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**(1981) 07 BOM CK 0007**

**In the Bombay High Court**

**Case No : Writ Petition No. 1156 of 1981**

Baburao Atmaramji Lande

APPELLANT

Vs

Collector, Chandrapur and another

RESPONDENT

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**Date of Decision : 13-07-1981**

**Acts Referred:**

Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 — Section 72(7)

**Citation : (1983) MhLj 792**

**Hon'ble Judges : M.S. Jamdar, J;B.A. Masodkar, J**

**Bench : Division Bench**

**Advocate : D.K. Deshmukh, for the Appellant; V.P. Salve, Asst. Govt. Pleader for respondent No. 1 and V.S. Sirpurkar, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

M.S. Jamdar, J.—This petition raises an interesting question about the interpretation of the provisions of the Maharashtra Zilia Parishads and Panchayat Samitis Act, 1961, relating to motion of no-confidence against a Chairman or Deputy Chairman of the Panchayat Samiti.

2. The petitioner is the elected member of Rajura Panchayat Samiti. He was elected from Warur Panchayat Samiti Circle in May 1979. He was elected as Chairman of the Panchayat Samiti in the election held in June 1979. Since then he continues to hold the said post.

3. Panchayat Samiti of Rajura block consists of 16 members. Out of them, 9 members gave requisition to the Collector, Chandrapur, on 13-2-1981, requesting him to convene a meeting of the Panchayat Samiti to consider the motion of no-confidence, which they intended to move against the petitioner. In pursuance of this requisition. The Collector convened a meeting of the Panchayat Samiti at 1.00 P. M. on 7-3-1981 in the office of the Panchayat Samiti, for considering the motion of no-confidence against the petitioner and issued necessary notice of the meeting on 18-2-1981. He appointed the Sub-Divisional Officer, Rajura, to

preside over the said meeting.

4. At the time and place fixed in the notice of the meeting, besides the Presiding Officer, only the proposer of the motion Shri S. N. Gode was present. He submitted a requisition withdrawing the no-confidence motion. The requisition was signed by the proposer and the seconder K. S. Awatale. However, since only one member was present, further proceeding of the meeting could not be carried on.

5. About a month thereafter, 12 members of the Panchayat Samiti gave a requisition to the Collector on 8-4-1981, requesting him to convey a meeting of the Panchayat Samiti to consider the motion of no-confidence against the petitioner. The reasons mentioned in the requisition for moving the motion of no-confidence were exactly the same as mentioned in the earlier requisition dated 13-2-1981. Before the Collector could take any action on the requisition, the petitioner submitted an application to him, requesting that no action should be taken on the requisition and no meeting of the Panchayat Samiti should be convened for considering the motion of no-confidence, contending, inter alia, that the net result of the special meeting dated 7-3-1981 was that no-confidence motion against the petitioner was rejected and hence the second requisition dated 8-4-1981 was barred by virtue of sub-section (7) of section 72 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961. The Collector, Chandrapur, however, rejected the application by his order dated 13th April 1981 and issued notice on the same date, convening a special meeting of the Panchayat Samiti at 1-00 P.M. on 27-4-1981 for consideration of the motion of no-confidence against the petitioner. The petitioner, therefore, filed this petition on 20-4-1981 for quashing the order dated 13-4-1981 passed by the Collector, Chandrapur (respondent No. 1) and also for quashing the notice issued by respondent No. 1 for convening a special meeting of the respondent No. 2 Panchayat Samiti for consideration of no-confidence motion.

6. The procedure laid down for motion of no-confidence against a Chairman or Deputy Chairman of the Panchayat Samiti is contained in section 72 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, which reads as follows:

"72. (1) A Chairman or Deputy Chairman shall cease to be the Chairman or the Deputy Chairman, as the case may be, if a motion of no-confidence is passed at a special meeting of the Panchayat Samiti by a majority of not less than two-thirds 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 Samiti and the office of such Chairman or Deputy Chairman shall thereupon be deemed to be vacant.

(2) The requisition for such special meeting shall be signed by not less than one-fourth 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 Samiti

and shall be delivered to the Collector. The requisition shall be signed by the requisitionists and shall be made in such form and in such manner as may be prescribed by the State Government.

(3) The Collector shall within seven days from the date of receipt of the requisition under sub-section (2) convene a special meeting of the Panchayat Samiti. The meeting shall be held on a date not later than thirty days from the date of issue of the notice of the meeting.

