

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

WRIT PETITION NO. 13110 OF 2024

Priyanka Abhijeet Deodhare

... Petitioner

Versus

State of Maharashtra Through

Secretary Rural Development

Department, Mantralay, Mumbai & Ors.

... Respondents

Mr. Drupad S. Patil, *a/w Mr. Namikumar Pansare for the Petitioner.*

Mr. J.P. Patil, *AGP for Respondent / State Nos. 1 to 3.*

Mr. P.G. Chavan, *a/w Mr. Someshawar K. Pawale i/b Mr. Sachin Padaye, for Respondent Nos. 4 to 7 & 9 to 11.*

CORAM : SANDEEP V. MARNE, J.

RESERVED ON : 20 FEBRUARY 2025.

PRONOUNCED ON : 28 FEBRUARY 2025.

JUDGMENT :-

1) The issue that arises for consideration in the present Petition is whether failure to furnish copy of requisition sent by 1/3rd Members of Panchayat to Tehsildar proposing a motion of no confidence against a Sarparch, who is served with Tehsildar's notice convening the special meeting, would *ipso facto* vitiate the motion of no-confidence.

2) Petitioner, who is Sarpanch of Village Kaddhe, Taluka Khed, District Pune, has filed this Petition challenging the Order dated 27 August 2024 passed by the Collector, Pune rejecting Dispute Application No. 10 of 2024 filed by her under provisions of Section 35(3B) of the Maharashtra Village Panchayats Act, 1959 (**Village Panchayats Act**) in respect of no-confidence motion adopted against her in the meeting of Panchayat held on 8 January 2024.

3) Elections to the Gram Panchayat Kaddhe, Taluka Khed, District Pune were held on 15 January 2021. In the meeting of the Panchayat, Petitioner was initially elected as Member of the Panchayat and later she was elected as Sarpanch. Seven members of the Gram Panchayat submitted notice dated 1 January 2024 to Tahsildar, Taluka Junnar, District Pune for moving motion of no confidence against Sarpanch. Tahsildar accordingly convened meeting of Gram Panchayat on 8 January 2024 for presenting motion of no-confidence. Petitioner was apparently served notice prepared by Tahsildar on 1 January 2024 intimating the date and time of meeting scheduled to be held on 8 January 2024. It is Petitioner's case that the requisition submitted by 7 members for adoption of notice of no-confidence was not served on her.

4) On 8 January 2024, meeting of the Panchayat was held and motion for no-confidence against the Petitioner was adopted by majority of 7:2. Petitioner was accordingly removed from the position of Sarpanch of the Panchayat. Petitioner challenged her removal and no-confidence motion by filing Dispute before the Collector under provisions of Section 35(3B) of the Village Panchayat Act. By order dated 27 August 2024, the Collector has confirmed the motion of no-

confidence by rejecting the Dispute preferred by the Petitioner. Petitioner is aggrieved by order dated 27 August 2024 passed by the Collector and has accordingly filed the present Petition.

5) Initially Petitioner questioned eligibility of Respondent Nos. 5, 7 and 9 to participate in the meeting and vote on the ground that they are disqualified under Section 10-1A of the Village Panchayat Act on account of failure to submit Caste Validity Certificate. This Court was therefore persuaded to pass ad-interim relief staying the effect of motion of no-confidence dated 8 January 2024 vide order dated 10 October 2024. However, upon filing of Affidavit-in-Reply by State Government as well as by Respondent Nos. 4 to 7 clarifying the position with regard to submission of caste validity certificates by the respective members, the Petitioner has given up the point of absence of requisite majority for adopting the motion of no-confidence as recorded by this Court in order dated 24 January 2025. The Petition is thus pressed only *qua* the point of non-service of requisite notice under sub-rule (1) of Rule 2 of the Maharashtra Village Panchayats Sarpanch and Up-Sarpanch (No Confidence Motion) Rules 1975 (**No Confidence Motion Rules**).

6) Mr. Drupad Patil, the learned counsel appearing for the Petitioner would submit that under provisions of Rule 2(2) of the No Confidence Motion Rules, the Tahsildar is required to send one copy of notice of no-confidence to Sarpanch. That in the present case, what is served on the Petitioner is only notice prepared by Tahsildar intimating the date of holding of meeting for discussing motion of no-confidence and that the requisition dated 1 January 2024 signed by 7 members to the Tahsildar under Rule 2(1) of the No Confidence Motion Rules was never served on the Petitioner. He would submit

that service of copy of notice of motion (requisition) for no-confidence on Sarpanch is not an empty formality. Inviting my attention to the format of the notice, he would submit that the same must state reasons for proposing motion of no-confidence. That the purpose of service of copy of notice/requisition under Rule 2(1) ensures that the Sarpanch, against whom no-confidence motion is proposed, gets an opportunity of answering the allegations levelled against her in the notice. That mere service of notice of scheduling of meeting by Tahsildar is not sufficient and it is incumbent that such notice must be accompanied with the requisition sent by the members proposing motion of no-confidence.

