

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7792 OF 2017

Raosaheb Mallappa Magdum & Ors.

... Petitioners.

Vs.

Vandana Shivajirao Mane and Ors.

... Respondents

Mr. S. S. Patwardhan for petitioners.

Mr. Keshav Jugale i/b Abhijit M. Adagule for respondent no.1.

Mr. A. A. Alaspurkar-AGP for the State-Respondents no. 2 and 4.

CORAM: ABHAY AHUJA J.

DATE : 19th DECEMBER 2022

PC. :

1. By this petition filed under Articles 226 and 227 of the Constitution of India, petitioners are challenging the order dated 1st July, 2017 passed by the Collector, Kolhapur in Village Panchayat Dispute No. 27 of 2017 allowing the dispute filed by the respondent no.1 and setting aside the No Confidence Motion.

2. The brief facts are that earlier requisition in prescribed format and by the prescribed number of members of the village panchayat was served on the Tahsildar on 12th May, 2017. Since the Tahsildar was on leave and resumed duty on 27th May, 2017, on the said day itself he issued notices to the members of panchayat requiring them to attend the special

meeting to motion on No Confidence on 30th May, 2017.

3. On 30th May, 2017, the motion of No Confidence was taken up for consideration; 13 members voted in favour of motion and 3 against. The motion expressing the want on confidence in respondent no.1, was accordingly passed on the said date.

4. By the impugned order dated 1st July, 2017, the Collector set aside the said motion holding that there was breach of Section 35(2) of the Maharashtra Village Panchyat Act, 1958 (the “said Act”) and Rule 2(3) of Bombay Village Panchayat Sarpanch and Upa-Sarpanch (No Confidence Motion) Rules, 1975 (the “said Rules”) in as much as meeting to consider the motion of No Confidence was convened by the Tahsildar beyond the period of 7 days from the date of receipt of the notice/requisition.

5. In view of the conflicting views expressed in different decisions of this Court, the issue that arose was whether the time limit of 7 days from the date of receipt of requisition prescribed in Section 35(2) of the said Act and Rule 2(3) of the said Rules, to convene the meeting to consider the motion of No Confidence is mandatory or directory.

6. This Court after considering the various provisions of the said Act, the said Rules, as well as conflicting judgments referred the matter for consideration by the Full Bench of this Court. A Full Bench of this Court on 3rd September, 2019, answered the reference by holding that notwithstanding sub-section (2) of Section 35 of the said Act mandating the Tahsildar to convene a meeting of the Panchayat within seven days from the receipt of the notice under sub-section (1), if for some reason the Tahsildar is unable to do so or deliberately refrains from doing so and though he may be personally liable for the wrong committed but that would not mean that a meeting convened beyond seven days would be *corum non-judice*. The Full Bench accordingly held that the decision taken at the meeting would be legal and valid. Paragraph 18 of the Full Bench Decision is quoted as under:-

“18. Thus, we answer the reference by holding that notwithstanding sub-section (2) of Section 35 of the Maharashtra Village Panchayat Act, 1959 mandating the Tahsildar to convene a meeting of the Panchayat within seven days from the receipt of the notice under sub-section (1), if for some reasons the Tahsildar is unable to do so or deliberately refrains from doing so, he may be personally liable for the wrong committed but that would not mean that a meeting convened beyond seven days would be *corum non-judice*. The decision taken at the meeting would be legal and valid”

7. Mr. Patwardhan, learned counsel for the petitioner would submit that in view of the Full Bench decision of this Court, the order dated 1st July, 2017 passed by the Collector in Village Panchayat Dispute No. 27 of 2017, ought to be set aside. He, however, submits that since the term of the office of the sarpanch having expired and pursuant to stay granted by this Court on the impugned decision, the order of this Court would be rendered academic.

8. Be that as it may, in view of the Full Bench decision of this Court dated 3rd September, 2019 holding that the requisition notice under Section 35(2) of the said Act and Rule 2(3) of the said Rules to convene a meeting to consider the motion of No Confidence to be directory, the order dated 1st July, 2017 of the Collector deserves to be set aside and is hereby set aside.

9. Petition stand allowed in the above terms. No costs.

(ABHAY AHUJA, J.)

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