

(2002) 02 BOM CK 0129

In the Bombay High Court

Case No : Writ Petition No. 1130 of 1998

Balaji Tulsiram Chaudhari

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 11-02-2002

Acts Referred:

Bombay Village Panchayats Act, 1959 — Section 154, 35(3), 35(B)

Citation : (2002) 3 ALLMR 563 : (2002) 4 BomCR 702 : (2002) 2 MhLj 508

Hon'ble Judges : V.M. Kanade, J;V.G. Palshikar, J

Bench : Division Bench

Advocate : Anjan De, for the Appellant; N.S. Khubalkar, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

V.G. Palshikar, J.—By this petition, the petitioner is challenging the order passed by the Additional Collector, Gadchiroli, as also the order passed by the Additional Commissioner, in the proceedings arising out of Bombay Village Panchayats Act, 1958 (hereinafter, for the sake of brevity, referred to as "the Act").

2. Undisputed facts, giving rise to the petition, are that: On notice moving for no confidence motion against Shri B. T. Choudhari of village Mohazari, was move by one Shri Bodhaji Nikhure and some other members of the Gram Panchayat. The notice was presented to the Tahsildar, Armori, who, as per law, convened special meeting of the panchayat for consideration of the no confidence motion on 13-11-1997. It was presided over by the Tahsildar. Both the Sarpanch and Up-Sarpanch and other members participated in the meeting and when the motion was put to vote, the Tahsildar Ruled that motion was defeated or failed. He ruled accordingly that the motion for no confidence was not carried by sufficient number of votes, as required by law.

3. An appeal u/s 35(3 B) of the Act was, therefore, filed before the Additional Collector, Gadchiroli, by the mover of No confidence motion, i.e. Shri Bodhaji.

This appeal was decided by the Additional Collector on 25th November, 1997 and was allowed, holding that the no confidence motion was carried and declaring the office of Sarpanch as vacant.

4. The petitioner, therefore, filed further appeal before the Commissioner, u/s 35 (3 C) of the Act, contending inter alia that the appeal, as filed by the respondent-Bodhaji, itself was not maintainable. Other grounds regarding merits were also raised. This further appeal was decided by the Commissioner on 26th February, 1998, He rejected all the contentions raised while dismissing the appeal with costs. The petition is, therefore, directed against both the orders.

5. It is contended by Shri De, learned counsel appearing on behalf of the petitioner that on a plain reading of Section 35 of the Act, it will be apparent that the provisions contained therein, do not provide for an appeal to a person, who has failed to carry the No confidence motion, moved by him in a meeting called for that purpose by the Tahsildar. According to the learned Counsel, the appeal under that Section and further appeal u/s 35 (3 C) of the Act, is available only in case where the motion for no confidence carried.

6. Opposing this submission it was claimed by the teamed A.G.P., appearing on behalf of the respondent Nos. 1 to 4, that the recourse could be taken to Section 154 of the Act, whereunder it is observed that powers of superintendence or supervision could be exercised by higher officials in the hierarchy mentioned therein, and since the Tahsildar has committed an error while acting as Presiding Officer in that meeting called under the Act, any calculation of the votes, his declaration of results, is liable to be reviewed, revised or otherwise reconsidered by the higher authority u/s 154 of the Act. The question of law, as raised by the learned counsel for the petitioner, as also the answer given by the learned Asstt. Govt. Pleader, are substantial in nature and would require adequate adjudication. It is likely that such occasion would arise frequently and, therefore, interpretation of the provisions of Section 35 as also Section 154, is liable to be made.

7. In order to appreciate the contentions, it will be appropriate to consider the provisions of the Bombay Village Panchayats Act, 1958, empowering various officers to do various functions under the Act. It will be seen from the Scheme of the Act that it was the Legislative for controlling the governance of Gram panchayats or village panchayats, as they are called in the State of Bombay, as it then was, exhaustive provisions have been made in the Act for that purpose. Chapter-II deals with Gram Sabhas, Establishment and Constitution of Panchayats, whereunder provision is made regarding meeting of Gram Sabha and the panchayat; constitution of panchayat; elections thereto; preparation of voters list; qualifications and disqualifications for the members of Gram Panchayat, are all defined. This chapter only defines what is motion of no confidence in Section 35.

