



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 24 OF 2023

Shailesh s/o Davduji Gabhane,
Aged about 45 years, the Vice-President,
Nagar Panchayat, Mohadi, Dist. Bhandara.

..... **PETITIONER**

...VERSUS...

1. The Collector,
Bhandara.
2. The Chief Officer,
Nagar Panchayat, Mohadi,
District Bhandara.
3. The President,
Nagar Panchayat, Mohadi,
District Bhandara.
4. Sachin Balchand Gaidhane,
Aged about 36 years,
R/o. Nehru Ward, Bypass Road,
Mohadi, District Bhandara.
5. Jotish Jaydev Nandanwar,
Aged about 38 years,
R/o. Tilak Ward, Mohadi, District Bhandara.
6. Vandana Krishna Parate,
Aged about 48 years,
R/o. Tilak Ward, Mohadi, District Bhandara.
7. Disha Dinesh Nimkar,
Aged about 38 years,
R/o. Nehru Ward Road, Mohadi,
District Bhandara.
8. Savita Vilas Sathawane,
Aged about 34 years,
R/o. Gandhi Ward Road, Mohadi,
District Bhandara.

..... **RESPONDENTS**

Respondent
nos.4 to 8 added
as per Court's
order dated
31.08.2023
passed in MCA
No.814/2023
sd/-
C.F.Petitioner

Shri R.M.Bhangde and Shri K.S.Motwani, Advocates for petitioner.
Shri N.R.Rode, Assistant Government Pleader for respondent no. 1.
Shri G.N.Khanzode, Advocate for respondent no.2.
Shri T.S.Deshpande, Advocate for respondent no.3.
Shri A. M. Ghare, Advocate for respondent nos. 4 to 8.

CORAM :- A.S.CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

THE ARGUMENTS WERE HEARD ON : 07.10.2023

JUDGMENT IS PRONOUNCED ON : 10.11.2023

JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. Challenge raised in the present writ petition is to the motion of no-confidence dated 26.12.2022 that has been moved against the petitioner who was holding the post of Vice-President at Nagar Panchayat, Mohadi. The said motion is challenged as being contrary to the provisions of Section 55-1A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short, the Act of 1965).

3. Nagar Panchayat, Mohadi comprises of 19 Councillors of which 17 are elected and 2 are nominated. In the First General Body Meeting of the Nagar Panchayat, Mohadi, the petitioner was elected as its Vice-President on 19.01.2022. 9 elected Councillors not being satisfied with the discharge of functions as Vice-President moved a requisition on 20.12.2022 against the petitioner proposing to move a motion of no-confidence against him. On 21.12.2022 the President of the Municipal Council convened a special meeting on 26.12.2022 for considering the requisition. In the special meeting held on 26.12.2022 a motion of no-confidence

came to be moved. 12 Councillors voted in favour of the motion while 5 opposed the same. Since the motion was supported by two-thirds of the Councillors entitled to vote, it was declared that the petitioner had lost the confidence of the Councillors and hence was liable to be removed under Section 55-1A of the Act of 1965. Being aggrieved, the petitioner has challenged the said motion.

4. Shri R. M. Bhangde, learned counsel for the petitioner submitted that the petitioner had been removed as Vice President in a manner contrary to Section 55-1A of the Act of 1965. According to him, the manner in which such requisition was required to be considered was not indicated in Section 55-1A. In absence of any procedure being indicated, the Maharashtra Municipal Councils (Conduct of Business) Rules, 1966 (for short, the Rules of 1966) and especially Rules 17 to 24 ought to have been followed. It was submitted the Chief Officer who was the Presiding Officer merely referred to the provisions of Section 55-1A in the said meeting and immediately thereafter the motion was put to vote by show of hands. The motion was neither proposed nor seconded. No opportunity was granted to the petitioner to put-forth his say on the said motion and merely on the basis of show of hands it was stated that the motion was carried. The Presiding Officer was obliged to grant an opportunity of speaking to the petitioner against whom the motion was moved. Even if such opportunity was not specifically claimed, it was required to be granted by the Presiding Officer. The learned counsel referred to the decisions in *Viswas Pandurang Mokal vs. Group Gram Panchayat, Shihu and others* [2011(3) *Mh.L.J.*500] and *Tatyasaheb Ramchandra Kale vs. Navnath Tukaram Kakde and others* [2014 (6) *Mh.L.J.* 804] to submit that by failing to grant an

