

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13764 OF 2023

Smt. Sampada Vilas Mahargude

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. V. S. Kapse a/w. Mr. Ranjeet H. Patil, Advocates, for the Petitioner
Mr. A. B. Chate, Additional GP a/w. Mr. P. G. Sawant, AGP for the State
Mr. Balwant Salunkhe, Advocate, for Respondent Nos. 3 to 11

CORAM : MADHAV J. JAMDAR, J.

DATED : 13th DECEMBER 2023

ORAL JUDGMENT:

1. Heard Mr. Kapse, learned Counsel appearing for the Petitioner, Mr. Salunkhe, learned Counsel appearing for Respondent Nos. 3 to 11 and Mr. Chate, learned Additional GP along with Mr. P. G. Sawant, learned AGP appearing for the State.
2. By the present Writ Petition filed under Article 227 of the Constitution of India, the challenge is to the legality and validity of Order dated 20th October 2023 passed by the Respondent No. 2-Collector, Sangli in Appeal Gram/Appeal/16/2023 (“**impugned Order**”) filed under Section 35(3-B) of the *Maharashtra Village Panchayats Act [Act No. III of 1959]* (“**said Act**”). By the impugned Order, the said Appeal filed by the Petitioner

has been rejected and as a result of the same, a motion of no confidence carried against the Petitioner in the meeting dated 17th July 2023 of the Gram Panchayat Talewadi, Taluka Atpadi, District Sangli has been held to be passed in accordance with Section 35(3) of the said Act.

3. It is the contention of Mr. Kapse, learned Counsel appearing for the Petitioner that the Notice as contemplated under Section 35 of the said Act, has not been served on the Petitioner. There is a grave procedural defect and therefore, said motion of no confidence has been carried in an illegal manner. The Requisition has not been served on the Petitioner and therefore, motion of no confidence has been passed by violating principles of natural justice. The mandatory requirements under Rule 2(3) of the *Bombay Village Panchayats Sarpanch and Up-Sarpanch (No Confidence Motion) Rules, 1975* (“**said Rules**”) are not complied with. He pointed out Rule 2(1) and submitted that the same is also not followed. Service of Notice on the Petitioner’s son is not a good service and therefore, it has to be held as no service on the Petitioner. The signature on the said Notice is not that of the son of the Petitioner and accordingly Affidavit dated 13th September 2023 of the Petitioner’s son i. e. Sharad Vilas Mahargude is filed before the Collector. He submitted that the Petitioner’s son is not residing with the Petitioner in her house. He submitted that Petitioner’s husband

has also filed an Affidavit stating that he was present in the Petitioner's house on 13th July 2023 and no one had come to serve the Notice on that day. Service of Notice of proposed motion of no confidence along with the Requisition is a mandatory requirement under the scheme of the said Act and the same is not complied with. He submitted that in any case, Requisition is not in the prescribed format and Tahsildar has not served the Notice dated 12th July 2023. Due to non-service of the Notice dated 12th July 2023, the Petitioner's rights are violated. The right to speak in the meeting in which motion of no confidence is being considered, is a vital right which the Sarpanch is entitled to under Section 35(2) of the said Act and therefore, the motion of no confidence which has been passed is not in accordance with law. The Notice did not contain the Requisition moved by the Respondent Nos. 5 to 11 and that it is mandatory to serve the Requisition on the person against whom motion of no confidence is to be carried. He submitted that Rule 2(1) of the said Rules provides that one original and nine copies of the Requisition are required to be submitted to the Tahsildar and same are required to be sent to Sarpanch, Upa-Sarpanch, Zilla Parishad, Panchayat Samiti, Collector, Commissioner, Secretary and one copy is required to be displayed on the notice board of the Gram Panchayat. He submitted that these mandatory requirements are not

complied with.

