
(2015) 01 BOM CK 0155
In the Bombay High Court
Case No : Writ Petition No. 10781 of 2012

Chandrakant Bapuso Rugge	Vs	APPELLANT
Grampanchayat, Tamdalge and Others		RESPONDENT

Date of Decision : 27-01-2015

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 29, 34, 34(1), 35, 35(1)
Constitution of India, 1950 — Article 226, 227

Citation : (2015) 2 ABR 355 : (2015) 5 ALLMR 883 : (2015) 5 BomCR 607 :
(2015) 2 MhLj 700

Hon'ble Judges : M.S. Sonak, J.

Bench : Single Bench

Advocate : Pooja Thorat a/w. V.M. Thorat, for the Appellant

Final Decision : Dismissed

Judgement

M.S. Sonak, J.—The petitioner was the Sarpanch of the Gram panchayat, Tamdalge. The petitioner tendered his resignation from the post of Sarpanch on 17 August 2012 by addressing a writing to that effect under his hand to the Chairman of Panchayat Samiti. The Block Development Officer, directed placement of said resignation for its approval in the meeting of Panchayat Samiti scheduled for 10 September 2012. In the meantime, i.e., 23 August 2012, more than one-third total number of members of the Panchayat requisitioned a meeting to consider motion of no confidence against the petitioner. Such requisition was in consonance with the provisions provisions of Section 35(1) of the Bombay Village Panchayats Act, 1958 (said Act). The Tehsildar, in consonance with the provisions of Section 35(2) of the said Act, by notice dated 23 August 2012 convened a Special Meeting for considering the motion of no confidence at the office of Panchayat on 29 August 2012. At the specially convened Meeting, the petitioner objected to taking up of the motion, inter alia on the ground that he had already submitted his resignation on 17 August 2012 and the same was to come up before the Panchayat Samiti for approval on 10 September 2012. Notwithstanding such objection, the motion of no confidence

was carried through with seven members out of the total nine members expressing their want of confidence in the petitioner.

2. By application dated 3 September 2012, the petitioner raised a dispute before the Additional Collector urging the following:

(a) That in view of the petitioner having tendered his resignation on 17 August 2012, the motion of no confidence ought not to have been taken up for consideration in the Special Meeting for 29 August 2012; and

(b) That there was non-compliance with the provisions of Rule 17 of the Village Panchayat (Meeting) Rules, 1959 (said Rules), inasmuch as there was neither any proposer nor any seconder to the motion of no confidence.

3. The Additional Collector found no merit in the dispute raised by the petitioner and consequently dismissed the petitioner's application dated 3 September 2012 by making order dated 2 November 2012 (impugned order).

4. In this petition, the petitioner impugns the passage of no confidence motion in the Special Meeting on 29 August 2012 and the order made by the Additional Collector on 2 November 2012, rejecting the petitioner's objections thereto.

5. Ms Thorat, learned counsel for the petitioner, at the outset submitted that she would not press the issue of violation of Rule 17 of the said Rules, in view of the decision of the Full Bench of this Court in case of Shri Tatyasaheb R. Kale and Shri Navnath T. Kakde and ors. Letters Paten Appeal No. 312 of 2013 in Writ Petition No. 6967 of 2012 decided on 9 October 2014. Accordingly, the challenge on the basis of alleged violation of Rule 17 of the said Rules does not survive.

6. Ms Thorat, by placing reliance upon paragraph 21 of the decision in case of Shri. Tatyasaheb Kale (supra), however, pointed out that no confidence motion, which has been passed without fulfilling the requirement of Section 35(3) of the said Act is vulnerable and can always be challenged as such. In the present case, learned counsel pointed out that there has been breach of Section 35(3) of the said Act, inasmuch as the factum of petitioner having already resigned, even prior to the members of Panchayat requisitioning a meeting to consider the motion of no confidence has been completely ignored. Learned counsel pointed out that under Section 35(3), no special meeting of the Panchayat can at all be convened if Sarpanch or Upa-Sarpanch has already tendered his resignation or in any case no effect can be given to a motion of no confidence passed at such specially convened meeting of the Panchayat. Learned counsel pointed out that this issue was specifically raised in the specially convened meeting of 29 August 2012 and thereafter before the Additional Collector. However, the same has not been considered and therefore, the motion of no confidence cannot be said to have been validly passed or in any case it cannot be said that the petitioner has ceased to be a Sarpanch of the Panchayat. Learned counsel pointed out that on a future date, the petitioner has withdrawn his resignation, but such withdrawal was basically to vest him with locus standi to challenge the motion of no

confidence wrongfully passed against him. For all these reasons, learned counsel submitted that this petition ought to be allowed and the reliefs prayed for therein be made absolute.