(4) The meeting shall be presided over by the Collector or any officer authorised by him in this behalf. The Collector or such officer shall, when presiding over such meeting, have the same powers as the Chairman when presiding over a Panchayat Samiti meeting has, but shall not have the right to vote.

(5) The meeting called under this section shall not, for any reason, be adjourned.

(6) The names of the members voting for and against the motion shall be read in the meeting and recorded in the minute-book kept u/s 118 read with sub-section (13) of section 111.

(7) If the motion of no-confidence is rejected, no fresh motion of no-confidence shall be brought before the Panchayat Samiti within a period of six months from the date of such rejection of the motion.

Section 49, which contains the provision relating to no-confidence motion against President or Vice-President of the Zilla Parishad, is almost identical, the only difference being that the motion against President or Vice-President can be passed by simple majority and the requisition can be given by not less than one fifth of total number of Councillors.

7. As mentioned above, at the meeting convened on 7-3-1981, only Shri S. N. Gode, who, as per the requisition dated 13-2-1981, was expected to move the motion, remained present and gave the requisition to the Presiding Officer withdrawing no-confidence motion against the petitioner. But, as no other member was present, further proceeding of the meeting could not be carried on. The Collector proceeded on the basis that the motion of no-confidence was withdrawn and the said withdrawal did not amount to rejection of the motion. In holding that withdrawal does not amount to rejection, he relied upon the clarification given by the Government by the letter No. ZPA/1080/2350/XXLI, dated 28th March 1980, issued by the Government in Rural Development Department, in respect of no-confidence motion against the office bearers of Zilla Parishad. According to him, this clarification is equally applicable to no-confidence motion in respect of the office bearers of Panchayat Samiti, because the provisions of Sections 49(7) and 72 (7) and the rules framed under the Maharashtra Zilla Parishads (Conduct of Business) Rules, 1964, and the Maharashtra Panchayat Samitis (Conduct of Business) Rules, 1965, are identical. The clarification, which is relied upon, reads as follows:

A motion which has been withdrawn would not amount to rejection. Since the

provisions of Section 49(7) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, require positive rejection and not implied rejection. In the absence of positive rejection, there should be no bar for moving a motion of no confidence within six months.

8. There is, however, scope for a dispute in the present case as to whether no-confidence motion for which the special meeting was called on 7-3-1981 was validly withdrawn. There is nothing in section 72 or for that matter in section 49, which relates to motion of no-confidence against President or Vice-President, about withdrawal of motion of no-confidence. There is no provision in either of these sections prohibiting withdrawal nor any procedure is prescribed in what manner the motion of no-confidence could be withdrawn. The Maharashtra Zilla Parishad Presiding Authorities (No-Confidence Motion) Rules, 1962, as amended by Government Notification dated 5th September 1965, are also silent on this point. Rule 26 of the Maharashtra Zilla Parishads (Conduct of Business) Rules, 1964, however, provides that any motion which has been proposed and seconded may be withdrawn by the proposer with the consent of the Councillor who seconded the motion with the permission of the Zilla Parishad. These rules are framed in exercise of the powers conferred by clause (xix-a) of sub-section (2) of section 274 read with sub-section (2) of section 111 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961. By virtue of section 118 of the said enactment, provisions of sections 111 and 112 apply to meeting of the Panchayat Samiti, as they apply in relation to the meeting of the Zilla Parishad. It is, therefore, possible to contend that in the absence of any specific provision, the rule in respect of withdrawal of an ordinary motion would also be applicable to a motion of no-confidence, either against the President or Vice-President of the Zilla Parishad or Chairman or Deputy Chairman of the Panchayat Samiti, and such motion cannot be withdrawn without the permission of the Zilla Parishad or Panchayat Samiti, as the case may be. It is also a moot question whether a person whose name is mentioned in the requisition as mover of the motion of no-confidence can alone withdraw the motion when the requisition for a special meeting for consideration of no-confidence motion is expected to be signed by not less than 1/5th of the total number of the members of the Zilla Parishad or 1/4th of the total number of the members of the Panchayat Samiti, as contemplated by sections 49 (2) and 72 (2) respectively. But this question need not detain us long, because, by no imaginable or conceivable stretching of the meaning of the word "withdrawal", it can be considered as synonymous with the word "rejection".

