

(2018) 08 BOM CK 0095
In the Bombay High Court
Case No : Writ Petition No. 7479 OF 2017

Shantabai Kautik Ghule

APPELLANT

Vs

Collector Aurangabad And Others

RESPONDENT

Date of Decision : 13-08-2018

Acts Referred:

Maharashtra Village Panchayats Act, 1958 — Section 35(1), 35(2)

Citation : (2018) 08 BOM CK 0095

Hon'ble Judges : RAVINDRA V. GHUGE, J

Bench : Single Bench

Advocate : Gore Ravindra Vitthal, B.A.Shinde, D.Y.Nandedkar

Final Decision : Dismissed

Judgement

1 The Petitioner is aggrieved by the impugned order dated 27.04.2017 by which, the Additional Collector, Aurangabad has rejected Dispute

Application No.Kannad/CR/10/2017 filed by the Petitioner challenging the passing of noÂ?confidence motion against her on 21.02.2017.

2 I have considered the strenuous submissions of the learned Advocates for the respective sides.

3 The contentions of the Petitioner can be summarized as under:Â?

(a) The ""noÂ?confidence"" requisition circulated by 07 members out of 09 of the BarkatpurÂ?Raigaon Group Gram Panchayat is dated 10.02.2017.

(b) The said requisition is said to be tendered to the Tahasildar on 15.02.2017 against the Petitioner, who is a lady Sarpanch of the said village panchayat.

(c) The special meeting was convened on 21.02.2017, which can be said to be beyond the requisite 07 days period, within Â which such special

meeting is to be convened.

(d) No notice was ever served upon the Petitioner by the Tahasildar, though all other members have received the said notice.

(e) By the circular dated 24.04.2017 issued by the Revenue and Forest Department, State of Maharashtra, the charge with the Additional Collector to deal with all disputes pertaining to the Zilla Parishad/ Panchayat Samiti/ Nagar Parishad/ Nagar Panchayat/ Gram Panchayat elections, has been taken away and vested only with the District Collector.

(f) The Additional Collector, who was earlier handling such matters on delegation of authority, has been divested of such jurisdiction.

(g) As no notice was served on the Petitioner, she was not present in the special meeting on 21.02.2017.

4 The learned AGP submits that earlier the affairs with regard to the elections and all other disputes pertaining to the Gram Panchayats or

Municipal Councils as mentioned in the circular dated 24.04.2017, could be dealt with by the District Collector or Additional Collector, as the case

could be. By the said circular, the jurisdiction of the District Collector is sought to be preserved only with relation to the election matters pertaining to

the Zilla Parishad/ Panchayat Samiti/ Nagar Parishad/ Nagar Panchayat/ Gram Panchayat elections. Only matters pertaining to the elections are now

to be dealt with by the District Collector under the relevant provisions of law. Other matters, save and except the election matters, would continue to

be dealt with by the Additional Collector unless the District Collector specifically takes over such matters within his jurisdiction.

5 Considering the above and upon going through the phraseology of the circular dated 24.04.2017, it appears that under clause 9 of the earlier circular

dated 29.03.2012, all matters pertaining to the elections and all disputes in the Gram Panchayats under the Maharashtra Village Panchayats Act, were

being dealt with by the District Collector or the Additional Collector, as the case could be. Specific words used in clause 3 of this circular dated

24.04.2017 would indicate that the State Government has resolved under the orders of the State Election Commission vide their letters dated

10.02.2015 and 30.03.2015, that only those subjects mentioned in clause 9, which have been specifically adverted to in paragraph 3, have been

removed from the realm of the Additional Collector. As such, the election matters

pertaining to the Zilla Parishad/ Panchayat Samiti/ Nagar

Panchayat/ Nagar Parishad/ Gram Panchayat elections are now taken away from the Additional Collector and would be dealt with only by the District

Collector.

6 I do not find that the jurisdiction to deal with all disputes under the Maharashtra Village Panchayats Act has been taken away from the realm of the Additional Collector as it is specifically not mentioned in the circular that all disputes pertaining to the Gram Panchayat would be adjudicated upon only by the Collector. On this count, therefore, the contention of the Petitioner cannot be entertained.

7 Insofar as the contention of the Petitioner that the requisition notice dated 10.02.2017 proposing the motion of no confidence was subjected to a special meeting on 21.02.2017 i.e. beyond seven days permitted, is concerned, I find that the said contention is not sustainable. Though seven

members have signed the requisition bearing the date 10.02.2017, the same has been tendered to the Tahasildar on 15.02.2017. Section 35(2) of the

Maharashtra Village Panchayats Act clearly mandates the Tahasildar to convene a special meeting of the Gram Panchayat for considering the motion

of no confidence at the office of the Panchayat, within seven days from the date of receipt of the notice by him under subsection (1) of Section 35.

8 Section 35 of the Maharashtra Village Panchayats Act reads as under:Â?

35. Motion of no confidence. Â?

(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 subsection (1), the Tahasildar, shall convene a special meeting 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) If the motion is carried by [a majority of not less than two-thirds 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 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 brought within a period of six months from the date of election of Sarpanch or

Upa-Sarpanch.

(3A) If the 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 UpaSarpanch 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].

9 Considering the above, it is obvious that after the Tahasildar receives such a notice on any given date, the limitation of 07 days begins after one

day of the receiving of such notice as the date on which he receives such a notice, is excluded. The Tahasildar received the notice on 15.02.2017. He

convened the special meeting on 21.02.2017, which is the sixth day. As such, there is no illegality insofar as the convening of the special meeting is

concerned.

10 The last contention of the Petitioner is that she was never served with the notice of the special meeting and hence, she never knew that the

meeting was convened on 21.02.2017. The record reveals that the Petitioner has received the notice dated 15.02.2017 on 17.02.2017. She has signed

and put the date under her signature in acknowledgment on the copy preserved by the Tahasildar, which was produced before the Additional

Collector. In the proceedings before the Additional Collector, she did not take a stand that the signature is forged and that the matter should be

referred to the handwriting expert. She did not point out any of her signatures appearing on other documents of the Gram Panchayat to indicate that

the signature on the notice was a false or bogus signature. In this backdrop, even this argument is unsustainable.

11 Admittedly, the motion of no-confidence was passed by 7:0 vote count. Two members including the Petitioner did not remain present.

12 In view of the above, I do not find any merit in this petition and the same is, therefore, dismissed.

13 Consequentially, the ex-parte ad-interim protection granted by this Court on 07.06.2017, stands vacated forthwith.