



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

WRIT PETITION NO. 3044 OF 2024

Varsha Pravin Mahadik

...Petitioner

VERSUS

District Collector Ahmednagar,
Tal. & Dist. Ahmednagar and Ors.

...Respondents

...

Mr.Ajinkya Reddy, Advocate for petitioner.

Mr.K. B. Jadhavar, AGP for Respondent Nos. 1 and 2- State.

Mr. P. P. More a/w Mr. Arya Mehta h/f Mr. Akash E. Madne for Respondents.

...

CORAM : KISHORE C. SANT, J.
RESERVED ON : 25th SEPTEMBER 2024
PRONOUNCED ON : 10th DECEMBER 2024

PC :-

1. Heard the learned Advocate for the parties.
2. The present petition is filed by a Sarpanch against whom no confidence motion came to be passed. The challenge raised against the said motion before the learned Collector in Gram Panchayat Dispute No.68 of 2023 also failed. This petition is therefore filed challenging the judgment and order passed by learned Collector, Ahmednagar dated 5th March 2024 in the above dispute. The Respondent Nos.4 to 14 are the members, who had moved no

confidence motion. The Respondent Nos.1 and 2 are the Collector and Tahsildar. The Respondent No.3 is the Gram Panchayat, Belapur Khurd.

3. The facts giving rise to the petition are that the election of Gram Panchayat, Belapur Khurd was held in the year 2021. The petitioner came to be elected as a member to the Gram Panchayat and subsequently as sarpanch of village Belapur Khurd. Immediately within few months, the Respondents sent a requisition to the Tahsildar to call a meeting to pass no confidence motion. The Tahsildar pursuant to the requisition, issued notice on 15th November 2021 convening a meeting on 19th November 2021. However, immediately on 16th November 2021, the said meeting was called off by the Tahsildar in view of Section 35(3) of the Maharashtra Village Panchayats Act, 1959, whereby the provision is made that no such motion can be moved within two years against the Sarpanch from the date of the election or within two years after earlier motion fails.

4. The Respondents thereafter again moved another motion on 18th August 2023. The Tahsildar on receipt of the requisition convened a meeting on 22nd August 2023. Pursuant to the said requisition, the meeting was held. The motion was carried and was passed by a majority of 9 Vs. 2. The Tahsildar therefore declared that the notice of motion of no confidence is passed.

5. As stated, the petitioner challenged the said resolution by filing Gram Dispute before the learned Collector, Ahmednagar, raising various grounds. It is stated that the earlier meeting dated 16th November 2021 was cancelled and, therefore, in view of Section 35 (3) of the Maharashtra Village Panchayat Act, ("said Act" for short) no motion could have been moved within two years thereafter. The notice was not in format and was not given within time. Some grounds were taken about the conduct of the meeting and that no proper opportunity was given to the petitioner to speak in the meeting.

6. The Respondent Nos.4 to 14 appeared and opposed the dispute. The learned Collector on hearing the parties, rejected the

dispute holding that the resolution is rightly passed. Against the said decision, now the petitioner is before this Court.

SUBMISSIONS OF LEARNED ADVOCATES

7. The learned Advocate Mr. Ajinkya Reddy for the petitioner vehemently argued the petition. The main thrust of argument is that when the earlier motion was moved and that failed in the month of November 2021, no second motion could have been moved within two years from the said date. In the present case, another motion is moved on 18th August 2023 which is clearly against the provisions of Section 35 of the Act. The learned Collector has failed to appreciate this aspect. The earlier meeting in the year 2021 had failed. Thus, no motion could have been brought within two years.

8. The learned Advocate for the petitioner relied on the decisions of this Court in the cases of ***Gulab s/o Pandu Chavan Vs. State of Maharashtra***¹; ***Savita Shrimant Ghule Vs. Sangita Bibhishan Sanap and Ors.***² and ***Prakash s/o Barku Patil Vs.***

1 2015(5) Mh.L.J. 113

2 2024(2) Mh.L.J. 119

The State of Maharashtra and Ors.³

9. The learned Advocate Mr. P. M. More opposed the petition. He submits that the earlier notice of motion cannot be said to have been failed as the meeting itself was not convened. Though the wording is used as it was adjourned but there was no question of even adjournment of the said meeting as it was moved within two years from the election of Sarpanch. The motion was moved in the year 2023 was a fresh motion, proviso to Section 35 (1)(1A) of the Maharashtra Village Panchayats Act, would come into play. He relies upon the judgment in the case of ***Sundara Pandian Kalidasan Vs. State of Telangana***⁴ in support of his submission.

