

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

WRIT PETITION NO.4174 OF 2023

Rahul S/o Sahdev Lokhande, Wathoda, Taluka Warud, Dist. Amravati and anr.

-vs-

State of Maharashtra, Thr. Secretary, Rural Development Dept. Mantralaya, Mumbai and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S. V. Bhutada, Advocate for petitioners.

Shri A. A. Madiwale, Assistant Government Pleader for respondent Nos.1, 3 and 5.

Shri J. B. Kasat, Advocate for respondent No.2.

Shri Nilesh Gawande, Advocate for respondent No.6.

Shri R R. Rajkarne, Advocate for respondent Nos.7 to 11.

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

DATE : July 28, 2023

P. C.

1. The question that arises for consideration in this writ petition is when the post of Sarpanch is reserved for a particular category of members and the Sarpanch elected as such is the only member belonging to that particular category, on removal of such Sarpanch due to passing of a motion of no-confidence under Section 35(2)(a) of the Maharashtra Village Panchayats Act, 1959 (for short, the Act of 1959), whether he/she can again contest the by-election that is held for filling in the vacancy caused due to his/her removal ?

2. The respondent No.6 was elected as Sarpanch of Gram Panchayat Wathoda, Taluka Warud, District Amravati. The post of Sarpanch was reserved for Scheduled Caste (Women). By a motion of no-confidence moved by the petitioners along with other members of the Gram Panchayat, the respondent No.6 came to be removed from the

post of Sarpanch since the said motion came to be passed by the requisite majority. Since a vacancy had arisen on the post of Sarpanch that was reserved for members belonging to Scheduled Caste (Women) category and the respondent No.6 was the only eligible member who could contest the said election, the petitioners have challenged the notice dated 30/06/2023 convening the meeting of the Gram Panchayat for electing the Sarpanch by holding a by-election.

3. Shri S. V. Bhutada, learned counsel for the petitioner by referring to various provisions of the Act of 1959 including Section 43(1) thereof submits that any vacancy of which notice has been given to the Collector on account of occurring of various contingencies including confirmation of no-confidence motion is required to be filled in by conducting election. The person who is elected in such election can hold office only for such period as Sarpanch or Upa-Sarpanch “in whose place he has been elected” would have held office if the vacancy had not arisen. Thus, according to the learned counsel the words “in whose place he has been elected” would exclude the Sarpanch against whom the no-confidence motion has been confirmed. By permitting such member who has been removed by a motion of no-confidence to again contest the by-election for filling in the same post would be against democratic principles and passing of the motion of no-confidence would be rendered otiose. Under Section 35(2) (a) on such motion of no-confidence being carried by the requisite majority the

Sarpanch is required to forthwith stop exercising powers and performing of functions and duties of the office of Sarpanch. This would imply that a Sarpanch removed by a motion of no-confidence is not expected to again contest the by-election for the office of Sarpanch. The learned counsel sought to draw support for this submission by referring to the judgment of the Full Bench in *Tatyasaheb Ramchandra Kale vs. Navnath Tukaram Kakde and ors.* (2014) 6 *Mh.L.J.* 804. He fairly pointed out that the Division Bench in *Chandarbai w/o Malhari Gaikwad and anr. vs. State of Maharashtra and ors.* 1998 (2) *Mh.L.J.* 724 has held that there was no bar for such Sarpanch who was removed through a motion of no-confidence to contest again and get re-elected. The respondent No.6 had been removed by the members of the Gram Panchayat since she did not have the confidence of majority of the members. Hence it was not permissible for respondent No.6 to again contest the by-election. It was thus submitted that it be held that the respondent no.6 was not eligible to contest the by-election for electing the Sarpanch.

4. Shri Nilesh Gavande, learned counsel for the respondent no.6 opposed the writ petition. According to him, in absence of there being any disqualification prescribed for a Sarpanch who has been removed by virtue of motion of no-confidence being passed to again contest the by-election, the respondent no.6 was entitled to submit her nomination form and contest the said elections. The disqualifications prescribed

under Section 14 of the Act of 1959 did not include a disqualification by virtue of which a Sarpanch against whom motion of no-confidence was passed was precluded from contesting the by-election. The proceedings were governed by the Act of 1959 and in absence of any statutory prohibition, the contention of the petitioners was not liable to be upheld. The learned counsel placed reliance on the judgment of the Division Bench in *Chandarbai w/o Malhari Gaikwad and anr.* (supra) and submitted that the writ petition was liable to be dismissed.