8. Chapter-III deals with administrative powers and duties vesting in the

panchayats. Chapter-IV deals with properties and funds of the panchayat. Chapter-V pertains to Establishment, Budget and Accounts. Chapter-IX deals with Taxation and recovery of claims by the panchayats, defining the items or matters, in which levy of taxes and fees, is permissible by the panchayats. Chapter-X deals with financial assistant to panchayats and then comes Chapter-XI, which spells out control over the functioning of the village panchayats. It provides for appointment of District Village Panchayat Officers. It defines powers of the Chief Executive Officer of the Zilla Parishad in relation to a panchayat. It spells out the circumstances, in which, an action of dissolution or supersession of the panchayats, can be undertaken or ordered.

9. In the instant petition, we are mainly concerned with Section 35 and Section 154 of the Act. Section 35 provides a mechanism, with which motion of no confidence is to be moved, discussed and voted upon. It gives the manner in which the motion is to be carried and provides for all consequential reliefs and declarations that must follow. Sub-section (3 B) of Section 35 of the Act provides for an appeal, which in the instant case, was preferred by the respondent, who was mover of the no confidence motion, which failed. The provisions of Section 35(3 B) are reproduced as hereunder:--

"(3B) If the Sarpanch or, as the case may be, the Upa-Sarpanch 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 fifteen days from the date on which it was received by him; and any such decision shall, subject to an appeal under Sub-section (3C), be final."

10. From plain reading of Section quoted above, it will be seen that the validity of the motion carried under Sub-section (3) may be disputed within seven days from the date on which such motion was carried, and may be referred the dispute to the Collector, who shall decide. The words which are important in this Sub-section are, therefore, "the validity of the motion carried under Sub-section (3)". In order to invoke the power of arbitration vested in the Collector u/s (3B), therefore, which is a condition precedent, as prescribed by Sub-section (3B) is that the motion is carried under Sub-section (3B). The plain meaning of words "motion carried" is motion passed and for this purpose, one does not have to go to any dictionary or any other provision of law. But Section (3A) of Section 35 itself, which provides that, if the motion is not moved or is not carried by the specified majority at any meeting of the panchayat, no such fresh motion shall be moved against Sarpanch, or as the case may be Upa-Sarpanch, within a specified period. Moving of no confidence motion is, therefore, entirely different from the motion, not being carried and "not being carried" means failure of the motion. That being the position, the validity of the motion carried, can be disputed within seven days, as contemplated by Section (3B) of Section 35 of the Act. Section (3B) of Section 35 postulates passing of the vote of no confidence against Sarpanch or Upa-Sarpanch, as the case may be. If there is failure, no

fresh motion can be brought on the same subject for a specified period. Therefore, a dispute can be raised u/s 35(3B) only when the motion of no confidence is carried or passed. In the instant case, the motion of no confidence had failed. It is pertinent to note here that the duty of Tahsildar to preside over a meeting convened for consideration of no confidence motion is over after he conducts the meeting and declares the result thereof. That purely administrative function enjoined on him, the correctness of which, cannot be subjected to examination or re-examination u/s 154 of the Act, as we will see motion in as much as of that section. Therefore, according to us, on plain reading of Section 35(3B), a dispute can be raised only in the event of motion for no confidence being carried, i.e. motion for no confidence being passed by the required number of votes and an appeal, under that provision by a person, who wants to agitate failure of no confidence motion, is not maintainable. The Collector, functioning u/s 35(3B), therefore, has no jurisdiction to entertain a complaint or a dispute or an appeal in relation to a motion of no confidence, which has failed. That being the position in law, the action of the Collector, in the instant case, in passing the impugned order dated 25-11-1997, was fully without jurisdiction and same is, therefore, liable to be quashed and the order, which is wholly without jurisdiction, cannot be further subjected to an appeal. Yet Sub-section (3C) of Section 35 was invoked by the present petitioner, as there was an order of the Collector u/s 35(3B). The Commissioner, before whom, the further appeal lay, should have seen, therefore, that the decision rendered by the Collector u/s 35(3B) was without jurisdiction and it was therefore his duty to set it aside. Failure on his part to do so is failure to perform statutory duty. In any event, both the orders of the Collector and the Commissioner, must go for lack of jurisdiction.