4. On the other hand, Mr. Salunkhe, learned Counsel appearing for Respondent Nos. 5 to 11 submitted that Respondent Nos. 5 to 11 who are members of the Gram Panchayat, moved the proposal for motion of no confidence against the Petitioner on 11th July 2023. The said Requisition has been signed by seven members of the Gram panchayat. Said Gram Panchayat is having nine members. Motion of no confidence is as per the prescribed format. In view of the said notice dated 11th July 2023, the Respondent No. 3-Tahsildar, Atpadi convened said meeting on 17th July 2023 and issued Notice dated 12th July 2023 to all the members. Record shows that the notice was served upon the Petitioner's son at the residence of the Petitioner, who was present therein at that time and a Panchnama to that effect has been drawn. Notice dated 12th July 2023 along with the Requisition has been validly served on the Petitioner. On 17th July 2023, the meeting for considering the motion of no confidence was held in which seven out of nine members have voted in favour of the motion of no confidence. The Petitioner remained absent in the said meeting. The Notice of motion of no confidence is in the prescribed format. The Tahsildar has convened the special meeting on 17th July 2023 and served the same on the Petitioner's son in accordance with the provisions of law. It is a settled

legal position that even if there is some technical fault in the proceedings of the meeting of the Panchayat, as the motion of no confidence has been carried by three-fourth of the Gram Panchayat members who are present and entitled to vote, which is the requirement under the provisions of the said Act, no prejudice is said to have been caused to the Petitioner. He relied on the decision of a learned Single Judge of this Court in the case of ***Prabhawati Vijaykumar Khivsara v. State of Maharashtra & Ors.***¹

5. Before considering the rival contentions, it is necessary to set out the factual aspects.

(i) The Gram Panchyat Talewadi, Taluka Atpadi, District Sangli has a total of nine members. The Petitioner and Respondent Nos. 5 to 11 were elected as members of the Gram Panchayat in the year 2021.

(ii) Petitioner has been elected as the Sarpanch of the said Gram Panchayat in the year 2021.

(iii) On 11th July 2023, Respondent Nos. 5 to 11 i.e. seven members out of nine members have moved the motion of no confidence in accordance with Section 35 of the said Act and submitted the said proposal to the Tahsildar-Respondent No. 3 on 11th July 2023.

(iv) The Tahsildar convened a special meeting on 17th July 2023 and

1 2008 (2) Mah LJ 274

issued Notice dated 12th July 2023 for considering said motion of no confidence to all the members including Petitioner and Respondent Nos. 5 to 11.

There is a dispute on the issue of whether the said notice dated 12th July 2023 was served on the Petitioner or not. It is the contention of the Respondents that the said notice has been duly served on the Petitioner's son who is an adult and who was present at that time in the house of the Petitioner. It is their contention that a Panchnama to that effect has been drawn. However, it is the contention of the Petitioner that no such notice has been served.

(v) Thereafter, the meeting of Gram Panchayat was held on 17th July 2023. In the said meeting, the Petitioner was absent. In the said meeting, motion of no confidence has been passed by an overwhelming majority of seven members out of nine members i.e. more than three-fourth members supporting the motion of no confidence.

6. Before considering the rival contentions, it is necessary to set out the relevant legal provisions.

(i) Section 35 of the said 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.

(2) Within seven days from the date of receipt by him of the notice under sub-section (1), the Tahsildar shall convene a special meeting of the Panchayat for considering the motion of no confidence at the office 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 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:

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:

(3-A) If the motion is not moved or is not carried by a majority of not less than two-third of 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.

(3-B) 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.

(Emphasis added)

(ii) The relevant Rules of the said Rules are as follows:

“2. (1) The members of a panchayat who desire to move a motion of no-confidence against the Sarpanch or the Upa-Sarpanch shall give notice thereof in the form appended hereto to the tahsildar of the taluka in which such panchat is functioning. Where the members desire to move the motion of no-confidence against the Sarpanch as well as the Upa-Sarpanch, they shall give two separate notices.

(2) The notice under sub-rule (1) shall be accompanied by nine additional copies thereof, and the Tahsildar shall send one copy to the Sarpanch, one to the Upa-Sarpanch and one each to the Zilla Parishad, the Panchayat Samiti, the Collector and the Commissioner. One copy shall also be given to the Secretary.

(2-A) The Tahsildar shall also publish the said notice by placing the same on the notice board at the office of the Panchayat and Tahsildar Office.

