



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12428 OF 2023

Shabanabi Maulasaheb Patel And Others

VERSUS

The District Collector Latur And Others

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Advocate for the Petitioner : Mr. B.R. Rathod h/f Mr. S.J. Gaike

AGP for Respondents: Advocate R.R. Tandale

Advocate for Respondent 4 : Mr. R.R. Imale

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : September 06, 2024

PER COURT :-

1. Petitioners impugns the order dated 20.9.2023 passed by the District Collector, Latur, Respondent No.1 in File No.2023/GPN/CR-25.

2. Mr. B.R. Rathod h/f Mr. Gaike, learned advocate appearing for the petitioners submits that, respondent no.4 was elected as Sarpanch of village Pirupatelwadi. Panchayat consists of seven members. A motion of no confidence was moved by members of village Panchayat against him. Consequently, Tahsildar, Nilanga had convened special meeting vide notice dated 13.7.2023. However, due to technical defects in the notice a Corrigendum dated 14.7.2023 was issued and corrected notice was served upon the Members of village Panchayat so also respondent no.4-Sarpanch. He submits that since respondent no.4 had not personally accepted the notice, it was affixed on conspicuous part of his house and panchnama

was drawn in presence of five panchas. In pursuance of said notice, a Special Meeting was conducted on 17.7.2023 in the office of the village Panchayat. Respondent no.4 Sarpanch alongwith five members of village Panchayat were present. Finally, motion of no confidence was passed by majority of five versus one (5/1). However, respondent no.4 raised the dispute before the District Collector, under section 35 (3) (b) of the Maharashtra Village Panchayats Act, 1966. The learned Collector, allowed the dispute on two grounds. Firstly, there was defective service of notice of no confidence on respondent no.4. Secondly, no confidence motion is not passed by majority of 3/4th members.

3. Learned counsel appearing for the petitioners further submits that conclusion drawn by the learned Collector is erroneous and contrary to the legal and factual position on record. The defect in the notice was immediately cured vide corrigendum dated 14.7.2023 and it was published at village Panchayat. The panchnama clearly shows that it was duly affixed on house of respondent no.4. He was present at the meeting. Consequently, there was no defect in service of notice. He would further submit that out of seven members of village Panchayat, six members were present at the meeting including respondent nos.4 and 5. Members voted in favour of no confidence motion. Therefore, it has been passed with requisite majority.

4. Mr. Imale, learned advocate appearing for respondent no.4 filed affidavit-in-reply and supports the order passed by the Collector. He would submit that the notice dated

13.7.2023 convening meeting of no confidence was defective. It was served upon the respondent no.4. Respondent no.4 pointed out defective notice to the Tahsildar. Thereafter, behind back of the respondent no.4, some Corrigendum was issued. The corrected notice was never served upon the Respondent no.4, however, a panchnama depicting affixing such notice at house of respondent no.4 was fabricated, which is shown to be signed by five witnesses. However, three of them have filed the affidavit before the District Collector stating that their signatures were obtained on blank paper by Talathi. The District Collector has appreciated the aforesaid aspects, consequently declared that the motion of no confidence passed in a meeting dated 17.7.2023 is illegal. He would submit that no interference is required in the impugned order.

5. I have considered the submissions advanced by the learned advocates appearing for the respective parties. It is not in dispute that in pursuance of the representation made by five members of the village panchayat, Tahsildar had issued a notice of meeting to be held on 17.7.2023 at the office of village Pirupatelwadi, Tq. Nilanga. Copy of the said notice is placed on record alongwith the reply filed by respondent no.4. It shows that meeting was convened with stipulation that the election of Sarpanch is proposed. The petitioners appears to have received said notice on 14.7.2023 at about 4 p.m. It appears that, thereafter, a Corrigendum was issued by Tahsil office correcting mistake in the notice published on 13.7.2023. Corrigendum dated 14.7.2023 appears to have been affixed at

the office of village Panchayat on 15.7.2023. Admittedly, the notice after Corrigendum was never personally served upon respondent no.4. However, it is the contention of petitioners that same was affixed at the house of respondent no.4 and panchama is drawn as respondent no.4 refused to accept the notice in person. The learned Collector however noted that such panchnama is not believable as three witnesses out of five have filed affidavit that they have not signed such panchnama or notice was never affixed in their presence. It is true that respondent no.5 was present at the meeting of no confidence, however, he explained that when he went to the office of Tahsildar in the morning of 17.7.2023, he came to know that Tahsildar has visited village Panchayat office. Consequently, he came back to village and found that meeting was being convened for no confidence against him. Although, he raised protest to such meeting for want of advance notice of such meeting, no confidence motion was passed recording his presence at the meeting.