7. Mr. Patil, learned counsel for respondent Nos. 4 to 10 submitted that the interpretation suggested by the learned counsel for the petitioner upon provisions of Section 35(3) of the said Act is incorrect and if accepted would lead to untold mischief. Learned counsel pointed out that there was no legal infirmity whatsoever in either the members of Panchayat requisitioning Meeting to consider motion of no confidence or in the Tehsildar convening such a special meeting for the said purpose. Motion of no confidence was passed overwhelmingly and the will of the majority cannot be permitted to be defeated on the basis of hyper-technical objections which do not go to the root of the matter. Learned counsel further submitted that if indeed the petitioner has resigned as a Sarpanch, then the petitioner ought not to be conceded any locus standi to maintain the present petition. For all these reasons, learned counsel submitted that the petition, as filed, ought to be dismissed with costs and the interim reliefs by virtue of which, the petitioner continues as a Sarpanch, be vacated at the earliest.

8. The rival contentions, now fall for my determination.

9. The provisions of Section 35, which are relevant for appreciating the challenge raised, read thus:

35. Motion of no confidence : (1) A motion of no confidence may be moved by not less than one third of the total number of the members who are for the time being entitled to sit and vote at any meeting of the Panchayat against the Sarpanch or the Upa-Sarpanch after giving such notice thereof to the Tahsildar, as may be prescribed. Such notice once given shall not be withdrawn.

(2) Within seven days from the date of receipt by him of the notice under subsection (1), the Tahsildar, shall convene a special meeting of the Panchayat for considering the motion of no confidence at the office of the Panchayat a time to be appointed by him and he shall preside over such meeting. At such special meeting, the Sarpanch, or the Upa-Sarpanch against whom the motion of no confidence is moved shall have a right to speak or otherwise to take part in the proceedings at the meeting (including the right to vote).

(3) If the motion is carried by a majority of not less than two-third of the total number of the members who are for the time being entitled to sit and vote at any meeting of the Panchayat or the Upa-Sarpanch, as the case may be, shall cease to hold office after seven days from the date on which the motion was carried unless he has resigned earlier or has disputed the validity of the motion so carried as provided in subsection (3B); and thereupon the office held by such Sarpanch or Upa-Sarpanch shall be deemed to be vacant.

Provided that, where the office of the Sarpanch being reserved for a woman, is

held by a woman Sarpanch, such motion of no-confidence shall be carried only by a majority of not less than three-fourth of the total number of the members who are for the time being entitled to sit and vote at any meeting of the Panchayat;

Provided further that, no such motion of no-confidence shall be brought within a period of six months from the date of election of Sarpanch or Upa-Sarpanch.

(3A) If the motion [is not moved or is not carried] by [a majority of not less than two-third of] [or, as the case may be, three-fourth, of] [* * *] the total number of the 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 [one year] from the date of such special meeting.]

(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.

(3C) Any person aggrieved by the decision of the Collector may, within seven days from the date of receipt of such decision, appeal to the Commissioner who shall decide the appeal, as far as possible, within fifteen days from the date on which the appeal is received by him, and any such decision shall be final.

(3D) Where on a reference made to him under sub-section (3B), the Collector upholds the validity of the motion carried under sub-section (3) and no appeal is made by the Sarpanch or the Upa-Sarpanch under sub-section (3C) within the limitation period specified in that sub-section, or where an appeal is made under sub-section (3C) but it is rejected by the Commissioner, the Sarpanch or, as the case may be, the Upa-Sarpanch shall cease to hold office, in the former case, immediately after the expiry of the said limitation period and, in the latter case, immediately after the rejection of the appeal, and thereupon the office held by such Sarpanch or Upa-Sarpanch shall be deemed to be vacant.]