(2-B) Every notice under sub-rule (1), wherever it may be practicable, be served by delivering or tendering it to the Sarpanch or Upa-Sarpanch to whom it is addressed or, where such person cannot be found, by delivery or tendering it to any adult member of his family residing with him; and if no such

adult member can be found or, where the Sarpanch, Upa-Sarpanch or such adult member, as the case may be, refuses to accept the notice, it shall be served by affixing it, in the presence of two witnesses, on the outer door or some other conspicuous part of the house in which such Sarpanch or Upa-Sarpanch ordinarily dwells. The notice served in this manner shall be deemed to be served or tendered or delivered to the concerned Sarpanch or Upa-Sarpanch.

(3) The Tahsildar shall, immediately on receipt of such notice under sub-rule (1), Tahsildar shall satisfy himself that the notice has been given by not less than one-third of the total number of members (other than associate members) who are for the time being entitled to sit and vote at any meeting of the panchayat and then convene a special meeting of the Panchayat for the purpose within seven days from the date of receipt of such notice.”

(Emphasis added)

7. Learned Counsel appearing for the Petitioner relied on ***Prabhawati Vijaykumar Khivsara*** (supra) and particularly on paragraphs 20 to 22 therein which read as under:

“20. The Division Bench of this Court, in the case of Nimba Rajaram Mali vs. Collector, Jalgaon and others, reported in 1998 (3) Mh. L.J. 204:1999 (1) Bom. c.r. 546, followed the aforesaid Judgment in the case of Smt. Annapurnabai Ajabrao vs. Annapurnabai Anandrao (referred supra) and observed thus:

“In a democratic society what is important is the will of the majority and the elected representatives must honour the will of the majority. It is immaterial to analyse and debate on the reasons behind the will of the majority or the specific reasons for such will being expressed. The will of the majority is of paramount importance and it must be respected by all elected

*representatives responsible for the governance of such democratic institutions. As observed by the Apex Court in the case of Babubhai (supra), resolution of No Confidence Motion is different from Censure Motion and such a resolution cannot be faulted on the ground that there were no reasons or reasons were vague and lacked detailed specifications. **Once the resolution of No Confidence Motion is passed by a clear majority and in keeping with the requirements of the concerned statutory provisions, the person against whom such a resolution is passed, must honour the will of the majority and make way for the new election of his successor. Unless it is shown that while passing such a resolution of No Confidence Motion, there was flagrant violation of any of mandatory procedure laid down, such a resolution cannot be interfered with by the Court or statutory authorities adjudicating such disputes***".

21. It appears that these Judgments of the Division Benches also have not been brought to the notice of the learned Judges who had decided the cases which are relied on by Shri Chate, learned Counsel.

22. In a democratic set up a person is expected to respect the mandate of majority. Support of a majority is fundamental in the democratic set up and particularly when no prejudice is pointed out by alleged departure from the procedural requirement, the mandate of the majority cannot be interfered with lightly by this Court. In that view of the matter, I am unable to find any merit in both the petitions. Both the petitions, are therefore, rejected".

(Emphasis added)

8. The distinction between a motion of no confidence and a motion of censure was emphasised in the decision of the Supreme Court in ***Babubhai***

*Muljibhai Patel v. Nandlal Khodidas Barot*² wherein it has been held as follows:

*“It is no doubt true that according to the form prescribed the ground for the motion of no confidence has to be mentioned in the notice of intention to move a motion of no confidence. It does not, however, follow therefrom that the ground must also be specified when a motion of no confidence is actually passed against a President. It is pertinent in this context observe that **there is a difference between a motion of no confidence and a censure motion.** While it is necessary in the case of a censure motion to set out the ground or charge on which it is based, a motion of no confidence need not set out a ground or charge. A vote of censure presupposes that the persons censured have been guilty of some impropriety or lapse by act or omission and it is because of that lapse or impropriety that they are being censured. It may, therefore, become necessary to specify the impropriety or lapse while moving a vote of censure. No such consideration arises when a motion of no confidence is moved. Although a ground may be mentioned when passing a motion of no confidence, the existence of a ground is not a prerequisite of a motion of no confidence. There is no legal bar to the passing of a motion of no confidence against an authority in the absence of any change of impropriety or lapse on the part of that authority.*

2 (1974) 2 SCC 706

The essential connotation of a no-confidence motion is that the party against whom such motion is passed has ceased to enjoy the confidence of the requisite majority of members”.

