



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

159 WRIT PETITION NO. 6020 OF 2023

BALBHIM RAM JADHAV AND OTHERS

VERSUS

THE COLLECTOR LATUR AND OTHERS

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Advocate for the Petitioners : Mr. Khande A. A.

AGP for Respondents-State : Mr. P. D. Patil.

Advocate for respective Respondents : Mr. R. K. Ashtekar.

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CORAM : S. G. MEHARE, J.

DATE : 22.04.2024

PER COURT :-

1. Heard the learned counsel for the petitioners, learned AGP for respondent Nos.1 and 2/State Authorities and the learned counsel for respondent Nos.3 and 4.

2. The village panchayat has nine members in all. Six (6) members were moved a notice of no confidence motion against respondent No.3/Sarpanch under Section 35(3)(B) of the Maharashtra Village Panchayats Act. The Tahsildar accordingly called the meeting. However, he held the meeting on 9th day. The Tahsildar recorded the proceeding of the meeting and observed that six members casted vote in favour of no confidence motion. The majority of 3/4th would require for no confidence motion, if the Sarpanch is a woman. However, he

observed that the post of Sarpanch was reserved for Scheduled Tribe. Hence, it may be required for majority of 2/3rd. She recorded the proceeding that resolution of no confidence motion has been passed. Respondent No.3 preferred the appeal under Section 35(3)(B) of the Maharashtra Village Panchayats Act before the Collector. The Collector allowed the appeal holding that the resolution was not passed by required majority, the meeting was convened after the seven (7) days.

3. Learned counsel for the petitioners submits that the Hon'ble Full Bench of Bombay High Court in case of ***Raosaheb Mallappa Magdum and others Vs. Vandana Shivajirao Mane ; 2019 (5) Mh.L.J. 844*** held that notwithstanding Sub Section (2) of Section 35 of the Maharashtra Village Panchayats Act, the mandating the Tahsildar to convene the meeting of Panchayat within seven (7) days from the receipt of the notice under Section (1), if for some reasons the Tahsildar is unable to do so or deliberately refrain from doing so, he may be personally liable for the wrong committed. But, that would not mean that a meeting convened beyond seven (7) days would be coram non judice. The decisions taken at the meeting would be legal and valid. Since the law on this point has been settled, the findings of the Collector that the meeting was held beyond

seven (7) days is illegal and is liable to be quashed and set aside.

4. Learned counsel for the petitioners submits that respondent No.3 did not raise the objection before the Collector that the resolution was not passed by requisite majority. Therefore, the Collector suo motu took the illegal decision. The Collector has no power to consider the legality of the resolution at his own unless the objection is raised.

5. Learned counsel for contesting respondents would submit that every authority under the law has to examine the legality of the Act done by the authorities. If apparent illegalities committed every appellate authority under the law has power to take the cognizance of law and passed an appropriate orders. Therefore, only for non raising the grounds, the order of the Collector could not be invalid.

6. No confidence motion is throwing a publicly elected person and a setback to the democratical election process. Rule of majority always prevail over. The law is well settled that what are the grounds mentioned in the no confidence motion notice are immaterial. The Rule of majority prevails. The no confidence motion goes to the roots of majority. The

law is very specific about the requisite majority of passing no confidence motion. However, the Court of law, particularly; the Appellate Court of law cannot close the eyes when the apparent illegalities appears or it is purely a question of law. Therefore, the Collector has correctly exercised the powers pasting the legality and validity of resolution of no confidence. He is correctly recorded the findings that there was no requisite majority to pass the no confidence motion as provided under the provisions of Section 35 of the Maharashtra Village Panchayats Act.

7. For the above reasons, this Court does not find any substance in the petition. Hence, the petition stands dismissed. No order as to costs.

(S. G. MEHARE, J.)

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vmk/-