

(2025) 01 BOM CK 0044

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 13685 Of 2024

Shital Kiran Rajput

APPELLANT

Vs

District Collector Chhatrapati
Sambhajinagar And Others

RESPONDENT

Date of Decision: Jan. 27, 2025

Acts Referred:

- Maharashtra Village Panchayats Act, 1959 - Section 30, 30(1A), 30A(1A), 35, 35(2), 35(3), 35(4), 43

Hon'ble Judges: S.G. Mehare, J; Shailesh P. Brahme, J

Bench: Division Bench

Advocate: R.V. Gore, S.R. Yadav Lonikar, A.R. Salve, H.V. Tungar

Final Decision: Allowed

Judgement

S.G. Mehare, J

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. The petitioner/Sarpanch has impugned the notice dated 11.12.2024 of respondent no.2 convening the meeting of no confidence motion under

Section 35 sub-section (2) of the Maharashtra Village Panchayats Act (for short "Panchayats Act").

3. The petitioner was elected from the OBC (Woman) Category as the member of the Village Panchayat in the general elections held on 15.01.2022.

She was elected as Sarpanch on 19.07.2023. Before her, respondent no.4 was the Sarpanch. While removing respondent no.4 as a Sarpanch, the

petitioner was also the member inviting the meeting of no confidence. On 11.12.2024, respondent nos.3 to 10 moved a representation to respondent

no.2/Tahsildar for convening the meeting of no confidence against the petitioner. The petitioner has mainly impugned the notice of respondent no.2 on

the ground that since she has not completed her tenure of two years from the date of her election, no such motion of no confidence shall be moved.

Therefore, the impugned notice of respondent no.2 is illegal, incorrect and against the provisions of law.

4. Respondent no.2 filed an affidavit in reply. He submitted that he solicited the guidance from the District Collector to deal with such issue before

him. Respondent no.1 guided him that the no confidence as such can be initiated against the petitioner i.e. Sarpanch or Up-sarpanch, if any, within two

years from the date of election and within six months preceding the date of expiry of the term of the Village Panchayat. On the basis of the guidance

solicited to him by his authority, he came with a case that the impugned notice dated 11.12.2024 is prima facie void.

5. Contesting respondent nos.3 to 11 are the parties interested in the no confidence against the petitioner. They have appeared before the Court. Their

learned counsel has vehemently argued that immunity as provided under 4th proviso to Section 35 of the Panchayats Act could not be available to the

petitioner as she is not the Sarpanch elected first in time. He has vehemently argued that the immunity is to the post and not to the person. The earlier

Sarpanch held the post for more than two years and then no confidence was brought against him. Interpreting the 4th proviso, he would further submit

that the period of two years should be counted from the date of election of Sarpanch or Up-sarpanch. The first Sarpanch was elected long back.

Therefore, the no confidence motion is legally correct and the meeting should be convened. To Bolster his arguments, he relied on the case of

Charushila Bira Shriram Vs. The State of Maharashtra and Others, Writ Petition No.9981 of 2024 of the Bombay High Court decided on January 3,

2025.

6. To counter the interpretation of the respondents, learned counsel for the petitioner would submit that no such discrimination could be done with the

petitioner being the second Sarpanch elected by the Village Panchayat members. The proviso is unambiguous. The immunity is not given to the post

but it is given to the person. Two years are to be counted from the date of election of the Sarpanch and not the post. The period of two years is yet to

over. Their no confidence motion is illegal. To bolster his arguments, he would rely on the judgment of this Bench in the case of Mukesh Eknath

Chavan Vs. The State of Maharashtra and Others, Writ Petition No.10447 of 2021 dated 05.10.2021. He would submit that the interpretation of the

Single Bench of the Bombay High Court in the case of Charushila (supra) is contrary to the object of the proviso. There is some purpose behind such

proviso. Since the immunity of two years has been granted, the immunity granting to the post of motion of no confidence as such could not be

entertained. The authority empowered to convey the meeting has expressed the opinion in favour of the petitioner. Therefore, respondent nos.3 to 10

have no voice to say so. He prayed to allow the petition.

7. The short question falls for consideration is whether the immunity/protection of two years from no confidence motion is to be given qua to the post

or the person.

8. For the ready reference, proviso (4) of Section 35 of the Panchayats Act which pertains to the no confidence motion is reproduced which reads

thus :

“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:”

9. The words used in the above proviso are unambiguous. Period of two years should be considered from the date of election of Sarpanch or Upa-

sarpanch as is applicable in the case at hand. The election of Sarpanch is done by a process. However, the Single Bench of Bombay High Court in the

case of Charushila (supra) reading Section 35 and 43 of the Panchayats Act conjointly expressed the opinion that the words “date of election

occurring in 4th proviso to Section 35(3) is referable to the date of the election of the first Sarpanch. The interpretation also serves the purposive

interpretation as although the statutory longevity by grant of immunity of period of two years is prescribed for infusing stability but at the same time the

observation of the Full Bench in Tatyasaheb Ramchandra Kale Vs. Navnath Tukaram Kakade, 2014 (6) Bom. C.R. 737 though rendered in the

context of mandatory nature of the Panchayat Rules notes as under:

The issue has to be looked at from one more perspective. In terms of Section 38 of BVP Act, the executive power of the Panchayat is vested in the Sarpanch and it is the Sarpanch who is made responsible for the acts of the Panchayat. Hence if an interpretation which results in Sarpanch being continued, which Sarpanch has lost the mandate of the house, the same would result in acting against the very tenets of democracy. It is required to be borne in mind that the very essence of democracy and fundamental to it, is that a person who has lost the mandate cannot be allowed to continue.". (Emphasis supplied)

10. Finally, it has been observed that the words "date of election" occurring in the 4th proviso to Sub Section (3) of Section 35 being situation specific

and not person specific, the immunity granted is qua the post and not qua the person and would therefore mean the date of election of first Sarpanch

and not the date of election of last elected Sarpanch.