(Emphasis added)

9. A Full Bench of this Court in the case of ***Tatyasaheb Ramchandra Kale v. Navnath Tukaram Kakde***³ was considering the issue of whether a failure to formally move and second a motion of no confidence as required by Rule 17 of the *Bombay Village Panchayats (Meetings) Rules, 1959* would render the motion of no confidence carried by the requisite majority under Section 35 of the said Act invalid. The Full Bench in its decision, held as follows:-

15. It is in the context of the test laid down by the Apex Court in K. Narasimhiah's case that the instant case would have to be considered. As indicated above, the object of the Bombay Village Panchayats Act is to establish village panchayats so that they function as units of local self-government. The Act can be said to reflect the policy of the State insofar as decentralization of powers and vesting them in the local self-governments is concerned. The Sarpanch and Upa-Sarpanch can be said to be pivotal to the functioning of the Gram Panchayat, as the executive power is vested in the Sarpanch who is made directly responsible for the due fulfillment of the duties imposed upon the Panchayat by or under the Act. It is considering the pre-eminent position that the Sarpanch and Upa-Sarpanch are said to occupy that the provisions have been made as regards their election, resignation, vacation of the office of the Sarpanch and Upa-Sarpanch by a motion of no confidence passed by the Panchayat. The idea as indicated

above is to lend stability to the office of the Sarpanch and Upa-Sarpanch so that the administration at the village level does not suffer. However, if the Sarpanch or Upa-Sarpanch has lost the mandate of the house, his removal is circumscribed by the requirement of the motion of no confidence being moved by 1/3rd of the members and passed by 2/3rd of the members, then as a democratic practice he would have to vacate the office. Hence if on account of a formal defect viz that the motion is not proposed or seconded though passed by 2/3rd majority, if the motion is to be termed as invalid, the same would result in nullifying and defeating provision in the Bombay Village Panchayats Act which provides the manner in which a Sarpanch can be removed. The effect of such invalidation would be that the smooth functioning of the elected body would be affected. The consequence would be that though the requirements of the Act have been fulfilled, the proceedings would be held to be invalid on account of the non compliance of Rule 17, which is part of subordinate legislation, in the matter of proposing and seconding of the motion. A provision contained in a subordinate legislation cannot prevail, if the requirement of the main enactment i.e. the Act has been fulfilled. In such an eventuality the requirement of the subordinate legislation would have to give way to the Act and hence the requirement of Rule 17 in the matter of proposing and seconding the motion can only be said to be directory. For the same reason Rule 39 which is part of the same Meeting Rules would have no impact on the conclusion that Rule 17 is directory and not mandatory.

(Emphasis added)

10. The Full Bench in *Tatyasaheb Ramchandra Kale* (supra) in paragraph 21 held as follows:

“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)

11. The said Act provides for separate and distinct provisions concerning motion of no confidence (Section 35), disqualification (Sections 14, 14-A, 14-B) and removal from office (Sections 39, 39A). As held by the Hon’ble Supreme Court in **Babubhai** (supra), there is a distinction between the motion of no confidence and disqualification/removal from office. As held in **Babubhai** (supra) the essential connotation of a no-confidence motion is that the concerned Sarpanch or Upa-Sarpanch against whom such motion is passed has ceased to enjoy the confidence of the requisite majority of members. Thus, it is clear that as held in **Babubhai** (supra) although a ground may be mentioned when passing a motion of no confidence, the existence of a ground is not a prerequisite of a motion of no confidence. As held in **Tatyasaheb Ramchandra Kale** (supra) a provision contained in a subordinate legislation cannot prevail, if the requirement of the main enactment i.e. the Act has been fulfilled. In such an eventuality the requirement of the subordinate legislation would have to give way to the

Act.

