



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1744 OF 2023

Sau. Sushama Wasudeo Patil,
Age 47 years, Occu. Social work and Household,
R/o. Dahiwad, Tq. Amalner, District Jalgaon

.. Petitioner
(Original Applicant/
Appellant)

Versus

1. The Collector, Jalgaon,
District Jalgaon
2. The Tahsildar, Amalner,
Tq. Amalner, District Jalgaon
3. The Block Development Officer,
Panchayat Samiti, Amalner,
Tq. Amalner, Dist. Jalgaon
4. The Village Development Officer,
Gram Panchayat, Dahiwad
Tq. Amalner, District Jalgaon
5. Devanand Kapurchand Bahare
Ae 38 years, Occu. Agri.
6. Manikrao Himmatrao Patil,
Age 55 years, Occu. Agri.
7. Sunil Shaligram Patil,
Age 48 years, Occu. Agri.
8. Shivaji Suklal Pardhi,
Age 28 years, Occu. Agri.
9. Vaishali Prakash Mali,
Age 27 years, Occu. Household
10. Varsha Gulab Patil,
Age 42 years, Occu. Household
11. Malubai Suresh Mali,
Age 46 years, Occu. Household

12. Ashabai Motilal Mali,
Age 50 years, Occu. Household
13. Yogita Bharatsing Gosavi,
Age 32 years, Occu. Household
14. Hirabai Ashok Bhil,
Age 54 years, Occu. Household

All R/o. Dahiwad, Tq. Amalner,
District Jalgaon

.. Respondents

...

Mr. Ashwin V. Hon, Advocate for Petitioner;
Mrs. R. R. Tandale (Choure), A.G.P. for Respondents No.1 and 2;
Mr. Sachin B. Munde, Advocate for Respondent No.3;
Mr. Nilesh N. Bhagat, Advocate for Respondents No.15 and 16

...

WITH

WRIT PETITION NO. 9106 OF 2022

Sau. Sushama Wasudeo Patil,
(elected Sarpanch through public)
Age 46 years, Occu. Social work and Household,
R/o. Dahiwad, Tq. Amalner, District Jalgaon

.. Petitioner
(Original Applicant/
Appellant)

Versus

1. The Collector, Jalgaon,
District Jalgaon
2. The Tahsildar, Amalner,
Tq. Amalner, District Jalgaon
3. The Block Development Officer,
Panchayat Samiti, Amalner,
Tq. Amalner, Dist. Jalgaon
4. The Village Development Officer,
Gram Panchayat, Dahiwad
Tq. Amalner, District Jalgaon
5. Devanand Kapurchand Bahare
Ae 38 years, Occu. Agri.
6. Manikrao Himmatrao Patil,
Age 55 years, Occu. Agri.

7. Sunil Shaligram Patil,
Age 48 years, Occu. Agri.
8. Shivaji Suklal Pardhi,
Age 28 years, Occu. Agri.
9. Vaishali Prakash Mali,
Age 27 years, Occu. Household
10. Varsha Gulab Patil,
Age 42 years, Occu. Household
11. Malubai Suresh Mali,
Age 46 years, Occu. Household
12. Ashabai Motilal Mali,
Age 50 years, Occu. Household
13. Yogita Bharatsing Gosavi,
Age 32 years, Occu. Household
14. Hirabai Ashok Bhil,
Age 54 years, Occu. Household

All R/o. Dahiwad, Tq. Amalner,
District Jalgaon

.. Respondents

...

Mr. Ashwin V. Hon, Advocate for Petitioner;
Mrs. R. R. Tandale (Choure), A.G.P. for Respondents No.1 and 2;
Mr. Sachin B. Munde, Advocate for Respondent No.3;
Mr. Nilesh N. Bhagat, Advocate for Respondents No.15 and 16

...

CORAM : S. G. MEHARE, J.

