



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 15209 OF 2023

1. Sow. Manjushatai Balaji Shete, ... **Petitioner**  
Age 32 Years, Occu: Household and  
Member of Village Panchayat, Jambhala  
Tq. Hadgaon, Dist. Nanded.
2. Sow. Jyoti Sadashiv Sarkunde,  
Age 26 Years, Occu: Household and  
Member of Village Panchayat, Jambhala  
Tq. Hadgaon, Dist. Nanded.
3. Pandurang Uttam Davare,  
Age 31 Years, Occu: Agriculture and  
Member of Village Panchayat, Jambhala  
Tq. Hadgaon, Dist. Nanded.

**VERSUS**

1. The State of Maharashtra  
Through its Secretary,  
Rural Development Department,  
Mantralaya, Mumbai 32
2. The Tahsildar,  
Tahsil Office Hadgaon, Tq. Hadgaon,  
Dist. Nanded
3. The Gramsevak,  
Grampanchayat Office, Jambhala  
Tq. Hadgaon, Dist. Nanded
4. Shantabai Vishwanath Pawar,  
Age 62 Years, Occu: Household and  
Member of Village Panchayat, Jambhala  
Tq. Hadgaon, Dist. Nanded.

5. Sow. Renuka Maroti Vanole,  
Age 28 Years, Occu: Household and  
Member of Village Panchayat, Jambhala  
Tq. Hadgaon, Dist. Nanded.
6. Gangadhar Sattaji Dokhale,  
Age 34 Years, Occu: Agriculture and  
Member of Village Panchayat, Jambhala  
Tq. Hadgaon, Dist. Nanded.
7. Prakash Sagan Chirmade,  
Age 32 Years, Occu: Agriculture and  
Member of Village Panchayat, Jambhala  
Tq. Hadgaon, Dist. Nanded.
8. Sow. Anita Sachin Hatkar, ... **Respondents**  
Age 27 Years, Occu: Agriculture and Ex-  
Sarpanch of Village Panchayat, Jambhala  
Tq. Hadgaon, Dist. Nanded.

Mr. Deshmukh Umakant B., Advocate for Petitioners  
Mr. P. S. Patil, AGP for the Respondents/State

CORAM : RAVINDRA V. GHUGE &  
Y. G. KHOBRAGADE, JJ.  
DATE : 12th December, 2023

**ORDER (Per Ravindra V. Ghuge, J):**

1. Three persons are Petitioners before us, who are the elected members of the Grampanchayat Jambhala, Tq. Hadgaon Dist. Nanded. Respondent No.8 is the former Sarpanch of the said village, who suffered no confidence motion on 07.11.2023 by 3/4th majority. She was ousted. Thereafter, the post of Sarpanch has been put up for election scheduled on 14.12.2023. The post is reserved for 'Scheduled

Caste woman category'. Respondent No.8 is the only Scheduled Caste woman, amongst all the elected members of the Grampanchayat. This Petition has been filed by the Petitioners on an apprehension that she would again contest on 14<sup>th</sup> December, 2023 and being the sole Scheduled Caste Woman candidate, she would be again elected as a Sarpanch, unopposed.

2. The Petitioners submit that when Respondent No.8 Sarpanch was ousted by a no confidence motion, it would be unbecoming on her part to re-contest the election and under fortuitous circumstances, she would be surely elected, if she contests, as she is the only 'Scheduled Caste woman' elected member of the Grampanchayat. Reliance is placed upon the judgment of the learned Single Judge of the Punjab and Haryana High Court in **Sukhwant Singh Vs. State of Punjab and others, 2013 (5) Law Herald 4067.**

3. Section 35 of the Maharashtra Village Panchayats Act, 1959 (for short, Maharashtra Act) 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.]

"(1A) In respect of the panchayat to which the Sarpanch is directly elected under section 30A- 1A, the provisions of this section shall apply with the following modifications:-

(a) in sub-section (1), for the words "one-third" the words "two third" shall be substituted;

(b) in sub-section (3), for the portion beginning with the words "If the motion" and ending with the words "against the Sarpanch;" the following portion shall be substituted, namely :-

" If the motion of no-confidence 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, the Sarpanch or the Upa-Sarpanch, as the case may be, and ratified before the special Gram Sabha by the secret ballot in the presence and under the Chairmanship of the Officer appointed for the purpose by the Collector, 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, in case the motion is carried out against the Sarpanch".

