



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

WRIT PETITION NO.2954 OF 2024

Yogini w/o Sanjay Deshmukh,
Age : 47 Years, Occu. : Household and Agri.,
R/o Mandawa, Tq. Washi,
District Osmanabad. ... **Petitioner.**

Versus

1. The State of Maharashtra through
District Collector, Osmanabad.
2. The Tahasildar Washi,
Tahasil Office Washi,
Tq. Washi and Dist, Osmanabad.
3. Gramsevak, Grampanachay Karyalay,
Mandawa, Ta: Washi, Dist. Osmanabad.
4. Bhagwansinh S/o Bharatsinh Gahirwar,
Age: 60 Years, Occu: Agri,
5. Umesh S/o Sadashiv Deshmukh,
Age: 35, Occu: Agri,
6. Nitin S/o Shivajirao Randive,
Age: 60 Years, Occu: Agri,
7. Arun S/o Rambhau Shinde,
Age: 62 Years, Occu: Agri,
8. Asha W/o Tanaji Mali,
Age: 30 Years, Occu: Household,
9. Shobha W/o Magansinh Chavan,
Age: 30 Years, Occu: Household,
10. Sunita W/o Sunil Patil,
Age: 50 Years Occu: Agri.,
11. Aarefa W/o Sadik Pathan,
Age: 30 Years Occu: Agri.,
Respondent No. 4 to 11 are
R/o Mandawa, Tq. Washi,
Dist. Osmanabad. ... **Respondents.**

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Advocate for Petitioner : Mr. D. J. Ghodke h/f Mr. Amol Jagtap.
AGP for Respondents-State : Mrs. M. L. Sangit.
Advocate for Respondent Nos.4 to 11 : Mr. Sujit A. Patil.
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CORAM : S. G. MEHARE, J.
DATE : 18.03.2024

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.

2. The petitioner was the elected Sarpanch of Village Panchayat. There were nine elected members of the Village Panchayat. A notice was issued to the Tahsildar for convening the meeting for a no-confidence motion. The Tahsildar, following the due procedure of Law convened the meeting on 09.01.2024. A resolution by 8/9 was passed against the petitioner. The petitioner had approached the District Collector under Section 35 (3)(b) of the Maharashtra Village Panchayats Act, 1958 ('Village Panchayats Act' for short).

3. The petitioner had raised the issue that three members were disqualified since they did not comply with Section 10-1A and 30-1A of the Village Panchayats Act i.e. failing to submit the caste validity certificate within a year from the date of

declaration of the election. Therefore, they were not entitled to sit in the meeting. The next objection was that one of the members, Arun Rambhau Shinde, submitted his caste validity certificate on 02.03.2022, a year after his election. Therefore, he could not propose the subject of no confidence against the petitioner. The last ground was that the Tahsildar did not give the petitioner a right to speak in the meeting. The statutory provisions of the Law have been violated. Therefore, the resolution of no-confidence motion against the petitioner as a Sarpanch is illegal and invalid.

4. Learned counsel for the petitioner has vehemently argued that three members have violated Section 10-1A and 30-1A of the Village Panchayats Act. He submits that none of these three members were entitled to get the benefit of the Maharashtra Temporary Extension of Period for Submitting Validity Certificate (for certain elections to Village Panchayats, Zilla Parishads and Panchayat Samitis) Act, 2023. He also argued that none of these three members could take advantage of the said sections. However, if that Act is considered to be applied, they have been covered under Section (a) of Section 3 of the said Act. Therefore, submission of their caste validity

certificate is in violation of Section 10-1A and 30-1A of the Village Panchayats Act.

5. To bolster his argument, he relied on the case of *Sudhir Vilas Kalel and others Vs. Bapu Rajaram Kalel and others, Civil Appeal No.1776 of 2024 (@ Special Leave Petition (C) No.23017 of 2023) of Supreme Court dated 07.02.2024*. He submits that the resolution of no confidence as well as the order of the Collector dated 07.03.2024 confirming the resolution of no confidence be quashed and set aside.

