



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 756 OF 2024

MADHURI RANJIT TALWARE
VERSUS
THE STATE OF MAHARASHTRA THROUGH COLLECTOR AND
OTHERS

...
Advocate for the Petitioner : Mr. Deshmukh Umakant B.
AGP for Respondents-State : Mrs. M. L. Sangit.
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CORAM : S. G. MEHARE, J.
DATE : 18.01.2024

PER COURT :-

1. Heard the learned counsel for the petitioner and learned AGP for Respondent Nos.1 to 4-State.
2. A no-confidence motion resolution has been passed against the petitioner in a special meeting dated 03.10.2023. The petitioner was served by substituted service affixing on the conspicuous place of her house. The resolution reveals that the petitioner was present and requested the secret ballot. She denied the allegations against her in the representation for no-confidence motion. However, it was decided by voting by raising hands. The 3/4th majority was against her. Hence, the resolution was passed. The Collector dismissed the petition of the petitioner, by his order dated 04.01.2024.

3. Learned counsel for the petitioner heavily harped upon non-acceptance of her demand to have voting by secret ballot. He also argued that if there had been a secret ballot, she would have been able to convince the voters. The voters were under threats and coercion. Hence, they had no courage to support her by raising their hands. He has referred to Bombay Village Panchayats (Sarpanch and Upa-Sarpanch) Election Rules, 1964 (“Rules 1964” for short). He has vehemently argued that Rule 10 of the Rules, 1964, provides for the procedure for election. The said rule is applicable to the meetings convened for the no-confidence motion. Relying on the judgment of the Division Bench of this Court in *Maruti Bandu Patil Vs. Village Panchayat Sidhnorli and others; 1981 Mh.L.J. 255*. He submits that the words “any member present at the meeting so demands” were substituted in the year 1966 for the words “majority of the members present at the meeting so demand”. Interpreting the substituted words, the Division Bench held that the provision as to voting by ballot, which was dependent upon the demand by the majority of members present at the meeting, was given a go-by, and now, by amended rule, a duty is cast upon the Presiding Officer to hold the election by a ballot if any member present at the meetings so demands. He would submit that the

same rules would apply to the meetings held for the no-confidence motion. Rejecting his request to have voting by secret ballot, the resolution is bad in law. He also submitted that after the removal of the petitioner from the post of Sarpanch, the Authority had proposed the election of a new Sarpanch. That apart, the right to say has also not been properly mentioned in the resolution. Substantial questions of law have been involved in this writ petition as regards the rights of the person against whom the no-confidence motion is moved to say in the meeting. Therefore, this is a fit case for granting the stay.

4. Learned AGP would submit that there are no specific rules of the meeting convened for the no-confidence motion against Sarpanch or Upa-sarpanch. In the absence of specific meeting rules, the Maharashtra Village Panchayats (Meetings) Rules, 1959 ("Rules 1959" for short) would apply. She has referred to Rule 28 of the Rules 1959 and argued that the votes should ordinarily be taken by word of mouth or by a show of hands but may, if the majority of the members present so decide, be taken by ballot. She would rely on the case of *Kishore Ramchandra Phalak Vs. Vilas Damodar Mahajan and others; 1997(3) Mh.L.J. 27*. In this case, this Division Bench

held that the procedure for the meetings of members of the Panchayat, consider no-confidence motion against Sarpanch prescribed under Rule 28(1) of the Rules 1959 is applicable. In the absence of any demand by the majority of the members for voting by secret voters, the voting should be by showing hands.

5. Learned counsel for the petitioner further relied on the case of *Jaenendrakumar Phoolchand Daftari Vs. Rajendra Ramsukh Mishra and others; 1994 (1) Mh.L.J. 100*. He further relied on the judgment of this Court passed in the case of *Aarti w/o Santosh Pawar Vs. State of Maharashtra through its Principal Secretary, Rural Development Department, Mantralaya, Mumbai 32, in Writ Petition No.14612 of 2021, dated 18.10.2023*. He also relied on the case of the Hon'ble Full Bench of this Court, *Viswas Pandurang Mokal Vs. Group Gram Panchayat Shihu and others; 2011 (3) Mh.L.J. 500*. He also relied on the case of *Uddhav Poma Aade Vs. Additional Commissioner, Aurangabad and others; 2018 (3) Mh.L.J. 529*. On the basis of the ratio laid down in the above cases, it has been vehemently argued that the provisions of the Rules, 1964 are squarely applicable to the proceeding for no-confidence motion.

6. This Court has gone through all the above cases. They dealt with the Rules 1964. The Hon'ble Division Bench answered the question put to it which reads thus, "Whether the provisions of the Meeting Rules and in particular Rule 17 thereof, will apply to the meeting convened specifically for considering the motion of no confidence moved in accordance with Sub Section 1 of Section 35 of the said Act and the No Confidence Motion Rules?" The Full Bench unequivocally answered the question that, "in our opinion, the provisions of Section 17 will apply in a meeting called under Section 35". Considering the ratio of the Full Bench, this Court is not convinced that the Rules of 1964 do not apply to the meetings convened for the no-confidence. On the contrary, rules 1959 would apply. In the case of *Kishore (supra)*, this Court has specifically answered that rule 28(1) of Rule 1959 would apply, which provides that if a majority of the members decide, the votes shall be taken by ballot. This means that if the persons asking to vote by secret ballots are in the minority, the Presiding Officer is not bound to follow it. Here, in the case, the petitioner, a member sitting in the meeting with another member, asked for a secret ballot. However, they were not in the majority. That apart, the law is crystal clear that the rules

of 1964 do not apply in the meeting convened for the no-confidence motion under Section 35 of the Act.

7. Considering the law on the issues placed before the Court, in which almost all the questions were raised against the impugned resolution and the order of the Collector was considered. There appears to be no substance. *Prima facie*, the petitioner has no case for granting the stay. Hence, issue notice to the respondents, returnable on 05.02.2024.

8. Learned AGP waives service of the notice for respondent Nos.1 to 4 – State.

9. *Humdast* allowed.

(S. G. MEHARE, J.)

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