7) Mr. Patil would further submit that provisions of No Confidence Motion Rules are mandatory in nature and any breach thereof would render the motion of no-confidence vitiated. In support, he would rely upon judgments of this Court in:

- (i) ***Indubai Vedu Khairnar Vs. State of Maharashtra & Ors.*¹,**
- (ii) ***Ashabai Ashok Shinde Vs. Additional Commissioner, Amravati Division & Ors.*²,**
- (iii) ***Shivkant S/o Haribhau Bangar Vs. Gramsevak, Mauje Ratnapur and others*³,**
- (iv) ***Surekha S/o Eshwar Jadhav Vs. Nirmala W/o Madhavrao Jadhav & Ors.*⁴**
- (v) ***Digambar Virbhadra Yesge & Anr. Vs. Additional Collector and Ors.*⁵**
- (vi) ***Narmada Baburao Goslod Vs. The Collector Nanded and Others*⁶**

1 (2003) 2 Bom CR 239

2 (2009) 2 Bom CR 880

3 2010 (6) Mh.L.J. 149

4 2013 (5) Mh.L.J. 710

5 (2018) 5 Bom CR 570

6 Writ Petition No. 136 of 2018 decided on 19 March 2019 (Aurangabad Bench)

8) Mr. Patil would also fairly point out various decisions of this Court which can be cited against the Petitioner. He would submit that in ***Durgadas Ukhaji More & Ors. Vs. Additional Commissioner Nashik Division and Others***⁷ though this Court has held that the provisions of Rule 2(2) are directory in nature, the very same learned Judge (*D. G. Karnik J.*) subsequently held in ***Indubai Vedu Khairnar*** (supra) that said provisions are in fact mandatory. He would rely upon judgment of the Apex Court in ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. & Ors.***⁸ in support of his contention that a decision is an authority for which it is decided and not what can logically be deduced therefrom and that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

9) In his usual fairness, Mr. Patil would invite attention of this Court to judgment of co-ordinate bench of this Court in ***Yamunabai Laxman Chavan & Ors. Vs. Sarubai Tukaram Jadhav & Ors.***⁹ in which this Court has held that non furnishing of copy of requisition to the Sarpanch does not validate the requisition and that Rule 2(2) is directory in nature. He would urge this Court to take a different view by considering the ratio of various judgments quoted above repeatedly holding that provisions of Rule 2 of No Confidence Motion Rules are mandatory in nature. He would submit that the learned Judge (*Dr. D. Y. Chandrachud J.*, as he then was) who decided ***Yamunabai Laxman Chavan*** had in fact held in ***Arjun Sambhaji Khade*** that the provisions of No Confidence Motion Rules are mandatory in nature. He would submit that in ***Arjun Sambhaji Khade*** this Court has held that furnishing of

7 2003 (1) Mh.L.J. 420

8 2003 (2) SCC 111

9 2004 (2) Mh.L.J. 1004

copies of requisition to the Sarpanch is mandatory. He would therefore urge me to reconcile the ratio of various judgments and to hold that failure to furnish copy of requisition under Rule 2(2) of No Confidence Motion Rules would render the motion of no-confidence *ab initio void*.

10) The Petition is opposed by Mr. Chavan, the learned counsel appearing for Respondent Nos. 4 to 7 and 9 to 11. He would submit that the Petitioner has been duly served with the notice for motion of no-confidence. That she has participated in the meeting and was given full opportunity of setting her defence in respect of the motion. That she was fully made aware about the reasons why the motion was adopted against her. That therefore she cannot now be permitted to turn around and raise a technical plea of non-supply of requisition for motion of no-confidence signed by the 7 members. He would further submit that the contesting Respondents had filed 7 copies of the requisition with the Tahsildar and it was the duty of Tahsildar to furnish one of the copies to Sarpanch. That if at all there is any omission on the part of the Tahsildar to do so, the contesting Respondents cannot be made to suffer. He would submit that this principle has been recognised by this Court in its judgment in ***Durgadas Ukhaji More*** (supra) in which it is also held that the form of notice prescribed under Rule 2(2) of No Confidence Motion Rules is merely directory and not mandatory. He would also rely upon full bench judgment of this Court in ***Tatyasaheb Ramchandra Kale Vs. Navnath Tukaram Kakde & Ors.***¹⁰ in support of his contention that a validly adopted motion of no-confidence cannot be invalidated only on count of some minor infraction not affecting merits of the motion. He would submit that

10 2014 (6) Mh.L.J. 804

the main ground on which the present Petition was filed was alleged absence of majority on account of non-submission of caste validity certificates by some of the members. That the contesting Respondent demonstrated before this Court that none of them were disqualified and had submitted caste validity certificates. That after failing in the main ground, Petitioner is now attempting to cling on the post of Sarpanch by raising a technical plea of non-furnishing of copy of requisition. He would submit that Petitioner has lost confidence of majority of members and does not have a right to continue on the post of Sarpanch. He would pray for dismissal of the Petition.

11) Mr. J. P. Patil, the learned AGP appearing for Respondent Nos. 1 to 3 would submit that provisions of Rule 2 of No Confidence Motion Rules have been followed to the hilt. That the Tahsildar served combined notice dated 1 January 2024 as per sub-rule (1) of Rule 2 by calling for special meeting of the Panchayat. He would submit that technical errors are required to be ignored if the no-confidence motion is passed by majority and in support he would rely upon judgment in ***Tatyasaheb Ramchandra Kale*** (supra). He would pray for dismissal of the Petition.

12) Rival contentions of the parties, as noted above, now fall for my consideration.

13) As observed above, the Petitioner has given up the point of absence of majority for adopting motion of no-confidence. She now presses the solitary point of non-furnishing of copy of requisition submitted by seven members under Rule 2(1) of the No Confidence Motion Rules in support of her contention that the entire motion

stands vitiated on account of breach of mandatory provisions of the Rules.

