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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13629 OF 2023**

Smt. Amrapali Sakharam Kamble,
Age :35 years, Occu : Agriculture,
R/o, Mhasrang, Taluka :Bhudargad,
District : Kolhapur

..... Petitioner

Versus

1. The District Collector,
Kolhapur, having office at
Collectorate of Kolhapur,
Swarajya Bhavan, Assembly Road,
Nagala Park, Kolhapur
2. The Tahsildar, Bhudargad Taluka @
Presiding Officer, Having Office at
Tahsildar Office, Gargoti,
Taluka : Bhudargad, District : Kolhapur
3. Grampanchayat Mhasrang,
Taluka : Bhudargad, District : Kolhapur,
Through its Gramsevak
4. Shri Uttam Krushna Dhuri
Age : 55 Years, Occu: Agriculture,
R/o. Mhasrang, Taluka :Bhudargad
District : Kolhapur
5. Smt. Swanandi Sachin Pandare

- Age : 26 Years, Occu : Agriculture,
R/o. Mhasarang, Taluka : Bhudargad
District : Kolhapur
6. Smt. Nahnubi Adam Shaikh
Age : 60 Years, Occu : Agriculture,
R/o. Mhasarang, Taluka : Bhudargad
District : Kolhapur
7. Smt. Shama Anwar Shaikh
Age : 45 Years, Occu : Agriculture,
R/o. Mhasarang, Taluka : Bhudargad
District : Kolhapur
8. Smt. Shahutai Sanjay Gurav
Age : 40 Years, Occu : Agriculture,
R/o. Mhasarang, Taluka : Bhudargad
District : Kolhapur
9. Shri Eknath Vishnu Divekar
Age : 38 Years, Occu : Agriculture,
R/o. Mhasarang, Taluka : Bhudargad
District : Kolhapur
10. Smt. Suvarna Sunil Chavan
Age : 44 Years, Occu : Agriculture,
R/o. Mhasarang, Taluka : Bhudargad
District : Kolhapur
11. Shri. Pandharinath Ananda Kamble
Age : 52 Years, Occu : Agriculture,

R/o. Mhasarang, Taluka : Bhudargad

District : Kolhapur

..... Respondents

Mr. Utkarsh Desai i/b. Mr. Prashant Bhavake for the Petitioner.

Smt. Sulbha Chipade, AGP for Respondent Nos. 1 to 3.

Mr. Nikhil Dilip Waje a/w. Mr. Vishesh Srivastav a/w. Mr. Prem Gada
for Respondent Nos. 4 to 10.

CORAM : GAURI GODSE, J.

RESERVED ON : 8th MAY 2024

PRONOUNCED ON : 8th AUGUST 2024

JUDGMENT:

1. This petition is filed by the Sarpanch of Mhasrang Gram Panchayat to challenge the order of approval of the No-Confidence motion passed against her.

FACTS IN BRIEF:

2. The petitioner and respondent nos. 4 to 10 were elected as members of the Mhasrang Gram Panchayat on 18th January 2021. The petitioner got elected as Sarpanch from amongst the members on 26th February 2021. It is the case of the members of the Gram Panchayat that the petitioner has remained absent from all the meetings since October 2022. The petitioner had filed an application

seeking leave of absence from 23rd December 2022 to 6th January 2023 on account of the ill health of her son, who was receiving treatment in Mumbai. The petitioner's leave of absence was approved by the Gram Panchayat on 26th December 2022. The petitioner filed another leave application on 24th February 2023, seeking leave of absence on similar grounds from 24th February 2023 to 20th March 2023.