6. Per contra, learned counsel for respondents Nos.4 to 11 had filed an affidavit-in-reply and argued that two elected members, namely Shobha Magansinh Chavan and Bhagwansinh Bharatsinh Gaherwar had submitted their caste validity certificates on 09.09.2021. It was in compliance with Sections 10-1A and 30-1A of the Village Panchayats Act. Therefore, there is no substance in the submissions of the learned counsel for the petitioner that they have violated the said provisions. He further argued that one member, namely Arun Rambhau Shinde, submitted his caste validity certificate on 02.03.2022. However, he has been protected under Act 2023. In addition, thereto, he also argued that even if the Village Panchayat member, namely Arun is held for the sake of

argument disqualified. There was 3/4th majority of the voters was in favour of the no-confidence motion. In those circumstances, the petitioner also has no case. He relied on the case of *Gulab S/o Pandu Chavan Vs. The State of Maharashtra through Additional District Collector, Nanded and others of this Bench passed in Writ Petition No.10229 of 2014*, dated 19.11.2014. In this case, it has been held that moving the motion legally is distinct and different from carrying the motion. The motion legally moved shall necessarily have to mean that the procedure adopted for moving the motion and for placing it in a special meeting fulfills the requirement of Law. If the notice for convening a special meeting is not in tune with the provisions of the Law, such notice will have to be construed to be an unsustainable notice. In such a situation, it was concluded that the motion will not be said to be moved as per the Law, and therefore, the entire business transacted in the meeting, based on such a notice, would have to be watered down. A question that has been raised before the Court is that the person who proposed the subject for discussion has been disqualified. Therefore, the meeting is invalid. The said issue is no longer res-integra. The full bench of this Court, in judgment dated 09.10.2014, delivered in *LPA No.312 of 2013 in the matter of Shri. Tatyasaheb Ramchandra Kale Vs. Shri. Navnath*

Tukaram Kakade and 17 others, held that Rule 17 of the Village Panchayats (Meeting) Rules, 1959 is directory in nature and not mandatory. It has further observed that when more than 1/3rd (the then requirement of the majority) of the members of the Grampanchayat have moved the notice introducing the motion of 'no confidence', a proposer and a seconder is not held to be mandatorily required.

7. The learned counsel for respondent Nos.4 to 11 further argued that the third member namely Arun Shinde has been protected under the Act, 2023. The case of *Sudhir (supra)* relied upon by the petitioner is on the different material facts. In that case, there was no 3/4th majority and the facts that the petitioner was held disqualified and not granted the protection of the Act of 2023. However, the Act of 2023 has been interpreted in the said case, and the interpretation of the said Act applies to the case at hand. He would submit that the only member who has submitted his caste scrutiny committee after one year from the date of the election has been protected under Section 3(1)(a)(b) of the Act. Therefore, there is no force in the arguments of the learned counsel for the petitioner that he was deemed to be disqualified for being a member of the village panchayat.

8. Though it has been vehemently argued that three members were disqualified for not submitting their caste validity certificate in time, the record reveals that two of them had submitted their caste validity certificates within a prescribed time provided under Section 10-1A and 30-1A. So the objections against them go. One of the members admittedly did not submit the caste validity certificate within one year. However, he has submitted the certificate on 02.03.2022.

9. Learned AGP also argued the same.

10. In these facts, the small question is whether the third member Mr. Arun Rambhau Shinde, could be protected under the Act of 2023.