14) Before proceeding further, it would be necessary to have quick look at the provisions of Section 35 of the Village Panchayats Act dealing with motion of no-confidence which provides thus:

35. Motion of no confidence.

(1) A motion of no confidence may be moved by not less than one-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) Within seven days from the date of receipt by him of the notice under sub-section (1), the Tahsildar shall convene a special meeting of the Panchayat for considering the motion of no confidence at the office of the Panchayat at a time to be appointed by him and he shall preside over such meeting. At such special meeting, the Sarpanch or the Upa-Sarpanch against whom the motion of no confidence is moved shall have a right to speak or otherwise to take part in the proceedings at the meeting including the right to vote.

(3) (a) If the motion 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 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 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 years 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 falls, 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 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 presence and under the Chairmanship of such officer, by a simple majority by the 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, 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:

(3A) If a motion is not moved or is not carried by a majority of not less than or, as the case may be, 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, no such fresh motion shall be moved against the Sarpanch or, as the case may be, the Upa-Sarpanch within a period of one year from the date of such special meeting.

(3B) If the Sarpanch or, as the case may be, the Upa-Sarpanch desires to dispute the validity of the motion carried under sub-section (3), he shall, within seven days from the date on which such motion was carried, refer the dispute to the Collector who shall decide it, as far as possible, within thirty days from the date on which it was received by him; and his decision shall be final.

15) Thus, a motion of no confidence can be moved by not less than one third of the total number of members who are entitled to sit and vote at any meeting of the Panchayat against the Sarpanch

or the Upsarpanch by giving such notice of motion to the Tahsildar in the prescribed form. The manner in which notice of motion of no confidence is to be served has been dealt with by No Confidence Motion Rules. Rule 2 provides thus:

2. (1) The members of a panchayat who desire to move a motion of no confidence against the Sarpanch or the Upa-Sarpanch shall give notice thereof in the form appended hereto to the tahsildar of the taluka in which such panchayat is functioning. Where the members desire to move the motion of no-confidence against the Sarpanch as well as the Upa-Sarpanch, they shall give two separate notices.

(2) The notice under sub-rule (1) shall be accompanied by seven additional copies thereof, and the Tahsildar shall send one copy to the Sarpanch, one to the Upa-Sarpanch and one each to the Zilla Parishad, the Panchayat Samiti, the Collector and the Commissioner. One copy shall also be given to the Secretary.

(2-A) The Tahsildar shall also publish the said notice by placing the same on the notice board at the office of the *Panchayat* and Tahsildar Office.

(2-B) Every notice under sub-rule (1), wherever it may be practicable, be served by delivering or tendering it to the *Sarpanch* or *Upa-Sarpanch* to whom it is addressed or, where such person cannot be found, by delivery or tendering it to any adult member of his family residing with him; and if no such adult member, as the case may be, refuses to accept the notice, it shall be served by affixing it, in the presence of two witnesses, on the outer door or some other conspicuous part of the house in which such *Sarpanch* or *Upa-Sarpanch* ordinarily dwells. The notice served in this manner shall be deemed to be served or tendered or delivered to the concerned Sarpanch or *Upa-Sarpanch*.

(3) The Tahsildar shall, immediately on receipt of notice under sub-rule (1), satisfy himself that the notice has been given by not less than one-third of the total number of members (other than associate members) who are for the time being entitled to sit and vote at any meeting of the Panchayat and then convene a special meeting for the purpose within seven days from the date of receipt of such notice.

16) Thus, under sub-rule (1) of Rule 2 of No Confidence Motion Rules, members of Panchayat who desire to move a motion of no-confidence against a Sarpanch shall give notice thereof in the form appended to the Rules to the Tahsildar. A separate notice is contemplated for moving motion of no-confidence against Up-Sarpanch. The form of notice to be given under Rule 2(1) of Rules is

prescribed at the end of the Rules. The notice under Rule 2(1) is required to be accompanied by nine additional copies thereof and the Tahsildar is required to send one copy to the Sarpanch, one to the Upa-Sarpanch and one each to the Zilla Parishad, Panchayat Samiti, Collector, Commissioner and Secretary. The Tahsildar is also required to publish such notice by placing the same on the notice board at the office of the Panchayat and Tahsildar. Under Rule 2(3), the Tahsildar, after recording satisfaction that the notice has been given by the requisite number of members, is supposed to convene a special meeting for discussing the motion of no-confidence within seven days from the date of receipt of such notice.

17) It is sub-rule (2) of Rule 2 of No Confidence Motion Rules which is at the center of controversy in the present case. This is because Petitioner contends that the notice under sub-rule (1) of Rule 2 (requisition by one third members) was never served on her. Petitioner was apparently served with the letter intimating the date and time of special meeting scheduled to be held on 8 January 2024. It would be apposite to reproduce notice dated 1 January 2024 prepared by Tahsildar which reads thus:

तहसिलदार कार्यालय खेड (पुणे).

(ग्रामपंचायत शाखा)

क्र.ग्रामपनि/कावि/१/२०२४

दिनांक-१/०१/२०२४

प्रति.