DISCUSSION

10. Considering the above submissions, the main question that arises for consideration is as to whether the motion moved on 15th August 2023 can be said to have been moved within two years on failure of the earlier motion.

3 1998(3) Bom.C.R. 84

4 2021 (5) ANDH LD 143

11. Whether the motion moved on 15th November 2021 can be taken as motion failed in view of proviso to Section 35 (1)(1A)(c) of the Maharashtra Village Panchayats Act ("the Act" for short). For the purpose of convenience, the relevant portion of Section 35 of Maharashtra Village Panchayats Act is reproduced as below.

35. Motion of no confidence.

- [(1)] A motion of no confidence may be moved by 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 against the Sarpanch or the Upa-Sarpanch after giving such notice thereof to the Tahsildar as may be prescribed. [Such notice once given shall not be withdrawn.]

(1A) -----

a.-----

b.-----

c.-----

2.-----

3. If the **motion is carried by** [a majority of not less than [three-fourth] of] the total number of the members [* * *] who are for the time being entitled to sit and vote at any meeting of the panchayat or the Upa-Sarpanch, as the case may be, [shall forthwith stop exercising all the powers and perform all the functions and duties of the office and thereupon such powers, functions and duties shall vest in the Upa-Sarpanch in case the motion is carried out against the Sarpanch; and in case the motion is carried out against both the Sarpanch and Upa-Sarpanch, in such officer, not below the rank of Extension Officer, as may be authorised by the Block Development Officer, till the dispute, if any, referred to under sub-section (3B) is decided:

Provided that, if the dispute so referred is decided in favour of the Sarpanch or, as the case may be, Upa-Sarpanch, thereby setting aside such motion, the powers, functions and duties of the Sarpanch or Upa-Sarpanch shall forthwith stand restored, and if the dispute is decided confirming the motion, the office of the Sarpanch or, as the case may be, Upa-Sarpanch shall be deemed to have fallen vacant from the date of the decision of the dispute, unless the incumbent has resigned earlier:

Provided further that, in cases where the offices of both the Sarpanch and Upa-Sarpanch become vacant simultaneously, the officer authorised under this sub-section shall, pending the election of the Sarpanch, exercise all the powers and perform all the functions and duties of the Sarpanch but shall not have the right to vote in any meetings of the panchayat:]

[[**Provided also** that], where the office of the Sarpanch being reserved for a woman, is held by a woman Sarpanch, such motion of no-confidence shall be carried only by a majority of not less than three-fourth of the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat:]

[**Provided also** that], no such motion of no-confidence shall be brought within a period of two years from the date of election of Sarpanch or Upa-Sarpanch and before six months preceding the date on which the term of panchayat expires;

Provided also that, **if the no-confidence motion fails**, then no motion shall be moved within next two years from the date of failure of no-confidence motion.]

12. The judgment relied upon by the petitioner in the case of **Gulab Chavan Vs. State of Maharashtra and Ors.** (supra), this Court had an occasion to consider the provisions of Section 35 (3-B) of the Bombay Village Panchayats (Meeting) Rules, 1959. The question for consideration was in respect of four days notice of a special meeting. It was held that it was mandatory in view of Rule 4 of the meeting Rules to give four clear days prior notice before the holding a special meeting. By relying upon the judgment in the case of **Ravindra Sukhdeo. Sanap and Anr. Vs. The State of Maharashtra and Ors.**⁵. It is held that the motion if not moved

5 2014(4)Mh.L.J. 443

would not amount to motion not carried. It is further considered in the said judgment that motion which is not carried, cannot be said to be "not carried" unless and until it is "moved" legally. It fails only after it is so moved and it is voted against. It is further held that the motion if "not carried" shows failure or rejection of motion of no confidence. While "not moved" is the step or decision of the requisitionists not to press no confidence motion at all. This Court finds that it was held in the fact of that case, if meeting is annulled due to absence of requisite notice, it was held to be no meeting in the eyes of law and the earlier motion passed became ineffective and therefore, it was rendered to be invalid for want of requisite notice.