11. The Hon'ble Supreme Court in the case of *Sudhir (supra)* discussed the provisions of the Act of 2023. In paragraph No.31, it has been observed which reads thus ;

“31. As would be evident, this Temporary Extension Act was enacted since the Scrutiny Committees were overburdened with the work of verification of Caste Certificates and the elected members were facing difficulties in obtaining the Validity Certificates within the prescribed time. It is aimed to protect the applicants whose applications are still pending before the Scrutiny Committee. The idea was that such elected candidates

ought not to be deprived merely because of non-issuance of Validity Certificates when the applications are still pending. Section 3 begins with a non obstante clause. It applies to elections held on or after the 1st January, 2021 and till 10.07.2023, the date of commencement of the Temporary Extension Act, 2023. It clearly provides that it covers the cases of persons who have applied to the Scrutiny Committee for verification of his Caste Certificate before the date of filing of the nomination papers and who are elected on the reserved seat; and whose applications are pending before the Scrutiny Committee on the date of commencement of the Act. It is mandated that they can produce the certificate within twelve months from the date of commencement of the Temporary Extension Act, 2023 i.e. till 09.07.2024. Sub-clause (b) states that a person whose election has been terminated or deemed to have been terminated or a person who is disqualified for being a Member or Sarpanch for not submitting the Validity Certificate within the period specified in the sections mentioned above (10-1A and 30-1A), shall be deemed to be and shall be continued to be a member or Sarpanch and shall not be disqualified till the period of twelve months. Sub-section (2) further clearly states that the provisions of sub-section (1) shall not apply where the member whose application of Validity Certificate had been rejected by the Scrutiny Committee. Section 4 states that all legal proceedings pending immediately before the date of commencement of the Act, before any court or authority relating to disqualification of a member, for not submitting the Validity Certificate where extension of period for submission is granted under the present Act was to abate.”

12. Reading the above paragraph, it has been clarified that the Act 2023 assists the elected members from the reserved category for which the election was held on or after 01.01.2021 and till 10.07.2023. The election of the Village Panchayat for which he was elected was held on 18.01.2021. Hence, any disqualification for not submitting the caste validity certificate in a year as prescribed under the Law has been protected. Sub Clause (ii) of Section 3 of the Act of 2023 appears relevant to adjudicate the dispute in this case. It has been provided therein that whether the elected candidate from the reserved category has been terminated or deemed to have been terminated or disqualified for not submitting the caste validity certificate, such candidate shall be deemed and shall continue to be a member of the Village Panchayat till the period of 12 months. The said 12 months, as per the Act of 2023, would end on 09.07.2024. Before that period, the caste validity certificate was produced. Therefore, the case of member Arun Shinde has been squarely covered under Section 3(1) of the Act of 2023.

13. The next objection is that the disqualified candidate has proposed the subject in the meeting, which this Court has set at rest in the case of *Tatyasaheb (Supra)*. Rule 17 of the Rules

1959 applies to the meeting of no confidence motion against Sarpanch and Upasarpanch. Rule 17 has been declared a directory, and the Law has been laid down that introducing the motion of no confidence by a proposer and a seconder is not mandatorily required. Hence, this ground also go.

14. The next argument is that one member, namely Arun Shinde, was not competent. Therefore, the entire proceeding of the no-confidence has been vitiated. This point also does not survive because even though he has been excluded or declared not entitled to vote, the majority of the 3/4th members were against the petitioner. Therefore, also, the Rule of majority as required under the Panchayats Act for a valid no-confidence motion against the Sarpanch has been complied with. A required majority of the members has passed the no-confidence motion. All members who were entitled to sit and cast vote in a meeting were entitled to participate. The resolution appears to have been correctly passed. Another argument of the petitioner is that the right to speak was not granted to the petitioner. However, the learned counsel for respondents referring to the minutes of the meeting have correctly pointed out that the petitioner had answered each of the allegations that prove that her right to speak was not taken away.

15. Considering the facts and Law, this Court concludes that none of the members against whom the objections were raised were disqualified from continuing as a village Panchayat member for not submitting the validity certificate within a prescribed period. The third village Panchayat member, namely Arun Shinde, who has admittedly submitted a validity certificate after one year, has been protected under the Act of 2023. Therefore, his presence and proposal of the subject of no confidence are legal, valid, and correct.

16. Examining the facts and Law mentioned above, the Court does not find substance in the writ petition. Hence, the writ petition stands dismissed.

17. Rule stands discharged.

18. No order as to costs.

19. The Learned AGP is requested to inform the Tahsildar about today's order.

(S. G. MEHARE, J.)

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vmk/-