

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

WRIT PETITION NO.2449 OF 2023

SACHIN RAMESH MANE

VERSUS

**THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL SECRETARY
AND OTHERS**

...

Advocate for Petitioner : Mr. Shrikant G. Kawade

AGP for Respondents: Mr. S.B. Yawalkar.

CORAM : MANGESH S. PATIL

& S.G. CHAPALGAONKAR, JJ.

DATE : 28th FEBRUARY 2023

P.C.:-

Petitioner, who was elected on 15.1.2021 and was subsequently elected as a Sarpanch is moving this petition since a no confidence motion has been moved under Section 35 of the Maharashtra Village Panchayats Act, 1959 and is likely to be taken up today.

2] Learned Advocate for the petitioner would submit that already a similar motion was moved on 27 August 2021 but it could not get through. In spite of the provision prohibiting any fresh no confidence motion within next two years of failure of the earlier one, the current process is void-ab-initio and should not be allowed to go through.

3] Learned AGP submits that even on petitioner's own saying, admittedly, though earlier a no confidence motion was moved, it was invalid, inasmuch as, contrary to a stipulation under that provision, it was moved within two years of the election and after it was realized the process was dropped. It is not tantamount to failure of the no confidence

motion and will not affect a fresh no confidence motion, which is slated today.

4] As far as the facts are concerned, there is no dispute. The earlier no confidence motion was moved within two years of the election which could not have been validly moved in view of the specific provision contained in Section 35. It appears that realizing this fact the process itself was dropped by the Tahsildar and it is not that the no confidence motion was allowed to go through the complete process and any resolution was passed.

5] In our considered view, the plain reading of the 5th proviso to sub-section 3 of Section 35, prohibits fresh no confidence motion within next two years from the date of failure of earlier no confidence motion. The word 'failure' would indicate that the process was completed but could not get through and not when the process though initiated has been dropped mid-way.

6] In view of the plain meaning which can be had from the reading of the fifth proviso, the present process being questioned by the petitioner cannot be said to be invalid or violative of the 5th Proviso to Sub-section 3 of Section 35 of the Maharashtra Village Panahayats Act.

7] Writ petition is dismissed.

[S.G. CHAPALGAONKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

grt/-