१. सौ. प्रियंका अभिजित देवदरे, सरपंच
 २. श्री. सचिन सदाशिव नाईकडे, उपसरपंच
 ३. श्री.संगलिक विकास संभाजी सदस्य
 ४. श्रीमती. नाईकडे प्रगती प्रकाश सदस्या
 ५. श्री. जाधव अर्जुन धोंडीभाऊ, सदस्य
 ३. श्री. नाईकडे कमल तानाजी, सदस्या
 ७. श्रीमती. कदम जयमाला ज्ञानेश्वर, सदस्या
 ८. श्रीमती. मिरजे रोहिणी संदीप, सदस्या
 ९. श्री. चव्हाण केतन बबनराव, सदस्य
- दरील सर्व रा. कडधे ता. खेड जिल्हा-पुणे

विषय:- कडधे ग्रामपंचायतीचे सरपंच सौ. प्रियंका अभिजित देवदरे यांचे विरुद्ध अविश्वास ठरावा बाबत विशेष सभा.

२/- उपरोक्त विषयास अनुसरून कळविणेत येते की, कडधे ग्रामपंचायतीचे सरपंच सौ. प्रियंका अभिजित देवदरे यांचे विरुद्ध सौ. रोहिणी संदीप मिरजे व इतर ६ सदस्य यांनी दिनांक- १/०१/२०२४ रोजी अविश्वास ठराव दाखल केला आहे. सदर अविश्वास ठरावावर विचार विनिमय करणेसाठी ग्रामपंचायत कार्यालय कडधे येथे विशेष सभा दिनांक- ८/०१/२०२४ रोजी दुपारी २.०० वाजता अयोजित केली आहे. तरी सदर सभेस न चुकता हजर राहावे.

(प्रशांत बेडसे) तहसिलदार खेड (पुणे)

पत,
तलाठी कडधे ता.खेड जि.पुणे

२/- सदरच्या नोटीसा संबंधीतास मुदतीत बजावून त्याची पोहच सादर करावी. ग्रामसेवक कडधे ता. खेड जि. पुणे

२/- दिनांक- ८/०१/२०२४ रोजी दुपारी २.०० वाजता सभेच्या इतिवृत्तासह न चुकता हजर राहावे.

पोलीस निरीक्षक खेड

. २/- दिनांक ८/०२/२०१४ रोजी सदर ठिकाणी योग्य तो पोलीस बंदोबस्त ठेवणेत यावा. प्रत.

मा.जिल्हाधिकारी पुणे (ग्रामपंचायत शाखा) यांना माहितीसाठी व पुढील कार्यवाहीसाठी सादर मा.विभागीय आयुक्त, पुणे विभाग, पुणे यांना माहितीसाठी व पुढील कार्यवाहीसाठी सादर मा. मुख्य कार्यकारी अधिकारी, जिल्हा परिषद पुणे यांना माहितीसाठी व पुढील कार्यवाहीसाठी सादर. गट विकास अधिकारी, पंचायत समिती खेड यांना पुढील कार्यवाहीसाठी रवाना.

तहसिलदार खेड (पुणे)

1)विकास संभाजी मंडलिक	सही
2) अर्जुन धोंडीभाऊ जाधव	xxx
3) रोहिणी संदिप मिरजे	xxx
4) प्रगती प्रकाश नाईकडे	xxx
5) जयमाला ज्ञानेश्वर कदम	xxx
6) सचिन सदाशिव नाईकडे	xxx
7) चव्हाण केतन बबनराव	xxx
8) नाईकडे कमल तानाजी	xxx
9) प्रियंका अभिजित देवदरे	xxx

श्रीग के राजगुरु.

ग्रामपंचायत कडधे,
ता. खेड, जि पुणे

18) Notice dated 1 January 2024 is admittedly received by the Petitioner. The notice dated 1 January 2024 did not state that it accompanied the requisition submitted by seven members for motion of no-confidence. The requisition submitted by the seven members to the Tahsildar on 1 January 2024 reads thus:

मा. तहसिलदार सौ. खेड
राजगुरुनगर, ता. खेड, जि. पुणे.

दि. ०१/०१/२०२४

महोदय

आम्ही खालील सहया करणार ग्रामपंचायत कडधे, ता. खेड, जि. पुणे या ग्रामपंचायतीचे विद्यमान सदस्य आहोत ग्रामपंचायत कडधे, ता. खेड, जि. पुणे या ग्रामपंचायतीच्या सरपंच सौ. प्रियंका अभिजीत देवदरे यांचे विरुद्ध खालील कारणाने अविश्वास ठराव सादर करीत आहोत.

- १) मनमानी पद्धतीने काम करणे.
- २) सदस्यांना विश्वासात न घेता काम करणे.
- ३) पदाचा गैरवापर करुन स्वमनीतील लोकांची कामे करणे.
- ४) पदाचा गैरवापर करुन चुकीच्या बाबी शासना समोर सादर करणे.
- ५) पदाचा गैरवापर करुन स्वतः चा लाभ सधणे,
- ६) इतर सदस्यांना वेळोवेळी अपमानित करणे.
- ७) ग्रामसभा, मासिक सभा यांचे नियोजन न करता त्यापासून पळ काढणे.

वर नमदू केलेली वस्तू: स्थिती सत्य असून त्याबाबत आगवेवर कोणीही दबाब किंवा इतर अमिषांचा वापर केला नाही. आम्ही आमचे सदसदविवेक बुदीने खाली सहया करीत आहोत.

