

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

WRIT PETITION NO. 7296 OF 2023

Sou. Rupali Vijay Jadhav
Age.37 years, Occ. Household,
R/o.Nimgaon Wagha,
Tq. & Dist. Ahmednagar.

.. Petitioner

Versus

1. The State of Maharashtra
Through Collector,
Ahmednagar.

.. Respondents

2. The Tahsildar,
Nagar Taluka,
Dist. Ahmednagar.

3. Sou. Lata Arun Falke
Age. Major, Occ. Household,

4. Pramod Eknath Jadhav,
Age. Major, Occ. Agri.,

5. Kiran Subhash Jadhav,
Age. Major, Occ. Agri.,

6. Dipak Bhanudas Gaikwad,
Age. Major, Occ. Agri.,

7. Sou. Alka Bhanudas Gaikwad,
Age. Major, Occ. Household,

8. Sou. Ujwala Sagar Kapse,
Age. Major, Occ. Agri.,

9. Sou. Munnabee Dilavar Shaikh
Age. 40 years, Occ. Household,

10. Sanjay Ranba Kapse
Age. Major, Occ. Agri.,
11. Sou. Sujata Dnyandeo Kapse,
Age. Major, Occ. Household.
12. Nana Kisan Dongare
Age. Major, Occ. Service,

All above R/o. Nimgaon Wagha,
Tq. Nagar, Dist. Ahmednagar.

Mr.A.S. More, Advocate for the petitioner.
Mrs.D.S. Jape, AGP for the respondent Nos.1 and 2.
Mr. N.L. Jadhav, Advocate for respondent Nos.3 to 11.

CORAM : KISHORE C. SANT, J.
DATED : 03.07.2023

ORAL JUDGMENT :-

01. Rule. Rule made returnable forthwith by consent of the parties.
02. The petitioner who happens to be a Sarpanch of village Nimgaon Wagha, Tq. & Dist. Ahmednagar has challenged the judgment and order passed by the learned District Collector dated 26.02.2023 rejecting her Dispute Application No.35 of 2023, raising dispute about no-confidence motion passed against her by the members of the village Panchayat.

03. Three grounds on which the petitioner had challenged the order are as below :-

- i) The Tahsildar has not presided over the meeting and the same is presided over by the Nayab Tahsildar.
- ii) The meeting was not convened within seven days of receipt of notice of no confidence.
- iii) No opportunity was given to speak in the meeting.

04. The learned Advocate for the petitioner relies upon section 35(2), which reads as under :-

“35 (2) Within seven days from the date of receipt by him of the notice under sub-section (1), the Tahsildar shall convene a special meeting of the panchayat at a time to be appointed by him and he shall preside over such meeting. At such special meeting, the Sarpanch or the UpaSarpanch against whom the motion of no confidence is moved shall have a right to speak or otherwise. to take part in the proceedings at the meeting (including the right to vote)”

05. The learned Advocate for the petitioner submits that it is the Tahsildar who has to personally preside over the special meeting when no-confidence motion is moved against the Sarpanch or Vice Sarpanch. The notice of motion was received on 10.05.2023. On the same day the notice was issued to the members of the Grampanchayat and the meeting was actually convened on 17.05.2023 and therefore he submits that it is not within seven days of the receipt of motion of no-confidence. The third point he submits that the section mandates of giving of opportunity to the person

against whom no-confidence motion is moved to address the meeting, but no such opportunity was given to him.

06. The learned Advocate Mr. Jadhav for respondent Nos.3 to 11 relies upon judgment in the case of **Sahebrao Khandu Patil & Ors. Vs. Joharabai Latif Patel and Ors. reported in 2003 (1) Bom.C.R. 172**, wherein this Court has held that provisions of section 35(2) are directory and not mandatory. In that case it was held that the meeting presided over by the Nayab Tahsildar is not illegal.

07. On the second submission, the learned Advocate Mr. Jadhav relied upon judgment reported in **2008(3) Bom.C.R. 683 in the case of Seema Ashok Kamble Vs. Collector, Pune and ors.**, wherein it is clearly held that the date on which motion is moved is to be excluded while calculating seven days. This Court has held this in view of section 10 of the Bombay General Clauses Act, 1904.

08. So far as third submission is concerned, in the proceeding from the meeting, it is not shown that the petitioner had raised any objection

stating that she has not been given opportunity in the proceeding.

09. By considering the above facts and the submissions, this Court finds that what needs to be seen in such proceeding is that the person has lost confidence. The fact of voting by nine out of eleven members against the members is not disputed. The notice of motion was received on 10.05.2023. Therefore, calling for the meeting on 17.05.2023 cannot be said to be beyond seven days, in view of section 10 of the Bombay General Clauses Act and judgment in the case of Seema Ashok Kamble (Supra). On the first point, this Court find that even if meeting is presided over by the Nayab Tahsildar, same cannot be faulted with. The learned Collector has considered this aspect and this Court does not find any reason to call for interference in the impugned order.

10. With the above observations, the petition stands dismissed. Rule discharged.

[KISHORE C. SANT, J.]