

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

930 WRIT PETITION NO.13075 OF 2022

ASHABAI KAILAS AKOLKAR AND OTHERS
VERSUS
THE DISTRICT COLLECTOR AURANGABAD AND OTHERS

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Advocate for Petitioners : Mr. R. V. Gore
AGP for Respondents-State : Mr. G. O. Wattamwar
Advocate for Respondent No.4 : Mr. K. D. Jadhav
Advocate for Respondent No.3 : Mr. V. H. Pathade
Advocate for Respondent Nos.5,6: Mr.Syed Parvez h/f Shaikh Tarek Mobin H.

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CORAM : ARUN R. PEDNEKER, J.
DATE : 15th February, 2023

PER COURT :

1. Heard learned Advocates appearing on behalf of all the parties.
2. The learned Advocate for the petitioner submits that the 'no-confidence' motion was moved against the Upa-Sarpanch of village Panchayat Hatnoor, Taluka Kannad, District Aurangabad, before completion of period of two years from the date of elections. Although the 'no-confidence' motion was carried out, the same was set aside in view of the bar contained in proviso to Section 35 (3) of the Maharashtra Village Panchayats Act, which runs as under :-

"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."

Proviso to Section 35 (3) of the Act bars the 'no-confidence' motion being moved within two years from the date of election of the Sarpanch or the Upa-Sarpanch and before six months preceding the date on which the term of the panchayat expires. In the instant case, the 'no-confidence' motion being moved before the expiry of two years period from the date of election the same was set aside by the Collector.

3. The petitioner has challenged the order passed by the Collector in the present petition. The petitioner contends that, the Collector while passing the order of setting aside the 'no-confidence' motion on the ground that it was premature in view of the proviso to Section 35 (3) of the Maharashtra Village Panchayats Act, the Collector ought to have observed in the impugned order that there is no bar in bringing a fresh 'no-confidence' motion after the expiry of two years period from the date of election. The learned Collector having not observed as above has committed a jurisdictional error.

4. Per contra, the learned Advocate appearing for the respondent No.4 submits that, the Collector has rightly set aside the 'no-confidence' motion as it is violative of proviso to Section 35 (3) of the Maharashtra Village Panchayats Act, and it is not within the

jurisdiction of the Collector to mention any further contingency as to bringing about the 'no-confidence' motion after the expiry of the period of two years.

5. The learned Advocate for the respondent No.4 submits that if the law permits, then the petitioner is entitled to move a 'no-confidence' motion, however it is premature today to make any observation as regards the bringing a fresh 'no-confidence' motion after the expiry of two years from the date of election. I do not see any error committed by the Collector. The issue before the Collector was limited to the 'no-confidence' motion' passed within the period of two years from the date of the election.

6. The petitioner is at liberty to take appropriate action, if available in law. In view of the above, the writ petition is dismissed.

(ARUN R. PEDNEKER, J.)

vj gawade/-.