(4) In cases where the offices of both the Sarpanch and Upa-Sarpanch become vacant simultaneously, the District Village Panchayat Officer or such other officer as he may authorise in this behalf shall, pending the election of the Sarpanch exercise all the powers and perform all the functions and duties to the Sarpanch but shall not have the right to vote in any meeting of the Panchayat.

(emphasis supplied)

10. From the undisputed facts, it is clear that there is no breach whatsoever of the provisions contained in sub-sections 1 and 2 of Section 35 of the said Act. In the present case, more than one third members of the Panchayat requisitioned a Meeting to consider motion of no confidence against the petitioner. This was

entirely consistent with the provisions contained in sub-section 1 of Section 35 of the said Act, which contemplate such requisition by not less than one third of the total number of members who are for the time being entitled to sit and vote at any meeting of the Panchayat. Based upon such requisition, the Tahasildar, in compliance with the statutory duty imposed upon him under sub-section 2 of Section 35 of the said Act convened a Special Meeting of the Panchayat to consider the motion of no confidence on 29 August 2012. There is no allegation that at such specially convened meeting, the petitioner was not permitted to speak or otherwise take part in the proceedings. In fact, the minutes of the meeting record that the petitioner did speak and participate at such meeting, by way of raising objection to the very consideration of motion of no confidence. There is nothing in the provisions contained in sub-sections 1 and 2 of Section 35 of the said Act, which bars the members of Panchayat from requisitioning a Special Meeting for consideration of motion of no confidence or for the Tahasildar convening such Special Meeting for such purpose, merely because a Sarpanch may have tendered his resignation, which is yet to be approved by the Panchayat Samiti. Accordingly, there is no merit whatsoever in the petitioner's contention that Tahasildar could not have convened a Special Meeting in order to consider the motion of no confidence against the petitioner.

11. Sub-section 3 of Section 35 of the said Act, provides that if the motion is carried by a majority of not less than two third of the total number of members, who are for the time being entitled to sit and vote at the meeting of Panchayat, then the Sarpanch or Upa-Sarpanch, as the case may be shall cease to hold office after seven days from the date of which the motion was carried, unless such Sarpanch or Upa-Sarpanch has resigned earlier or has disputed the validity of the motion under sub-section 3B. This means that consequent upon motion being carried out by majority by not less than two third of the members, the Sarpanch or Upa-Sarpanch as the case may be shall continue to hold office for seven days from the date on which such motion was carried. However, if within this period of seven days, Sarpanch or Upa-Sarpanch tenders his resignation, then the period of seven days grace offered by the provision to such Sarpanch or Upa-Sarpanch, shall not apply and such Sarpanch or Upa-Sarpanch shall cease to hold office from the date of resignation. There is nothing in sub-section 3 of Section 35 of the said Act to indicate that a motion of no confidence cannot be considered against the Sarpanch or Upa-Sarpanch, who has tendered his resignation, but the same is pending for approval either before the Panchayat Samiti (in case of Sarpanch) or the Sarpanch (in case of Upa Sarpanch), as the case may be. There is also nothing in sub-section 3 of Section 35 of the said Act to support the contention that a Sarpanch, who may have tendered his resignation earlier, shall not cease to hold office after seven days from the date on which motion of no confidence was carried by majority of not less than two third of the members of the Panchayat. Reading of the statutory provisions, therefore, does not support the contention raised by and on behalf of the petitioner.

12. In this case, there is no dispute that the motion of no confidence was carried by not less than two third of total number of members of the Panchayat, who were for the time being entitled to sit and vote at any meeting of the Panchayat. Therefore, ordinarily, after seven days from the date on which such motion was carried, the petitioner would cease to hold office as Sarpanch. The petitioner, however, contends that since the petitioner had resigned earlier, the petitioner would not cease to hold office until his resignation is considered by the Panchayat Samiti.

13. As noted earlier, the petitioner's contention finds no support in the plain reading of sub-section 3 of Section 35 of the said Act. The phrase "unless he has resigned earlier" has to be read in conjunction with the phrase which precedes it, namely "shall cease to hold office after seven days from the date of which the motion was carried". Thus read, it means and implies that though ordinarily a Sarpanch shall continue in office as a Sarpanch for seven days notwithstanding the passage of motion of no confidence against him, nevertheless, such continuance for a period of seven days can be either waived or curtailed, by the Sarpanch tendering his resignation in the meanwhile. The resignation as contemplated by sub-section 3 of Section 35 of the said Act, therefore, is the one tendered by the Sarpanch, after he has lost the confidence of majority of not less than two-third of members.