3. Respondent nos. 4 to 10 contended that: (i) the petitioner's application for leave of absence from 24th February 2023 to 20th March 2023 was rejected in the meeting held on 25th February 2023, (ii) a requisition for passing a No-Confidence motion against the petitioner was moved by them on 27th February 2023 before the learned Tahsildar, (iii) notice under Section 35 of the Maharashtra Village Panchayat Act, 1958 ("the said Act") was served upon the petitioner by the learned Tahsildar intimating her that the meeting for deciding requisition for No-Confidence motion would be held on 3rd March 2023 at 2.00 pm, (iv) on 3rd March 2023, the petitioner filed her written submission through her father-in-law in the meeting convened for deciding requisition for No-Confidence motion, (v) the learned Tahsildar conducted the meeting on 3rd March 2023 and No-

Confidence motion was passed unanimously by seven out of nine members present in the meeting.

4. Aggrieved by the No-Confidence Motion passed by the Gram Panchayat, the petitioner filed an appeal under Section 16 of the said Act. By the impugned order dated 18th September 2023, the learned Collector dismissed the petitioner's appeal. Hence, the present petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER :

5. Learned counsel for the petitioner submitted that on 24th February 2023, the petitioner had already submitted her application for leave of absence from 24th February 2023 to 20th March 2023. The said application was illegally rejected on 25th February 2023. Learned counsel for the petitioner thus submitted that knowing fully well that the petitioner was absent due to the ill health of her son, who was undergoing treatment for a bone marrow transplant at Wadia Hospital, Mumbai, the members of the Gram Panchayat with malafide intention moved the requisition for No- Confidence motion against the petitioner. The application for leave of absence dated 25th February 2023 was rejected on the same day, and an immediate requisition

notice was issued on 27th February 2023.

6. It is the petitioner's case that though the notice of the meeting for deciding requisition for No-Confidence motion was served upon the petitioner, the requisition submitted by the members of the Gram Panchayat was not served upon her. By referring to copies of the minutes of the meeting submitted before this Court by the learned counsel for respondent nos. 4 to 10, the learned counsel for the petitioner submitted that the minutes had been shown to be signed by the Sarpanch, i.e. the petitioner. Learned counsel for the petitioner submitted that the minutes of the meeting recorded by the Gram Panchayat are suspicious. Learned counsel submitted that when the petitioner was not present from 24th February 2023 to 20th March 2023, there was no question of the petitioner signing the minutes of the meeting rejecting the petitioner's application for leave of absence.

7. Learned counsel for the petitioner further submitted that in view of Rule 2(2-B) of the Bombay Village Panchayats Sarpanch and Upa-Sarpanch (No Confidence Motion) Rules, 1975 ("the said Rules"), it is mandatory to supply a copy of the requisition for No-Confidence motion. However, in the present case the copy of the requisition

moved by the members of the Gram Panchayat was not served upon the petitioner.

8. Learned counsel for the petitioner referred to the panchnama recorded at the time of service of notice under Section 35 on the petitioner. He submitted that perusal of the panchnama would show that only notice was served upon the petitioner by affixing, but the copy of the requisition was not supplied. Learned counsel for the petitioner submitted that the petitioner was thus deprived of knowing the reason for the No-Confidence motion and was thus deprived of exercising her right to speak in the meeting.

9. Learned counsel for the petitioner submitted that along with the notice under Section 35, the petitioner was, for the first time, informed about the rejection of her application for leave of absence. Hence, in such circumstances, the petitioner was unable to remain present at the meeting and exercise her right to speak. However, the petitioner, through her father-in-law, had filed her written submission stating that she was away due to the treatment of her son and had already filed an application for leave of absence. Hence, the petitioner had requested to adjourn the meeting. Learned counsel for the petitioner thus

submitted that the petitioner is deprived of her right to speak in the meeting convened for deciding the requisition of a No-Confidence motion against the petitioner.

10. Learned counsel for the petitioner relied upon the decision of this Court in the case of *Dnyandev Mohiniraj Nipunage etc. Vs State of Maharashtra*¹ to support his contention that the No-Confidence motion cannot be passed without due compliance under Section 35 of the said Act. With regard to his submissions on the said Rules and compliance under Rule 2(2), learned counsel for the petitioner relied upon the decision of this Court in the case of *Smt. Yamunabai Chavan Vs Sarubai Jadhav*². Lastly, the learned counsel for the petitioner relied upon the decision of this Court in the case of *Nimba Rajaram Mali Vs The Collector and Others*³ to support his contention that due compliance of Section 35 of the said Rule read with Rule 2 of the No-Confidence Motion Rules is mandatory.