6. The explanation tendered by respondent no.4 is accepted by the learned Collector. Rule 2 Sub Rule (2) of Village Panchayat Act which mandates service of notice on Sarpanch, Upsarpanch and meeting, which reads thus :-

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.”

7. This Court in case of **Indubai Vedu Khairnar Vs. State of Maharashtra and others reported in 2003 (2) BomCR 239** observed that the provisions contained under sub-rule 2 of Rule (2) of Rules of 1975 as far as it requires service of notice to Sarpanch and Upsarpanch and other authorities is mandatory because a person against whom No Confidence motion is moved has to have an opportunity of defending of himself/herself. Further, such person would have right to speak. In case of non-service of notice of meeting, he would loose such right. Therefore, in absence of service of notice of no confidence, motion would be vitiating.

8. In the present case, since respondent no.4 had not accepted personal service of notice, it was affixed on conspicuous part of his house in presence of the panchas. Panchnama is signed by five witnesses. Certain photographs are produced during course of hearing to demonstrate that Corrigendum notice was duly affixed on house of respondent no.4. Although, three witnesses on panchnama have tendered affidavit in support of the stand of respondent no.4 regarding non-service of notice, fact remains that respondent no.4 was

present and participated in the meeting. His right to speak and defend himself is not prejudiced. Further, there is reason to believe that in fact, respondent no.4 was served with notice and attended meeting in pursuance of such service although he is trying to give some different story. Therefore, finding recorded by the District Collector, Latur that meeting of no confidence was vitiated because of non-service of notice to the respondent no.4 cannot be countenanced.

9. Fact remains that no confidence motion is passed in presence of respondent no.4 by majority. The village Panchayat consists of seven members. In all six members including respondent no.4 were present at the meeting. Except petitioner, all five (5) members present at the meeting voted in favour of the “No Confidence Motion.”

10. Section 35(3) of the Act requires that motion of no confidence to be carried by majority of not less than 3/4th of total number of members, who are for time being entitled to sit and vote at any meeting of Panchayat.

11. Looking to the number of Members entitled to sit and vote at the meeting, it will have to be examined that no confidence motion is passed with 3/4 th majority. As such, out of 7 (seven), 5.25 members shall vote in favour of ‘No Confidence.’ Since votes cannot be counted in fraction, question is whether the fraction of 0.25 can be considered as one to make it six votes. In the facts of the case, the Supreme Court of India in case of *Ganesh Sukhdeo Gurule Versus Tahsildar Sinnar and others in Civil Appeal No.11916 of 2018*

on 10th December, 2018 in paragraph no.17 observed as under :-

“17. Thus, in so far as vote of one member, Smt. Sushila Prakash Darade, the same can neither be computed for the no-confidence motion nor is relevant for computing two third majority as per the statutory scheme. The words ‘not less than’ used in Section 35 (3) of the Act has to be given meaning and purpose. When majority comes to 5.33 votes “not less than 5.33 votes” have to be given meaning, hence, 5.33 can never be rounded off to 5, fraction has to be treated as one because votes cannot be treated as fraction. Hence, 5.33 votes to be read as 6 votes for passing of the motion as mandated by Section 35 (3).”

12. Considering the corollary of law laid down by the Supreme Court of India, fraction 0.25 above 5 complete votes will have to be counted as one vote for the purpose of passing the motion as mandated by Section 35 (3) of the Act. As such 0.25 will have to be counted as six (6). The learned Collector has also misread the provisions of law while recording converse finding on this issue. Consequently, the order impugned cannot be sustained in law. Hence, the following order :-

ORDER

- i. Writ Petition is **allowed**.
- ii. The impugned order dated 20.9.2023 passed by the District Collector, Latur – Respondent No.1 in file No.2023/GPN/CR-25 is hereby quashed and set aside.
- iii. It is hereby declared that the motion of ‘No Confidence’ has been validly passed against

respondent no.4 in the meeting dated 17.7.2023 and office of Sarpanch of Village Panchayat is deemed to have fallen vacant.

iv. Writ Petition stands **disposed of** accordingly.

13. At this stage, Mr. Imle, learned counsel appearing for respondent no.4 seeks stay to the operation of the order as respondent no.4 wishes to approach the Hon'ble Supreme Court.

14. Taking into account the submissions advanced, the order passed above shall be kept in abeyance for a period of four (Four) weeks from today.

(S. G. CHAPALGAONKAR)
JUDGE

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