

**FARAD CONTINUATION SHEET.****IN THE HIGH COURT OF JUDICATURE AT BOMBAY****NAGPUR BENCH : NAGPUR.****WRIT PETITION NO.4684/2005 WITH****WRIT PETITION NO.4685/2005**

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Office Notes, office Memoranda of Coram  
appearances, Court's orders or directions  
and Registrar's order.

Court's or Judge's order

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**CORAM:    B.P. DHARMADHIKARI, J.**  
**DATED :    23.12.2005.**

1.            The writ petitions are heard finally considering the nature of controversy. Petitioner Sanjay in writ petition 4684/2005 is Deputy Chairman of Panchayat Samiti Ghantaji while petitioner Sau. Sangita in writ petition 4685/2005 is its Chairperson. Both the petitions are removed by vote of "no confidence" on 5/9/2005. Said resolution and action is challenged by them in present petitions only on the ground that the motion as moved

against them was not containing "grounds" in its support. Though the counsel for petitioner suggested that petitions are to be heard finally at the stage of admission itself and though the respective parties have been heard at some length, while passing orders I find that there is no such directions/observation in any of the earlier orders passed by Division Bench which ultimately on 16/11/2005 directed listing of matter before Single Judge. Division Bench while issuing notice before admission on 13/9/2005 directed parties to maintain status-quo.

2. I have heard Advocate Atul Chandurkar for both the Petitioners, Advocate V.M.Deshpande for respondent nos. 3 to 6 who moved the motion of no confidence, Advocate Shri Naik for intervenor Panchayat Samiti and Advocate Mrs.Wandile, AGP for Respondent Nos. 1 and 2. Advocate Shri Naik wanted interim order to be clarified so as to enable the Panchayat Samiti and Zilla Parishad to take further appropriate steps for proper administration of Panchayat Samiti.

3. Advocate Shri Chandurkar has relied upon Division Bench judgment of this court between Ganeshsinha Domansinha Hajari -versus-Commissioner, Nagpur Division reported at 1963 Maharashtra law Journal 569 to contend that if the grounds are not specified in the text of motion of no confidence, the motion is vitiated. He also relies upon subsequent Division Bench judgment in Dhrupad Bhagwan Sawale & another...vs...The Collector, District Buldhana reported at 1987 (1) Bom. C. R. 531 where same view has been reiterated and the earlier Division Bench (supra) has been followed. Advocate Shri Deshpande and learned AGP relied upon still latter Division Bench judgment in case of Bandopant Mallelwar -versus- State of Maharashtra reported at 1997 (1) Maharashtra law Journal 52 to contend that the grievance about absence of grounds in motion moved against petitioners is factually incorrect in as much as the motion itself mentions grounds therefor. Reliance has been placed on observations made in paragraph 26 of this

ruling in which both the above Division Bench rulings are considered and distinguished. Fortunately, all these judgments are upon provisions of same law and in case of Ganeshsinha Hajari (supra) motion was against Chairperson of Panchayat Samiti & in Bandopant Mallelwar (supra) it was against President of Zilla Parishad and 3 Chairmen/Chairpersons of Subject Committee. Dhrupad Bhagwan (supra) considers no confidence against President and Vice President of Zilla Parishad.

4. In view of defence, at this stage it is only necessary to find out whether the motion in question contained "grounds" in support thereof. The respondents have not disputed the propositions as laid down by earlier to Division Benches of this court at all and effort is to show that impugned motions in fact contained grounds in support of no confidence by placing reliance upon last Division Bench judgment in case of Bandopant Mallelwar (supra).

5. Motions are identical in both petitions and after

mentioning the name of respective petitioners with post it is mentioned that as said person (petitioner) has failed to satisfactorily discharge obligations of post held by him/her, the members moving said motion have no confidence in them. Thus failure to satisfactorily discharge obligations of post held by respective petitioners is argued to be the "ground" by respondents. Dhruvad Bhagwan (supra) considers motion which read "since Shri Dhruvad Bhagwan Saole has lost our confidence, we are proposing motion of no confidence against him". Ganeshsinha Hajari (supra) again shows that no grounds were mentioned in support of motion. In paragraph 9 in said case of Ganeshsinha Hajari it is held that grounds must be mentioned in motion proposed to be moved & it is mandatory requirement and would vitiate the notice given if grounds do not appear in motion accompanying the notice. In paragraph 10 it is further mentioned that grounds are necessary to limit the discussion in the meeting which as mentioned therein

would be otherwise "at large" or to control "universe of discourse". In Bandopant Mallelwar (supra), in paragraph 27 motion of no confidence proposed has been reproduced. It showed the allegations of incompetency, abusing post, writing false proceedings, insulting members in General Body, passing resolutions containing assurances and promises in disregard to Rules and Model Code of Conduct at the time of Parliamentary elections. These allegations have been held to constitute adequate grounds and it has been observed that the same were not vague. "Failure to satisfactorily discharge obligations of post" held by respective petitioners cannot be said to be a ground at all. That is the purpose why no confidence came to be proposed against Petitioners. It does not and cannot control the area of discussion as anything and everything can be used to substantiate it. In fact, posts held by Petitioners cannot by itself be made the ground for moving such motion. What the motions in dispute specify is only a conclusion and not even broader grounds

are incorporated therein to substantiate it.

6. Hence Rule. It is made returnable early. In the meanwhile, interim relief in terms of prayer clause (ii). Office to list the matter on board on 12/1/2006 for further orders. Advocate Shri Deshpande, learned AGP and Advocate Naik waive notice of Rule for their respective clients.

JUDGE

Dragon