a complete code

itself and in the wake of the statement of objects and reason while introducing the said provisions by the amending Act of 2017, the legislature deliberately emphasized on the elective office of the directly elected Sarpanch and the need to ensure is stability in office and to achieve the objects of the panchayat at root level and to deal with the mischief of affecting the efficiency of Sarpanch, by frequently moving such no-confidence motion, the amending act provided for a special provision to the effect that if a no-confidence motion is passed against the Sarpanch by the panchayat, it shall be kept before the Gram Sabha for ratification. This provision is specifically introduced, since the Sarpanch so elected was directly accountable to the public office village and if he was elected by the voters in the village and when he is sought to be removed, the villagers in the village will have a definite say in his removal. Looking to the intention of the legislature, being not to undermine the authority of the Sarpanch who has been directly elected and holding the high elective office, should not be easily ousted and the functioning of the panchayat is not disrupted, the mandate of Rule 5 of giving four days clear notice will have to be construed keeping in mind this laudable intention of the legislature. Though for reasons better known to the legislature, this provision of directly elected

Sarpanch was required to be rolled back by bringing an amendment in the year 2020 and the position of election of Sarpanch from amongst the members of the panchayat has been resorted to once again.

27. The decision of Division Bench of the Nagpur High Court had an occasion to deal with a similar issue in case of Rambharoselal Gahoi Versus State of M. P. and others reported in AIR 1955 Nagpur 35, in which the meaning of expression "clear days" has been explained and it has been unequivocally held that in case of use of such expression, the two terminal days must be excluded.

. I deem it appropriate to quote the relevant observations from the said judgment, which reads thus :

9. The rule of law is that when words such as so many "clear days" or so many days "at least" are used, the two terminal days must be excluded. This rule is summarised by Maxwell on the Interpretation of Statutes, 10th Edn., at page 351, by use of the following words : -

"Again, when so many 'clear days', or so many days 'at least' are given to do an act, or 'not less than' so many days are to intervene, both the terminal days are excluded from the computation. In other cases, it would seem, the rule is to exclude the first and include the last day."

28. The Division Bench of Rajasthan High Court in the case of **Anokhmal Bhurelal Versus Chief Panchayat Officer, Rajasthan Jaipur and others** reported in AIR 1957 Raj 388 interpreted the expression "at least seven days" being synonymous with seven clear days and held that in computing the period of seven days, clear interval is required. The relevant portion reads thus : -

"The answer to the question was therefore given in the negative and the notice was held to be invalid. The language of Rule 4 is not similar to the language of Section 22 of the Income Tax Act. In Rule 4 the language used is "at least seven days" before the date of election. The language of the provision that came up for consideration is much similar and the observation of the learned Judges in that case may serve as of assistance in this case. "At least seven days before the date of election" clearly means that 7 days' period must intervene between the date of the announcement of the notice and the date of election. In other words "seven days" clear interval is required to lapse between the date of the announcement of notice and the date of election. The general rule of law of the computation of time is that fractions of a day are not reckoned."

29. In **The Pioneer Motors (Private) Ltd. Vs. The Municipal Council, Nagercoil** reported in AIR 1967 SC 684, the Supreme Court has held that when a statute uses the expression of 'not more than so many days', both the terminal days have to be excluded and the number of days mentioned must be clear days. In a case where the statute has specified particular clear days, both the terminal days will have to be excluded and it has been held as under : -

"..... The words " not being 'less than one month " do imply that clear one month's notice was necessary to be given, that is, both the first day and the last day of the month had to be excluded. To put it in the language used by Maxwell on Interpretation of Statutes, 10th Edition, p. 351 :- "..when..... not less than' so many days are to intervene, both the terminal days are excluded from the computation."

30. The intention of the legislature must be the guiding factor while construing a provision in a statute, when the rules contemplate, four days clear notice and define the term clear days, I do not think it is permissible to cut short the days to subscribe to the submission that the rule is merely directory. The view expressed by me as above is recorded by the Full Bench of the Karnataka High Court in the case of C. Puttaswamy, etc. v. Smt. Prema, etc. reported in AIR 1992 Karnataka 356, where the question that was referred to the full bench for consideration reads thus : -

"Whether the provision under S. 47(3) of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 requiring the Deputy Commissioner to give to members of a Mandal Panchayat notice of a meeting for consideration of a motion of no-confidence against the Pradhan or Upa-Pradhan 'of not less than 15 clear days of such meeting' is mandatory or directory?"

. After referring to the catena of decisions, the question referred above has been answered as declaring the requirement to be mandatory. The said conclusion being arrived at by construing the statutory scheme and by recording as under : -

"The section provide that a meeting convened for the purpose of considering a motion of 'No confidence' shall not for any reason be adjourned. The motion was required to be carried by two-third the number of the members. Therefore, S. 47 contemplated a procedure totally different from what had been laid down in regard to ordinary meetings. It was, therefore, clear that a meeting convened for the consideration of a 'No confidence' motion was something special to the Act. The reason was obvious, because the democratic process by which Pradhan and Upa-pradhan had been elected was sought to be interfered with by moving a 'No confidence' motion. Therefore, the legislature had prescribed a procedure different from that of a ordinary meeting."

