

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2114 OF 2024
WITH
CIVIL APPLICATION NO. 2228 OF 2024
IN WP/2114/2024

Nirmala w/o Pandharinath Sarde (Shiralkar)
Age : 43 years, Occ. Household & Sarpanch,
R/o. Shirala, Post. Vadhona, Tq. Jafrabad,
Dist. Jalna

..Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai - 32.
2. The District Collector, Jalna.
Dist. Jalna.
3. The Tahsildar,
Tal. Jafrabad, Dist. Jalna,
4. The Grampanchayat,
Shirala, Post. Vadhona, Tq. Jafrabad,
Dist. Jalna.
Trough its Gramsevak
5. Suman Madhavrao Dungahu
Age 50 Yrs, Occ. Member,
6. Malanbai Bhimrao Shiralkar
Age 55 Yrs, Occ. Member,
7. Mangala Prabhakar Malwar
Age 50 Yrs, Occ. Member,
8. Pushpa Shantaram Patole
Age 40 Yrs, Occ. Member,
9. Shrikrushna Shrimant Dungahu
Age 35 Yrs, Occ. Member,
Res. No. 5 to 9 are R/o Shirala, Post Vadhona,

Tq. Jafrabad, Dist. Jalna.

10. Mithun Shivdas Chavan
Age 25 Yrs, Occ. Member,
11. Ranjana Sharad Pawar
Age 30 Yrs, Occ. Member,
12. Chandrakala Sham Rathod,
Age 50 Yrs, Occ. Member,
Res. No. 10 to 12 are R/o Vadhona Tanda,
Tq. Jafrabad, Dist. Jalna. ..Respondents

...

Advocate for the Petitioner : Mr. Purushottam Patil a/w. Mr. Vinay
Rathi a/w Mr. S.M. Pandit

AGP for Respondent/State : Mr. A.S. Shinde

Advocate for Respondent No.10 : Mr. Shaikh Mazhar Abdulhamid
Jahagirdar

...

CORAM : S.G. MEHARE, J.

DATED : FEBRUARY 22, 2024

ORAL JUDGMENT :-

1. Issue notice to the respondents. Learned AGP waives service of notice for respondent nos.1 to 3. Contesting respondent no.10 appeared on caveat and waives service of notice.
2. Civil Application for amendment is allowed. Amendment be carried out forthwith.
3. Considering the points involved in the petition, the matter is heard finally at the admission stage.
4. Rule. Rule is made returnable forthwith and heard finally by the consent of the parties.
5. The petitioner was the Sarpanch of the Village Panchayat. She has been removed from the post of Sarpanch by a no-confidence

motion passed on 22.12.2023 in an extraordinary meeting convened on the notice of the members of the Village Panchayat for no confidence. Being aggrieved thereby, she had filed an application before the District Collector on various grounds. The District Collector rejected her petition; hence, the petitioner approached this Court.

6. The petitioner has assailed the no-confidence motion on the following grounds :

- (i) The resolution of the no-confidence motion was not moved for voting.
- (ii) The meeting of no confidence was held without granting the petitioner at least three days' notice.
- (iii) Rule 17 of the Bombay Village Panchayats (Meeting) Rules, 1959 ('Rules of 1959' for short) is mandatory. However, it was not followed.
- (iv) The motion of no confidence was neither proposed nor convened as per Rule 18 of the Rules of 1959.
- (v) After a motion has been placed before the meeting under Rule 18 for consideration, the mover should speak in support of the motion, and the seconder may either follow or reserve his speech for a later stage of the debate thereon as prescribed under Rule 23 of the Rules of 1959.

7. Learned counsel for the petitioner referring to the Rules 18, 23 and 26 of the Rules of 1959 has vehemently argued that the

minutes of the meetings are silent on these legal requirements. There was a bare discussion in the meeting the procedure adopted by the presiding officer was not known to the law. Therefore, the democratically elected members must be protected. Removal of the elected member without following the due procedure of law carves a stigma on him. She had filed a bunch of documents. However, they were not taken into consideration.

8. Section 35 of the Village Panchayats Act confers a right upon the candidate to speak in the meeting. The Collector did not consider the legal aspects and erroneously dismissed the petition. To bolster his arguments, he relied on the case of Tarlochan Dev Sharma Vs State of Punjab and Others, (2001) 6 SCC 260, Viswas Pandurang Mokal Vs. Group Gram Panchayat, Shihu and Others, 2011 (3) Mh.L.J. 500 and Vijay Ramchandra Katkar Vs. Group Gram Panchayat, Pali and Others, 2010 (4) Mh.L.J. 497. He prayed to allow the petition.

9. Learned counsel for respondent no.10 has vehemently argued that the Rules of 1959, are not mandatory and this issue is no more *res integra*. In the case of Viswas (supra), the Hon'ble Full Bench has laid down the law that Rule 17 of the Rules of 1959, is directory. The meeting was convened following the due procedure of law. On reading the minutes of the meeting, it could be easily inferred that the opportunity to address was given to the petitioner.

