



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

WRIT PETITION NO.9745 OF 2023

1. Suresh S/o Manikrao Latpate,
Age : 50 years, Occu: Agri.,
R/o Kodri,
Tq.Gangakhed, Dist. Parbhani.
 2. Mukta Balaji Latpate,
Age: 35 years, Occu. Housewife,
R/o Kodri, Tq. Gangakhed,
Dist. Parbhani.
 3. Maharudra S/o Tukaram Bidgar,
Age: 51 years, Occu. Agri.,
R/o Kodri, Tq. Gangakhed,
Dist. Parbhani.
 4. Manik S/o Bhagwan Darade,
Age: 51 years, Occu. Agri.,
R/o Kodri, Tq. Gangakhed,
Dist. Parbhani.
 5. Rani Arjun Nanawate,
Age: 25 years, Occ. Housewife,
R/o Kodri, Tq. Gangakhed,
Dist. Parbhani.
 6. Prathama Anil Sawant,
Age: 34 years, Occ. Housewife,
R/o Kodri, Tq. Gangakhed,
Dist. Parbhani.
 7. Godavari Pandurang Latpate,
Age: 41 years, Occ. Housewife,
R/o Kodri, Tq. Gangakhed,
Dist. Parbhani.
 8. Dnyaneshwari Harishchandra Latpate,
Age: 40 years, Occ. Housewife,
R/o Kodri, Tq. Gangakhed,
Dist. Parbhani.
- ... Petitioners.**

VERSUS

1. The State of Maharashtra,
Through The Collector,
Parbhani, Dist. Parbhani.
2. The Tahasildar, Gangakhed,
Tq. Gangakhed, Dist Parbhani.
3. The Village Panchayat, Kodri,
Through its Gramsevak,
Tq. Gangakhed, Dist. Parbhani,
4. Mahananda Nagnath Latpate,
Age: 45 years, Occ. Housewife,
R/o Kodri,
Tq. Gangakhed, Dist. Parbhani. ... Respondents.

WITH

CIVIL APPLICATION NO.12312 OF 2023
IN WP/9745/2023

1. Avinash Sakharam Sawant,
Age: 35 years, Occ. Agril.,
R/o Kodri, Tq. Gangakhed,
Dist. Parbhani.
2. Balaji Gyanba Latpate,
Age: 74 years, Occ. Agril.,
R/o Kodri, Tq. Gangakhed,
Dist. Parbhani. ... Applicants.

VERSUS

1. Suresh S/o Manikrao Latpate,
Age : 50 years, Occu: Agri.,
R/o Kodri, Tq. Gangakhed, Dist. Parbhani.
2. Mukta Balaji Latpate,
Age: 35 years, Occu. Housewife,
R/o Kodri, Tq. Gangakhed,
Dist. Parbhani.
3. Maharudra S/o Tukaram Bidgar,

- Age: 51 years, Occu. Agri.,
R/o Kodri, Tq. Gangakhed,
Dist. Parbhani.
4. Manik S/o Bhagwan Darade,
Age: 51 years, Occu. Agri.,
R/o Kodri, Tq. Gangakhed,
Dist. Parbhani.
 5. Rani Arjun Nanawate,
Age: 25 years, Occ. Housewife,
R/o Kodri, Tq. Gangakhed,
Dist. Parbhani.
 6. Prathama Anil Sawant,
Age: 34 years, Occ. Housewife,
R/o Kodri, Tq. Gangakhed,
Dist. Parbhani.
 7. Godavari Pandurang Latpate,
Age: 41 years, Occ. Housewife,
R/o Kodri, Tq. Gangakhed,
Dist. Parbhani.
 8. Dnyaneshwari Harishchandra Latpate,
Age: 40 years, Occ. Housewife,
R/o Kodri, Tq. Gangakhed,
Dist. Parbhani.
 9. The State of Maharashtra,
Through The Collector,
Parbhani, Dist. Parbhani.
 10. The Tahasildar, Gangakhed,
Tq. Gangakhed, Dist Parbhani.
 11. The Village Panchayat, Kodri,
Through its Gramsevak,
Tq. Gangakhed, Dist. Parbhani,
 12. Mahananda Nagnath Latpate,
Age: Major, Occ. Housewife,
R/o Kodri, Tq. Gangakhed,
Dist. Parbhani.
- ... Respondents.**

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Advocate for Petitioners : Mr. Jadhavar A. T.

AGP for Respondent/s-State : Mr. N. B. Patil.

Advocate for Respondent No.4 : Mr. Mahesh Deshmukh h/f

Mr. V. H. Dighe.

Advocate for Respondent No.3 : Mr. S. B. Ghatol Patil.

Advocate for Applicant/s in CA. : Mr. Umesh B. Gite.

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CORAM : S. G. MEHARE, J.