Shri Amit Madiwale, learned Assistant Government Pleader for the respondent nos. 1, 3 and 5 and Shri J. B.Kasat, learned counsel for the respondent no.2 also opposed the writ petition by submitting that there was no bar in the Act of 1959 to preclude the respondent no.6 from contesting the by-election. Shri R.R.Rajkarne, learned counsel for the respondent nos. 7 to 11 supported the stand of the petitioners.

5. We have heard the learned counsel for the parties and we have given due consideration to their respective submissions. The factual scenario indicates that the post of Sarpanch at Gram Panchayat, Wathoda was reserved for Scheduled Caste (Women) under Section 30 of the Act of 1959. The respondent no.6 came to be elected as Sarpanch pursuant to the elections held on 28/01/2021. A motion of no-confidence was moved against the respondent no.6 by the petitioners as well as the respondent nos. 7 to 11. In the meeting held on 08/06/2023 the said motion of no-confidence was duly carried and

by requisite majority the respondent no.6 came to be removed from the post of Sarpanch. In view of the vacancy caused by the removal of the respondent no.6, a meeting of the members of the Gram Panchayat was called on 30/06/2023 for the by-election to be held on 07/07/2023. The respondent no.6 being the only eligible candidate, it was apprehended by the petitioners that she would again contest the said by-election. It is in this backdrop that the present challenge has been raised to the notice of the meeting dated 30/06/2023.

6. We may state that the Division Bench in *Chandarbai Malhari Gaikwad and anr.* (supra) has considered a similar contention that a member who is removed by virtue of a motion of no-confidence should not be permitted to contest the by-election for the same post again. It was held that removal of a Sarpanch by passing a motion of no-confidence under Section 35 of the Act of 1959 did not entail a disqualification for further elections under the Act of 1959. Since the office of the Sarpanch was reserved for a particular category of members, the Gram Panchayat would not be competent to elect any other member as Sarpanch who did not belong to such category. By holding that there was no disqualification arising out of the removal of a Sarpanch with the passing of motion of no-confidence, it was held that such member who belonged to the particular category and who had been removed by motion of no-confidence cannot be prevented from contesting the by-election again. Notwithstanding this legal

position, the learned counsel for the petitioners sought to contend that the provisions of Section 43 of the Act of 1959 which contemplate the modality of filling up of a vacancy and which prescribe elections to be held for the post of Sarpanch or Upa-Sarpanch as the case may be entitles a member 'in whose place he has been elected would have held office if the vacancy had not occurred'. The contention urged is that by providing for holding of elections for filling up the vacancy caused due to disablement, death, resignation, disqualification, confirmation of no-confidence motion, absence without leave or removal of a Sarpanch or Upa-Sarpanch and such member elected in the by-election being entitled to hold office for the remainder of the term of such Sarpanch or Upa-Sarpanch who had been removed is indicative of the fact that the Sarpanch or Upa-Sarpanch who had lost the confidence of the members cannot be the same person who can fill up the vacancy through by-election 'in whose place he has been elected would have held office if the vacancy had not occurred'. It was on this premise that it was urged that the outgoing Sarpanch or Upa-Sarpanch is dis-entitled from filling up such vacancy caused by his own removal.

7. We are not in a position to accept this contention for the reason that the words 'in whose place he has been elected would have held office if the vacancy had not occurred' merely contemplate that on the filling up of such vacancy, the member elected as Sarpanch or Upa-Sarpanch as the case may be is entitled to hold office only for the

reminder of the term for which such Sarpanch or Upa-Sarpanch would have held office if the vacancy would not have been caused on account of the contingencies mentioned in Section 43(1) of the Act of 1959. The said expression is not intended to convey that the Sarpanch or Upa-Sarpanch so removed cannot again fill in the very same post. The right to hold the office of Sarpanch or Upa-Sarpanch subject to being qualified to do so is prescribed by the Act of 1959. Subject to a person possessing such required qualifications and he/she not being precluded from holding such post under the Act of 1959, there would not be any statutory bar for such person to fill up the vacancy caused on the post of Sarpanch or Upa-Sarpanch. Section 14(1) of the Act of 1959 prescribes various disqualifications by which a person cannot continue as member of the Panchayat. As long as the reason for such disqualification continues, such person would not be entitled to continue as member of the Panchayat. For example under Section 14(1)(c-1), if a member of the Panchayat has held any office under any government or local authority and he has been dismissed for misconduct then unless a period of five years has elapsed since his dismissal, he would not be entitled to a member of the Panchayat. Similar is the case with regard to Section 14(1)(d) where removal takes place under Section 39(1) of the Act of 1959 and a period of six years from the date of removal has not elapsed. It is thus clear that wherever it was intended to prevent a person suffering from a disqualification to contest the elections again and become a member of the Panchayat the

same has been specifically provided in the Act of 1959. Thus subject to being qualified under the Act of 1959 and not being disqualified under the Act of 1959, there would be no basis for preventing a person who is not suffering from such disqualification to contest the elections. We may note that Section 14A and 14B of the Act of 1959 also prescribe for disqualification for the contingencies mentioned therein.

