

**Dusane**

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.11250 OF 2023**

Sou. Ujwala Ramrao Kawar ...Petitioner  
Aged 58 Yrs., Occ.: Sarpanch,  
Palasdar Gram Panchayat,  
Tal. Kalwan, District Nashik.

V/s.

The State of Maharashtra, through ...Respondents  
the Collector, Nashik & Ors.

Mr. Sachin Gite for Petitioner.

Mr. C.D. Mali, AGP for Respondent Nos. 1 and 2 -  
State.

Mr. Jayendra D. Khairnar for Respondent Nos. 3 to  
10.

**CORAM: MADHAV J. JAMDAR, J.**

**DATE: 6th November 2023**

**JUDGMENT :**

**1.** Heard Mr. Gite, learned counsel appearing for the  
Petitioner, Mr. Khairnar, learned Counsel appearing for  
Respondent No.3 to 10 and Mr. Mali learned AGP for the  
State- Respondent Nos. 1 and 2.

**2.** The Petitioner, who is elected Sarpanch of Village Palasdar,  
Taluka Kalwan, District Nashik has challenged the legality and

validity of the order dated 24<sup>th</sup> July 2023 passed by the Additional Commissioner, Nashik Division, Nashik in Gram Panchayat Appeal No. 67 of 2023 as well as order dated 28th April 2023 passed by the Additional Collector, Malegaon in Gram Panchayat Dispute Application No. 22 of 2023. The said Appeal has been filed under Section 54 of the Maharashtra Village Panchayats Act, 1958 (Act No. 3 of 1959) ("**Said Act**"). The Additional Commissioner, Nashik Division, Nashik passed the said order dated 24<sup>th</sup> July 2023 by observing that as Motion of No-Confidence has been passed under Section 35 of the said Act, the Appeal filed before him is not competent. In accordance with the Scheme of Section 35 of the said Act, dispute regarding Motion of No Confidence lies with the Collector and the Collector's decision is final. Thus, in effect challenge in the present Writ Petition is to the order dated 28th April 2023 passed by the Additional Collector, Malegaon.

**3.** Before considering the rival contentions, it is necessary to set out certain factual aspects.

**4.** The Petitioner was elected as Sarpanch on 15th February 2021 and a Motion of No-Confidence has been moved by seven Members of the Gram Panchayat on 16th February 2023. The said Gram Panchayat has total nine members. By following the

procedure as provided under Section 35 of the said Act, the said Motion of No Confidence has been carried in the meeting held on 21st February 2023. In the said meeting, seven Members out of nine members have voted in favour of the Motion of No Confidence.

**5.** The said Motion of No Confidence has been challenged by the Petitioner by filing an Appeal under Section 35 (3)(B) of the said Act as well as separate Appeal filed under Section 54 D(7) of the said Act. The Appeal filed under Section 35 (3)(B) bearing Gram Panchayat Dispute Application No. 22 of 2023 has been allowed to be withdrawn, in view of the Appeal filed under Section 54 D(7) of the said Act bearing Gram Panchayat Dispute Application No. 22 of 2023. However, in the present case, as Motion of No Confidence has been passed under Section 35 of the said Act and the Additional Collector, Malegaon while passing order dated 28<sup>th</sup> April 2023 exercised power under Section 35 of the said Act and held that the Motion of No Confidence can be moved under Section 35 of the said Act as well as under Section 54D of the said Act and in the present case, the Motion of No Confidence has been passed under Section 35 of the said Act. As seven out of nine Members have voted in favour of the Motion of No Confidence which fulfills the requirement of 3/4th

Members, the Additional Collector, Malegaon by impugned order dated 28th April 2023 dismissed Dispute Application No. 22 of 2023. As set out hereinabove, the Petitioner has challenged the said order by filing Gram Panchayat Appeal No. 67 of 2023 before the Additional Collector, Nashik Division, Nashik and as the said Appeal has been dismissed as the Motion of No Confidence has not been passed under Section 54D of the said Act and the same has been passed under Section 35 of the said Act, the Additional Commissioner held that he has no jurisdiction to adjudicate the said Appeal. Thus, challenge in the present Writ Petition is to the order dated 28th April 2023 of the Additional Collector, Malegaon.