ग्रामपंचायत सदस्याचे नाव.	सही
१) सौ. रोहिणी संदिप मिरजे	xxx
२) श्री. सचिन सदाशिव नाईकड	xxx
३) श्री. केतन बबनराव चव्हाण	xxx
४) श्री. विकास संभाजी मंडलिक	xxx
५) श्री. अर्जुन धोंडीभाऊ जाधव	xxx
६) सौ. प्रगती विकास नाईकडे	xxx
७) सौ. जयमाला ज्ञानेश्वर कदम	xxx

19) Petitioner therefore contends that mere communication of date and time of special meeting by Tahsildar is not sufficient compliance with provisions of Rule 2(2) of No Confidence Motion Rules and what ought to have been furnished to her is also the requisition signed by the seven members containing reasons for adopting motion of no-confidence.

20) Petitioner contends that furnishing of copy of requisition signed by members moving no-confidence motion under Rule 2(2) on

Sarpanch is a mandatory requirement, infraction thereof necessarily results in vitiating the no-confidence motion. On the other hand, it is contended by Respondents that a validly adopted motion of no-confidence under Section 35 does not get invalidated merely because a directory provision under Rule 2(2) of No Confidence Motion Rules of furnishing copy of requisition is not followed in the present case.

21) The issue of exact effect of non-furnishing of requisition to the Sarpanch under Section 2(2) of No Confidence Motion Rules 1975 is no more *res-integra* and is directly covered by judgment of co-ordinate bench of this Court (*Dr. D.Y. Chandrachud J., as he then was*) in ***Yamunabai Laxman Chavan*** (supra). This Court encountered a situation where there was omission to comply with the provisions of sub-rule (2) of Rule 2 and proceeded to decide whether such omission would vitiate the resolution passed adopting the motion of no confidence. This Court held in paragraphs 6, 7 and 9 as under:

6. While considering the position in law it would be necessary at the outset to analyse the provision of section 35. A motion of no confidence has to be moved by not less than one-third of the total number of members of the Gram Panchayat who are for the time being entitled to sit and vote in a meeting. Sub-Section (1) of section 35 stipulates that the motion can be moved after a notice is *furnished to the Tahsildar* as may be prescribed. To reiterate, therefore, what the Act mandates is that (i) the motion has to be moved by at least one-third of the total members of the panchayat entitled to sit and vote; and (ii) the motion may be moved after giving notice to the Tahsildar as prescribed. Therefore, what has to be prescribed by the rules what has in fact been prescribed by sub-rule (1) of Rule 2 of the Rules is the form in which a notice has to be furnished by the requisitionists to the Tahsildar. The form that has been laid down requires the members of the Panchayat who have sought to move the motion to intimate the Tahsildar that they propose to move a motion of no confidence in a meeting of the Panchayat for reasons which are spelt out therein. The facts which are stated therein have to be declared to be true to the 'best of information and knowledge' of the members moving the motion. Sub-section (2) of section 35 then stipulates that within a period of

seven days of the receipt of a notice under sub-section (1), the Tahsildar must convene a special meeting of the Panchayat for considering the motion at the office of the Panchayat at a time to be appointed by him. The Sarpanch or Upa-Sarpanch against whom a motion of no confidence is moved has a right to speak or otherwise take part in the proceedings of the meeting including the right to vote. The motion has to be carried by a majority of not less than two-thirds of the total number of members who are for the time being entitled to sit and vote at any meeting of the panchayat. The Sarpanch or the Upa-Sarpanch, as the case may be shall cease to hold office upon the expiry of seven days unless in the meantime, the validity of the motion has been disputed under sub-section (3B). Sub-section (3B) entitles the Sarpanch, or as the case may be, the Upa-Sarpanch to dispute the validity of the motion within a period of seven days before the Collector. The decision of the Collector is subject to a further appeal to the Commissioner.

7. The essence of a motion of no confidence is the expression by the elected members of a legislative body of a want of confidence or faith in the person or persons against whom the motion is moved. A motion of no confidence is not a removal for misconduct and it is not in the nature of disciplinary action adopted on account of charges of misbehaviour. A motion of no-confidence is what it states it is: an expression of a lack of confidence in the person. On the other hand, and in contradistinction to a motion of no confidence, the Act makes provisions for the *removal* of a member of the Gram Panchayat in section 39. Section 39 contemplates the removal of any member of the panchayat, the Sarpanch or Upa-Sarpanch where he is guilty of (i) misconduct in the discharge of his duties; or (ii) of a disgraceful conduct; or (iii) neglect or incapacity to perform his duty; or (iv) where such person is persistently remiss in the discharge thereof. The provision for removal has to be distinguished from an expression of no confidence. A removal is a disciplinary measure and in view of the well settled position in law, a removal has to be stated grounds after holding an enquiry. An enquiry is in fact, provided by sub-section (1) of section 39. On the other hand, a motion of no confidence is the ultimate expression by the members of a collective body, of the expression of a lack of faith in the person against whom that motion is moved.