opportunity to the petitioner to address the Councillors and explain his position, the motion of no-confidence had been vitiated. He also invited our attention to the decision in *Ashok Krishnakant Mehta vs. State of Maharashtra and others* [2000 (4) *Mh.L.J.*197] where the importance of requiring the person against whom such motion was moved to address the members. Since the merits of the motion had been affected by failure to grant an opportunity to the petitioner, the same was vitiated. Reference was also made to the decision in *Vijay Ramchandra Katkar vs. Group Gram Panchayat, Pali and others* [2010(4)*Mh.L.J.*497]. The learned counsel sought to distinguish the judgment of the Division Bench in *Ramkrushna Gangaram Rathi vs. Kisan Zingraji Madke* [1970 *Mh.L.J.*836] by urging that the issue considered therein was distinct from what was being urged in the present writ petition. It was thus submitted that the impugned motion of no-confidence was liable to be set aside and the petitioner ought to be reinstated as Vice-President.

5. On the other hand, Shri A. M. Ghare, learned counsel appearing for the respondent nos. 4 to 8 opposed the aforesaid submissions. At the outset, he submitted that since the provisions of Section 55-1A of the Act of 1965 were distinct from the provisions of Section 35(2) of the Maharashtra Village Panchayats Act, 1959 (for short, the Act of 1959), the decisions rendered under the latter Act could not be relied upon in the present context. The relevant provisions were not in *pari materia* and Section 55-1A was a Code in itself. It was clear that the Legislature did not intend to provide for any opportunity to the person against whom the motion was moved to speak in the debate. The Rules of 1966 could not be applied in these facts. What was material was only the procedural compliance

prescribed under Section 55-1A of the Act of 1965 namely that requisition was properly moved, the period stipulated therein was complied with and that the motion was passed by two-thirds majority. Besides aforesaid, nothing further with regard to grant of opportunity of speaking could be read in the said provision. For this reason, no debate was required to be held nor was the motion required to be substantiated by indicating the reasons for moving the same. In any event, it was submitted that at no point of time did the petitioner make any request for being permitted to address the Councillors in the special meeting held on 26.12.2022. To substantiate his submissions, the learned counsel placed reliance on the decisions in *Ramkrushna Gangaram Rathi* (supra), *Nimba Rajaram Mali Vs. Collector, Jalgaon and others* [1998(3) *Mh.L.J.* 204], *Raju Kisan Awale vs. State of Maharashtra and others* [2000(4) *Mh.L.J.* 592] and *Prabhawati Vijaykumar Khivsara vs. State of Maharashtra and others* [2008(2) *Mh.L.J.* 274] to urge that since the petitioner had lost the confidence of the two-thirds Councillors, he had been rightly removed under Section 55-1A of the Act of 1965.

Shri G. N. Khanzode, learned counsel appearing for the Nagar Panchayat - respondent no.2 submitted that the proceedings of the special meeting had been conducted in accordance with Section 55-1A of the Act 1965. Shri T.S.Deshpande, learned counsel appearing for the President of the Nagar Panchayat - respondent no.3 supported the contentions urged by the learned counsel for the respondent nos. 4 to 8. Shri N. R. Rode, learned Assistant Government Pleader for the Collector- respondent no.1 submitted to the orders of the Court.