11. Learned counsel for the petitioner thus submitted that there is a breach of compliance under Section 35 read with the said Rules, depriving the petitioner of her right to speak. He further submitted that

¹ (2000) MAHLR 729

² (2004)ALL MR 93 (BOM)

³ AIR 1999 BOMBAY 335

the learned Collector failed to take into consideration the aforesaid contentions and dismissed the petitioner's appeal without any valid reasons. Learned counsel thus submits that the present petition, therefore, requires interference by invoking power under Articles 226 and 227 of the Constitution of India.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS NOS. 4 TO 10:

12. Learned counsel for respondent nos. 4 to 10 ("members") supported the impugned order and the No-Confidence Motion. He submitted that under sub-section (2) of Section 35 of the said Act, the Tahsildar is under obligation to conduct the meeting within seven days of the date of requisition. He submitted that the notice under Section 35 was served upon the petitioner along with a copy of the requisition. He submitted that a perusal of the panchnama recorded at the time of service of notice clearly indicates that even the copy of the requisition was served upon the petitioner.

13. Learned counsel for the members further submitted that the petitioner is absent from the meetings of the Gram Panchayat right from 25th October 2022. Initially, the petitioner's leave of absence was

allowed till 6th January 2023. However, she again filed an application for leave of absence. Learned counsel submitted that the petitioner was duly informed about the rejection of her leave application. Hence, the petitioner was well aware that she was not permitted to remain absent, and thus, being Sarpanch of the Gram Panchayat, the petitioner was under obligation to attend meetings of the Gram Panchayat. However, inspite of having knowledge that her leave application was not approved, the petitioner chose to remain absent.

14. Thereafter, by referring to an affidavit in rejoinder filed by the petitioner, learned counsel for the members submitted that the affirmation of the affidavit in rejoinder done by the petitioner shows that she is residing in Miraj. Thus, according to the learned counsel for the members, it is clear that the petitioner does not even reside within the locality of Mhasrang Gram Panchayat, which is in Kolhapur. Thus, it is submitted that the petitioner has not come to this Court with clean hands. Learned counsel for the members thus submitted that the members of the Gram Panchayat have no faith in the petitioner and thus submitted a requisition for passing a No-Confidence motion against her. He submitted that after following the necessary procedure under Section 35 read with the said Rules, the No-Confidence motion

is rightly passed against the petitioner, and thus, she is not entitled to seek any relief in this petition.

15. With reference to the decisions of this Court relied upon by the learned counsel for the petitioner are concerned, learned counsel for the members submitted that once notice is served for conducting a meeting on the requisition of No-Confidence motion, Sarpanch or Upa-Sarpanch are not permitted to seek any adjournment and that once motion is duly served upon the Sarpanch or Upa-Sarpanch as required under Section 35 read with the said Rules, the No-Confidence motion can be passed even in absence of Sarpanch or Upa-Sarpanch. Learned counsel for the members submitted that the petitioner is thus not entitled to argue that she is deprived of her right to speak. He submitted that once the petitioner was intimated that her application for leave of absence was not approved it was her obligation to attend the meeting and exercise her right to speak.

16. Learned counsel for the members submitted that this Court, in the decision of *Dnyandev Mohiniraj Nipunage*, held that the provisions of the sub-rule (2) of Rule 2 of the said Rules are directory in nature and not mandatory. However, even otherwise, the notice and the

requisition were served upon the petitioner. Learned counsel for the members thus submitted that since the petitioner was absent from her address, the notice for meeting and requisition of No-Confidence motion was served by affixing in the presence of her father-in-law and by recording panchnama of the service by way of affixing. Hence, it is not open for the petitioner to submit that she was deprived of her right to speak.

