

Dusane

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

WRIT PETITION NO.11115 OF 2023

Dama Hiru Nirguda & Ors. ...Petitioners

V/s.

The State of Maharashtra, through ...Respondents
Administrative Department & Ors.

Mr. Prashant Prabhakar Raul for Petitioners.

Smt. M.S. Srivastava,AGP for State/Respondent
Nos. 1 to 7.

Mr. Nitin Gaware-Patil a/w Mr. Sachin P. Thorat for
Respondent No. 4.

CORAM: MADHAV J. JAMDAR, J.
DATE: 9th October 2023

JUDGMENT :

1. Heard Mr. Pratik Deshmukh and Mr. Raul, learned Counsel appearing for the Petitioners, Mr. Gaware Patil, learned Counsel appearing for the Respondent No. 4 and learned AGP appearing for the State.

2. The Petitioner has challenged legality and validity of the order dated 23rd August 2023 passed by the Collector, Raigad, Alibaug in Gram Panchayat Dispute Application No. 57/2021 filed under Section 35(3) of the Maharashtra Village Panchayats Act

(Act 3 of 1959) (hereinafter referred to as "**the said Act**"). By the said impugned order dated 23rd August 2023, the said Gram Panchayat Dispute Application was allowed and resultantly the Motion of No Confidence carried against the Respondent No.4 i.e. Deputy Sarpanch on 26th November 2021 has been set aside.

3. The Collector, Raigad, Alibaug has observed in the impugned order that 2/3rd members of the Gram Panchayat Mamdapur, Taluka Karjat, District Raigad, have given notice of Motion of No Confidence as per the requirement of Section 35(1) of the said Act and said Motion of No Confidence has been carried by 3/4th majority as required under Section 35(3) of the said Act. However, the Collector found that the proceedings in the meeting dated 26th November 2021, wherein the said Motion of No Confidence was carried, has not been conducted in accordance with the relevant rules. The Collector has found that the said Motion of No Confidence was not moved by any member and the same was not seconded and therefore, relying on the decision of this Court in the matter of **Vijay Ramchandra Katkar Vs. Group Grampanchayat, Pali**¹ held that the said meeting was not held in accordance with the Rules 17 to 26 of the Bombay Village Panchayats Meetings Rules, 1959.

¹ 2010 (4) All M.R. 707 : 2010 SCC OnLine Bom 710

4. However, the learned Counsel appearing for the Petitioner has relied on the Full Bench decision of this Court in the matter of **Tatyasaheb Ramchandra Kale Vs. Navnath Tukaram Kakde & Ors**², paragraph 21 of which reads as under:

"21. Finally to put the matter in perspective, **the requirement of Rule 17 in the matter of proposing and seconding the motion cannot impinge upon the validity of the motion of no confidence which has otherwise been passed by fulfilling the requirement of Section 35(3) of the Bombay Village Panchayats Act, 1958. The infraction that has occurred on account of the motion not being formally proposed and seconded cannot invalidate the motion if the same has been passed by fulfilling the requirements of Section 35(3) of the Bombay Village Panchayats Act, as the said infraction does not affect the merits of the case. Hence we hold that Rule 17 is directory**, and the test laid down in Section 44(3) of the Bombay Village Panchayats Act namely whether the defect affects the merits of the case, would have to be applied, if a challenge is raised to such a motion. **We accordingly answer the reference** and remit the matter back to the Division Bench for the above Letters Patent Appeal being decided on merits."

(Emphasis added)

5. Thus, it is clear that the proposing of and seconding the motion of no confidence is only an infraction and does not affect the merits of the Motion of No Confidence if passed by fulfilling the requirement of Section 35(3) of the said Act. As per Sub-Section 3 of Section 35 of the said Act, 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

² (2014) 6 Mah LJ 804

at any meeting of the Panchayat, the Sarpanch or the Upa-Sarpanch, as the case may be, shall forthwith stop exercising all the powers and perform all the duties of the office.

6. The relevant portion of Sub-Section 3 of Section 35 is reproduced hereinbelow for ready reference.:

"35. Motion of no confidence.-

(1).....

(2)

(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 the Sarpanch 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:"

(Emphasis added)

7. In this case, an admitted position is that out of total 10 members of the concerned Village Panchayat 8 have voted in favour of Motion of No Confidence and thus the same has been carried by more than 3/4th of the members. Thus, accordingly the requirement of Sub-Section 3 of Section 35 has been complied with.

8. It is clear that the aforesaid Full Bench Judgment has not been pointed out to the Collector and therefore, the Collector has passed the impugned order on the basis of an erroneous legal position. Accordingly, the Writ Petition deserves to be allowed by setting aside order dated 23rd August 2023 passed by the Collector, Raigad, Alibaug.

9. As the order dated 23rd August 2023 passed by the Collector is set aside, resultantly the Dispute Application No. 57 of 2021 filed by Respondent No. 4 is dismissed. Thus, the Motion of No Confidence carried on 26th November 2021 is restored.

10. Accordingly, the Writ Petition is allowed in above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)

BHALCHANDRA
GOPAL DUSANE

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