

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 20974 of 2018**

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TARABEN JITUBHAI VANAND

Versus

STATE OF GUJARAT

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Appearance:

MR CP CHAMPANERI(5920) for the PETITIONER(s) No. 1

DR VENUGOPAL PATEL, AGP for RESPONDENT No.1.

MR HS MUNSHAW, for the RESPONDENT(s) No. 2,3.

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CORAM: HONOURABLE DR.JUSTICE A. P. THAKER

**Date : 31/12/2018****ORAL ORDER**

1. Mr.Champaneri, learned advocate for the petitioner has filed draft amendment. The same is allowed. Amendment to be carried out forthwith.

2. At the request and with the consent of learned advocates appearing for the parties, the matter is taken up for hearing today and decided finally. Rule. Dr.Venugopal Patel, learned AGP waives service of notice of rule on behalf of respondent no.1 and Mr.H.S.Munshaw, learned advocate waives service of notice of rule on behalf of respondent nos.2 and 3.

3. This petition is filed by the petitioner stating that general election of the Deva Vanta Gram Panchayat was held in December 2016. The petitioner was elected for the post of Sarpanch uncontested and other four members were also elected uncontested. It is also stated that four other members were elected upon conduct of the election and, thus, total number of members of the panchayat is eight and one

sarpanch, totalling the number to nine. It is also contended that general body of the panchayat in its meeting dated 25.9.2018 passed a resolution and removed three members of the panchayat from the post of Members i.e. Sarojben Ravindrasinh Mahida, Ajitsinh Manubhai Lakum and Jagrutiben Vikramsing Mahida. It is also stated that all these three members being aggrieved and dissatisfied by their removal from the post of Members have challenged such decision by preferring writ petitions before this Court being Special Civil Application Nos.16239, 16240 and 16241 of 2018. It is also stated that these matters are pending before this Court and the same are sub-judice and bye-election for these posts have also not been conducted till date. It is also stated that no total strength of the members is existing as on today. It is also stated that now only five members and a sarpanch are remaining in the panchayat. While referring to Section 56 of the Gujarat Panchayats Act, 1993, it has been contended that No Confidence Motion can be moved against the Sarpanch only if the same is supported by one half of the total number of members of the panchayat concerned and such motion can be carried by majority of not less than 2/3<sup>rd</sup> of the total number of members of the panchayat. It is also contended that as per the provisions of Section 56 (5) of the Gujarat Panchayats Act, the meeting for No Confidence Motion shall be called within 15 days from the date of receipt of such motion and if the sarpanch fails to call the meeting, the Secretary of the Panchayat viz. Talati-cum-mantri shall report the same to the competent authority and he shall call the meeting of the panchayat within 15 days. It is also stated that respondent no.3 had on 27.11.2018 addressed a communication to the petitioner that Motion for No Confidence is moved against the

petitioner by four members and, therefore, the meeting is required to be called and needful is to be done by the Sarpanch i.e. the present petitioner. It is also contended that there was no total strength existing in the Panchayat in view of removal of three members from the membership and the said dispute was pending before the Honourable High Court, therefore, the petitioner refused to call the meeting and moving the Motion of No Confidence is contrary to the provisions of Section 56 of the Gujarat Panchayats Act, and, accordingly, addressed a letter to the respondent no.3 dated 11.12.2018. It is also the stand of the petitioner that respondent no.3, despite the settled legal position and despite the communication made by the petitioner, contrary to the provisions has asked the competent authority to call the meeting within 15 days as the petitioner-sarpanch has not called the meeting. It is the contention of the petitioner that in view of settled legal position, under Section 56 of the Panchayats Act, there is no legal acceptance of the requisition of No Confidence Motion and moving the same is contrary to the provisions of Section 56 itself. It is also contended that action of the respondent no.3 is arbitrary, erroneous and ex-facie illegal. On these grounds, the petitioner has filed the present petition for the following reliefs.

"8. ....

(A) *That this Hon'ble Court will be pleased to admit and allow the present petition.*

(B) *That this Hon'ble Court will be pleased to issue a writ of mandamus or any other appropriate writ order or direction in the nature of the same and be pleased to restrain the respondent no.2 and 3 from moving the requisition of motion of no confidence against the present petitioner at Annexure – A to the present petition.*

(C) *That this Hon'ble Court will be pleased to issue a writ of mandamus or any other appropriate writ order or direction in the nature of the same and be pleased to declare the initiation*

*of the proceedings u/s.56 of the Act on the requisition of motion of no confidence at Annexure – A to the present petition.*

*(D) That this Hon'ble Court will be pleased to direct the respondent no.2 and 3 not to proceed with the requisition of motion of no confidence against the present petitioner At Annexure – A to the petition, pending hearing till final disposal of the present petition.*

*(E) That this Hon'ble Court will be pleased to pass such other and further order as the nature and circumstances of the case may require."*

4. During the pendency of the petition, the petitioner has also sought for interim relief for staying the convening of the meeting on 1.1.2019. Respondent nos.2 and 3 have filed affidavit in reply.

