



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8323 OF 2023

Anusaya Shravan Narwade And 5 Others

VERSUS

The State Of Maharashtra Through Collector Hingoli And
Others

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Advocate for the Petitioners : Mr. U.B. Deshmukh

AGP for Respondents 1,2 : R.R. Tandale

Respondent Nos.3 and 4 served – absent.

Advocate for Respondent -5 : Mr. D.M. Shinde (Th. V. C.)

Advocate for Respondent – 6 : Mr. S.B. Pulkundwar

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : August 26, 2024

ORDER :-

1. The petitioners impugn the judgment and order dated 6.6.2023 passed by the District Collector, Hingoli in File No.2023/GPN/Kavi-205 and seeks to restore Resolution of 'No Confidence Motion' passed against respondent no.5/Sarpanch in Special Meeting dated 28.2.2023.

2. Mr. Umakant Deshmukh, learned advocate appearing for petitioners submits that petitioners are elected members of Village Panchyat, Kupati. They had moved the requisition dated 20.2.2023 before respondent no.2 for 'No Confidence Motion' against respondent no.5/Sarpanch. Respondent No.2 issued notices to the Members of Panchayat and scheduled Special Meeting on 28.2.2023. The notices were served upon all Members. Special Meeting held on

28.2.2023 was attended by all seven Members of the Panchayat and they participated in the motion. Consequently, motion is passed by 6/1 vote. Respondent No.5 assailed validity of 'No Confidence Motion' by filing appeal before the District Collector, Hingoli. District Collector allowed appeal vide order dated 6.6.2023 only on the ground that Special Meeting was not scheduled within the prescribed period of seven days.

3. Mr. Deshmukh would submit that the Full Bench of this Court in case of *Shri Raosaheb Mallappa Magdum and Ors. Vs. Vandana Shivajirao Mane and others* concluded that notwithstanding sub-section (2) of Section 35 of Maharashtra Village Panchayats Act, 1959 mandating the Tahsildar to convene a meeting of the Panchayat within seven days from the receipt of the notice under sub-section (1), if for some reasons the Tahsildar is unable to do so or deliberately refrains from doing so, he may be personally liable for the wrong committed but that would not mean that a meeting convened beyond seven days would be coram non-judice. The decisions taken at the meeting would be legal and valid. In view of the aforesaid authoritative pronouncement, Mr. Deshmukh submits that the order impugned thereby declaring 'No Confidence Motion' and meeting dated 28.2.2023 being illegal, cannot be sustained under law. He would therefore seek to restore 'No Confidence Motion' and upheld 'No Confidence Motion' passed against respondent no.5 in Special meeting dated 28.2.2023.

4. Per contra, Mr. Dhananjay Shinde, learned advocate appearing for respondent no.5 vehemently contend

that the challenge raised by respondent no.5 to the motion of no confidence was not restricted to the Schedule of meeting beyond 7 days. He would submit that, in terms of Rule 2 Sub-rule (2) of the Bombay Village Panchayats, Sarpanch and Up-sarpanch (No Confidence Motion), Rules 1975 (for short Rules of 1975), the notice under sub-rule (1) shall be accompanied by 7 additional copies and the Tahsildar shall send one copy to the Sarpanch, one copy to the Upa-Sarpanch and one each to Zilla Parishad, Panchayat Samiti, the Collector and the Commissioner. He submits that the notice served to the respondent no.5 was not in prescribed proforma as per Rule 2(1). It was in the nature of letter calling upon her to attend the meeting of 'No Confidence Motion'. Respondent No.5 was not communicated the grounds/charges on which 'No Confidence Motion' is proposed. In absence of communication of charges, Respondent no.5 lost her valuable right to defend the charges and make effective representation during meeting of no confidence. He would submit that the aforesaid non-observance of rule goes to the root of democratic principles. It is possible that respondent no.5 could have successfully defended charges, had she received advance notice of charges to be discussed in the meeting of 'No Confidence'.

5. In support of his contentions, he relies upon judgment of the Supreme Court of India in case of *Bhavnagar University Vs. Palitana Sugar Mill (P). Ltd., and others* reported in *(2003) 2 SCC 111* to contend that the statutory authority is required to do a thing in particular manner as prescribed while acting under the statute. The distraction

would be fatal. He also places his reliance on a judgment of Calcutta High Court in case of *Tanusree Halder and others Versus State of West Bengal and others* reported in 2022 SCC Online Cal 1135.