31. Further, the Full bench of Madhya Pradesh High Court in the case of **Bhulin Dewangan Vs. State of M.P. and Ors.** reported in 2000 (4) MPHT 69 also resolved the cleavage of opinions expressed by several benches of the MP High Court on the import and effect of provision contained in Section 21 of the MP Panchayat Raj Adhiniyam 1993 and sub-rule (3) of Rule 3 of the Rules. Section 21 of the Act is *para materia* as Section 35 of the Bombay Village Panchayat Act providing for no-confidence motion against Sarpanch and Up-sarpanch. Sub-rule (3) Rule 3 of the Madhya Pradesh Panchayat Niyam, 1994 contemplated a notice of no-confidence and the decision of the learned Single Judge in invalidating the result of no-confidence motion on the ground of non service of notice of meeting seven days in advance is upheld. By approving the observation made by another Division bench in **Raghuvans Prasad Vs.**

Mahendra Singh and others reported in (1967) MPLJ 941, which had observed "

"It is thus manifest that the mandatory provision contained in section 56 (3) of M.P. Municipalities Act about seven clear days notice of the meeting was not complied with. It is true that rule 3 of the Madhya Pradesh Municipalities (President and Vice-Presidents) Election Rules, 1962, which provides that the presiding authority shall specify in the notice of the meeting the time and place so fixed, is silent about the period of notice for the meeting at which the election is to be held. But this rule does not in any way override section 56 (3) and so read, it necessarily follows that the presiding authority must despatch to every Councillor notice of meeting seven clear days before the meeting."

32. Another decision of the Patna High Court which fortify the view taken by me is in the case of **Rambha Sinha Vs. The State of Bihar and Ors.** reported in 2004 (2) BLJR 1408 delivered by His Lordship Justice Chandramouli Kr. Prasad (as he was then) where Section 44(4) of the Bihar Panchayat Raj Act which contemplated seven clear days notice for holding a special meeting was a provision that came up for consideration and it has been observed as under : -

"9. So far as Section 44(4) of the Act is concerned, same in emphatic terms provides for seven clear days notice of a special meeting. The question is what is the meaning of the expression "seven clear days notice". Probably no question has more exercised the mind of Judges in former time than the question as to proper mode of computing time. The statute requiring that the notice of grounds of appeal was to be given fourteen days at least before the first day of the session, it was decided that

fourteen days at least meant fourteen clear days. The expression "not less than fifteen days" was considered to mean fifteen clear days. Here the Legislature itself has used the expression "seven clear days notice". In case if I hold that one of the days is to be reckoned inclusive and the other exclusive, I shall be held guilty of rendering the words used by the Legislature superfluous. It is sound principle of interpretation that the Legislature is deemed not to waste its words or to say anything in vain and the Court while considering the provisions shall not lean towards a construction which renders the words used by the legislature redundant except for compelling reason. Therefore, I am of the opinion that for computing seven clear days the day on which the notice is issued and the date of meeting shall be excluded."

33. The Rule 5 of the Village Panchayat (Gram Sabha meeting) Rules, 1959 are more specific and the legislature in the said Rules has not left it to the discretion of the authority to construe "clear days" but has itself defined "clear days" excluding the day of issue of notice and the day of the meeting, leaving no scope for interpreting the said term. It is the solemn duty of the Court to give due regard to the intention of the legislature and when the legislature contemplate that an extraordinary meeting of the Gram Sabha shall be preceded by at least four clear days notice before the date of such meeting, it is mandatorily stipulating that let four days clear notice be given and instead of leaving it to the discretion of the authorities to compute these four days the legislature has also clarified term "clear days".

. In the wake of the above discussion, in my considered opinion, the provision of giving four days clear notice being clearly violated by the Naib Tahsildar in convening the meeting of the special Gram Sabha in which the ratification was carried out by the members of the Gram Sabha, the no confidence motion cannot be said to be validly passed against the petitioner.

34. The learned Counsel for the respondent has made a feeble attempt to argue that the meeting of the Gram Sabha held on 16.09.2021 ought to be convened as per the Bombay Village Panchayats (Meetings) Rules, 1959 and by relying upon the said rules, the submission sought to be advanced is that sub-rule (2) of Rule 5 of the said Rules provide for at least one clear day notice before the day fixed for a special meeting, intimating the date, time and place of such special meeting and of the business to be transacted a day ahead.