RESERVED ON : 20.03.2024

PRONOUNCED ON : 04.04.2024

JUDGMENT :-

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

2. The petitioners and respondent No.4 are the elected members of village panchayat. The post of the Sarpanch of village panchayat was not reserved. It was for general open. Respondent No.4 was elected as a Sarpanch of the village. A notice under Section 35(1) of the Maharashtra Village Panchayats Act ("Panchayats Act" for short) for convening the meeting of no confidence against respondent No.4 was moved to the Tahsildar on 19.07.2023. Pursuant to the said notice, the Tahsildar convened the meeting on 25.07.2023 by issuing a notice to all members entitled to sit and vote in the meeting. There were 11 members of village panchayat. 9 members out of 11 attended the meeting and no confidence motion was

passed against respondent No.4 by 7:2. The Tahsildar declared that the no confidence motion against respondent No.4 is failed for the reasons that requisite $3/4^{\text{th}}$ majority of the members entitled to vote was not there. He has observed that $3/4^{\text{th}}$ of 11 members comes 8.25. Its fraction is 9. Therefore, it was not the passed by requisite majority. The petitioners have impugned the decision of the Tahsildar before this Court.

3. Learned counsel for the petitioners has vehemently argued that in view of the amendment of the Act 42 of 2022 for passing no confidence motion, there should be $2/3^{\text{rd}}$ majority and not $3/4^{\text{th}}$. He would submit that before the said amendment for no confidence motion under Section 35(1) the required majority was $3/4^{\text{th}}$. However, by the amendment of 2022, the original provision of $2/3^{\text{rd}}$ majority has been restored. He has referred to various amendments made in the Act for requisite majority for no confidence motion. He would submit that the law was amended and made applied to the no confidence motion against the Sarpanch elected directly from the public. Therefore, to safeguard the interest, the law has been amended and $3/4^{\text{th}}$ majority of the members was inserted for no confidence motion. Subsequently, the said provisions Sub Section 3(1A) as amended in Section 35 was deleted. By

Maharashtra 42 of 2022 Act, dated 29.08.2022, Sub Section (3) was re-lettered as clause (a). He interpreted this word re-lettered as clause (a) means the original section 35 was restored. The amendment of 3/4th majority was brought into force in 2020, when Section 3(1A) was inserted. It was for the no confidence motion against the directly elected Sarpanch from the public. Since that provision has been deleted in 2022, Sub Section (3) was re-lettered as clause (a), clearly means that for passing a no confidence motion, the majority would be 2/3rd and not 3/4th. He would pray to declare that the resolution was passed by requisite majority of 2/3rd and the resolution of no-confidence against respondent No.4 be declared legal and valid.

4. Learned counsel for the petitioners relied on the case of *Saw. Rohini w/o Sanjay Bhosale Vs. The State of Maharashtra and others, in WP.1236 of 2012 of Bombay High Court, decided 11.05 2012.*

5. Per contra, learned counsel for respondent No.4 argued that by amendment of 2022, the original position of majority 2/3rd has not been restored. By the amendment of 2022 Section (3) was simply re-lettered clause (a). The Clause (a) was inserted because by the said amendment clause (b) to that

Section was also inserted. To divide the provisions of law, this clause (a) has been inserted. He submits that applying the rule of fraction, there should have been atleast 9 members voted in favour of no-confidence. The Rule of fraction that to round of the fraction to the next number would also apply in the case where the fraction is less than .50.

6. Learned counsel for the respondent No.4 relied on the case of *Savita Shrimant Ghule Vs. Sangita Bibhishan Sanap and others ; 2024 (2) Mh.L.J. 119* and *Radhakishan Sadarangani and others Vs. Smt. Deepa Rohera, Chairperson and others ; 2019 (1) Mh.L.J. 221*. He prayed to dismiss the writ petition.

7. The State has supported the decision of the Tahsildar.

8. The first question to be determined is what shall be the requisite majority of votes to pass a no confidence motion against the Sarpanch. Though respondent No.4 was a woman, the post of Sarpanch was not reserved for either women or for any reserved category. Section 35(3) proviso (3) provides that where the Office of 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 3/4th of the total

number of the members, who for the time being entitled to sit and vote at any meeting of panchayat. Since the post of the Sarpanch of village panchayat of which petitioners and respondent No.4 were elected members was not reserved for woman, this proviso (3) as mentioned above would not apply. In the cases other than the post reserved for women, Rule 3(a) of the Act apply for passing the motion of no confidence by a requisite number of majority. A serious arguments have been advanced that Sub Section (3) was re-lettered as Clause (a) by Maharashtra 42 of 2022, dated 29.08.2022. Therefore, whether re-lettering Sub Section (3) as Clause (a) is the restoration of original Section before the Amendment of 2022 would apply. The word re-lettered means to renew the lettering of or change the lettering of. The plain interpretation of the word re-lettered is that only a letter (a) was added to Sub Section (3). This could be understood from the amendment of dated 29.08.2022. By this amendment, the legislature has inserted Clause (b) to Section 35 of the Act. Though Section 35(1A) has been deleted, the requisite majority of 3/4th required for no confidence motion has not been deleted nor by the amendment of 2022, it has the effect of restoring the original requirement of majority not less than 2/3rd.