12. Thus, following are the well established principles on the basis of which mandatory requirements of the scheme of the said Act read with said Rules can be ascertained:

- a) In a democratic society what is important is the will of the majority and the elected representatives must honour the will of the majority.
- b) Once the resolution of Motion of No Confidence is passed by a clear majority and in keeping with the requirements of the concerned statutory provisions, the person against whom such a resolution is passed, must honour the will of the majority and make way for the new election of his successor. Unless it is shown that while passing such a resolution of Motion of No Confidence, there was flagrant violation of any of mandatory procedure laid down, such a resolution cannot be interfered with by the Court or statutory authorities adjudicating such disputes.
- c) In a democratic set up a person is expected to respect the mandate of majority. Support of a majority is fundamental in the democratic set up and particularly when no prejudice is pointed out by alleged departure from the procedural requirement, the mandate of the majority cannot be interfered with lightly by this Court.
- d) A provision contained in a subordinate legislation cannot prevail, if the requirement of the main enactment i.e. the Act has been fulfilled. In such an eventuality the requirement of the subordinate legislation would have to give way to the Act.
- e) Test laid down in Section 44(3) of the said Act is whether the defect affects the merits of the case, would have to be applied, if a challenge is raised to motion of no confidence passed against Sarpanch and Upa-

Sarpanch, as the case may be.

13. On the touchstone of the above well established principles, the following can be said to be the mandatory requirements as per Section 35 of the said Act for coming to the conclusion that the 'Motion of No Confidence' is validly carried against the Sarpanch or Upa-Sarpanch, as the case may be:-

(i) Notice of 'Motion of No Confidence' against Sarpanch and Upa-Sarpanch is required to be submitted to Tahsildar by not less than two-third members of the total number of members who are for the time being entitled to sit and vote at any meeting of the Panchayat.

(ii) Within seven days from the date of receipt of such notice by the Tahsildar, he shall convene a Special Meeting of the panchayat for considering 'Motion of No Confidence' at the office of the panchayat at the time to be appointed by him and he shall preside over such meeting. Notice of such meeting is to be served on all the members of the Panchayat including the Sarpanch and the Up-Sarpanch.

(iii) At such special meeting of Grampanchayat, the Sarpanch or Upa-Sarpanch against whom '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.

(iv) Such a motion is required to be carried by a majority of not less than three-fourth of the total number of members, who are for the time being entitled to sit and vote at any meeting of the Grampanchayat.

14. In view of the above discussion, it is clear that the following requirements as provided in rules are not the mandatory requirements:

(i) The requirement that Notice of motion of no-confidence shall be accompanied by nine additional copies and the Tahsildar to send one copy to the Sarpanch, one to the Upa-Sarpanch and one each to the Zilla Parishad, the Panchayat Samiti, and the Collector and the Commissioner. One copy shall also be given to the Secretary.

(ii) The requirement that Tahsildar shall publish the said notice by placing the same on the notice board at the office of the Panchayat and Tahsildar Office.

15. The factual position on record in this case demonstrates the following:-

(i) On 11th July 2023, Respondent Nos. 5 to 11 i.e. seven members out of nine members have moved the motion of no confidence in accordance with Section 35 of the said Act and submitted the said proposal to the Tahsildar.

(ii) The Tahsildar i.e. Respondent No. 3 convened special meeting on

17th July 2023 and issued notice dated 12th July 2023 to all the members i.e. Respondent Nos. 5 to 11 including the Petitioner. The said Notice has been served on the Petitioner's son who is an adult and present at that time in the residence of the Petitioner and a Panchnama to that effect has been drawn. Accordingly, Notice dated 12th July 2023 was served on the Petitioner.

(iii) The meeting of Gram Panchayat has been held on 17th July 2023 and motion of no confidence has been passed by an overwhelming majority of seven members out of nine members i.e. more than three-fourth members supporting the motion of no confidence. The said meeting was not attended by the Petitioner.

16. In light of above legal and factual position, it is necessary to consider the contentions raised by the Petitioner.

17. It is one of the contention of the Petitioner that the said notice is not in accordance with law and that the said requisition as contemplated under Section 35(1) of the said Act is not in the prescribed format. It is significant to note that prescribed format only contemplates setting out the reasons for no-confidence motion. The notice of requisition issued by the Respondent Nos. 5 to 11 is at page 18 of the Writ Petition and along with the same, even the affidavit of Respondent Nos. 5 to 11 is also filed. A bare

perusal of the said notice clearly shows that the reasons are set out for the no-confidence against the Petitioner i.e. Sarpanch. The said reasons *inter alia* are that the Sarpanch is not doing the work properly, not implementing the resolution passed by the Gram Panchayat and Sarpanch does not take anybody in confidence etc. Therefore, there is no substance in the contention that the same is not in the prescribed format.