(c) for the fourth proviso, the following provisos shall be substituted, namely :-

"Provided also that, no such motion of no-confidence shall be brought within a period of two years from the date of election of Sarpanch or Upa-Sarpanch and before the 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 brought before the passage of time of next two years ."

(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) 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.

(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.

4. There is no dispute before us that the Maharashtra Act does not preclude or restrain a candidate from contesting the election to the position of Sarpanch, after he or she has been earlier ousted by a no confidence motion. It is only under Section 39(1A) of the Maharashtra Act, by which a person who is removed from the post of Sarpanch or Upa-sarpanch, on account of disgraceful conduct, would not be eligible for re-election as Sarpanch or Upa-sarpanch during the remainder of the terms of office of the members of the Panchayat. Sub Section 2 of Section 39 enables the Commissioner to impose a condition of disqualifying such a person for a period not exceeding six years, if the said person has resigned his office as member, Sarpanch or Upsarpanch

and has been found to be guilty of the acts and omissions specified in sub section (1).

5. For ready reference, Section 39 of the Maharashtra Act is reproduced hereunder:

**39. Removal from office.** - (1) The Commissioner may,-

(i) remove from office any member or any *Sarpanch* or *Upa-Sarpanch* who has been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct, or of neglect of or incapacity to perform his duty, or is persistently remiss in the discharge thereof. A *Sarpanch* or an *Upa-Sarpanch* so removed may at the discretion of the Commissioner also be removed from the *panchayat*, or

(ii) remove from office the member, *Sarpanch* or, as the case may be *Upa-Sarpanch*, if not less than twenty per cent of the total number of voters in the village who have paid all dues of the *panchayat* regarding taxes on buildings and lands and water charges, make a complaint that the annual accounts and the report of the expenditure incurred by the *panchayat* on the development activities are not placed before the *Gram sabha*; and the information thereof is not displayed on the notice board as required by sub-section (1) or (1A) of section 8:

Provided that, no such person shall be removed from office unless, in case of clause (i), the Chief Executive Officer or in case of clause (ii), the Deputy Chief Executive Officer as directed by the Chief Executive Officer; under the orders of the Commissioner, holds an inquiry after giving due notice to the *panchayat* and the person concerned; and the person concerned has been given a reasonable opportunity of being heard and thereafter the Chief Executive Officer or, as the case may- be, the Deputy Chief Executive Officer concerned, through the Chief Executive Officer, submits his report to the Commissioner. The inquiry officer shall submit his report within a period of one month:

Provided further that, the Commissioner shall, after giving the person concerned a reasonable opportunity of being heard, take a decision on the report submitted by the Chief Executive Officer or, as the case may be, the Deputy Chief Executive Officer, within a period of one month from the date of receipt thereof.;

(1A) Where a person is removed from office of the *Sarpanch* or *Upa-Sarpanch*, he shall not be eligible for re-election as *Sarpanch* or *Upa-Sarpanch* during the remainder of the term of office of members of the *panchayat*.

(2) The Commissioner may subject to like condition disqualify for a period of not exceeding [six years], any person who has resigned his office as a member, *Sarpanch* or *Upa-Sarpanch* and has been guilty of the acts and omissions specified in sub-section (1).

(3) Any person aggrieved by an order of the Commissioner under sub-section (1) or (2) may, within a period of fifteen days from the date of the receipt of such order, appeal to the State Government and the Government shall decide the appeal within a period of one month from the date of receipt thereof.

**39A. Power of Government to direct inquiry.** - (1) Notwithstanding anything contained in section 39, the State Government may, *suo motu* or on an application made to it against any member, *Sarpanch* or *Upa-Sarpanch* regarding any act or omission specified in sub-section (1) of section 39, direct the Chief Executive Officer concerned to hold an inquiry against such member, *Sarpanch* or, as the case may be, *Upa-Sarpanch*, and submit its report, within a period of one month, to the Commissioner.

(2) The Commissioner shall, after giving a reasonable opportunity of being heard to the *panchayat* and the person concerned, take a decision, within a period of one month, on the inquiry report.

(3) Any person aggrieved by an order of the Commissioner under subsection (2), may, within a period of fifteen days from the date of receipt of such order, appeal to the State Government and the decision of the Government thereon shall be final.