9. Shri Deshmukh, learned counsel for the petitioner, contended that as the meeting was convened specially for considering the no-confidence motion and as by virtue of sub-section (5) of section 72 the meeting was not capable of being adjourned, the motion must be deemed to have been rejected within the meaning of sub-section (7) of section 72. According to him, the fact that majority of the members of the Panchayat Samiti chose to remain absent clearly indicated that they were not in favour of the motion of no-confidence. It is difficult to

accept these submissions for two reasons; firstly, for rejection of a motion of no-confidence the meeting specially called for considering the motion must be held; and secondly, the members attending the meeting must exhibit by exercise of their votes that they do not approve of the motion. Ordinarily in the absence of required quorum the meeting can be adjourned and for the adjourned meeting no quorum would be necessary and the business for which the original meeting was convened can be transacted at the adjourned meeting even in the absence of required quorum. But if the statute, which prescribes the procedure for motions of no-confidence, specifically provides that a meeting specially called for consideration of the motion of no-confidence cannot be adjourned under any circumstances, then in the absence of the required quorum there would be no meeting at all, and the result would be that the motion of no-confidence and the notice calling the meeting would lapse. Section 72 (5) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, specifically provides that a meeting convened for considering no-confidence motion cannot be adjourned. In view of this provision, the meeting convened on 7-3-1981 was not capable of being adjourned even for want of quorum. As only one member out of 16 was present, the meeting could not be held for want of quorum. The result was that no meeting could be held in pursuance of notice issued by the Collector, convening the meeting on 7-3-1981. Consequently, there was no question of either passing the motion or rejecting it. The net result was that the motion lapsed.

10. The expressions "motion" and "resolution" are often, though not with absolute accuracy, used as if they were synonymous. Motion does not become a resolution unless it is adopted by the meeting. How a motion becomes a resolution is aptly described in Chapter 7 (page 72) of the Law of Meetings. Their Conduct and Procedure, (Fourth Edition), by Sir Sebag Shaw and Judge Dennis Smith, in the following words:

"Where the meeting is to determine whether certain acts are to be done and, if so, the method whereby they should be accomplished, the question for its consideration is expressed as a "motion", that is to say a formula whereby the meeting is "moved" to adopt a certain course or do some act or declare a particular attitude.?"

In the nature of things, a motion must as a rule be positive in its terms, for it would be stultifying if the meeting were exhorted to resolve to do nothing where that result could be achieved by mere inaction. A negative motion could be appropriate only where the assembling body is already committed to a course of conduct which it is desired to avoid, or where certain results must automatically ensue unless the contrary be resolved upon.

The motion having been stated, the meeting will deliberate upon it, and after possible amendment and discussion, the ultimate question as to whether the motion in the form it has come to assume is approved, is put to the meeting. The issue to be decided having, at that stage, been reduced to terms which incorporate agreed amendments, the question calls for a simple affirmative or

negative in answer. The answer which a member of the meeting desires to give is exhibited by the exercise of his vote in accordance with his voting rights. If the motion be approved, it becomes a resolution, the meeting having resolved to act as it has been moved to do.

11. The motion cannot be said to be carried or passed unless requisite number of members exhibit their approval of the motion by exercise of their votes, so also the motion cannot be said to have been rejected unless requisite number of members exhibit their disapproval of the motion by exercise of their votes. It may be that there may not be any deliberation in the meeting on the motion, but exhibition of approval or disapproval by exercising votes is absolutely necessary before a motion becomes a resolution or it is rejected. It is in this sense that the word "passed" is used in sub-section (1) of section 49 and sub-section (1) of section 72, and the word "rejection" is used in sub-section (7) of section 49 and sub-section (7) of section 72 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961. As laid down in sub-section (1) of section 49, a motion of no-confidence cannot be said to have been passed against the President or Vice-President of the Zilla Parishad unless majority of total number of the members, other than associate members, and against the Chairman or Vice-Chairman unless at least 2/3rd total number of the members, other than associate members, attend the meeting and vote in favour of the motion. The word "rejection" is used in sub-section (7) of sections 49 and 72 in contra-distinction with the word "passed" in sub-section (1).

