

(1986) 10 BOM CK 0026

In the Bombay High Court

Case No : Writ Petition No. 2052 of 1986

Dhrupad Bhagwan Sawale and Another

APPELLANT

Vs

Collector, District Buldana

RESPONDENT

Date of Decision : 17-10-1986

Acts Referred:

Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 — Section 274(2)
Maharashtra Zilla Parishads Presiding Authorities (No-confidence Motion) Rules, 1962
— Rule 2

Citation : (1987) 1 BomCR 531 : (1986) MhLj 996

Hon'ble Judges : V.A. Mohta, J; B.G. Deo, J

Bench : Division Bench

Advocate : S.V. Manohar, for the Appellant; G.D. Patil, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

V.A. Mohta, J.—Rule made returnable forthwith. Heard parties by consent. The sole point for consideration in this matter is whether notices of motion of no-confidence dated 25-9-1986 issued against the President and Vice-President of the Zilla Parishad, Buldana (Petitioner Nos. 1 and 2) issued under the Maharashtra Zilla Parishads Presiding Authorities (No Confidence Motion) Rules, 1962 (the Rules) framed u/s 274(2)(x) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (the Act) are valid for want of grounds in the motions. One of the motions reads :

"Since Shri Dhrupadrao Bhagwan Saale has lost our confidence, we are proposing motion of no confidence against him."

The other is similarly worded. The point is no more res integra. It is covered by our decision in Ganeshsinha Domansinha Hajari v. Commissioner, Nagpur Division, Nagpur and others, 1963 Mh.L.J. 569 followed in Shaligram v. Collector, Writ Petition No. 2476 of 1981 decided on 14/15-12-1981. Matter is governed by Rule 2 (as amended on 30-11-1965) which reads thus :

"2. Form of requisition.---The requisition to call a special meeting to consider a motion of no-confidence in the President or Vice-President or both shall be in the form hereto appended. The requisition shall be accompanied by the text of the motion proposed to be moved specifying therein the grounds on which it is proposed to move the motion and the name of the Councillor who shall move the motion."

Object of Rule 2 was explained thus :

"10. It seems to us also having regard to the other provisions of the Act and the rules and having regard to the particulars prescribed in the form that these rules were framed with a definite object. They were framed in order that the discussion at a meeting in which a no-confidence motion is to be moved should not, so to say, be "at large" as is generally the case when such motions are moved. The " universe of discourse" would necessarily be limited if the grounds are stated. Secondly, the object appears to be not only that the Chairman or Deputy Chairman against whom the no-confidence is being expressed should know in advance what was being alleged against him but also that all other members should be apprised of the charges upon which the no-confidence motion was moved. Thus the requirement as to the grounds achieves a double object, namely, to limit the area of discussion, and also to give due notice to the party charged as well as the members of the Samiti, of the charges and enables them to make up their minds upon the charges. We think that construing the provisions of the rule as merely directory would defeat that object. In our opinion, therefore, the notice given on 10-10-1962 by the four respondents was a notice which was not in compliance with the law and a notice upon which a meeting such as was requisitioned could not legally have been called."

2. Shri Patil, the learned Assistant Government Pleader for the respondent-Collector, has submitted that in a democratic set up, the fact that the majority has lost confidence is by itself sufficient reason for removal irrespective of validity or correctness of the grounds or reasons for loss of confidence and hence the notices were valid. Reliance has been placed on the case of Ramkrushna and another v. Kisan Zingraji Madke and others, 1970 Maharashtra Law Journal 836 with interpreted section 55 of the Maharashtra Municipalities Act which reads thus :

"55(1). A President shall cease to be President, if the Council by a resolution passed by a majority of not less than two-thirds of the total number of Councillors (excluding the co-opted Councillors) at a special meeting so decides.

(2) The requisition for such special meeting shall be signed by not less than one-half of the total number of Councillors (excluding the co-opted Councillors) and shall be sent to the Collector.

(3) The Collector shall, within ten days of the receipt of a requisition under sub-section (2), convene a special meeting of the Council;

Provided that, when the Collector convenes a special meeting, he shall give intimation thereof to the President.

(4) A meeting to consider a resolution under sub-section (1) shall be presided over by the Collector or any officer authorised by him in this behalf, but the Collector or such other officer shall have no right to vote.

(5) The co-opted Councillors present at any meeting mentioned in sub-section (4) shall have no right to vote on any resolution relating to the removal of the President.

3. Having regard to the clear difference in the language used in the two provisions, it is not possible to apply the ratio of Ramkrushna to the present matter. Indeed, this difference has been considered and on that basis, the ratio of Ganeshsinha was not applied in Ramkrushna by observing :

"9.....No assistance of this decision can be taken by the petitioner as the rules made under the Zilla Parishads and Panchayat Samitis Act specifically make a provision that the requisition must state the grounds on which the motion of no-confidence is to be moved....."

Thus far from supporting the contention of the respondent, Ramkrushna affirms the view taken on Rule 2.

4. Under the circumstances, petition is allowed. The notices dated 25-9-1986 (Annexures B and D) are quashed and set aside. Rule accordingly. No order as to costs.