



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

WRIT PETITION NO.14426 OF 2023

Chhaya Dnyaneshwar Kolhe
VERSUS
The District Collector And Others

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Advocate for the Petitioner : Mr. R.V. Gore
AGP for Respondents no.1 to 3 : Mr. S N Kendre
Advocate for Respondent 7 : Mr. D.H. Jadhavar
Advocate for Respondent nos.5,6,8 to 10: Mr. S.G. Kawade

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : 02nd August, 2024

ORDER :-

1. The petitioner impugns the order dated 17.10.2023 passed by the Collector, Chhatrapati Sambhajiagar in Case No.CR/218 passed u/s 35 (3-B) of Maharashtra Village Panchayat Act, 1959 and also seeks to quash and set aside the impugned Resolution dated 18.8.2023 passed by the village Panchayat, Bhalgaon, Tq. & District Aurangabad.

2. Mr. R.V. Gore, learned advocate appearing for the petitioner submits that petitioner was elected as Member of the Village Panchayat, Bhalgaon in the General Elections held on 8.2.2021. Thereafter, she was elected as 'Sarpanch'. She discharged her duties sincerely, however, on 29.5.2023, respondent no.6, 8 and 9 to 11 moved

notice of No Confidence Motion to the Tahsildar, Aurangabad against the petitioner. Respondent no.3- Tahsildar took cognizance of the notice and convened special meeting on 2.6.2023. However, before date of Special Meeting, petitioner was disqualified by orders of the respondent no.1 – District Collector for the reason that she failed to submit caste validity certificate. Consequently, special meeting dated 2.6.2023 was dropped. However, in view of the Government Resolution dated 10.7.2023 period fixed for submission of validity certificate was extended and order of disqualification passed by the District Collector was revived. Petitioner was restored as Sarpanch.

3. Mr. Gore, learned advocate would submit that respondent no.9 had filed writ petition no.8724 of 2023 before this Court seeking directions to reconvene meeting dated 2.6.2023 from the stage it was cancelled. Accordingly, this Court on 21.7.2023 issued notice to the State and matter was kept on 4.8.2023. On 18.8.2023 special meeting was convened. Consequently, no confidence motion has been passed.

4. Petitioner disputed Resolution dated 18.8.2023 in appeal before the District Collector, however, the District Collector rejected the same vide order dated 17.10.2023. Hence, this writ petition.

5. Mr. Gore would further submit that since special meeting dated 2.6.2023 has been dropped, it has consequence that No Confidence Motion has been failed. Therefore, second meeting dated 18.8.2023 is not legal.

6. Learned advocates appearing for respondents however, supports the impugned orders.

7. Having considered the submissions advanced and record tendered alongwith writ petition, apparently, a motion of 'No Confidence' was moved by Members of the village Panchayat against the petitioner on 29.5.2023. Respondent no.3 took cognizance of such notice and convened special meeting on 2.6.2023 in the office of the Village Panchayat, however, before the date of said meeting, petitioner was disqualified under the orders of the Collector for non-submission of the caste validity certificate. Therefore, in the meeting dated 2.6.2023 further proceeding was dropped since petitioner was already ceased to be Member of the Village Panchayat in view of the order dated 31.5.2023 passed by the Collector.

8. Thereafter, meeting was reconvened on 18.8.2023 by respondent no.3/Tahsildar. Petitioner had filed writ petition no.10200 of 2023 and raised challenge to the second notice. Pertinently, this Court observed in paragraph no.3 of the order dated 18.8.2023 as under :-

“3. The words "if the motion is not moved" appearing in Sub-section 3A, are to be read conjointly with the opening words in Section 35(1) viz. " a motion of no confidence may be moved by not less than 2/3rd of the total number of members who are for the time being entitled to sit and vote in any meeting of the panchayat." This would indicate that the words “if the motion is not moved” are not to be read in isolation to mean that, if a motion is not moved on the day of the special meeting, the motion is deemed to have failed. Hence, the further words “by a majority of not less than” would be applicable in both the contingencies and will have to be read as “if the motion is not moved or if the motion is not carried by a majority of not less than.....” .

9. In light of the aforesaid observations, the petitioner withdrew his challenge. Consequently, meeting dated 18.8.2023 was concluded by passing resolution of No Confidence against the petitioner.

10. Mr. Gore, learned advocate appearing for the petitioner submits that since notice of No Confidence motion was moved and meeting was convened on 2.6.2023, which has been dropped, the subsequent notice of No Confidence could not have been entertained. However, it is not open for the petitioner to raise such challenge, since she had earlier filed writ petition no.10200 of 2023 before the Division Bench assailing second motion but withdrew the said writ petition in view of the observations of this Court, as referred above.

11. In view of the aforesaid facts, it is not open for the petitioner to raise similar challenge at this stage. Pertinently, this Court has already observed in writ petition no.10200 of 2023 that if motion is not moved on the day of special meeting, that can be deemed to have been failed, only when, it was put to the vote.

12. In the present case, admittedly, earlier motion was dropped because of supervening events as petitioner has suffered disqualification under orders of respondent no.2 and she was no more member of the Village Panchayat so as to carry forward No Confidence motion against her. In such contingency, protection provided to the Sarpanch or Upsarpanch, as the case may be, from facing repeated No Confidence Motions would not be attracted. No such bar to move No Confidence Motion can be read in the facts of the case when earlier No Confidence Motion was dropped.

13. In that view of the matter, there is no merit in this writ petition. Writ Petition stands dismissed. No costs.

(S. G. CHAPALGAONKAR)
JUDGE

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