11. That takes us for consideration to the provisions of Section 154, on which reliance was placed by the learned Asstt. Govt, Pleader to infuse jurisdiction in Collector to suo motu revise result of motion of no confidence held in a meeting under Sub-section (3). Section 154 reads as under:--

"154. (1) In all matters connected with this Act, the State Government, and the Commissioners and Collectors shall have and exercise the same authority and control over the Commissioner, the Collectors and their subordinates, respectively as they have and exercise over them in the general and revenue administration.

(2) In all matters connected with this Act, the State Government shall have and exercise the same authority and control over the Zilla Parishad and the Panchayat Samiti as it has and exercises over them under the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961."

12. Plain reading of this section, therefore, demonstrates that the power of supervision has to be exercised by the superior officers, in cases of administrative functioning, upon the officials mentioned in the Act. The function enjoin on the Tahsildar u/s 35, does not leave any discretion to the Tahsildar to act as a Tahsildar. He is acting in that case as Presiding Officer of a particular

meeting and takes his power from the provisions of Section 35. A perusal of Section 35 will show that the Tahsildar has no option but to call a meeting of the Gram panchayat to consider motion of no confidence. It enjoins on him to call the meeting. The wording in this section are : the Tahsildar shall call a meeting within seven days. There is therefore, no discretion in the Tahsildar in this regard. His functioning, as such, is made subject to an appeal and further appeal in a given contingencies mentioned in section 35 itself. The general power of superintendence flowing from Section 154, therefore, cannot be exercised in cases where provisions of Section 35 are clear. It is only in cases, where Tahsildar declares results of no confidence motion and declares that it is carried and that his decision can be questioned in an appeal before the Collector u/s 35(3B) or further appeal before the Commissioner, u/s 35(3C). Such specific statutory remedy having been provided in cases where motion of no confidence is carried, the power of supervision flowing from Section 154, cannot be exercised in relation to cases, where motion of no confidence is not carried. We are unable, therefore, to accept the submission of the learned A.G.P. appearing on behalf of the State, that the Collector should have exercised his jurisdiction u/s 154. Apart from this legal position, the Collector was called upon to decide the correctness of the failure of motion by way of specific appeal made u/s 35(3B). His jurisdiction u/s 154 was not invoked. Section 154 does not empower suo motu revision or reconsideration of the exercise of power specifically given to a particular officer by an enactment itself. It is a general power spelling out the right of the superior officers to exercise the same authority and control over the subordinate in the general and revenue administration. The function, which Tahsildar discharges u/s 35, is not normally a function, which he, as a Tahsildar, performs in the general and revenue administration, so that the power of supervision u/s 154 could be exercised. This is a special functioning enjoined on Tahsildar by the provisions of Section 35 and that Section 35 provides specifically for the contingencies, in which, the decision of the Tahsildar can be challenged. That being the Scheme of Section 35, recourse cannot be taken to Section 154 in such dispute.

13. In the result, therefore, the petition succeeds and must be allowed. It is hereby allowed. The impugned orders dated 25-11-1997 passed by the Additional Collector, Gadchiroli and the order dated 26-2-1998, passed by the Commissioner, Nagpur Division, Nagpur, are set aside. There shall be, however, no order as to costs.