. The said argument of the learned Counsel is mentioned just to be rejected as it failed to consider the distinction between a Panchayat and a Gram Sabha, since the Gram Sabha as contemplated under the Maharashtra Village Panchayat Act, 1959 is a body

consisting of persons registered in the electoral rolls relating to the village comprised within the area of panchayat and is distinct from the panchayat. Gram Sabha is a permanent body in the form of assembly of electors and the members of Grampanchayat are elected by members of Gram Sabha which is a nucleus of the Panchayat Raj and Village Welfare. All those, above 18, living in village and whose names are included in the electorate of panchayat are members of Gram Sabha.

35. The procedure contemplated for removal of a directly elected Sarpanch prescribed for his election directly from the persons whose names are included in the list of voters for a village under Section 12 of the Act of 1959. For his removal by bringing a motion of no-confidence, apart from the motion of no-confidence being carried by a majority of not less than $\frac{3}{4}$ th of the total number of members entitled to sit and vote in a meeting of the panchayat, a ratification before the special Gram Sabha by a secret ballot in the presence and under the Chairmanship of Officer appointed for the purpose by the Collector is a second safeguard. The amended sub-section 1A of Section 35 contemplate ratification before the special Gram Sabha and, therefore, the learned Counsel for the respondent

apparently is missing the important requirement of the procedure prescribed under sub-section 1A of Section 35.

. The submission of the learned Counsel for the respondent by placing reliance upon the directions issued by the State Government in its communication dated 15.01.2020 which offer clarification in clause no. 5 by declaring that the notice of the special Gram Sabha should be given minimum three clear days before, is also not of any succor to him for the simple reason that it is merely a clarification issued by a Dy. Secretary in the Rural Development Department to the Collectors. The Counsel Shri. A. N. Nagargoje has termed the said communication as the directives issued under Section 22 of the amending Act, but even this argument does not hold any force. The reason being, Section 22 of the amending Act prescribed, that if any difficulty arises in giving effect to the provisions of the Maharashtra Village Panchayat Act, on its amendment, the State Government may by an order published in the Official Gazette, as the occasion arises, makes such provision not inconsistent with the provisions of the Act, as it may be necessary or expedient for the purpose of removing the difficulty. It further clarify that no such order shall be made after expiry of period of two years from the date of commencement of this Act and every order so made shall be laid,

as soon as may be, after it is made before each house of the State legislature. Perusal of the communication at page no. 48 of the petition dated 15.01.2020 for short of all the aforesaid requirement; firstly it is not an order, secondly, it is not an order published in the Official Gazette and thirdly, the said order being made after expiry of period of two years from the date of the commencement of the Maharashtra Village Panchayats (Amendment) Act (which came into force on 19.07.2017) has not adhered to the procedure contemplated, of being laid before each house of the State legislature. The period prescribed in the said communication for holding a special meeting of the Gram Sabha as 'three clear days', therefore, do not any way take forward the case of the respondents.

36. In the wake of the aforesaid discussion, by taking into account the special provision introduced for removal of a directly elected Sarpanch by the Maharashtra Village Panchayat (Amendment) Act, 2017 though the provision has been subsequently rolled out under the Maharashtra Village Panchayat (Amendment) Act, 2020, since the petitioner was directly elected as a Sarpanch, the procedure contemplated under sub-section 1A of Section 35 is the only manner in which the motion of no-confidence can be passed

against him and in the light of the said provision, the requirement of Rule 5 of the Gram Sabha notice Rules 1959 is held to be mandatory and in absence of following the said mandate of 'four clear days notice', the ratification by the resolution passed in the special Gram Sabha meeting of 16.09.2021 cannot be said to be in accordance with the requirement of sub-section 1A of Section 35 as inserted by the Maharashtra Village Panchayat (Amendment) Act, 2017. In the wake of the aforesaid, the requirement of ratification of the No-Confidence motion before the Special Gram Sabha held on 16.09.2021 do not meet the requirement prescribed for moving the no-confidence motion against the petitioner, a directly elected Sarpanch under the Maharashtra Village Panchayat (Amendment) Act, 2017. The action against him therefore cannot be sustained and is liable to be set aside.

37. For the reasons recorded above, it is manifest that there was no proper adherence to the rules holding the meeting of the Special Gram Sabha and in the wake of the consequences to be taken by the petitioner, the requirement of giving four days clear notice is held to be mandatory. In the absence of the ratification by the Gram Sabha in the Gram Sabha meeting, which was held without following

the mandate of four days clear notice, the ratification, which form the basis of the No Confidence Motion being passed against the petitioner, cannot sustain.

38. In the result, the impugned resolution dated 16.09.2021 passed in the Special Gram Sabha and the judgment and order dated 13.12.2021 passed by the Collector, Nanded, is quashed and set aside. The Writ Petition is allowed. Rule is made absolute in the aforesaid terms.

39. The learned AGP shall communicate the Nayab Tahasildar about this order being passed in the open court.

40. Rule is made absolute in the aforesaid terms with no order as to costs.

[BHARATI H. DANGRE]
JUDGE