9. Under the Bombay Village Panchayat Act, 1958, what is made mandatory is (i) The moving of a motion of no confidence by a stipulated number of members of the Gram Panchayat (one third); (ii) Those who move the motion must be entitled to sit and vote at a meeting of the panchayat; (iii) The furnishing of a notice of requisition to the Tahsildar as prescribed; (iv) The convening by the Tahsildar of a special meeting of the Panchayat within a period of seven days of the receipt of the notice at the time and place specified; (v) The entitlement of the Sarpanch and Upa-Sarpanch to speak or to otherwise participate in the proceedings and to vote upon the resolution; and (vi) The passing of the motion by a majority of not less than two-thirds of the total members of the panchayat entitled to sit and vote. The provisions which the

legislature considered as being mandatory in order to constitute a valid motion of no confidence have been specified in sub-sections (1), (2) and (3) of section 35. While construing the rules what must be borne in mind is that the Act mandates the *giving of a notice to the Tahsildar* as prescribed. In construing as to which part of the rules is mandatory, regard must be had to the provisions of the parent legislation because the legislature has indicated in clear terms therein those provisions in respect of which a punctilious compliance is expected. The members of the Gram Panchayat who seek to move a motion of no confidence against the Sarpanch or Upa-Sarpanch or both are required to furnish a notice of their intention to do so to the Tahsildar. Before he convenes the meeting, the Tahsildar has to be satisfied that the motion has been moved by one-third of the total number of members entitled to sit and vote. The Act then provides that the Tahsildar must convene a meeting of the Panchayat for considering the motion within a period of seven days. When he convenes a special meeting of the Panchayat, the Tahsildar furnishes an intimation to the members of the Panchayat including the Sarpanch and Upa-Sarpanch of the convening of the meeting. Sub-section (2) of section 35 requires the Tahsildar to convene a special meeting of the Panchayat for considering the motion and it is implicit therein that an intimation has to be furnished to all members of the Panchayat including the Sarpanch and Upa-Sarpanch who are sought to be proceeded against. In the event that the Sarpanch and the Upa-Sarpanch seek, in addition, copies of the actual requisition that has been issued by the members of the Panchayat, it is open to them to move the Tahsildar by submitting an application. **However, it would be impermissible for the Court to hold that resolution which has been duly passed by a two-third majority, upon a requisition moved by one third of the members of the panchayat eligible to sit and vote, at a meeting convened by the Tahsildar in accordance with law will stand invalidated merely because the Tahsildar has not sent a copy of the actual requisition to the Sarpanch or the Upa-Sarpanch as the case may be. Such a requirement cannot be read into the provisions of section 35(2). The provisions contained in Rule 2(2) must be regarded as directory having regard to the true nature and purpose of a motion of no confidence. A motion of no confidence is not akin to disciplinary proceedings or a provision for removal for misconduct. A removal for misconduct is punitive. In such a case, a person who is sought to be proceeded against has to be furnished with a charge sheet and the removal must take place by following an enquiry that is consistent with the principles of natural justice. A motion of no confidence on the other hand, does not partake of a punitive character nor is it based on charges of misconduct which have to be proved. 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.** The contention that the right to speak at the meeting given to a Sarpanch or Upa-Sarpanch requires that the requisition which has been moved be furnished to them cannot be acceded to Should the Sarpanch or

Upa-Sarpanch seek to have copies of the requisition, it is open to them to apply to the Tahsildar. However, whereas in the present case the Sarpanch or Upa-Sarpanch chooses to participate in the meeting whereafter a resolution is duly passed by the requisite majority, it would stultify the democratic process if the Court were to nullify the resolution on the ground that a copy of the requisition was not furnished to the Sarpanch or Upa-Sarpanch.

(emphasis added)

22) This Court in ***Yamunabai Laxman Chavan*** has thus ruled that mere failure by the Tahsildar in not sending the copy of actual requisition to the Sarpanch or Upa-Sarpanch would not invalidate a validly adopted motion of no-confidence. This Court further held that the requirement of sending copy of actual requisition to Sarpanch cannot be read into the provisions of Section 35(2) of the Village Panchayats Act. This Court further held that provisions contained in Rule 2(2) must be regarded as directory having regard to the true nature and purpose of motion of no-confidence. This Court drew distinction between a motion of no-confidence and disciplinary proceedings conducted for removal for misconduct. This Court further held that a motion of no-confidence does not partake of a punitive character nor is it based on charges of misconduct which have to be proved. This Court held that a motion of no-confidence is the fundamental expression of the collective will of the members of legislative body that they lack confidence in one of their own.

23) In my view, the judgment in ***Yamunabai Laxman Chavan*** conclusively answers the issue that is raised by Petitioner for consideration in the present case. Following the law enunciated by this Court in ***Yamunabai Laxman Chavan***, the motion of no-confidence in the present case would not be vitiated merely by reason

of non-furnishing of copy of requisition to the Petitioner under Rule 2(2) of the No Confidence Motion Rules.

24) Faced with the law enunciated by co-ordinate bench of this Court in ***Yamunabai Laxman Chavan***, Mr. Patil has made strenuous attempts to urge me to take a different view based on various subsequent judgments interpreting the provisions of the Rules 1975. He has submitted that *Dr. D. Y. Chandrachud J.*, had already held in ***Arjun Sambhaji Khade*** (supra) that furnishing of copy of requisition to Sarpanch under Rule 2(2) was a mandatory requirement. He has relied on observations made in paragraph 9 of the judgment in ***Arjun Sambhaji Khade*** which reads thus:

9. Section 35(1) of the Act to which a reference has already been made earlier requires that a motion of no confidence can be moved by not less than the stipulated number of members of the Panchayat after giving notice as prescribed to the Tahsildar. Sub-rule (2) of Rule 2 provides that the notice shall be accompanied by seven additional copies thereof. The Tahsildar is then required to send one copy to the Sarpanch, one to the Upa-Sarpanch and one each to the Zilla Parishad, Panchayat Samiti, the Collector, the Commissioner and the Secretary. The furnishing of the copies to the Sarpanch or as the case may be to the Upa-Sarpanch, who is sought to be removed is mandatory, because the elected member of the Grampanchayat who is sought to be removed, by the passing of a no confidence resolution must have an adequate opportunity of defending himself or herself. That must comprehend an adequate notice of the proposed resolution and the grounds thereof.