12. Natural justice demands that in the case of all censure and want of confidence motions the office-bearers affected should have an adequate opportunity to defend themselves. They should thus be given reasonable notice of the motion and of the meeting which is to discuss it, and at that meeting they should be given sufficient time to put their side of the story and to produce any relevant evidence. The person moving the resolution has also a right to address the meeting. This requirement postulates that a meeting must be held and the motion must be put to vote after discussion, if any.

12.A. The word "rejection" has several connotations. In Webster's Third New International Dictionary (Vol. II), two meanings of this word are given: (1) the action of rejecting or the state of being rejected; and (2) something rejected. In the same Dictionary, 7 connotations of the word "to reject" are given. They are:

"1: To refuse to acknowledge, adopt, believe, acquiesce in, receive, or submit to: decline to accept: refuse (considered a proposition fairly and rejected it);

2: to cast off (as a person); forsake;

3: to refuse to have, use, or take for some purpose: cast or throw away as useless, unsatisfactory, or worthless: discard; 4a: to refuse to hear, receive, or admit: rebuff; b: to refuse (a person) as lover or spouse; 5 : to refuse to grant, consider, or accede to; 6a: to throw or cast back : repulse; b : to cut off (as a person) from something; 7: to spew out;

In Volume LXXVI of the Corpus Juris Secundum, following connotations of the word "reject" are given:

"The word "reject" is defined as meaning to cast or throw away, as useless, unsatisfactory, etc.; to discard; to relegate; to send away; to repel. It is also defined as meaning to refuse to receive or to accept after consideration; to refuse to adopt; to decline. The term is sometimes used in the sense of disbelieve, and in this sense is defined as meaning to refuse to credit.?"

"Reject" has been held equivalent to, or synonymous with "Challenge" and "disapprove" and it has been compared with, or distinguished from, "accept", "disregard" and "weigh and disregard". "Rejected" has been held equivalent to "disallowed".

In Black's Law Dictionary (Fifth Edition), various connotations of the word "rejection" are not given, but we are asked to see the meaning attached to the words "non-acceptance", "refusal", "repudiation" and "rescind". "Non-acceptance" has been defined as "refusal to accept anything". The meaning of the word attached to "refusal" is given as follows:

Refusal--The act of one who has, by law, a right and power of having or doing something of advantage, and declines it. Also, the declination of a request or demand, or the omission to comply with some requirement of law, as the result of a positive intention to disobey. In the latter sense, the word is often coupled with "neglect," as if a party shall "neglect or refuse" to pay a tax, file an official bond, obey an order of court, etc. But "neglect" signifies a mere omission of a duty, which may happen through inattention, dilatoriness, mistake, or inability to perform, while "refusal" implies the positive denial of an application or command, or at least a mental determination not to comply; a rejection, a denial of what is asked.

It is thus clear that when used with reference to a motion, which is expected to be considered by body of persons, it implies positive expression of denial or disapproval of what is sought to be moved. Hence unless a motion is put to vote in a properly held meeting and defeated by requisite majority, it cannot be said to have been rejected.

13. The word "rejection" is commonly used in reference to nomination paper. It is well-settled that a process of rejection of nomination paper is not a mechanical process. Before rejecting a nomination paper, the Returning Officer is expected to apply his mind and if he decides to reject the nomination paper, he has to give reasons therefore.

14. The word "rejection" finds place in sub-section (3-A) of section 35 of the Bombay Village Panchayats Act, 1958. The said provision reads as follows:

If the motion is not carried by a majority of not less than two-thirds of the total number of the members (other than associate 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 six months from the date of the rejection of the motion.

It is clear that the word "rejection" is used in this provision to denote that motion of no-confidence was not carried, meaning thereby that it was defeated.

15. In our view, therefore, a motion of no-confidence cannot be said to have been rejected unless it is considered by the members in the meeting specially convened for that purpose. As admittedly no meeting was held on 7-3-1981, there was no question of rejecting the motion of no-confidence, for which the meeting was convened. The second requisition was, therefore, perfectly valid and the Collector was competent to issue notice on the basis of the said requisition, convening a fresh meeting for consideration of the motion of no-confidence against the petitioner. The petition, therefore, fails and is dismissed with costs. Rule discharged. As the meeting which was convened by the Collector on 27-4-1981 was stayed by the order of this Court, the Collector is directed to convene a fresh special meeting of Rajura Panchayat Samiti on the basis of the requisition dated 8-4-1981.