17. Learned counsel for the members thus submitted that once the majority of the members have unanimously held that they have lost their faith in their Sarpanch, it is appropriate that the petitioner walk away from the post of Sarpanch and not insist on continuing on the said post when the members have lost faith in her. Learned counsel for the members thus submits that this is not a fit case to exercise powers under Article 226 or 227 of the Constitution of India.

PETITIONER'S RESPONSE TO THE MEMBERS' SUBMISSIONS :

18. In response to the submissions made by the learned counsel for the members, the learned counsel for the petitioner submitted that if it was the case of the members that the petitioner continuously remained absent, it was always open for them to invoke Section 40 of the said

Act. However, no such action was taken against the petitioner. He submitted that knowing fully well that the petitioner had applied for leave to remain absent till 20th March 2023, the members deliberately, with malafide intention, moved the requisition within two days from the petitioner's application for leave of absence. Learned counsel for the petitioner thus submitted that the aforesaid decisions take the view that the allegation in the requisition need not be proved as this is beyond the scope of Section 35. However, once the petitioner's right to speak is breached by not following the said Rules, there is a breach of the provisions of the said Act and said Rules.

19. Learned counsel for the petitioner further submitted that conducting a meeting within seven days from the date of requisition as provided in sub-section (2) of Section 35 is not a mandatory Rule, and thus, it was always open for the learned Tahsildar to adjourn the meeting to the immediately next day of the petitioner's date of absence.

20. Learned counsel for the petitioner thus submitted that once the remedy to invoke Section 40 was available on the allegation of the petitioner's absence, the requisition moved for a No-Confidence

motion deliberately when the petitioner was away from the Gram Panchayat shows the malafide intentions of the members of the Gram Panchayat to deprive the petitioner of her right to speak. Learned counsel for the petitioner thus submitted that since there is a breach of the mandatory provision under the said Act and the said Rules, this is a fit case to exercise powers under Articles 226 and 227 of the Constitution of India.

ANALYSIS:

21. I have considered the rival submissions. Perused the papers. Before examining the rival contentions of the parties, it is necessary to refer to the relevant provisions of the said Act and the said Rules. Section 35 of the said Act provides for moving a No-Confidence motion against the Sarpanch or Upa-Sarpanch after giving such notice by not less than two third of the total number of members to the Tahsildar. Sub-Section (2) of Section 35 provides that within seven days from the date of receipt of the notice under sub-section (1), the Tahsildar shall convene a special meeting of the Gram Panchayat for considering the motion of No-Confidence and he shall preside over such meeting. Sub-Section (2) further provides that at such special meeting, the

Sarpanch or Upa-Sarpanch against whom the motion of No-Confidence is moved shall have the right to speak or otherwise take part in the proceedings at the meeting, including the right to vote. Thus, sub-section (2) indicates that the learned Tahsildar is under obligation to convene the meeting within seven days of the date of notice received by him. However, sub-section (2) also gives the right to speak to the Sarpanch or Upa-Sarpanch against whom the motion is moved. Rule (2) of the said Rules provides for the mode of service of the notice under Section 35(1) of the said Act and requisition moved by the members.

22. This Court, in the decision *Yamunabai Chavan*, held that the provision of sub-rule 2 of Rule 2 of the said rules is directory in nature. This Court, in the decision of *Yamunabai Chavan*, held that the motion of No-Confidence is not akin to disciplinary proceedings or a provision for removal for misconduct and that it does not partake of a punitive character nor is it based on charges of misconduct which have to be proved. However, it is held that a motion of No-Confidence is the fundamental expression of the collective will of the members of a legislative body that they lack confidence in one of their own members. Thus, it is held that the contention that the right to speak at the

meeting given to Sarpanch or Upa-Sarpanch requires that the requisition which has been moved be furnished to them cannot be acceded to. However, it is also held that the person against whom the motion is moved is entitled to the right to speak in the meeting. This Court, by relying upon the decision of the Division Bench of this Court held in paragraph 10 as under:

“10. There are two decisions of Division Benches of this Court, to which a reference must be made in the course of this judgment. The first is a judgment of a Division Bench consisting of Paranjape and B.D.Bal, JJ. In Smt. Annapurnabai Ajabrao v. Smt Annapurnabai Anandrao, 1967 Mh.LJ 36 (NOC) and it expounds upon the essence of a motion of no confidence :

“Even (a) Gram Panchayat is essentially a democratic institution which must be run on democratic principles. When the majority of the members have clearly expressed that they do not desire the petitioner to be their leader and Sarpanch, the proper attitude of the petitioner as a person working for democracy would have been to tender her resignation straightway. At any rate, it does not behove of a democratic spirit to challenge the decision of the majority who unmistakably declared their want of confidence in their erstwhile leader. Democratic principles as also the sense of

self-respect should have impelled the petitioner and persons situated in similar circumstances to gracefully submit to the decision of the majority and to walk out of the Gram Panchayat instead of raising frivolous contentions and forcing herself on the democratic institution which does not want her to hold that position.”

This Court thus held that once a No-Confidence motion is moved by a majority of the members, it cannot be interfered with on technical grounds.

23. This Court, in the case of ***Nimba Rajaram Mali***, held that giving details of the reasons in the notice is not a pre-requisite of Rule 2. This Court held that in a democratic society, the will of the majority is important, and the elected representative must honour it. Thus, it was held that it was immaterial to analyse and debate the reasons behind the will of the majority of the specific reasons for such will being expressed.

24. This Court thus held that once the resolution of No-Confidence is passed by a clear majority and in keeping with the requirement of the concerned statutory provisions, the person against whom the said resolution is passed must honour the will of the majority and make way

for the new election of his successor unless it is shown that while passing such a resolution of No-Confidence there was violation of any mandatory procedure laid down, such a resolution cannot be interfered with by the Court or Statutory Authorities adjudicating such a dispute.

25. By keeping in mind the aforesaid legal principles, it is necessary to analyse the submissions made by both parties in view of the facts of the present case. In the present case, it is not in dispute that the petitioner remained absent from the meeting of the Gram Panchayat from October 2022. The petitioner's application for seeking a leave of absence was allowed from 23rd December 2022 to 6th January 2023. However, the petitioner had filed another application for leave of absence from 24th February 2023 to 20th March 2023. Though it is sought to be contended on behalf of the petitioner that she had applied for leave of absence on the grounds of the medical treatment of her son, it is not disputed that the petitioner did remain absent from the meetings of the Gram Panchayat. The petitioner's application for remaining absent from 24th February 2023 to 20th March 2023 was not approved by the Gram Panchayat in the meeting held on 25th February 2023. The petitioner was informed about the said meeting on 27th February 2023. On the same day, she was also served with the notice

under Section 35 (1) of the said Act informing her that a meeting shall be held on 3rd March 2023 to decide the requisition for the No-Confidence motion. Thus, on 27th February 2023, the petitioner was made aware of the meeting to be held on 3rd March 2023. She was also aware that her application for a leave of absence was not approved by the Gram Panchayat. Thus, it cannot be said that the petitioner was not intimated well in advance that the meeting for the motion for No-Confidence against her was scheduled on 3rd March 2023. Thus, if the petitioner wanted to exercise her right under sub-section (2) of Section 35 and speak in the meeting, she had an opportunity to attend the meeting by physically remaining present.

26. Sub-Section (2) of Section 35 mandates holding a meeting within seven days by the Tahsildar from the date of receipt of notice under Sub-Section (1). Hence, it was obligatory on the part of the Tahsildar to hold a meeting within seven days of the date of receipt of the notice under sub-section (1) of Section 35. Though sub-section (2) of Section 35 provides for a right to speak to the Sarpanch or Upa-Sarpanch in the meeting for considering a motion of No-Confidence, the same provision also makes it mandatory for the learned Tahsildar to hold the meeting within seven days of the receipt of the notice.

