

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**VASANT
ANANDRAO
IDHOL**

WRIT PETITION NO. 9981 OF 2024

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Charushila Bira Shriram		...Petitioner
Versus		
The State Of Maharashtra		
Through The District Collector and Ors.		...Respondents

Mr.PS. Dani, Senior Advocate i/b Mr.Veerdhaval Kakade for the Petitioner.

R.S. Pawar, A.G.P for the Respondent Nos.1 and 2 – State.

Mr.Prathamesh Bhargude with Mr.Sumit Sonare for the Respondent Nos.7, 8, 9 and 11.

CORAM	:	AVINASH G. GHAROTE, J.
DATE	:	19th JULY 2024

P.C.:

1. Heard Mr.Dani, the learned senior advocate for the petitioner. The petition questions the order dated 11.7.2024, passed by respondent No.1 (page 44), whereby the challenge to the motion of no confidence dated 19.12.2023 at the behest of the petitioner has been turned down. Mr.Dani, the learned senior counsel for the petitioner submits that since the petitioner was elected as Sarpanch in the meeting dated 27.12.2021, the motion

of no confidence against her could not have been moved, within a period of two years from the date of her election, on account of which the motion of no confidence, which has been passed in the meeting dated 19.12.2023, would be contrary to the 4th proviso to section 35 (3) of the Maharashtra Village Panchayats Act, 1959 (MVP Act), the period of two years, expiring on 26.12.2023, which position has not been considered by the respondent No.1 while passing the impugned order, which vitiates the same.

2. Mr.Bhargude, the learned counsel for the respondent Nos.5, 7, 8, 9 and 11 submits, that the Sarpanch was first elected on 09.02.2021, however, on account of his resignation being accepted on 29.11.2021, the post fell vacant, as a result of which the petitioner was elected as Sarpanch in the meeting dated 27.12.2021. He therefore contends that the period of two years, as per the 4th proviso to Section 35(3) of MVP Act has to be reckoned from the date of election of the first Sarpanch, which would be 09.02.2021 and not from 27.12.2021. He submits, that the 4th proviso, has to be read in relation to the post and not to the person occupying the same and in the light of Section 30 sub-Section 2 of the MVP Act, since the election of the Sarpanch has

to be held in the first meeting after every general election, the period of two years will commence from such election of Sarpanch and not otherwise. He submits that any other meaning would indicate that the Sarpanch, would be in-capable of being removed by way of no confidence which would be contrary to democratic set up, which requires rule by majority. The learned AGP appears for respondent Nos.1 and 2 supports the impugned order, contending that the argument of Mr.Bhargude covers his argument entirely.

3. The issue needs consideration, for the reason that Section 43 of MVP Act when it speaks about filling of vacancies indicates, that such filling is for the duration which is remaining, considering which if the duration, is less than two years, then in view of the 4th proviso to Section 35(3) of the MVP Act, it would not be permissible to even move a no confidence motion, against the Sarpanch, in spite of the fact that he may have lost the majority.

4. Hence issue notice for final disposal, returnable on 31.07.2024. Mr.Bhargude waives service for respondent Nos.7, 8, 9 and 11. Learned AGP waives service for respondent Nos.1 and

2. By an *ad-interim* order, there shall be an *ad-inteirm* relief in terms of prayer clause (b) till the returnable date.

(AVINASH G. GHAROTE, J.)