25) In my view, the manner in which Mr. Patil, seeks to read judgment of this Court in ***Arjun Sambhaji Khade*** is clearly flawed. The correct ratio of the judgment in ***Arjun Sambhaji Khade*** is that a motion of no-confidence cannot stand vitiated by a mere defect in furnishing or a failure to furnish additional copies of motion of no-confidence. It is held in paragraphs 13 and 14 of the judgment as under :

13. Having regard to the underlying object of and the context in which the provision has been made in the Rules for furnishing additional copies, and the provisions of the Act, I am of the view that a motion of no confidence cannot stand vitiated by a mere defect in furnishing or a failure to furnish additional copies of the motion of no confidence.

14. In a matter such as the present, the Court must be guided by the fact that the resolution has been passed by an overwhelming majority of the elected members of the Grampanchayat. A motion of no confidence under section 35 stands on a different footing from the removal of a Sarpanch under section 39 for misconduct, negligence or incapacity in the performance of his duty. Section 39 contemplates an enquiry to be pursued by the Chief Executive Officer under the order of the President of the Zilla Parishad. This is in contradistinction to a motion for no confidence. A Division Bench of this Court in *Nimba Rajaram Mali v. Collector, Jalgaon*, 1998 (3) Mh. L.J. 204 : 1998 (4) ALL MR 479 thus held following the judgment of the Supreme Court in *Babubhai Mulji Patel v. Nandalal*, (1974) 2 SCC 706 : AIR 1974 SC 2105 that the essential connotation of a No Confidence Motion is that a party against whom such a motion is passed has ceased to enjoy the confidence of the requisite majority of members. In that case, it was held that a lapse on the part of the Tahsildar in sending copies of the motion of no confidence to some of the authorities would not invalidate the motion of no confidence and in holding thus the Division Bench observed that in a democratic institution such as a Grampanchayat, the will of the majority is of paramount importance. In my view, there was substantial compliance with the requirement of the rules. The motion of no confidence was proposed and carried by the requisite majority as required by section 35 of the Act. Both the authorities below were palpably in error in interfering with the decision reflected in the overwhelmingly large majority of the Grampanchayat.

26) In my view, therefore, there is no conflict in views of *Dr. D. Y. Chandrachud J.* in ***Yamunabai Laxman Chavan*** and ***Arjun Sambhaji Khade*** as sought to be suggested by Mr. Patil. In fact, the judgment in ***Arjun Sambhaji Khade*** has been considered and distinguished by His Lordship Justice Chandrachud in ***Yamunabai Laxman Chavan*** in Para 15, which reads thus:

15. In invalidating the resolution which has been passed in the present case, both the authorities below have adverted to a judgment delivered by me in ***Arjun Sambhaji Khade v. Mangal Ankush Kharmate***, 2003 (2) Mh. L.J. 295. That was a case, where a resolution of no confidence that was passed by the Gram Panchayat was set aside by the Collector on the ground that copies

of the requisition which had been submitted for holding of the special meeting had not been submitted in seven sets to the Tahsildar and that the notice was not in the prescribed form. In that case, as a matter of fact, the notice that had been furnished by the requisitionists to the Tahsildar contained the grounds on which the removal of the Sarpanch was sought. In the course of my judgment, I held that what was mandatory under section 35 and Rule 2 is the furnishing of a notice to the Tahsildar of the intention of the members of Gram Panchayat to move a motion of no confidence. Furnishing a notice to the Tahsildar was held to be mandatory because it is on the basis of that notice that the Tahsildar has to convene a special meeting of the Gram Panchayat. The judgment of the Court held that sub-rule (2) of Rule 2 makes a distinction between the notice and the seven additional copies thereof and while furnishing a notice to the Tahsildar was mandatory the provision for additional copies thereof was not. There is a passing observation in the course of that judgment that the opportunity which is to be granted to the Sarpanch or Upa-Sarpanch of defending himself must comprehend an adequate notice of the proposed resolution and the grounds thereof. In that case, as a matter of fact, the notice furnished by the Tahsildar to the Sarpanch also included a copy of the requisition. **The question as to whether a copy of the requisition must necessarily be furnished to the Sarpanch by the Tahsildar did not fall for consideration. That judgment, hence, cannot be read to mean that a failure of the Tahsildar to furnish a copy of the requisition to the Sarpanch and Upa-Sarpanch while convening a meeting must invalidate the resolution of no confidence.**

(emphasis added)

27) Mr. Patil has relied upon judgment of this Court in ***Digambar Virbhadra Yesge*** (supra) in support of his contention that provisions of Rule 2(2) are mandatory in nature. In ***Digambar Virbhadra Yesge*** a coordinate bench of this Court (*His Lordship Justice Ravindra V. Ghuge*) has dealt with a situation where the Petitioners therein were not served with the notices of special meeting convened by the Tahsildar. This Court held in paragraphs 16, 19 and 20 as under:

16. Insofar as the second issue that the petitioners were not served with notices of the special meeting is concerned, it is necessary to peruse the record and proceedings to assess as to whether, these petitioners had raised a specific ground before the Collector that they were never served with the notices of the special meeting.