DATE : 21-02-2024

PER COURT :-

1. Heard the learned counsel for the petitioners, learned A.G.P. for respondents No.1 and 2 and learned counsel for respondent No.3.
2. The petitioner was directly elected Sarpanch. No confidence motion was passed against her by the elected members in

meeting convened by the Tahsildar on the notice of village panchayat members. A no confidence motion was passed against the petitioner by 11 votes on 15.07.2022. However, without ratifying the said motion in the gram sabha, the resolution of no confidence was acted upon. The petitioner had impugned the resolution before the Collector under Section 35(3)(B) of the Village Panchayats Act. The Collector rejected the dispute on 30.08.2022. The petitioner had impugned the said order before this Court in Writ Petition No.9106 of 2022. This Court stayed the effect of no confidence motion observing that the petitioner shall not be removed as Sarpanch on the basis of no confidence motion passed until Gram Sabha ratify the motion. Thereafter, Gram Sabha was called for ratifying the no confidence motion passed against the petitioner. Meeting was convened on 12.09.2022. The voters were notified for the said extra ordinary meeting.

3. As per Rule 35(1A) now deleted, the voting by secret ballot was taken. 1818 voters cast votes. The authorities counted the votes. After counting, the result was declared that there were 830 votes ratifying the no confidence motion and 727 votes were against the ratification. 261 votes were declared invalid. The petitioner who was present in the meeting raised the dispute about validation and invalidation of the votes before the Collector, Jalgaon by the Village Panchayat Dispute No.122. The Collector followed the procedure and passed the order on 09.01.2023. The

invalid votes were verified. The Collector found that 114 votes were incorrectly held invalid which were against the ratification and 81 votes were held valid in favour ratification of the no confidence motion. Then, the Village Panchayat Dispute No.122 was decided on merit on 19.01.2023. The dispute impugning the ratification of no confidence in Gram Sabha was dismissed. Against that order, she has filed this writ petition No.174 of 2023.

4. The petitioner has impugned the order mainly on the ground that no notice of Gram Sabha was served personally upon the petitioner. The proceeding book is not genuine. Some persons were shown present in register, but it does not bear their signatures. The election process was not fair. It was biased. There was no correct counting of the votes. It is her indirect submissions that voting was done highhandedly. She indirectly wanted to say that 81 votes should have been counted in her favour.

5. The orders of the Collector have been impugned contending that it was passed without application of mind. The legal procedure have not been followed. Therefore, the entire process of ratification of the no confidence motion in Gram Sabha is illegal. Hence, it ought to have been quashed and set aside. He prayed to allow both petitions.

6. Learned counsel for respondent No.3/Gramsevak in Writ Petition No.1744 of 2023 has strongly opposed the grounds of

petition. They have argued that the service of individual notice upon Sarpanch of ordinary or extra ordinary meeting of Gram Sabha for ratifying the no confidence motion is not essential. How the notices of such meeting are to be given, has been provided in Rule 5 of the Bombay Village Panchayats (Meetings) Rules, 1959 (for short “Rules, 1959”). They would submit that the ground of no notice is false as she herself was present in the Gram Sabha. She had participated and put up her case before the Gram Sabha. The meeting of Gram Sabha was held in the presence of more than 500 people, who cast the votes. The ground of highhandedness is without basis. The proceeding was done genuinely in the presence of the petitioner. Therefore, she has no right to doubt genuineness of the proceeding of Gram Sabha. On her request, justice was done with her and by examining again valid and invalid votes, the authority has fairly counted 114 votes in her favour and 86 votes against her. Such fairness shows the application of mind. The Collector has passed well reasoned order after examining each fact of the case. There is no illegality in the impugned orders.

7. As far as Writ Petition No.9106 of 2022 is concerned, since the Gram Sabha retified no confidence motion has become *infructuous*.

8. A short question before the Court is, “Whether the invalid votes were correctly counted ?” The next question is, “Whether

the service of individual notice is essential to the Sarpanch of the extra-ordinary meeting of Gram Sabha for ratifying the no confidence against him or her?"

9. The ground has been raised that she was not served with the notice of the Gram Sabha for the ratification of the no confidence motion personally. However, surprisingly, she was present in the meeting. She had participated and put up her submissions in the meeting. It has been recorded in the proceeding of the meeting. In the circumstances, it is difficult to accept that she had no knowledge of the said meeting.