5. I have heard Mr.Champaneri, learned advocate for the petitioner, Dr.Venugopal Patel, learned AGP for respondent no.1 and Mr.H.S.Munshaw, learned advocate for respondent nos.2 and 3.

6. Mr.Champaneri, learned advocate for the petitioner has vehemently submitted that the resolution has to be moved by one half of the total strength of the members. He contended that, admittedly in the present case, three members have been removed and only five members are remaining, including one Sarpanch and, therefore, total strength of the remaining members is six and the requisition has been moved by only four members, which is not one half of the total strength of nine members. According to him, in view of Section 9 of the Gujarat Panchayats Act, 1993 read with Section 56 (1), no cognizance could have been taken of such motion by the authority. He has also contended that considering the vacancy of three posts, no motion could have been moved and no agenda could have been issued. It is also contended that entire

proceedings taken by the authority is vitiated in terms of Section 56 (1) of the Gujarat Panchayats Act and no requisition should be considered legal in the eyes of law. He has also contended that, in this case, meeting is still not convened and it should not be permitted to be convened. He has prayed to allow the petition in *toto*.

7. *Per contra*, learned AGP, Dr.Venugopal Patel, appearing for respondent no.1 has vehemently opposed the petition and has stated that the petition is devoid of merits and it should be dismissed.

8. Vehemently opposing the petition, Mr.H.S.Munshaw, learned advocate for respondent nos.2 and 3 has submitted that there is no dispute regarding the election held in 2016 and removal of three members by the Panchayat and those three members have filed Special Civil Applications before this Court, wherein no interim order has been passed by this Court. According to him, therefore, the total strength of the members will be only six, which includes one Sarpanch and five other members. He has also contended that out of the present members, one is sarpanch and one member is her husband. It is also contended that four members have moved No Confidence Motion, which is more than one half of the six members remaining and as per Section 56 (5), Sarpanch is bound to convene the meeting. The petitioner being the Sarpanch has not called the meeting and, now it has been convened by the authority under the Act. He has also contended that there is no breach of any provisions of the Panchayats Act and the meeting should not be stayed by this Honourable Court. He has also contended that if the submission of the petitioner is accepted, then in any case, No

Confidence Motion could not be moved till all the nine members are in the office. While referring to the decision in the case of **Manubhai F. Patel v. State of Gujarat and Others** reported in **2000 (1) GLR 124**, learned advocate has submitted that in this decision, Division Bench of this Honourable Court has specifically observed that, “the expression “total number of members of the Panchayat” appearing in Sec.56 (2) of the Act, cannot be construed to mean whole of members of the Panchayat. The number of vacancies of members of the Panchayat which are not filled up, cannot be taken into consideration while interpreting the expression “total number of members of the Panchayat” occurring in Sec.56 (2) of the Act.” In view of this, he has prayed to dismiss the petition.

9. Responding to the submission of Mr.Munshaw, learned advocate for the respondent nos.2 and 3, Mr.Champaneri, learned advocate for the petitioner has submitted that the decision relied upon by learned advocate for the respondents is not applicable in the facts of the present case. He submitted that in that case the meeting was already convened and during the meeting one member did not remain present and, therefore, there was a question arose which falls under Section 56 (2) of the Act. He would also submit that, in that case, there was no dispute that notice for no confidence motion moved against the petitioner was supported by one half of the total number of members of the panchayat, whereas in the present case, total number is to be considered as nine and if that figure is taken into consideration, then the motion moved by four members cannot be considered to have been moved by one half of the total number of members. He has also contended that, in the present case, the challenge is regarding requisition

motion, which is not legal in the eyes of law. He has stated that the present case is distinguishable on facts and, therefore, this decision will not be applicable. He has prayed to allow the present petition.

10. Now having considering the submission of both the sides, as the reliance has been placed on various provisions of the Panchayat Act 1993, it is worthwhile to refer to Section 9 of the Act, which reads as under:-

***“9. Constitution of Village Panchayats - (1) A village panchayat shall consist of such number of members as provided in sub-section (4);***

*(2) The members of a village panchayat shall be elected from amongst the qualified voters of the village.*

*(3) (a) A village Panchayat shall have a Sarpanch and an Upa-Sarpanch.*

*(b) The Sarpanch shall be elected by ballot by the qualified voters of the village from amongst themselves.*

*(c) The Upa-Sarpanch shall be elected by the members of the village panchayat from amongst themselves.*

*(4) A village panchayat of a village having population not exceeding three thousand shall consist of [eight] members and in case of a village panchayat where the population of the village exceeds three thousand, than for every [three thousand] or part thereof in excess of three thousand, the said number of [eight] shall be increased by two:*

*[Provided that the amendment made in this sub-section by the Gujarat Local Authorities Laws (Amendment) Act, 2014 (Guj. 23 of 2014) shall not have effect till the expiration of duration of any village panchayat, unless sooner dissolved.]”*

11. Reliance was also placed on Section 56 of the Panchayats Act, which reads as under:-

***“56. Motion of no-confidence.*** - (1) *Any member who intends to move a motion of no confidence against the Sarpanch or the Upa-Sarpanch may give notice thereof in the prescribed form to the panchayat concerned. If the notice is supported by one half of the total number of members of the panchayat concerned, the motion may be moved.*

