

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION (WP) NO.855 OF 2022

Shri Akul Kalipad Mandal,
aged about 57 years,
Occu. Agricultural, Sarpanch Gram
Panchayat Kalinagar, Ta. Mulchera,
Dist. Gadchiroli.

.... Petitioner

// VERSUS //

1. Collector, Gadchiroli
2. Presiding Officer/Tahsildar, Mulchera
(Sarpanch Confidence Motion) Gram
Panchyat Khalinagar, Taluka Mulchera,
District Gadchiroli.
3. Pawan Lakshmikant Mandal,
Age Major Ex Sarpanch Gram Panchayat
Khalinagar,
4. Shri Ram Krishna Ravindra Bhajan,
age major
5. Sau. Kabita Gaurang Biswas,
age major
6. Bruhaspati Praful Roy,
age Major
7. Sau. Banita Sanjit Basu,
age Major
8. Shri Vijayprakash Krishnaji Berad,
age major
9. Sau. Meena Sadanand Haldar,
age Major
All Respondents No.3 to 9 R/o Kalinagar,

Ta. Mulchera, Dist Gadchiroli.

...Respondents

Shri V.N. Morande, Advocate for the Petitioner
Ms Jaipurkar, AGP for the respondent Nos.1 and 2/State
None for the respondent Nos.3 to 9

CORAM : ANIL S. KILOR, J.
DATED : 06.02.2023

ORAL JUDGMENT :

1. Heard.
2. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.
3. In this writ petition, order dated 02.02.2022 passed by the Collector, Gadchiroli, setting aside no confidence motion passed against respondent No.3, the resolution of Gram Pachayat, Kalinagar accepting resignation of respondent No.3 as Sarpanch and the resolution dated 21.09.2021 electing the petitioner as Sarpanch, is under challenge.
4. The brief facts of the petition, are as under:

5. The elections of the Gram Panchayat, Kalinagar held in the year January-2021 and thereafter, the respondent No.3 was elected as Sarpanch from the elected members of the Gram Panchayat.

6. Thereafter, no confidence motion was moved against the respondent No.3 and it was scheduled to be held on 30.08.2021, however, three days before, i.e. on 27.08.2021 the respondent No.3 resigned from the post of Sarpanch by submitting his resignation in writing to the Chairman of the Panchayat Samiti.

7. Due to lack of knowledge about the resignation of the respondent No.3, a meeting was held for considering a motion of no confidence, on 30.08.2021 and it was passed by majority against the respondent No.3 and no proceeding was filed, challenging the said no confidence motion within a period of seven days i.e. the time prescribed under law for raising a grievance against the no confidence motion.

8. The proceeding challenging the same was filed on 30.09.2021 i.e. after one month. However, in the meantime, the

elections were held for the post of Sarpanch on 21.09.2021 and the present petitioner got elected as Sarpanch.

9. The Collector vide impugned order set aside the no confidence motion dated 30.08.2021, the resolution of Gram Panchyat accepting the resignation of the respondent No.3 and further the resolution electing the petitioner as Sarpanch in place of respondent No.3, which is the subject matter of this petition.

10. I have heard the learned counsel for the petitioner and the learned AGP for the respondent Nos.1 and 2/State. None for the respondent Nos.3 to 9, though served long back.

11. After going through the record, it is evident that the meeting for considering the motion of no confidence was convened on 30.08.2021 and before passing the motion of no confidence against the respondent No.3, he had already resigned from the post of Sarpanch on 27.08.2021.

12. It is further indisputable that on 21.09.2021, the elections were held for the post of Sarpanch and the petitioner got elected as Sarpanch by taking the charge as Sarpanch.

13. Thereafter, the appeal was filed before the Collector, Gadchiroli, challenging no confidence motion dated 30.08.2021 by the respondent No.3.

14. After going through the prayer of the said appeal, it can be seen that there was no challenge raised to the resignation submitted by the respondent No.3 or the election of the petitioner as Sarpanch held after the no confidence motion was passed against the respondent no.3. Despite the fact that the said appeal was not maintainable at the instance of the respondent no.3 because of his resignation, the Collector entertained the appeal and allowed the same.

15. Moreover, the appeal was entertained though it was filed after 30 days i.e. on 30.09.2021, whereas, a limitation prescribed under the Maharashtra Village Panchayat Act is of seven days, further ignoring that the elections were held and the petitioner was

declared as Sarpanch. The order passed by the Collector setting aside the resolution of accepting the resignation of respondent No.3 as well is illegal and bad in law.

16. Thus, I have no hesitation to hold that the Collector has committed error in setting aside the no confidence motion against the respondent No.3, the resignation of the respondent No.3 and the election of the petitioner as Sarpanch vide impugned order dated 02.02.2022. Accordingly, I pass the following order:

- (i) The writ petition is **allowed**.
- (ii) The order dated 02.02.2022 passed by Collector, is hereby quashed and set aside.

Rule accordingly. No costs.

[ANIL S. KILOR, J.]