6. The learned AGP has cited a judgment delivered by this Court at the Principal Seat in **Rahul and another Vs. State of**

**Maharashtra and Others, 2023 SSC OnLine Bom 2015: AIR 2023 Bom**

**356.** In the said matter, the Sarpanch had suffered a no confidence motion under Section 35. The post of Sarpanch was reserved for 'Scheduled Caste woman'. The lady who had been ousted as the Sarpanch by the No Confidence Motion, was the only person who could stake a claim to the post of Sarpanch as she belonged to the Scheduled Caste woman category and was the only eligible person. The contentions put forth in **Rahul (supra)** are practically identical to those that have been canvassed before us in this matter, by the learned Advocate for the Petitioners.

7. He contends that as certain allegations were made against the Sarpanch, the no confidence motion was moved. The motion was carried and she was ousted. He submits orally, without pleadings, that this should be considered as an ouster for disgraceful conduct under Section 39 of the Maharashtra Act, since allegations have been levelled against her. Despite the strenuous effort of the learned Advocate, we are afraid that he cannot convince us that an ouster under Section 35 would have the semblance of removal under Section 39 for disgraceful conduct, for the sole reason that Section 35 and Section 39, operate in two independent and different circumstances and situations.

8. There is no provision under the Maharashtra Act that a no confidence motion has to be backed or supported with allegations and such a motion can be carried only if the allegations are proved in the special meeting convened for the said purpose. In a democratic set up under the Constitution, if the required majority does not support an elected representative and if the law prescribing the passing of a 'no-confidence motion', is duly complied with, such a motion can be carried. No judicial pronouncement has been cited before us holding a contrary view that such a motion cannot be carried in the absence of allegations or if the allegations against the office holder are not proved. Absence of allegations would not be a ground for defeating a no-confidence motion, after the requisite majority has voted in favour of the motion. In such a situation, the motion is carried.

9. Per contra, under Section 39, a person can be removed on account of a disgraceful conduct after the alleged acts/omissions amounting to a disgraceful conduct, have been proved before a Commissioner. A specific procedure is enshrined in Section 39. The person concerned has to be given a reasonable opportunity of being heard and the Commissioner has to take a decision on the report submitted by the Chief Executive Officer or as the case may be, by the Deputy Chief Executive Officer.

10. The proviso below Section 39 (1) mandates that the Commissioner would call upon the Chief Executive Officer or the Deputy Chief Executive Officer to hold an inquiry after giving due notice to the Panchayat and the person concerned, who has to be given a reasonable opportunity of hearing. After completing such hearing, the Chief Executive Officer or Deputy Chief Executive Officer, has to submit his report to the Commissioner. If the charges against the Sarpanch or Upa-sarpanch are established, the Commissioner can disqualify the said candidate under Clause (i) or (ii) of Sub section 1 of Section 39. Under Sub section (2) of Section 39, a candidate can be disqualified for a period not exceeding six years.

11. In view of the above and the distinct features emerging from the phraseology of Sections 35 and 39, the contention of the learned Advocate for the Petitioners that the passing of a no confidence motion on allegations would *ipso facto* amount to an ouster on account of disgraceful conduct, stands rejected.

12. We have yet another reason to reject such a submission. The pitfall in accepting the contentions of the learned Advocate for the Petitioners is that, certain elected members of the Grampanchayat would level allegations against a Sarpanch or Upa-sarpanch in a requisition u/s 35 and succeed in ousting the Sarpanch by passing a no confidence motion, so as to amount to a removal on account of

disgraceful conduct, without initiating any proceeding under Section 39. Thereafter, they will demand a disqualification such Sarpanch/up Sarpanch for the remainder term. In such a situation, the members who desire to remove a Sarpanch/up-sarpanch for disgraceful conduct, would resort to Section 35 to avoid the strict rigours enshrined in the procedure u/s 39.

13. Section 39 has certain in-built stringent conditions. The complaint u/s 39 cannot be allowed unless, the acts/omissions alleged in the complaint, are proved by following the entire procedure laid down therein. As such, the contention of the Petitioners, if accepted, would render Section 39 redundant.

14. In view of the above, we do not find that this is a fit case for exercising our extra ordinary jurisdiction. **This Petition, sans merit and is dismissed.**

( Y. G. KHOBRAGADE, J. )

( RAVINDRA V. GHUGE, J. )

JPChavan