14. If the interpretation suggested by learned counsel for the petitioner is to be accepted, then the same would give occasion to serious mischief. In fact, the instance of what such mischief could be can be illustrated by the conduct of the petitioner in this very case. The petitioner, possibly realising that he he has lost the confidence of majority, tendered his resignation from the post of Sarpanch on 17 August 2012. In terms of Section 34(1) of the said Act, such resignation by a Sarpanch has to be by writing under his hand addressed to the Chairman of the Panchayat Samiti. Sub-section 4 of Section 34 of the said Act makes applicable to the provisions of sub-sections (2), (3), (4),(5) and (6) of Section 29 mutatis mutandis to the resignations tendered under sub-sections (1) and (2) of Section 34, as they apply to the resignation tendered under sub-section (1) of Section 29 of the said Act. The said sub-sections of Section 29 of the said Act permit a member to dispute the genuineness of the resignation, in which case the dispute shall have to be referred to the Collector. The decision of the Collector is appealable to the Commissioner. The resignation is to take effect, where there is no dispute after expiry of seven days from the date on which it is placed before the prescribed authority and where there is dispute, consequent upon rejection of appeals by Collector and Commissioner. The petitioner, with his eye upon such elaborate procedure tendered his resignation on 17 August 2012. After the passage of motion of no confidence, the petitioner purported to withdraw his resignation, allegedly on the ground of vesting him with locus standi to question the motion of no confidence. This is precisely serious mischief, which would ensue, if the contention urged by and on behalf of the petitioner, in the matter of interpretation of sub-section 3 of Section 35 of the said Act is to be accepted.

From the facts and circumstances, in the present case, it is apparent that the petitioner attempted a subterfuge by tendering and withdrawing his resignation, with a view to avoid facing motion of no confidence or vacating office, notwithstanding the expression of want of confidence in him, by no less than seven out of nine members of the Panchayat. Such petitioner, is not entitled to invoke a constitutional jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

15. That apart, it is apparent that the petitioner has lost the support of the majority. The petitioner merely intends to cling to power on the basis of hyper-technical and misconceived pleas. The conduct of the petitioner, as noted earlier, has not been candid or honest. If the interpretation put-forth by and on behalf of the petitioner is to be accepted., then the same will enable a Sarpanch, who has lost the will of the majority, to first submit a resignation and on the said basis defer vacation of office, notwithstanding that a motion of no confidence has been carried against him. Such Sarpanch would thereafter go on raising several disputes with regard to the resignation. The legislature has certainly not intended this type of situation. The provision contained in sub-section 3 of Section 35 of the said Act is not intended to postpone the cessation from the office to some indeterminate point of time or upto the dispute with regard to resignation is finally adjudicated by the authorities prescribed under the said Act. It is trite that the post of a Sarpanch has to be filled in by a democratic process. The continuance of a person in the post of a Sarpanch is also until such person enjoys the support of the majority. In fact, the basis of democracy is the will of majority. Only in case of a clear conflict between the rule of law and rule of majority, shall the rule of majority have to give in. In the present case, there is no violation of any statutory provisions or rule of law. Consequently, there is no reason as to why the rule of majority ought not to prevail.

16. There is no merit in this petition. Normally, in a case like this, where the petitioner has clung to power, despite having lost the confidence of seven out of nine members of the Panchayat, costs ought to be imposed upon the petitioner. However, considering the circumstance that there were conflicting decisions in the matter of interpretation of Rule 17 of the said Rules, this petition was admitted and interim relief granted. The dispute as now been resolved by the Full Bench of this Court in case of Tatyasaheb R. Kale (supra). The learned counsel for the petitioner was right in not pressing the issue of alleged infraction of Rule 17 of the said Rules. In this view of the matter, this Court refrains from imposing costs upon the petitioner. The petition is liable to be dismissed and is so dismissed.

17. Rule is discharged. Interim relief, if any, stands vacated.