6. Having considered the submissions advanced by learned advocates appearing for the respective parties, it is apparent that, in pursuance of the requisition of no confidence motion dated 20.2.2023, meeting for no confidence motion was convened on 28.2.2023. The proceeding book shows that all seven members of village Panchayat were present at the meeting. All Members were given information as regards to purpose of the meeting of 'no confidence motion' and discussion to be held on motion under section 35 of the MVP Act. The proceedings records in all 5 charges to be discussed against the Sarpanch/Respondent no.5. Proceeding also record that respondent no.5 participated in the discussion and denied all the charges. Finally, no confidence motion came to be passed with majority of 6/1 . The District Collector, however, declared meeting of no confidence dated 28.2.2023 to be illegal and contrary to the Rules only on the ground that it was convened beyond statutory period of seven days. Apparently, the reason recorded by the Collector is unsustainable in view of the law laid down by the Full Bench of this Court in case of *Shri Raosaheb Mallappa Magdum and ors. Vs. Vandana Shivajirao Mane and ors. (Supra)*.

7. In that view of the matter, it would be necessary to deal with second contention raised on behalf of respondent

no.5 that she was not served with notice of no confidence motion in the format prescribed and she was not communicated the charges on which such motion was moved. Reliance is placed on the Bombay Village Panchayats Sarpanch and Upa-Sarpanch (No Confidence Motion), Rules, 1975. Rule 2(1) and (2) states as under :-

“2. (1). The members of a panchayat who desire to move a motion of no-confidence against the Sarpanch or the Upa-Sarpanch shall give notice thereof in the form appended hereto to the Tahsildar of the taluka in which such panchayat is functioning. Where the members desire to move the motion of no-confidence against the Sarpanch as well as the Upa-Sarpanch, they shall give two separate notices.

(2) The notice under sub-rule (1) shall be accompanied by [nine additional copies] thereof, and the Tahsildar shall send one copy to the Sarpanch, one to the Upa-Sarpanch and one each to the Zilla parishad, the Panchayat Samiti, the Collector and the Commissioner, one copy shall also be given to the Secretary.”

8. Referring to language of section 2 (1) Mr. Shinde, learned advocate appearing for respondent no.5 submits that the notice shall be in the form appended thereto. According to him, non-service of the notice in specified format would vitiate entire proceeding as petitioner was never convened the grounds on which ‘No Confidence Motion’ is moved.

9. The law on the aforesaid point is no *more resintegra*. The provisions contained under Sub-Rule (2) of Rule 2 of the Rules are held to be directory and not mandatory in nature. The omission to specify grounds for moving motion of no confidence or error in typing of verification clause would

not by itself invalidate notice under sub-section (1) of Section 35 of the Act. Giving reference to the Judgment of this Court in case of *Nimba Rajaram Mali Vs. The Collector, Jalgaon*, this Court observed that once the resolution of 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 flagrant violation of any of mandatory procedure laid down, such a resolution cannot be interfered with by the Court or statutory authorities adjudicating such disputes. The Division Bench further observed that authorities concerned, should not set aside no confidence motion unless there was flagrant violation of mandatory procedure.

10. In yet another judgment in case of **Yamunabai Laxman Chavan and others Vs. Sarubai Tukaram Jadhav** reported in 2004 (2) Mh.L.J. 1004 this Court observed that the provisions contained in Rule 2(2) must be regarded as directory having regard to the true nature and purpose of a motion of no confidence. A motion of no confidence is not akin to disciplinary proceedings or a provision for removal for misconduct. A removal for misconduct is punitive. In such a case, a person who is sought to be proceeded against has to be furnished with a charge sheet and the removal must take place by following an inquiry that is consistent with the principles of natural justice. A motion of no confidence on the other hand,

does not partake of a punitive character nor is it based on charges of misconduct which have to be proved. A motion of no confidence is the fundamental expression of the collective will of the members of a legislative body that they lack confidence in one of their own. The contention that the right to speak at the meeting given to a Sarpanch or Upa-Sarpanch requires that the requisition which has been moved be furnished to them cannot be acceded to. Should the Sarpanch or Upa-Sarpanch seek to have copies of the requisition, it is open to them to apply to the Tahsildar. However, where as in the present case the Sarpanch or Upa-Sarpanch chooses to participate in the meeting whereafter a resolution is duly passed by the requisite majority, it would stultify the democratic process if the Court were to nullify the resolution on the ground that a copy of the requisition was not furnished to the Sarpanch or Upa-Sarpanch.

11. Applying the aforesaid principles of law in the facts of present case, it is abundantly clear that the respondent was served with communication regarding No Confidence Motion, she has participated in the meeting. The grounds of no confidence motion were discussed. The petitioner denied the charges / allegations and thereafter, No Confidence Motion is passed with thumping majority of 1/6. In that scenario, merely because notice was not served in format prescribed would not vitiate the motion of 'No Confidence.'

12. In that view of the matter, there is no force in the submission advanced on behalf of the respondent no.5.

Consequently, writ petition succeeds and allowed in terms of prayer clause “B” & “C”. Writ petition stands **disposed off**.

(S. G. CHAPALGAONKAR)
JUDGE

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