6. We have heard the learned counsel for the parties and with their assistance we have gone through the documents on record. We have given due consideration to the respective submissions. The factual aspects of the matter are not in dispute. After being elected as Vice-President on 19.01.2022 a requisition seeking to remove the petitioner from the said post was moved by 9 Councillors on 20.12.2022. Notice of special meeting dated 21.12.2022 was issued and the special meeting was convened on 26.12.2022. Perusal of the minutes of the Special Meeting held on 26.12.2022 indicates that the Chief officer informed the Councillors present of the relevant statutory provisions and the fact that nominated members would not have the right of voting coupled with the fact that if the motion was not passed, a fresh motion would not be liable to be moved for the remainder of the term. Thereafter the motion was put to vote through show of hands and of the 17 elected Councillors, 12 voted in its favour while 5 opposed the same. As a result, it was declared that the motion of no confidence was passed with two-thirds majority in its favour. Consequently, the petitioner stood removed as Vice-President under Section 55-1A of the Act of 1965.

7. Perusal of Section 55-1A of the Act of 1965 indicates that under sub-section (2) a requisition for removal of the Vice-President has to be signed by not less than one-half of the total number of Councillors to the President. Within ten days of receiving such requisition, the President has to convene a special meeting of the Council and in such meeting the nominated Councillors would not have any right of vote. The Vice-President can be removed on the basis of such motion if it is passed by majority of not less than two-thirds of the total number of Councillors at

such special meeting.

8. Prior to insertion of Section 55-1A of the Act of 1965 vide Maharashtra Act No.17 of 2002 the removal of a Vice-President by Councillors was provided for in Section 55 as it then stood. Under Section 55(1) of the erstwhile provision on passing of a resolution by majority of the Councillors, a President/Vice-President would cease to be the President or Vice-President. In *Narayan Suryabhanji vs. Municipal Council, Chandur Railway and others*, **Special Civil Application No. 1109 of 1967** decided on 19.04.1968 a challenge to the notice convening a special meeting for considering a motion of no-confidence was raised on the ground that the same was defective and invalid as it did not indicate the material or the nature of allegations on the basis of which the motion of no confidence was to be passed. Since no opportunity to the elected office bearer to show cause as to why he should not be removed was not provided, it was urged that such elected office bearer was deprived of a reasonable opportunity of showing that there was no good ground for passing the resolution. The Division Bench while considering the said challenge held as under:

“ On merits, the contention of the petitioner is that the notice issued by the Collector on 13.10.1967 is defective and invalid because it does not give any idea as to the material or the nature of the allegations on the basis of which the motion of no-confidence was to be passed or which the petitioner was required to meet. It is also complained that the proceedings of the meeting which considered the motion of no-confidence were conducted in such a manner that the petitioner was deprived of any opportunity to explain his conduct or to know what the charges against him were or to give his defence if any such charges or complaints were made known to him. In other words, the motion of no-confidence was passed purely on the strength of the majority vote without giving a fair opportunity to the

petitioner as an elected office bearer to show cause why he should not be removed from office or why he should not cease to be in office.”

“In our opinion, no such obligation seems to be cast either on the requisitionists or on the Collector in framing the agenda of the meeting to be called on receipt of the requisition from the Councillors for a meeting to be convened to consider the question of no-confidence against the President or Vice-President. It will be seen that the right that is given to the Councillors under sub-section (1) of Section 55 of the Maharashtra Municipalities Act, merely speaks of passing a resolution that the President or Vice-President shall cease to be President or Vice-President. When the Legislature speaks in sub-section (4) of Section 55 that the resolution to be considered at the meeting is a resolution of removal of President, it is only describing the content of the power that is reposed in the Councillor under sub-section (1) of Section 55, and that power or that right is only a right of resolving that the person for the time being holding the office of President or Vice-President shall cease to hold that office. This provision may be contrasted with similar provisions in other Acts where the Legislature requires that in moving a motion of no-confidence the requisitionists have to indicate what their grievance is against the person against whom the motion of no-confidence is to be moved, for example, under the Maharashtra Zilla Parishads and Panchayat Samitis Act. On the other hand, the scheme under the Municipalities Act seems to be that there may not be any indication either in the requisition or in the resolution itself as to why in the opinion of the majority, if the resolution is passed, they do not desire that the office-bearer shall continue in office, or, in other words, desire that he should cease to hold office. We are not sure whether the provision in the Municipalities Act may not prove a blessing in disguise if ugly exhibition of charges and counter-charges or allegations are considered avoidable and a healthy practice of recognising the essence of democratic traditions that a person who comes in office by the will of the majority should go out of office the moment that majority expresses its intention to that effect, is not to be welcomed. The essence of office held in a democratic institution on the basis of the confidence of the majority consists in the tenure being continued only so long as and only as long as the person holding the office continues to have the confidence of the majority. This does not mean that a person

