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45-WP-15076-2023

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

45 WRIT PETITION NO. 15076 OF 2023

Shashikala Sahebrao Kharat

VERSUS

The State Of Maharashtra Through Its District Collector And Others

...

Mr. Sambhaji G. Munde, Advocate for the Petitioner.

Smt. R. R. Tandale, AGP for Respondent-State.

CORAM : KISHORE C. SANT, J.

DATE : 16th DECEMBER 2024

PC :-

1. Challenge is raised to an order passed by the learned Collector, Jalna on 22nd November 2023 whereby the learned Collector has dismissed the appeal filed by the present petitioner.
2. The facts in short are that, the petitioner came to be elected as a member of Gram Panchayat Parandgaon, Taluka Ghansavangi, District Jalna. Consequently, she also came to be elected as a Sarpanch of the village. The other members of the Gram Panchayat initially moved a motion of no confidence by giving notice on 23rd August 2021. Pursuant to that, the Tahsildar issued notice calling for meeting on 27th August

2021. However, the learned Collector found that, by that time the petitioner had not completed two years term as a Sarpanch and therefore, no motion could have been moved and cancelled the said meeting. Thereafter, the members again moved another notice of motion for no confidence on 31st July 2023. Pursuant to this notice, a meeting was held and motion was carried by requisite majority. The learned Tahsildar therefore, declared that the motion is passed and the petitioner seized to be a Sarpanch.

3. The petitioner challenge passing of the motion by filing an appeal. In the appeal before the Collector, it is the main ground of the petitioner that after first meeting, motion was failed. No motion could have been moved within two years thereafter. Moving of the motion itself is illegal and therefore, it ought to have been held that the motion is illegal and no action could have been taken pursuant to that meeting and prayed for allowing her dispute. Some other grounds were also raised on merits.

4. The learned Collector held that the earlier notice was only cancelled and not withdrawn. It is only in case the motion is carried and failed against the Sarpanch or Upa-sarpanch, no such meeting can be

called within next two years of such failure. He thus, rejected the appeal of the petitioner.

5. The learned Advocate for the petitioner vehemently argued that the Collector has failed to properly consider Sections 35(1) and 35(3) which read as under:-

“35. **Motion of no confidence.** [(1)] A motion of no confidence may be moved by not less than [two third] of the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat against the Sarpanch or the Upa-Sarpanch after giving such notice thereof to the Tahsildar as may be prescribed. [Such notice once given shall not be withdrawn.]

(2) -----

(3) [(a)] If the motion is carried by [a majority of not less than (three fourth) the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat or the Upa-Sarpanch, as the case may be, [shall forthwith stop exercising all the powers and perform all the functions and duties of the office and thereupon such powers, functions and duties shall vest in the Upa-Sarpanch in case the motion is carried out against the Sarpanch; and in case the motion is carried out against both the Sarpanch and Upa-Sarpanch, in such officer, not below the rank of Extension Officer, as may be authorised by the Block Development Officer, till the dispute, if any, referred to under sub-section (3B) is decided:

Provided that, if the dispute so referred is decided in favour of the Sarpanch or, as the case may be, Upa-Sarpanch, thereby setting aside such motion, the powers, functions and duties of the Sarpanch or Upa-Sarpanch shall forthwith stand restored, and if the dispute is decided confirming the motion, the office of the Sarpanch or, as the case may be, Upa-Sarpanch shall be deemed to have fallen vacant from the date of the decision of the dispute, unless the incumbent has resigned earlier:

Provided further that, in cases where the offices of both the Sarpanch and Upa-Sarpanch become vacant simultaneously, the officer authorised under this sub-section shall, pending the election of the Sarpanch, exercise all the powers and perform all the functions and duties of the Sarpanch but shall not have the right to vote in any meetings of the panchayat:]

[Provided also that] where the office of the 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 three-fourth of the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat:]

Provided also that, no such motion of no-confidence shall be moved within a period of

two yers from the date of election of Sarpanch or Upa-sarpanch and before six months preceding the date on which the term of panchayat expires :

Provided also that, if the no-confidence motion fails, then no motion shall be moved within next two years from the date of failure of no-confidence motion.]

[(b)] After the motion of no-confidence against the directly elected Sarpanch is carried by a majority of not less than three-fourth of the total number of the members, who are for the time being entitled to sit and vote at any meeting of the panchayat, then the same shall be ratified by the Gram Sabha, in a special meeting convened, within fifteen days from passing of such motion, by an officer appointed by a Collector in this behalf, in the presence and under the Chairmanship of such officer, by a simple majority by the method of counting of heads. After such ratification of motion by the Gram Sabha, the Sarpanch shall forthwith stop, exercising all the powers and performing all the functions and duties of the office and thereupon, such powers, functions and duties shall vest in the Upa-Sarpanch, and in case the motion is carried out against both the Sarpanch and Upa-Sarpanch, and in case the motion is carried out against both the Sarpanch and Upa-Sarpanch, in such officer, not below the rank of Extension Officer, as may be authorised by the Block Development Officer, till the dispute, if any, referred to under sub-section (3B) is decided;]"

6. He thus submits that, the earlier notice ought to have been taken as withdrawn since it was cancelled. The Collector has wrongly interpreted that the earlier notice was not withdrawn but was cancelled. In view of proviso to sub-Section (3) of Section 35 clearly provides that, if no confidence motion fails, then no motion can be moved within next two years. He submits that, thus moving of the motion itself was illegal and against the proviso. He submits that the Collector has committed serious error and committed an illegality while deciding the appeal. He thus prays for allowing the writ petition.

7. The learned AGP vehemently opposes the petition. She submits that the wording of Section 35(1) clearly provides that the notice shall not be withdrawn which necessarily mean that the person who moved the motion cannot withdraw the motion. In the present case it is the Tahsildar who has cancelled the meeting as moving of the motion within two years after election of a Sarpanch or Upa-sarpanch was not permissible under the law and she prays for dismissal of the writ petition.

8. This Court has considered as to whether the earlier meeting in August 2021 can be said to have been withdrawn or it was only cancelled by the Tahsildar and whether such cancelling of the meeting can be said to be withdrawal of the notice of motion of no confidence.

9. This Court has gone through the order passed by the Collector. The Collector while passing the order has considered that the earlier motion though was moved, was not carried. The said motion was neither passed nor failed and therefore, bar of proviso to sub-Section (3) of Section 35 is not attracted. This Court has gone through the reasoning by the Collector. There does not appear to be any infirmity or perversity in the

order of Collector.

10. In view of this, this Court does not find any merit in the petition and therefore, petition stands dismissed. No order as to costs.

[KISHORE C. SANT, J.]