*(2) Where in the case of the Sarpanch or, as the case may be, the Upa-Sarpanch, the motion is carried by a majority of not less than two-thirds of the total number of the members of the panchayat, the Sarpanch or, as the case may be, the Upa-Sarpanch shall cease to hold office after a period of three days from the date on which the motion is carried unless he has resigned and the resignation has become effective earlier; and thereupon the office held by him shall be deemed to have become vacant.*

*(5) (a) Notwithstanding anything contained in section 91 or 95 a meeting of the panchayat for dealing with a motion of no confidence under this section shall be called within a period of fifteen days from the date on which the notice of such motion is received by the panchayat;*

*(b) If the Sarpanch fails to call such meeting, the Secretary of the panchayat shall forthwith make a report thereof to the competent authority and thereupon the competent authority shall call a meeting of the panchayat within a period of fifteen days from the date of the receipt of the report.”*

12. Reference has also been made to the provision regarding filling up vacancies as enumerated in Section 61 of the Act,



which reads as under:-

***“61. Filling up of vacancies.-*** (1) Any vacancy in the office of a Sarpanch, or Upa-Sarpanch, or member of a panchayat of which notice has been given to the competent authority in the prescribed manner shall be filled by the election of a Sarpanch, Upa-Sarpanch or as the case may be, member, who shall hold office so long only as the Sarpanch, Upa-Sarpanch or member, in whose place he has been elected, would have held office if the vacancy had not occurred :

*Provided that if vacancy of a member occurs within [twelve months] preceding the date on which the duration of the panchayat expires under section 13, it shall not be filled.*

*[Provided, however, that vacancy in the office of a member, if any, existing on the date of commencement of the Gujarat Local Authorities Laws (Amendment) Act, 2015 (Guj.15 of 2015) may not be filled till the general election is held for re-constituting the panchayat immediately after coming into force of the Gujarat Local Authorities Laws (Amendment) Act, 2015 (Guj. 15 of 2015.)]*

(2) The meeting for the election of the Upa-Sarpanch of a village panchayat under sub-section (1) shall be convened by the competent authority on such date as it may fix and the election shall be held in the same manner in which the election of a Upa-Sarpanch is held under section 51 and the provisions of that section shall, so far as may be, apply in respect of such election.”

13. Considering the aforesaid legal provisions, if I consider the factual aspects of the present case, there is no dispute as

to the fact that there was election of Panchayat in question in December 2016 and, thereafter, three members have been removed from the panchayat, and they have challenged the same before this Court, wherein no stay has been granted by this Court. Therefore, upon removal of three three members, only six members are remaining. It is also undisputed fact that four members have moved the motion and it also reveals from the record that present petitioner-Sarpanch has addressed a letter, which is said to have been received by Talati-cum-mantri on 11.12.2018, drawing his attention that three removed members have filed petition before this Court and, therefore, no meeting could be convened. It is also undisputed fact that now respondent nos.2 and 3 have proposed to convene the meeting on 1.1.2019.

14. The only question that is required to be decided in this matter is what should be the total number of members of the panchayat and the meaning given to that expression used in the Gujarat Panchayats Act, whether it should include present strength or it should include actual sanctioned number of members.

15. For this purpose, on considering the decision in the case of **Manubhai F. Patel** (supra), it is found that in that case, the motion was moved by support of more than one half of the total number of members of the panchayat. In that case also, the question arose as to the interpretation of the expression “total number of members of the Panchayat”, and while referring to the various judgments, it was observed by this Court that expression, “total number of members of the Panchayat” appearing in the Act cannot be construed to mean whole of the members of the panchayat. The number of

vacancies of members of the panchayat, which are not filled up, cannot be taken into consideration while interpreting the expression, “total number of members of the Panchayat” as occurring in Section 56 (2) of the Act. Of course, the Court has referred to Section 56 (2) of the Act, but the entire Section 56 relates to the same expression. Therefore, interpretation given by the Division Bench of this Court in the aforesaid decision squarely applies to the facts of the present case. In the present case, at present the total number of members of the panchayat is six. Even if for any reason, other posts are not filled up then no fault can be found with the respondent acting in consonance with the provisions of Section 56 of the Gujarat Panchayats Act. Filling of the members is with the other competent authority. If the interpretation, as suggested by learned advocate for the petitioner, is accepted, then in no case, any motion can be moved against the Sarpanch or any other member till entire strength of the members are filled up. However, this is not the intention of the legislature in making the provisions of Section 56 of the Gujarat Panchayats Act.

16. Therefore, considering the entire evidence on record and the facts that three members have already been removed from their posts and they have challenged the said action before this Court, wherein no stay has been granted, the position remains that at present there are only six members in the panchayat, out of which four have moved the motion, which is definitely more than one half of members. Whether motion will succeed or not is another question but for that purpose the meeting cannot be stopped or stayed.

17. In view of above discussion, on merits as well as on legal aspect, the present petition is devoid of merits and the same

requires to be dismissed. Resultantly, the present petition is dismissed. Rule is discharged with no order as to costs.

R.S. MALEK

**(A. P. THAKER, J)**