13. In the case of ***Prakash Bapu Patil*** (supra), a Division Bench this Court considered the provision of Section 53(3-A) as it stood then. No confidence motion was moved. Requisition was sent to the Tahsildar to move no confidence motion. The meeting was fixed on 7th November 1996. The learned Tahsildar however cancelled the said meeting in view of provisions of Section 35(3-A) of the Act and

thus, the meeting itself was cancelled. This requisition was a second time requisition. Thereafter, the members again sent a requisition on 21st March 1997. Pursuant to the said meeting, a requisition was fixed on 27th March 1997. This third notice had been impugned by the petitioner in that case. The ground was taken pursuant to requisition dated 6th November 1996 was within one year of notice dated 21st March 1997 and thus, the said could have been moved. The relevant paragraph No.7 of this order is reproduced as under:-

“7. As per rule 2(3) of the Bombay Village Panchayats Sarpanch and Upa-Sarpanch)No Confidence Motion) Rules, 1975 the notice of no confidence is required to be given by a majority of members of the Panchayat whereas, as per section 35(3-A) of the said Act, the motion is required to be moved by a majority of not less than two -thirds of the total number of members, who are for the time being entitled to sit and vote at any meeting of the Panchayat. In the instance case, there are in all 7 members and the notice of no confidence was moved on 6-11-1996 by four members out of 7 thus satisfying the requirements of the above rule. However, in the actual meeting to be arranged by the Tahsildar, what is necessary is that at least two-thirds of the total number of members must support the motion and then only the motion is deemed to be moved. The harmonious construction of the provisions of the Rule 2(3) of the said Rules and section 35(3-A) of the said Act clearly leads to the conclusion that the term “motion is not moved” is synonymous with and amounts to “motion is not carried”. To decide whether the motion was moved or not moved, the meeting in pursuance of the notice of no

confidence must be held and vote must be recorded either against or in favour of the motion. In the instant case, the Tahsildar, having realised that the first motion was defeated on 6-3-1996 and the second notice of no confidence dated 6-11-1996 was within the period of one year and was not entertainable in view of the amended provisions of section 35(3-A) of the Act, rightly cancelled the meeting scheduled on 7-11-1996 and the said cancellation of the meeting does not, by any stretch of imagination, mean that the motion was not moved. The impugned notice dated 21-03-1997, has therefore, to be considered with reference to the date when the first no confidence motion was defeated on 6-3-1996 and if so considered the said impugned notice is not within the period of one year and hence not barred by the provisions of section 35(3-A) of the Act."

14. On considering this Court finds that it is clear that to attract the wording of 'failure of motion' means when it is validly carried and moved in the meeting. In the present case, it is clear that the earlier in November 2021 though requisition was sent to the Collector, no meeting was actually held. There was, therefore, no question of putting motion for voting. Thus, the said judgment in fact goes against the petitioner.

15. It is clear that the earlier requisition though was sent by the members, no meeting pursuant to the said requisition was held. The meeting was rightly cancelled and it cannot be said to have been moved and failed.

16. From reading of the last proviso it is be seen as to whether the earlier motion dated 15th November 2021 can be said to be failed when a meeting itself is not held. The facts in this case are clear and there is no dispute. The earlier motion itself was not carried in the meeting as the meeting itself was adjourned. Though wording is used as adjourned in effect no meeting was held pursuant to the earlier motion. Since no meeting was held, there is no question of failure of the motion. It is only after the motion is pressed and meeting is convened and the motion is put for voting then the motion would either be passed or be failed. The motion which itself is not put for voting cannot be said to have been failed. This Court is of the opinion that motion can be said to have failed only in case if it was placed for voting. So long as, such notice is not put for voting it cannot be said that the notice has failed.

17. Second question depends on the first question. This Court has held that in the present case, there was no failure of the earlier notice of motion, then naturally it cannot be said that second motion was moved within two years on failure of the earlier motion.

18. Considering this position in the present case though earlier meeting was moved however, meeting itself was not held pursuant to the earlier requisition. All these reasons, this Court finds force in the submission of the respondent, no case is made out to entertain the petition. Hence, the following order:

ORDER

- (i) Petition stands dismissed.
- (ii) No order as to costs.
- (iii) Applications, if any, also stand disposed off.

[KISHORE C. SANT, J.]