faithfully and conscientiously discharging the duties of his office may not without merit lose the confidence; but that is neither relevant nor material. The intention of the Legislature seems to be that a person who is elected by a majority vote may not continue in office the moment he loses the confidence of the majority.”

We are in respectful agreement with what has been held in *Narayan Suryabhanji* (supra).

9. The issue as to whether a requisition for convening a meeting to pass a resolution to remove a President of the Municipal Council was required to indicate the grounds on which the President was sought to be removed was considered in *Ramkrushna Gangaram Rathi* (supra). Section 55 as it then stood prescribed the mode for removal of the President and the Vice-President of the Municipal Council. The requisition in the said case was challenged on the ground that it did not state the grounds on which the President was sought to be removed. The Division Bench held that on a plain reading of Section 55 it did not appear that the requisition must state the grounds or reasons on which the President is sought to be removed. Importance was given to the will of the majority and it was observed that the omission to prescribe for grant of reasonable opportunity in Section 55 could not be stated to be inadvertent or unintentional. It was thus held that the tenure of the Office of the President was wholly at the pleasure and will of the majority of the Councillors and that the President could continue as long as he enjoyed the confidence of the majority. Though it was urged that the Court ought to take a different view of the matter than the one taken in *Narayan Suryabhanji* (supra), that contention was not accepted. It is thus clear from the said decision that

reasons for removal of the President under Section 55 of the Act of 1965 as it then stood were not required to be given.

This decision has been referred to in *Raju Kisan Awale* (supra) and it has been observed that Section 55 excluded the operation of the principles of natural justice in the process of action for removal of the President. The will of the majority was given importance. In this context, we may refer to the decision in *Babubhai Muljibhai Patel vs. Nandlal Khodidas Banod and others* [**AIR 1974 SC 2105**] wherein it was observed that there is no legal bar to the passing of a motion of no-confidence against an authority in the absence of any charge of impropriety or lapse on the part of that authority. It was further held that it was sufficient that the party against whom such motion is passed has ceased to enjoy the confidence of the requisite majority of members.

10. The learned counsel for the petitioner sought to rely upon various decisions rendered under the Act of 1959 to urge that an opportunity to address the Councillors in the special meeting which would include an opportunity of hearing the Councillor sought to be removed was necessary. In the light of the two decisions *Narayan Suryabhanji* and *Ramkrushna Gangaram Rathi* (supra) decided by two co-ordinate Benches considering the provisions of Section 55 of the Act of 1965 as it then stood which are in *pari materia* the provisions of Section 55-1A of the Act of 1965, we do not find it expedient to refer to the decisions rendered under the Act of 1959 since the statutory scheme for removal of the elected office bearer is quite distinct. The said decisions proceed to interpret the provisions of Section 33 of the Act of 1959 and on a perusal of the same, it is clear that the

requirements for passing a motion of no-confidence under that statute are different from the manner in which a motion of no-confidence can be passed under Section 55-1A of the Act of 1965. The statutory scheme is distinct in both the statutes. In the present case, there has been due compliance with the statutory period of submitting the requisition, of it being signed by more than one-half of the total number of Councillors and a special meeting being convened by the President within ten days of receiving such requisition. The requisite majority has expressed its no-confidence against the petitioner. In that view of the matter, no fault can be found with the passing of the motion of no-confidence.

11. For aforesaid reasons, we do not find that there is any case made out to interfere in writ jurisdiction on the grounds urged by the learned counsel for the petitioner. The challenge to the passing of the motion of no-confidence fails. The writ petition stands dismissed. Rule is discharged with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)

Andurkar.