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WP 8583.24.odt

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

WRIT PETITION NO. 8583 OF 2024

**SHIVPRASAD BHAUSAHEB UBALE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.**

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Mr. Mahesh Deshmukh h/f. Mr. K.D. Pote, Advocate for petitioners.
Ms. R.R. Tandale, AGP for respondent.

CORAM : S.G. CHAPALGAONKAR, J.

DATE :- 13th AUGUST, 2024.

ORDER :-

1. The petitioner approached this Court praying for grant of following reliefs :-

(A) Hold and declare that, the impugned proceeding – Grampanchayat Dispute bearing No. SR/43/2024 (Annex- “D”) filed by Respondent Nos. 5 to 13 herein under Section 35 (3B) of Maharashtra Village Panchayat Act against the Petitioners is not maintainable and entertainable and further declare that, impugned Notice issued in said proceeding by Respondent No.2 – District Collector, Ahmednagar dated 23.7.2024 (Annex- “E”) is without jurisdiction.

(B) Kindly issue appropriate Writ or Order in the like nature thereby quash and set aside the impugned proceeding – Grampanchayat Dispute bearing No. SR/43/2024 (Annex-”D”) filed by Respondent No.5 to 13 herein U/sec. 35 (3B) of Maharashtra Village Panchayat Act against the Petitioners is not maintainable and entertainable and further declare

that, impugned notice issued in said proceeding by Respondent No.2 – District Collector, Ahmednagar dated 23.7.2024 (Annex-”E”).

2. Mr. Mahesh Deshmukh, learned advocate appearing for the petitioners submits that respondent No.4 Village Panchayat consists of 13 members. Petitioners and respondent Nos. 5 to 15 are elected as members of village panchayat in the elections that took place on 15.1.2021. Respondent No.1 got elected as a Sarpanch. Petitioner No.2 is elected as Upa-Sarpanch. The period of 5 years of present panchayat would expire on 8.2.2026.

3. On 5.7.2024, a motion of “No Confidence” was moved against the petitioners. Consequently, a special meeting was convened and scheduled on 10.7.2024. At the special meeting, only 9 members of the Village panchayat were present and voted in favour of the motion. Respondent No.3 – Tahsildar declared that motion has failed for want of 3/4th majority. As such, minutes of the meeting were recorded. The respondent Nos. 5 to 13 approached the District Collector, Ahmednagar and filed proceeding purportedly under Section 35(3b) of the Maharashtra Village Panchayat Act, 1966, seeking cancellation of proceeding of meeting dated 10.7.2024 and for issuing directions against respondent No.3 to convene a meeting of “No Confidence” again. The District Collector took cognizance of the aforesaid proceeding and issued notices to the petitioners.

4. Mr. Deshmukh, learned advocate for petitioners would raise two fold contentions :-

Firstly, under Section 35(3b) of the Maharashtra Village

Panchayat Act, the remedy is provided only in case of “No Confidence Motion” is carried against Sarpanch and Upa-Sarpanch. However, it is not open for the members of the Village Panchayat to raise dispute in case the “No Confidence Motion” fails.

Secondly, he contends that once the motion for “No Confidence” fails, no motion shall be brought before passage of time of next one year.

On these two counts, he submits that the proceeding instituted by respondent Nos. 5 to 13 and titled as “dispute” before District Collector is not maintainable. The District Collector has no authority to entertain and grant relief as claimed in the dispute.

5. According to Mr. Deshmukh, the District Collector should not have taken cognizance of such dispute and should have dismissed the same at threshold without issuing any notice to the petitioners. To buttress his submissions, Mr. Deshmukh, relies upon the judgment of Division Bench of this Court in the matter of “ ***Balaji Tulshiram Chaudhari vs. State of Maharashtra and others***” reported in 2002(3) ***All.M.R. 563***.

6. I have considered submissions advanced and also perused the documents tendered into service in the writ petition. It is pertinent to note that respondent No.2 – Collector has merely issued notices in pursuance of the dispute filed by respondent Nos. 5 to 13. Except issuance of notice, no further orders is passed. The legal objections as to the maintainability of the proceeding in dispute can be raised before the District Collector, who is under obligation to consider and decide the same. It would be within the domain of the Collector to answer the

questions of law posed by the petitioners. It would be for the Collector to consider the law laid down by this Court in the case of *Balaji Chaudhari (supra)* as regards to the locus-standi to file dispute under the provision of Section 35(3b) of the Village Panchayat Act. The Collector would also be required to look into the provisions of Section 35(3A) which bars fresh motion of “No Confidence” against the Sarpanch and Upa-Sarpanch within a period of one year from the date of such special meeting, in case the motion of “No Confidence” fails.

7. It would be improper to entertain the writ petition on aforesaid grounds and delve into the jurisdiction of Collector to entertain and decide the issue sought to be raised. In that view of the matter, the petitioners would be at liberty to file appropriate reply to the dispute. The District Collector shall consider the same on merits and pass appropriate order after granting an opportunity of hearing to all concerned.

8. With aforesaid observations, writ petition stands disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-