19. Notwithstanding the above contention, Rule 2(2-B) of the Rules, 1975 prescribes a particular procedure to be followed for serving the notice of a special meeting on the *Sarpanch* or *Up-Sarpanch*. Rule 2(2-B) reads as under:

“2(2-B) Every notice under sub-rule (1), wherever it may be practicable, be served by delivering or tendering it to the Sarpanch or Up-Sarpanch to whom it is addressed or, where such person cannot be found, by delivery or tendering it to any adult member of his family residing with him; and if no such adult member can be found or, where the Sarpanch, Up-Sarpanch or such adult member, as the case may be, refuses to accept the notice, it shall be served by affixing it, in the presence of two witnesses, on the outer door or some other conspicuous part of the house in which such Sarpanch or Up-Sarpanch ordinarily dwells. The notice served in this manner shall be deemed to be sensed or tendered or delivered to the concerned Sarpanch or Up-Sarpanch.”

20. Though the learned A.G.P. and the learned Advocates appearing for the contesting respondents have canvassed that Rule 2(2-B) may be directory in nature and not mandatory, it cannot be ignored that a person, who is democratically elected, cannot be compelled to face a no-confidence motion pursuant to notice issued by the *Tahasildar*, who may act high-handedly. When a procedure is prescribed for serving a notice of an important subject as that of a no-confidence motion, it is always in the interest of justice and fair play that the procedure is followed in order to avoid any deficiency in the said proceeding.

28) In my view, the judgment in ***Digambar Virbhadra Yesge*** does not assist the case of the Petitioner. In that case the Petitioner therein were actually not served with notice as required under Rule 2(2B) of No Confidence Motion Rules 1975 and in the light of those facts, this Court held that the provision for Rule 2(2B) are not directory but mandatory. Non-receipt of any intimation regarding convening of meeting for discussion of notice of no confidence cannot be equated with the scenario of non-furnishing of copy of requisition where the Sarpanch is admittedly served with notice of Tehsildar convening the meeting.

29) Judgment in ***Indubai Vedu Khairnar*** (supra) is relied upon by Mr. Patil essentially to negate the ratio of judgment in

Durgadas Ukhaji More (supra). Both the judgments are rendered by the same learned Judge (*Justice D. G. Karnik*). In ***Durgadas Ukhaji More*** there was defect in the requisition signed by the members, which did not contain verification clause. In the light of that factual position, *Karnik J.* held the requirement of verification was only directory and not mandatory. It was observed that there was substantial compliance and that therefore the motion of no-confidence validly passed by majority could not be set aside on a technical ground. It is sought to be suggested by Mr. Patil, few days later, *Karnik J.* held in ***Indubai Vedu Khairnar*** that the provisions of Rule 2(2) of the No Confidence Motion Rules are mandatory in nature. In ***Indubai Vedu Khairnar*** again, the Petitioner therein came up with a complaint that she did not receive the notice of meeting scheduled for discussing motion of no-confidence. In the light of those facts *Karnik J.* held the requirement of Rule 2(2) of No Confidence Motion Rules 1975 of service of notice of no-confidence is mandatory. The judgment in ***Indubai Vedu Khairnar*** does not deal with the issue of effect of non-furnishing of requisition sent by 1/3 of members to the Tahsildar and it deals with the issue of non-service of even a basic notice of convening of special meeting for discussing no-confidence motion. The judgment in ***Indubai Vedu Khairnar*** therefore cannot be read in support of a proposition that the requirement of furnishing requisition is mandatory in nature.

30) Mr. Patil has relied on judgment of this Court in ***Shivkant Haribhau Bangar*** (supra) in which again, the Petitioners therein were never served with notice of meeting of no-confidence, which is not the fact situation in the present case. The observations made by this Court about right to speak in the meeting

not being empty formality are made in the light of failure to serve notice of meeting of no-confidence. Similar was the situation in ***Surekha Eshwar Jadhav*** (supra) where the Sarpanch was not permitted to speak in the special meeting. Mr. Patil has also relied upon interim order of this Court in ***Narmada Bapurao Goslod*** (supra), which being mere interim order, cannot constitute a precedent to be followed by this Court.

31) The conspectus of the above discussion is that no case is made out for taking a view different than the one taken in ***Yamunabai Laxman Chavan*** which is an authoritative pronouncement of this Court holding that mere defect of non-furnishing of copy of requisition to the Sarpanch under Rule 2(2) of the No Confidence Motion Rules of 1975 does not vitiate the motion of no-confidence.

32) I therefore do not find any valid reason to interfere in the impugned decision of the Collector, who has rightly dismissed the Dispute Application filed by the Petitioner. The motion of no-confidence adopted in the meeting dated 8 January 2024 is perfectly valid. Petition, being devoid of merits, is accordingly **dismissed** without any order as to costs.

[SANDEEP V. MARNE, J.]

33) After the judgment is pronounced, the learned counsel appearing for the Petitioner seeks continuation of ad-interim order passed by this Court on 10 October 2024. Request is opposed by the learned counsel appearing for the contesting Respondents. As

observed in paragraph 5 of the judgment, ad-interim order dated 10 October 2024 was passed on account of allegation of ineligibility of Respondent Nos.5, 7 and 9 to participate in the meeting and to vote. The Petitioner has now given up the issue of eligibility of the said Respondents. Therefore, the very reason why ad-interim relief was granted on 10 October 2024 no longer survives. In that view of the matter request for continuation of ad-inter relief is rejected.

[SANDEEP V. MARNE, J.]