

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1437 OF 2024

Archna W/o. Vikas Phulare,
Age-37 years, Occu- Upa-Sarpanch
R/o. Shivgaon, Tq. Vaij Vaijapur,
Dist. Chhatrapati Sambhajnagar.

..Petitioner

VERSUS

1. The District Collector,
Chhatrapati Sambhajnagar.
2. The Tahsildar, Vaijapur,
Tq. Vaijapur, Dist. Chhatrapati Sambhajnagar
3. The Gramsavek,
Group Gram Panchayat, Shivgaon-Pathari,
Tq. Vaijapur, Dist. Chhatrapati Sambhajnagar
4. Ashok S/o Eknath Borase,
Age- Major, Occu- Member,
5. Mamata W/o. Shantilal Rajput,
Age- Major, Occu- Member,
6. Tarabai W/o. Waman Gangurde,
Age- Major, Occu- Member,
7. Vimalbai W/o. Dagadu Gaikwad,
Age- Major, Occu- Member,
8. Vijaysingh S/o. Mahasingh Jarwal
Age- Major, Occu- Member,
9. Sunita W/o. Venunath Darekar,
Age- Major, Occu- Member,
10. Swati W/o. Vikas Darekar
Age- Major, Occu- Member,
11. Sitabai W/o. Madan Gomladu
Age- Major, Occu- Member,

Resp.No.4 to 11 All R/o. Shivgaon-Pathari
Tq. Vaijapur, Dist. Chhatrapati Sambhajinagar.

..Respondents

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Advocate for the Petitioner : Mr. Gore Ravindra Vitthal
AGP for Respondent Nos.1 & 2 : Mr. A.S. Shinde

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CORAM : S.G. MEHARE, J.

DATED : FEBRUARY 20, 2024

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.
2. Learned counsel Mr. Omprakash V. Waghmare holding for Advocate Mr. P.D. Kale has instructions to appear for respondent nos.4 to 11. Office to accept his vakalatnama.
3. A short question that arises for determination is whether 3/4th majority for a no-confidence motion against the Upa-sarpanch should be calculated considering the total members of the panchayat.
4. The no-confidence motion has been passed against the petitioner by 7:2 out of nine total elected members. It has been objected that one of the members who cast the vote against the petitioner was disqualified for not submitting the caste validity certificate within one year. Hence, he was not entitled to sit and vote at the meeting.
5. Learned counsel for the petitioner submits that both authorities have erred in misinterpreting the Government Ordinance dated 10.07.2023. They have incorrectly held that by this Ordinance,

one additional year has been extended to submit the caste validity certificate. He would argue that neither authority considered Section 3(2)(b) of the said Ordinance. The concession/extension of one more year under Section 3 would not apply to the members whose application for the validity certificate has been rejected by the Scrutiny Committee. The Scrutiny Committee rejected the validity certificate of the member who voted against the petitioner. Soon after the candidate was declared disqualified, he ceased the office of the Village Panchayat. Therefore, by eliminating him, there is no 3/4th majority. He has argued that the 3/4th majority should be counted considering the total nine members of the Village Panchayat. To bolster his arguments, he pressed into service the law laid down by the Hon'ble Supreme Court in the case of Ganesh Sukhdeo Gurule Vs. Tahsildar, Sinnar and Ors, 2019(1) ALL MR 471 (S.C.).

6. Learned counsel for the contesting respondents and learned AGP would submit that the counsel for the petitioner has misread the law laid down by the Hon'ble Supreme Court in the case of Ganesh (supra). The term entitled to sit and vote has been interpreted in the said judgment. Eliminating one who is disqualified, there were six votes against the petitioner. At the relevant time, eight members were entitled to sit and vote. On counting the votes against the petitioner, there was a majority of 3/4th votes against the petitioner. One of the members did not cast a vote on either side.

7. The Hon'ble Supreme Court in the case of Ganesh (supra) has observed in Para 9, which reads thus :

“9. In the present case statute, Section 35(3) refers to majority as “a majority of 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”. The above expression clearly indicates the majority of not less than two-third of the “total number of the members who are for the time being entitled to sit and vote”. The key words in the expression are members who are for the time being entitled to sit and vote at a meeting in the Panchayat. The computation of majority thus refers to “entitlement to sit and vote at any meeting”. Thus, the number of members who are entitled to sit and vote in a meeting have to be taken into consideration for computing the majority. Total number of members being nine and one member being disqualified to sit and vote, the computation of majority has to be on the basis of number eight, two-third of the number eight will be 5.33. The Submission of the respondent is that the two-third majority has to be computed out of the members present and voting i.e. seven excluding one member who was unqualified to vote and five is more than two-third of seven, the majority has been rightly passed. The interpretation put by the learned counsel for the respondent cannot be accepted in view of the clear language of statute. The crucial words in the statute are members “who are for the time being entitled to sit and vote”. This, expression cannot be treated to be expression members present and voting. The submission of the respondent that for computation of majority number of seven members should be treated, cannot be accepted. “

8. The Hon'ble Supreme Court has answered that the majority has to be computed on the basis of the number of members entitled to sit and vote at any meeting of the panchayat. In that case,

there were also nine members. One was disqualified, and eight members were entitled to sit and vote in the meeting of the panchayat. The Hon'ble Supreme Court held that out of nine, eight members were entitled to sit and vote, and the computation of majority has to be on the basis of number eight. It was nowhere interpreted that the number of total members of the panchayat should be considered for computing the majority, a 3/4th majority, to pass the no-confidence motion. The arguments of the learned counsel for the petitioner appear misconceived that the majority has to be counted on the basis of a total of nine members of the Village Panchayat. Reading the law laid down by the Hon'ble Supreme Court in the above case, the arguments of the respondents are correct. The computation of the majority has to be on the basis of eight members who were entitled to sit and vote.

9. In view of the facts of the case and the law laid down by the Hon'ble Supreme Court as aforesaid, there is no substance in the petition. Hence, the petition stands dismissed.

10. Rule stands discharged. No order as to costs.

(S.G. MEHARE, J.)