The subject was brought to the notice of the members by the presiding officer. The petitioner was informed about the subject; hence, she had asked to drop the proceeding and vote by secret ballots. The presiding officer has decided on her request, which is reflected in the meeting minutes. He would submit that something here and there would not vitiate the no-confidence motion. The rule of the majority would apply. Once the majority goes against the Sarpanch or Upa-sarpanch, he has to follow the mandate of the majority. He also argued that the notice under Section 35 of the Act cannot be read from the Rules. Relying on the case of Tatyasaheb Ramchandra Kale v. Navnath Tukaram Kakde, 2014 SCC OnLine Bom 1483, he argued that moving a motion by proposal and second a motion of no confidence as required under Rule 17 of the Rules of 1959 would not render the motion of no confidence invalid. He would submit that this judgment of this Court is subsequent to the judgment of Viswas (supra), which was also considered in that case. He also relied on the case of Sampada Vilas Mahargude Vs. State of Maharashtra and Others, 2023 SCC Online Bom 2779 and referred to the observations recorded from the case of Tatyasaheb in the said case. He also argued that the grounds or reasons for no confidence are not required. The only object of such grounds is losing confidence in the person holding the post of Sarpanch or Upa-sarpanch. The law is well settled in that regard. There is no infirmity in the impugned

order or the resolutions passed in the no-confidence motion meeting. Therefore, there is no substance in the petition.

10. In the case of Viswas (*supra*), the Full Bench of this Court has laid down the law that Rule 17 of the Rules of 1959 is directory and not mandatory. Therefore, the objection that the proposal of no-confidence was not moved and not seconded has no legal force. He has raised the grounds but concedes that Rule 17 is not mandatory. Rule 18 of the Rules of 1959, provides that after a motion has been moved and seconded, the person presiding over the meeting shall propose the question by reading the motion for the consideration of the panchayat. The first part of this rule includes the contents of Rule 17, which has been declared not mandatory. The second part of this rule was about reading the motion for the consideration of the panchayat. In the resolution, it has been specifically reflected that the presiding officer had read the subject put up for consideration in the panchayat.

11. The next objection was that after placing the motion before the meeting for consideration under Rule 18, the motion was not kept for voting. However, Rule 23 provides that after a motion has been placed before the meeting for consideration under Rule 18, the mover may speak in support of the motion, and the seconder may either follow or reserve his speech for the later stage of the debate thereon.

12. The question is whether the motion of no confidence requires debate. The minutes of the resolution reveal that the petitioner has exercised her right to address by giving a written application for dropping the resolution, and she had also asked to vote by secret ballot. Rule 28 of the Rules of 1959 provides that votes shall ordinarily be taken by word of mouth or by a show of hands; however, if the majority of members present so decide, it should be taken by ballots. There was no majority requesting to take the votes by ballots; hence, the presiding officer had correctly rejected her prayer. As far as the debate on the subject is concerned, the Hon'ble Supreme Court, in the case of Muljibhai Patel v. Nandlal Khodidas Barot, (1974) 2 SCC 706, held that "there is a difference between a motion of no confidence and a censure motion. While it is necessary in the case of a censure motion to set out the ground or charge on which it is based, a motion of no confidence need not set out a ground or charge. A vote of censure presupposes that the persons censured have been guilty of some impropriety or lapse by act or omission and it is because of that lapse or impropriety that they are being censured. It may, therefore, become necessary to specify the impropriety or lapse while moving a vote of censure. No such consideration arises when a motion of no confidence is moved. Although a ground may be mentioned when passing a motion of no confidence, the existence of a ground is not a prerequisite of a motion

of no confidence. The Hon'ble Supreme Court has laid down the law in explicit words that for a motion of no confidence, debate is not a prerequisite condition.

13. This Court in the case of Nimba Rajaram Mali vs. Collector, Jalgaon and others, 1998 (3) Mh. L.J. 204 has referred to the case of Sampada (supra) and laid down the law that "once the resolution of a no-confidence motion is passed by a clear majority and in keeping with the requirements of the concerned statutory provisions, the person against whom such a resolution is passed, must honour the will of the majority and make way for the new election of his successor. Unless it is shown that while passing such a resolution of no-confidence motion, there was a flagrant violation of any mandatory procedure laid down, such a resolution cannot be interfered with by the Court or statutory authorities adjudicating such disputes". The legal position has also been clarified by this Court that unless there is a flagrant violation of any mandatory procedure laid down for the no-confidence motion, no Court or statutory authorities can interfere with such proceedings.

14. The objection has also been raised that the no-confidence motion was not put for the vote. The resolution minutes are very specific: after the members discussed and the petitioner addressed the meeting, the presiding officer invited the members sitting in the meeting to put the votes of no confidence against the motion. Two

members cast the votes against the motion. It was observed that out of nine members, seven cast their votes in favour of the motion. It shows that the procedure laid down had been explicitly followed in conducting the meeting as provided in the Rules of 1959. Therefore, there is no substance in the arguments of the learned counsel for the petitioner that factually there are apparent defects causing prejudice to the interest of the petitioner. None of the case laws relied upon by the learned counsel for the petitioner come to her assistance. As against it, the case laws discussed above and the law laid down in the case of Sampada (supra) assist the case of respondent no.10.

15. In view of the above, the Court concludes that the petition is devoid of merit. Hence, the petition stands dismissed.

16. No order as to costs.

17. Rule stands discharged.

(S.G. MEHARE, J.)