Thus, a complete reading of sub-section (2) of Section 35 of the said Act indicates that the meeting has to be held within seven days of the date of notice. Accordingly, in the present case the learned Tahsildar conducted the meeting on 3rd March 2023 on the notice received by him on 27th February 2023.

27. The Hon'ble Division Bench of this Court, in the decision of ***Dnyandev Nipunage*** observed that once a meeting of the Gram Panchayat or any other local authority is called, then if there is coram to conduct the business of the meeting, then the meeting has to take place. It is further observed that there is no provision under any law applicable to Gram Panchayat that such a meeting can be adjourned only because a member or two requests that the meeting be adjourned. Thus, it is held that when even general meetings are not adjourned on the request of any member, then the position of special meetings has to be stricter, and the meeting called for consideration for a No-Confidence Motion has to be conducted, and the motion must be put for discussion. Thus, in the present case, I do not find any substance in the arguments made by the learned counsel for the petitioner that the meeting should have been postponed due to the non-availability of the petitioner.

28. Admittedly, on 3rd March 2023, the petitioner remained absent. However, she chose to submit a written submission through her father-in-law. Thus, it cannot be said that she did not exercise her right under sub-section (2) of Section 35. A careful reading of sub-section (2) of Section 35 of the said Act indicates that the Sarpanch and Upa-Sarpanch have the right to speak in the meeting or otherwise take part in the proceedings at the meeting, including the right to vote. Thus, a careful reading of sub-section (2) of Section 35 would indicate that it is obligatory on the part of the Tahsildar to conduct the meeting within seven days of the receipt of the notice; however, there are options provided to the Sarpanch and Upa-Sarpanch to exercise the right to speak by remaining present or otherwise take part in the proceeding, including the right to vote. Thus, in the present case, the petitioner chose to remain absent and did not exercise her right to speak; however, she expressed her views by submitting written submissions through her father-in-law. The petitioner may have her own reasons for not being able to attend the meeting. However, considering the well-established legal principles in the decision of *Yamuna Chavan*, it is not necessary to examine the reasons behind the petitioner's absence. In view of the legal principles settled in the decision of *Yamuna Chavan*,

explaining the nature and scope of a No-Confidence Motion, I do not find any substance in the arguments raised by the learned counsel for the petitioner by relying upon the provision of Section 40 of the said Act, in as much as the scope of the said provision dealing with absence of a member of Panchayat cannot be equated with the motion of No-Confidence against a Sarpanch or Upa Sarpanch.

29. In view of the aforesaid facts, the legal principles laid down by this Court in *Yamunabai Chavan* and *Nimba Rajaram Mali* squarely apply to the present case, to mean that once a resolution of No-Confidence is passed by a clear majority, the petitioner against whom such a resolution is passed must honour the will of the majority and make way for the new election of her successor. Thus, the legal principles laid down in the said decisions squarely apply to the present case.

30. The well-established principles of law regarding the scope of interference under Article 227 of the Constitution of India are summarised by the Hon'ble Supreme Court in the case of *Shalini Shyam Shetty and Another Vs Rajendra Shankar Patil*⁴. The relevant extracts from paragraph 49 are as follows:

⁴ (2010) 8 SCC 329

“49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(e) According to the ratio in Waryam Singh [AIR 1954 SC 215], followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, “within the bounds of their authority”.

(f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.”

emphasis applied

31. In the present case, I do not find any breach of any mandatory

provisions of the said Act, or the said Rules. There is no error or infirmity in the impugned order dismissing the petitioner's appeal. Hence, this is not a fit case to exercise powers under Articles 226 or 227 of the Constitution of India. Thus, for the reasons stated above, the petition is dismissed.

[GAURI GODSE, J.]

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