



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

MISCELLANEOUS CIVIL APPLICATION NO.814/2023 IN WRIT PETITION. NO.24/2023

(SACHIN BALCHAND GAIDHANE & OTHERS **VERSUS** SHAILESH DAVDUJI GABHANE & OTHERS)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri A.M. Ghare, counsel for the applicants.
Shri R.M. Bhangde, counsel for the non-applicant no.1.
Ms S.S. Jachak, Assistant Government Pleader for the non-applicant no.2.

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

DATE : AUGUST 31, 2023.

ADMIT. Heard the learned counsel for the applicants, the learned counsel for the non-applicant no.1 and the learned Assistant Government Pleader for the non-applicant no.2.

2. The applicants seek review of the judgment dated 08.08.2023 in Writ Petition No. 24 of 2023 *inter alia* on the ground that the applicants being the requisitionists who had submitted the requisition dated 20.12.2022 for moving a motion of no confidence against the non-applicant no.1 were the necessary parties in Writ Petition No. 24 of 2023. That writ petition had been filed by the non-applicant no.1 for challenging the motion of no confidence as passed against him in the special meeting of the Municipal Council that was convened on 26.12.2022.

3. Shri A.M. Ghare, learned counsel for the applicants submitted that the requisition signed by nine Councillors of Municipal Council Mohadi was submitted to the President of the Municipal Council on 20.12.2022 seeking a special meeting to be convened as the requisitionists proposed to move the motion of no confidence. Since the said motion was passed in the special meeting and a challenge was raised to the said motion by the non-applicant no.1, the applicants as requisitionists were the necessary parties for being heard on the challenge to the said motion of no confidence. Without impleading the applicants, the writ petition was filed. The writ petition was entertained and in

absence of the applicants it was held that the motion of no confidence was passed against the non-applicant no.1 in a manner contrary to Section 55-1A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short, 'the Act of 1965'). In support of the said contention reliance was placed on the judgment of the Division Bench in *Hindurao Dnyanu Shirtode & Another Versus State of Maharashtra & Others* [1998(3) Mh.L.J. 622]. It was thus submitted that the judgment under review ought to be recalled since the writ petition was decided in absence of the applicants.

4. This contention was opposed by Shri R.M. Bhangde, learned counsel for the non-applicant no.1 by submitting that the Municipal Council through its Chief Officer had been arrayed as the respondent no.2 in the writ petition and it had been heard while deciding the said writ petition. The applicants were not necessary parties for being heard in the challenge to the motion of no confidence. According to him of the nine requisitionists, an application for intervention was filed by four requisitionists for intervening in the said proceedings and the said requisitionists had been heard while deciding the writ petition. Further the present applicants had knowledge of the filing of the writ petition as well as the passing of the interim order on 04.01.2023. Despite having knowledge of the same the present applicants did not take any steps to intervene in the writ petition and hence they had acquiesced to the hearing of the writ petition in their absence. Since some of the requisitionists had intervened in the writ petition there was no reason whatsoever to hold that the present applicants also ought to have been heard. The applicants failed to explain their conduct in this regard and only after the writ petition was allowed they had chosen to seek review of the aforesaid judgment. In that regard, the learned counsel placed reliance on the decisions in *U.P. Jal Nigam & Another Versus Jaswant Singh & Another* [(2006) 11 SCC 464] and *Bijay Mishra & Others Versus Union of India & Others* [2013 SCC OnLine Orissa 424]. It was thus submitted that the applicants were not necessary parties and there was no reason to review the order passed in the writ petition.

5. We have heard the learned counsel for the parties and we have perused the documents on record. It is not in dispute that the requisition dated 20.12.2022 was signed by nine Councillors. The present application has been preferred by five of the said requisitionists. They had not been impleaded as the respondents in the writ petition challenging the motion of no confidence. Of the nine Councillors four had filed Civil Application No. 2122 of 2023 seeking leave to participate in the writ petition. They were permitted to do so and it was the stand of the said applicants that they were supporting the non-applicant no.1 herein against whom the motion of no confidence was passed. It is thus apparent that in the writ petition the parties heard were the non-applicant no.1, the Chief Officer of the Municipal Council, its President and the Councillors who were supporting the President. There was no representation of the Councillors who were supporting the motion of no confidence and had voted in favour of the same. In the facts of the present case when challenge to the passing of the motion of no confidence in the special meeting dated 26.12.2022 was on the ground that the President was not given a chance to speak in the special meeting, we find that the presence of the applicants in the writ petition was necessary. This is for the reason that despite there being five Councillors who were supporting the motion of no confidence they were not heard when the said motion was set aside. The four Councillors who had intervened in the writ petition had switched sides and were supporting the ousted President. As a result of the motion of no confidence being set aside legal prejudice has been caused to the requisitionists who had moved the motion of confidence and it in that view of the matter that they ought to have been heard before any decision was taken on the validity of the motion of no confidence. The decision in *Hindurao Dnyanu Shirtode & Another* (supra) arises out of the proceedings under the Bombay Village Panchayats Act, 1959 and it had been held that the persons who had proposed and had thereafter passed the motion of no confidence ought to be joined a parties in the writ petition challenging such motion. We therefore find that the applicants ought to have been heard before deciding the writ petition.

6. As regards the contention that the applicants were aware of the pendency of the proceedings filed by the non-applicant no.1, we do not find that on the basis of implied knowledge of the present proceedings the applicants were not liable to be heard on the challenge to the motion of no confidence. Four requisitionists who had intervened chose to support the Vice President and hence other Councillors who were supporting the motion of no confidence were not heard. We therefore do not find that on this basis the applicants were not liable to be heard in the writ petition.

7. It may be stated that the learned counsel for the applicants raised other grounds in support of the review application which were replied to by the learned counsel for the non-applicant no.1. However, since we find that the applicants ought to have been heard in the writ petition, we have not examined other grounds that were based on the findings recorded in the writ petition.

8. Hence, for aforesaid reasons the judgment dated 08.08.2023 in Writ Petition No. 24 of 2023 is recalled and the writ petition is restored for being considered afresh. The original petitioner shall implead the review applicants as the respondents in the writ petition. The miscellaneous civil application is allowed in aforesaid terms with no order as to costs.

WRIT PETITION NO. 24/2023.

Stand over 06.09.2023 for further consideration.

(MRS. VRUSHALI V. JOSHI, J.)

(A. S. CHANDURKAR, J.)