**6.** It is the contention of Mr. Gite, learned Counsel appearing for the Petitioner that the Motion of No Confidence cannot be passed under Section 35 of the said Act. It is his contention that special provisions are made in Chapter 3A of said Act regarding scheduled areas. Therefore, it is his contention that Motion of No Confidence cannot be moved under Section 35 of the said Act. However, Mr. Khairnar, learned Counsel appearing for Respondent Nos. 3 to 10 has contended that this point is no more *res integra*. He relied on the decision of a learned Single Judge of this Court in the matter of **Chaya w/o Sudhakar**

**Madavi Vs. Additional Collector, Gadchiroli and Others<sup>1</sup>.** In the said decision, it has been held that power under Section 54D in Chapter III-A making special provisions conferring powers upon the members of the Gram Sabha is additional power. The relevant discussion is to be found in paragraphs 10 and 11 of the said decision, which reads as under:

"10. The provision of Section 54-D of the said Act was for the first time introduced in the Statute book under Chapter III-A dealing with the special provisions for Gram Sabha and Panchayat in Scheduled areas brought into force by Maharashtra Act No.27 of 2003 with effect from 8-8-2003. Prior to introduction of such amendment under the Act, Section 35 operated in respect of a motion of no-confidence to be moved in respect of Gram Sabha and Panchayat irrespective of the fact whether those were included in the scheduled areas. **In order to take away such power conferred upon the elected members of Panchayat as conferred by Section 35 of the said Act, it was necessary for the Legislature either to suitably amend the provisions of Section 35 to take away such power in respect of Gram Sabha and Panchayat included in the scheduled areas or to provide a non-obstante clause in Chapter III-A introduced by Maharashtra Act No.27 of 2003 with effect from 8-8-2003 so as to give an overriding effect to the provision of the motion of no-confidence in respect of Gram Sabha and Panchayat included in the scheduled areas. Neither the provision of Section 35 of the said Act is amended to curtail the rights of elected members of Panchayat to move and pass a no-confidence motion, nor Chapter III-A or Section 54-D therein has been given an overriding effect.**

11. The objects and reasons of the Maharashtra Act No.27 of 2003 for introducing Chapter III-A clearly indicate that the Legislature has intended to make the additional provision conferring power upon the members of Gram Sabha also to move and pass a no-confidence motion by a secret ballot against a Sarpanch or Upa-Sarpanch of the Gram Sabha and Panchayat in the scheduled areas. **It was not the intention of the Legislature to take away the power conferred**

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**upon the elected members of Panchayat under Section 35 of the said Act to move a motion of no-confidence against the Sarpanch or the Upa-Sarpanch, as the case may be, of the Gram Sabha and Panchayat** included in the scheduled areas. The question of law framed is answered accordingly."

**(Emphasis added)**

**7.** Thus, the point, which has been canvassed by Mr. Gite is already decided in the said decision. In the present case, admittedly after following the procedure as contemplated under Section 35 of the said Act, the said Motion of No-Confidence has been carried by an overwhelming majority i.e. more than 3/4th Members and therefore no interference under Article 227 of the Constitution of India is warranted as far as the challenge to the legality and validity of the order dated 28<sup>th</sup> April 2023 passed by Additional Collector, Malegaon in Gram Panchayat Dispute Application No. 22 of 2023 is concerned. Accordingly, the Writ Petition is dismissed, however, with no order as to costs.

**8.** In view of dismissal of the Writ Petition, ad-interim order granted on 7<sup>th</sup> September 2023 shall stand vacated forthwith.

BHALCHANDRA  
GOPAL  
DUSANE

**(MADHAV J. JAMDAR, J.)**

Digitally signed by  
BHALCHANDRA  
GOPAL DUSANE  
Date: 2023.11.10  
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