

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

911 WRIT PETITION NO.10200 OF 2023

**CHAYA DNYANESHWAR KOLHE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS**

...
Advocate for Petitioner : Mr. Godhamgaonkar A.G.
GP for Respondents/State : Mr. D.R. Kale
Advocate for R/5 : Mr. S.S. Thombre
...

**AND
WRIT PETITION NO.8724 OF 2023**

**BHAUSAHEB LIMBAJI DEOKAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA
THROUGH ITS PRINCIPAL SECRETARY AND OTHERS**

...
Advocate for Petitioner : Mr. S.S. Thombre
GP for Respondents/State : Mr. D.R. Kale
...

**CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.
DATE : 18th August, 2023**

PC. :-

1. The issue involved in this matter is as regards the conjoint reading of Section 35(1) with Section 35 (3-A) of the Maharashtra Village Panchayats Act. Section 35 reads as under:

“35. Motion of no confidence.

*[(1) A motion of no confidence may be moved by not less than [two-third] of the total number of the members [* * *] who are for the time being entitled to sit and vote at any meeting of the panchayat against the Sarpanch or the Upa-Sarpanch after giving such notice thereof to the Tahsildar as may be prescribed. [Such notice once given shall not be withdrawn.]*

(2) Within seven days from the date of receipt by him of the notice under sub-section (1), the Tahasildar, 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 Upa-Sarpanch 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).

*(3) (a) If the motion 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 or the Upa-Sarpanch, as the case may be, [shall forthwith stop exercising all the powers and perform 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; and in case the motion is carried out against both the Sarpanch and Upa-Sarpanch, in such officer, not below the rank of Extension Officer, as may be authorised by the Block Development Officer, till the dispute, if any, referred to under sub-section (3B) is decided:*

Provided that, if the dispute so referred is decided in favour of the Sarpanch or as the case may be, Upa-Sarpanch, thereby setting aside such motion, the powers, functions and duties of the Sarpanch or Upa-Sarpanch shall forthwith stand restored, and if the dispute is decided confirming the motion, the office of the Sarpanch or, as the case may be, Upa-Sarpanch shall be deemed to have fallen vacant from the date of the decision of the dispute, unless the incumbent has resigned earlier:

Provided further that, in cases where the offices of both the Sarpanch and Upa- Sarpanch become vacant simultaneously, the officer authorised under this sub-section shall, pending the election of the Sarpanch, exercise all the powers and perform all the functions and duties of the Sarpanch but shall not have the right to vote in any meetings of the panchayat:]

[Provided also that), where the office of the Sarpanch being reserved for a woman, is held by a woman Sarpanch, such motion of no-confidence shall be carried only 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:]

[Provided also that, no such motion of no-confidence shall be moved within a period of two years from the date of election of Sarpanch or Upa-Sarpanch and before six months preceding the date on which the term of panchayat expires:

Provided also that, if the no-confidence motion fails, then no motion shall be moved within next two years from the date of failure of no-confidence motion.]

(b) After the motion of no-confidence against the directly elected Sarpanch 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, then the same shall be ratified by the Gram Sabha, in a special meeting convened, within fifteen days from passing of such motion, by an officer appointed by a Collector in this behalf, in the presence and under the Chairmanship of such officer, by a simple majority by the method of counting of heads. After such ratification of motion by the Gram Sabha, the Sarpanch 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, and in case the motion is carried out against both the Sarpanch and Upa-Sarpanch, in such officer, not below the rank of Extension Officer, as may be authorised by the Block Development Officer, till the dispute, if any, referred to under sub-section (3B) is decided:".

(3A) If the motion [is not moved or is not carried] by [a majority of not less than [or, as the case may be, 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, no such fresh motion shall be moved against the Sarpanch or, as the case may be, the Upa-Sarpanch within a period of "[one year] from the date of such special meeting.]*

(3B) If the Sarpanch or, as the case may be, the Upa-Sarpanch desires to dispute the validity of the motion carried under sub-section (3), he shall, within seven days from the date on which such motion was carried, refer the dispute to the Collector who shall decide it, as far as possible, [within thirty days from the date on which it was received by him; and his decision shall be final].

*(3C) [* * *]*

*(3D) [* * *]*

*(4) [* * *]"*

[Emphasis supplied]

2. We have considered the strenuous submissions of the learned advocates for the respective sides.

3. The words "*if the motion is not moved*" appearing in Sub-section 3A, are to be read conjointly with the opening words in Section 35(1) viz. "*a motion of no confidence may be moved by not less than 2/3rd of the total number of members who are for the time being entitled to sit and vote in any meeting of the panchayat.*" This would indicate that the words "*if the motion is not moved*" are not to be read in isolation to mean that, if a motion is not moved on the day of the special meeting, the motion is deemed to have failed.

Hence, the further words “*by a majority of not less than*” would be applicable in both the contingencies and will have to be read as “if the motion is not moved or if the motion is not carried by a majority of not less than.....” .

4. The learned advocate for the Petitioner submits on instructions from the husband of the Petitioner present in the Court, that the Petitioner desires to withdraw this petition.

5. In view of the above, **this petition is disposed off** as withdrawn on instructions.

6. Writ Petition No.8724/2023 was not on board. At the request of the learned advocate for the Petitioners, the same is taken on board.

7. The learned advocate for the Petitioners seeks liberty to withdraw this petition on instructions.

8. As such, **this petition is disposed off** as withdrawn on instructions.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]