18. The contention which the Petitioner has raised is that the motion of no confidence along with the requisition is to be mandatorily served on the person against whom motion of no confidence is proposed to be moved. Reliance is placed on the said Rules. The relevant Rule is Rule 2(b) of the said Rules. Rule 2(b) provides that as far as possible the notice is to be served on the Sarpanch or Upa-Sarpanch as the case may be and if the said person is not available, then the same can be served on any adult member of the family of such person. It is the case of the Respondents that as the Petitioner-Sarpanch was not available, the notice has been served on her adult son and accordingly, a Panchanama was drawn. The said Panchnama specifically records that what is informed to the Panchas is that the Petitioner is not available, she is not well and has been admitted at Sangli. Therefore, notice has been served on her son i.e. Sharad Vilas Mahargude. Admittedly, said Sharad Vilas Mahargude is an adult.

19. It is significant to note that the Petitioner has annexed to this Writ Petition the notice dated 12th July 2023 issued by the Tahsildar, Atpadi addressed to all the members of the Gram Panchayat and the copy annexed to the Writ Petition as Exhibit B (Page 26) is specifically marked to the Petitioner. The said notice specifically directs the Talathi to serve the same along with the copy of Notices on the Petitioner. On the rear side of the said Notice, the Petitioner's son has signed and Gram Sevak's signature also appears. It is very significant to note that the Petitioner has annexed to this Writ Petition a copy of Notice which has been specifically marked to her and no explanation is given for custody of said Notice. Thus, it is clear that the Petitioner has been served with the said Notice through her son who is an adult. Thus, there is compliance with the provisions of the said Rules regarding service of Notice.

20. The Petitioner has also raised the contention that the signature as appearing on the rear side of the Notice is not the signature of the Petitioner's son. The Petitioner's son has filed Affidavit stating that the signature is not his signature. It is also contended that the son is also residing separately from his mother. An affidavit of the Petitioner's husband has also been filed to the effect that on 13th July 2023 he was present in the house for entire day and no one visited the house on that

day. However, Panchanama is drawn when the notice was served on the Petitioner's son and therefore, said contentions are disputed questions of fact and therefore, the Writ Court cannot go into those aspects. The Collector has come to the conclusion that the Petitioner has been properly served. There is no perversity or illegality in the said finding.

21. The Petitioner has raised other contentions that number of copies of the notice which are required to be given and several other requirements are not complied with. However, there is nothing on record to show that the said requirements are not complied with. In any case, the same are not mandatory requirements.

22. It is the contention of the Petitioner that Section 35(2) of the said Act provides that Sarpanch or Upa-Sarpanch against whom motion of no confidence is to be passed, shall have the right to sit and vote and also to speak in the meeting convened to consider such a motion. It is the Petitioner's submission that the said right is violated. However, factual position on record clearly shows that inspite of receipt of Notice, the Petitioner has remained absent in the meeting which was held on 17th July 2023. It is further significant to note that in the said meeting, seven members out of total nine members, who were for the time being entitled to sit and vote at the meeting of the Panchayat, passed the motion of no

confidence and the same is greater than the requirement of three-fourth of total number of members.

23. In this particular case, the discussion herein above shows that the Petitioner has failed to establish any departure from the procedural requirements. In this particular case, admittedly seven members out of nine members have voted in favour of motion of no confidence and no case is made out that there is no overwhelming majority of three-fourth members that voted in favour of the motion. The observations in the decision of *Prabhawati Vijaykumar Khivsara* (supra) to the effect that unless it is shown that while passing such a resolution of No Confidence Motion, there was flagrant violation of any of mandatory procedure laid down, such a resolution cannot be interfered with by the Court or statutory authorities adjudicating such disputes are squarely applicable to this case.

24. Accordingly, no interference in the impugned Order under Article 227 of the Constitution of India is warranted. The Writ Petition is dismissed, however with no order as to costs.

26. At this stage, a request is made by Mr. Kapse, learned Counsel appearing for the Petitioner to continue the *ad interim* relief. However, the said request is rejected.

[MADHAV J. JAMDAR, J.]