8. Faced with the absence of any statutory prohibition for a Sarpanch/Upa-Sarpanch who has been removed by motion of no-confidence being again entitled to contest the by-election for filling in such vacancy, the learned counsel for the petitioners sought to urge that by permitting a Sarpanch/Upa-Sarpanch who has lost the confidence of the members of the Panchayat to again contest the by-election and get elected as the sole candidate on the very same post would affect the smooth and congenial functioning of the Panchayat. A Sarpanch/Upa-Sarpanch who had lost the confidence of the members would not be in a position to immediately regain the confidence of the members in such manner. The learned counsel sought to draw support from the judgment of the Full Bench in *Tatyasaheb Ramchandra Kale* (supra) in that regard. The Full Bench considered the question as to whether failure to formally move and second a motion of no confidence in the manner prescribed by Rule 17 of the Bombay Village Panchayats (Meetings) Rules, 1959 (for short, the Rules of 1959) would render the motion of no confidence carried by the requisite majority invalid.

While answering the said question it was held by the Full Bench that the post of Sarpanch/Upa-Sarpanch was considered important by the Legislature since various safeguards in the form of motion being moved by not less than $1/3^{\text{rd}}$ of the members entitled to sit and vote as well as passing of such motion by $2/3^{\text{rd}}$ of the members entitled to sit and vote was contemplated. In respect of a woman Sarpanch, it was $3/4^{\text{th}}$ of the number of members who were entitled to sit and vote. A provision was also made that a motion could not be moved within a period of six months from the date of election of the Sarpanch or Upa-Sarpanch. It was pointed out that the provisions of Section 35 of the Act of 1959 have been amended from time to time to highlight this aspect. It was thus held that the principle behind the said provision was to lend stability insofar as the post of Sarpanch/Upa-Sarpanch were concerned and to see that the elected body functions smoothly. While holding Rule 17 of the said Rules to be directory in nature, it was held that an interpretation which permits a Sarpanch who has lost the mandate of the house to again continue would be against the very tenets of democracy. A person who had lost the mandate could not be allowed to continue. An elected person was entitled to continue in office only till such time as he/she enjoys the confidence of the persons who comprise such bodies. It was on this premise that the Full Bench proceeded to hold that any infraction that had occurred on account of the motion not being formally proposed and seconded would not result in invalidating the motion if it had been passed by fulfilling the requirements of

Section 35(3) of the Act of 1959 since such infraction did not affect the merits of the case.

9. At first blush the observations sought to be relied upon by the learned counsel for the petitioners appear to substantiate the contentions of the petitioners as urged. It is however to be kept in mind that the right to contest elections is a purely statutory right and such right is governed by the statute under which it is claimed. If the concerned statute does not prescribe any disqualification nor does it preclude a candidate from contesting elections, such candidate cannot be so prevented on a ground *dehors* the statute. What may appear to be morally appealing may not necessarily have statutory support. In *Raghunathrao Ganpatrao vs. Union of India [AIR 1963 SC 1267]* the distinction between law and morality as well as the line of demarcation which separates morals from legislation was noticed. It was held that a moral obligation cannot be converted into a legal obligation. The rights of the parties being governed by the Act of 1959, in the absence of there being any statutory prohibition for a Sarpanch/Upa-Sarpanch to contest the by-election that is occasioned by his/her own removal as Sarpanch/Upa-Sarpanch pursuant to a motion of no-confidence, the contention of the petitioners cannot be accepted. If the Legislature has not thought it fit to prohibit a Sarpanch/Upa-Sarpanch who is removed by motion of no-confidence to contest the by-election necessitated by virtue of his/her removal, it would not be permissible for the Court to

prescribe such prohibition especially when on a plain reading of Sections 14, 35 and 43 of the Act of 1959 the legislative intention is crystal clear.

10. For all these reasons, we do not find any case made out to invoke extraordinary jurisdiction under Article 226 of the Constitution of India. The writ petition is thus dismissed leaving the parties to bear their own costs. Civil Application (W) No.2125 of 2023 is also disposed of.

(MRS. VRUSHALI V. JOSHI, J.)

(A. S. CHANDURKAR, J.)

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