9. In case of *Rohini (supra)*, the post of Sarpanch was reserved for candidate belonging to a Scheduled Tribe. The no confidence motion was passed against the Sarpanch, which was reserved for a candidate belonging to Scheduled Tribe. Five members voted in favour of the motion of no confidence out of seven. The resolution was impugned before the Additional Collector. The Additional Collector rejected the dispute. The appeal was preferred before the Additional Divisional Commissioner. It was also dismissed. The arguments of the petitioner in that case were that the petitioner belongs to a protected class being a woman and proviso to Sub Section (3) of Section 35 was applicable, if the Office of Sarpanch was held by a woman. Under these premise, this Court reproducing the then Sub Section (3) of Section 35, held that the motion of no confidence if it is carried by $2/3^{\text{rd}}$ of total number of members who are for the time being entitled to sit and vote at any meeting of the panchayat, the Sarpanch of the Upa-Sarpanch, as case may be, shall cease to hold Office after seven days from the date of which the motion was carried. It has been further held that the exception is called out by virtue of first proviso to Sub Section 3. It lays down that if the Office of Sarpanch being reserved for woman is held by the woman Sarpanch, such motion of no confidence shall be carried out

only by majority of not less than $3/4^{\text{th}}$ of the members who are entitled to sit and vote at any meeting of the panchayat. The said proviso requires two conditions to be satisfied. First, the Office of Sarpanch should be reserved for a woman and second is same shall be held by woman Sarpanch. The proviso shall have to be strictly construed. The said proviso will not apply if the Office of the Sarpanch is reserved for a person belonging to Scheduled Tribe or Scheduled Caste and is held by a woman. The prima donna requirement of said proviso is that the Office of Sarpanch should be reserved for woman. It is only if the said office is reserved for a woman and a woman candidate is occupying the Office then said proviso would apply. Thereafter, the legislature made many amendments to the said Section. The proviso to that Section were reset. But, proviso protecting the Sarpanch being reserved for women kept intact. The ratio laid down in that case would not apply for the simple reason that though the Sarpanch was woman, it was not reserved for woman.

10. Reading the amendment of Maharashtra 42 of 2022, dated 29.08.2022, the Court does not agree with the submissions of the learned counsel for the petitioners that there shall be a majority of not less than $2/3^{\text{rd}}$ members for

passing the no confidence motion against Sarpanch. By way of the said amendment, the amendment of Maharashtra 42 of 2022 substituting $3/4^{\text{th}}$ for words $2/3^{\text{rd}}$ has not been disturbed nor the original Section 3 has been restored.

11. Next question is whether the Rule of rounding of the fraction into whole number would apply.

12. This Court in case of *Savita Ghule (supra)* held that requirement of Rule 17 of the Village Panchayats Meetings Rules in the matter of proposing and seconding motion cannot impinge upon validity of motion of no confidence. The present case was not alike.

13. In the case of *Radhakishan (supra)* a dispute was about the fraction of the votes. The facts of this case were that there were 11 members of the committee. The no confidence motion was passed against the Chairman. Out of 8 members, 5 members of the Managing Committee had moved no confidence motion and the no confidence motion was also passed by $2/3^{\text{rd}}$ majority. The Rules of rounding of fraction into whole number were stated in Section 73AAA of the Maharashtra Co-operative Societies Act, ignoring the fraction while constituting the committee were $2/3^{\text{rd}}$ members were

reached in election process out of total numbers. Under these premise, the Court held that in the given case, it may be said that out of eight members of managing committee though five members have voted in favour of no confidence motion against the three members, in view of the provisions of Section 73-1D being silent and not empowering the authority to relax the said condition or to round or fraction such, “no confidence motion failed”.

14. The Hon’ble supreme Court in the case of ***Ganesh Sukhedo Gurule Vs. Tahsildar, Sinnar and others ; 2019(1) ALL MR 471*** has dealt with the issue of rounding of the fraction and held that the rule of rounding of the fraction into whole number would apply. Considering the total number of the members entitled to sit and vote and the total number of the vote cast in favour of the no confidence motion. The Tahsildar appears to have correctly held that the $\frac{3}{4}^{\text{th}}$ and 11 members comes to 8.25 and 8.05 is to be rounded up to 9. There appears no error in the impugned order of the Tahsildar.

15. Hence, writ petition stands dismissed.

16. Rule made discharged.

17. No order as to costs.

18. Civil Application stands disposed of accordingly.

(S. G. MEHARE, J.)

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vmk/-