10. The Rules, 1969 provides for the procedure calling such meetings. Rule 4 of the said Rules provides that the Sarpanch may, at any time of his own motion, and if so required by the [Standing Committee, Panchayat Samiti, or the Chief Executive Officer,] call an extraordinary meeting of the Gram Sabha. The Sarpanch and in his absence the Upa-Sarpanch shall fix the date, time and place of the meeting of the Gram Sabha. The Sarpanch may, at any time of his own motion can call an extraordinary meeting of the Gram Sabha. Rule 5 speaks that the notice of an ordinary meeting of the Gram Sabha shall be given at least seven clear days before the date of such meeting and in the case of an extraordinary meeting at least four clear days before the date of such meeting. Rule 6 provides for procedure for service of notice

of such meeting. The notice of such meeting either ordinary or extraordinary, of the Gram Sabha shall be published (a) by affixing it at the office of the panchayat and the village chavdi or chora and in the absence of a village chavdi or chaura at any other conspicuous place or places in the village, and (b) by making an announcement by a beat of drum on the fourth day, and also on the day immediately preceding the date of the meeting. Rule of intimating the person concerned the date, time and place is applicable to such meeting.

11. Reading the above Rules, it does not show that individual notice is to be served upon any of the voters. Practically it also not possible to serve the individual voter. Sarpanch being the first citizen of the village and the officer of the village panchayat should be more conscious about the activities happending in the village. Be that as it may, presence of the petitioner in the meeting itself is a proof that the notices were correctly published. If the notices were not published, such a larger number of voters would not have attended the meeting.

12. In view of the Rules, 1959 discussed above, there is no substance in the submission of the learned counsel for the petitioner that individual notice of the said meeting to the Sarpanch was essential.

13. That the proceeding book of the village meeting has been

placed on record. The signature of few members/voters were obtained. It is also not the requirement of the law that the proceeding book should be signed by all voters. It is also not rule that the persons who have signed the proceeding must cast vote. The presence of members is just to show that the meeting is conducted and subject has been placed in the meeting. As per rule the subject of meeting is required to be known to the voters present in the meeting. It was discussed and opportunity was granted to the petitioner to put her case. She has exercised her right, then as per Section 35(1A), voting by secret ballot was taken. Since the petitioner was not satisfied with declaring the invalid votes, the authority had accepted her request and re-examined the valid and invalid votes. The authority has fairly declared that 114 votes are in her favour and 81 votes were against her out of 261 invalid votes. The authority also has fairly declared 45 ballots blank. Around 21 votes were invalid for the other reasons. While taking the decision of valid or invalid votes, the authority has considered directives of the Election Commission.

14. After re-examining the valid and invalid votes, 114 votes were added to the votes which were against the ratification and 81 votes were added to the votes which were in favour of ratification of the votes. Thereafter, again the votes in favour and against were re-counted. After recounting, there were 911 votes in favour

of ratification of the no confidence motion. 841 votes were against the ratification. By totaling these total votes, majority votes were in favour of the ratification of the no confidence motion. The process is done by democratic way. It was the only procedure available to call back the elected members in election process. However, subsequently, it has been deleted.

15. Perused the impugned orders. The Collector has discussed the entire facts and the submissions of the parties and relevant procedures of law, held that Section 35(3B) has not been violated. The resolution ratification the no confidence motion was passed by majority and correctly dismissed the petition.

16. The defect of not ratifying the no confidence motion in Gram Sabha has been rectified in the meeting. The said meeting and its process was legal and valid. There are no substantial ground to interfere with the impugned order. In consequences of the subsequent proceeding and dispute of the petitioner, writ petition No.9106 of 2022 become *infructuous*. Hence, following order is passed;

ORDER

- i) Writ Petition No.1744 of 2023 stands dismissed.
- ii) Writ Petition No.9106 of 2022 stands disposed of as *infructuous*.

(S. G. MEHARE)
JUDGE