11. The Division Bench of this Court while interpreting the same proviso in the case of Mukesh (supra) has observed in para 4 that, the provision of

Sub Section 3 of Section 35 of the Maharashtra Village Panchayats Act is explicitly clear and admit of no ambiguity. The literal interpretation is

unambiguous. No confidence motion cannot be held for a period of two years from the date of election.

12. Primary rules of interpretation is to consider the literal meaning of the words used in the Act. The term "Sarpanch" has been defined under

sub-section (17) of Section 3 of the Panchayats Act, which reads thus :

"(17) "Sarpanch" and "Upa-Sarpanch" means a Sarpanch and Upa-Sarpanch elected under section 30, [30A-1A] [30A] 44 or 43;"

13. Section 30 of the Panchayats Act speaks of the election of Sarpanch. It provides that every Panchayat shall be presided over by a Sarpanch who

shall be elected by, and from amongst, the elected members thereof. Section 30-1A is more relevant to interpret the term whether the Sarpanch is a

person or a post. It provides that the person contesting election for reservation office of Sarpanch to submit the caste certificate and validity

certificate. Herein, the word person has been used for contesting the election for reserved office of Sarpanch. This section further provides

responsibility upon such person to submit the validity certificate within a time prescribed.

14. As per Section 30 of the Panchayats Act, the Sarpanch, who should preside over the Panchayat is a person elected by and from amongst the

elected members thereof. As per Section 30A-1A, the Sarpanch is a "person"™ elected directly by the voters. The Sarpanch is an executive head

of the Panchayat. He has to discharge certain duties. As per Section 38 of the Act, the executive powers, for the purpose of carrying out the

provisions of the Village Panchayats Act and the resolutions passed by a Panchayat, vests in the Sarpanch who shall be directly responsible for the

due fulfillment of the duties imposed upon the Panchayat by or under this Act. His duty is to convene the Panchayat meetings from time to time. He is

responsible for the misconduct in discharge of the duties or for any disgraceful conduct or neglect or incapacity to perform his duties or persistently

remains absent in discharge of such duties. If the Sarpanch is guilty of the above acts, he may be removed by the Commissioner by following due

procedure of law. He even cannot remain absent as per his whims.

15. The preamble of the Act is that the Village Panchayats are constituted in the State investing such powers by the authority to enable them to

function as units of local self-government and of development activities in rural areas, and for certain other matters. As observed above, the Sarpanch

is an executive authority of the government resolutions and he has been imposed with the duties. In this context, the interpretation of 4th proviso to

Section 35 should be considered. We are of the view that the immunity has been granted to every Sarpanch elected during the tenure with a view to

ensure the smooth functioning of the Village Panchayat. The purpose is to protect the functioning of the Village Panchayat and consider the welfare

of the voters of the Village Panchayat. Therefore, the Act has been constituted.

16. In the judgment of a Single Bench relied upon by the contesting respondents in the case of Charushila (supra), the doctrine of purposive

interpretation has been applied. We are of the view that the Sarpanch is a post conferred upon a person. Therefore, the term "Sarpanch"™ as

well as the post of Sarpanch cannot be distinguished. Both have identical meanings in common parlance. If any action is to be taken for the

misconduct or negligence mentioned above, it would be taken against the person who holds the post of Sarpanch. The purposive interpretation is a method of interpreting the laws that considers the laws purpose rather than just its literal meaning. In other words, the intent of legislature is to be understood in the context of purpose and object of the Act. The interpretation is always held in the fulfillment in the object of statute which is the purposive interpretation of statute. In the case of Workmen Of Dimakuchi Tea Estate vs The Management Of Dimakuchi Tea Estate, AIR 1958 SC 353, the Honâ€™ble Supreme Court held that the words of a statute, when there is a doubt about their meaning are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view. Reading 4th proviso to Section 35 of the Act, we are of the view that its language is unambiguous. The words used in this proviso does not create doubt or draws two meaning. It is explicitly clear and unambiguous. Its literal interpretation is also unambiguous. The words used in the said proviso that no such motion of no confidence shall be moved within a period of two years from the date of election of Sarpanch specifically gives the immunity to the Sarpanch elected. There is no scope to draw the inference that such immunity has been granted to the Sarpanch who has been appointed first time. This immunity is granted to every Sarpanch elected during the tenure of Village Panchayat withstanding his sequence in office. We have already discussed above the object of the Act and the purpose of immunity is to ensure smooth functioning of the Village Panchayat. If the meaning as has been given to the word â€˜Sarpanchâ€™ in the case relied upon by the contesting respondents is considered, the very object and purpose of the proviso of the Act may be frustrated. The proviso does not distinguish the election of the Sarpanch for the first time or subsequent thereto after the no confidence against the Sarpanch preceding to the election of another Sarpanch. In view of the rule of interpretation, literal meaning and the words in the said proviso, we are of the opinion that the judgment of Charushila (supra) would not help the contesting respondents. We do not approve the view taken in Charushila (supra).

17. For the above reasons, the writ petition is allowed. The impugned notice dated 11.12.2024 for no confidence motion stands quashed and set aside.

18. No order as to costs.

19. Rule is made absolute in above terms.