
(2014) 02 BOM CK 0217
In the Bombay High Court
Case No : Writ Petition No. 105 of 2014

Dinesh

APPELLANT

Vs

The Collector and Others

RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 35(3B)
Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 — Section 23-A
23-A(1) 23-A(2) 23-A(3) 23-A(4)

Citation : (2014) 2 ABR 540 : (2014) 3 ALLMR 676 : (2014) 3 BomCR 839 :
(2014) 3 MhLj 362

Hon'ble Judges : Z.A. Haq, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : A.M. Ghare and Mr. M.P. Khajanchi, for the Appellant; H.D. Dangre, Advocate for the Respondent Nos. 3 to 15 and Mrs. K.S. Joshi, Assistant Government Pleader for Respondent nos. 1, 2, 17 and 18, for the Respondent

Final Decision : Dismissed

Judgement

Z.A. Haq, J.—RULE. Rule made returnable forthwith. The petitioner, Director and Chairman of the Agriculture Produce Market Committee, Katol, has filed this writ petition challenging the resolution passed in the special meeting of the respondent no. 16-Committee on 26.12.2013 by which the No-Confidence Motion is passed against the petitioner.

2. It is the case of the petitioner that the respondent nos. 13, 14 and 15 did not attend the meetings of the respondent no. 16-Committee on 10.10.2013, 09.11.2013 and 12.11.2013 and, therefore, in the meeting held on 12.11.2013, after discussion, the Secretary of the respondent no. 16-Committee was directed to take note of it and to give intimation about it to the concerned authorities. According to the petitioner, the Secretary had not taken any action in the matter and, therefore, by the letter dated 21.11.2013, the petitioner had given intimation to the in-charge Secretary to give information about the absence of the respondent nos. 13, 14 and 15 from three consecutive meetings to the

concerned authorities. According to the petitioner, the respondent nos. 13, 14 and 15, after getting knowledge of the steps taken by the petitioner, started instigating other members of the respondent no. 16-Committee to move the No-Confidence Motion against the petitioner and accordingly, the respondent nos. 13, 14 and 15 moved a requisition u/s 23-A of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (hereinafter referred to as "the Maharashtra Act XX of 1964") to the District Deputy Registrar, Cooperative Societies, Nagpur for convening the special meeting on 28.11.2013. The special meeting is held on 28.11.2013 and the No-Confidence Motion is passed against the petitioner by the resolution signed by 13 out of 18 members of the respondent no. 16-Committee. According to the petitioner, the resolution is illegal and unsustainable in law and, therefore, the petitioner has approached this Court.

3. Shri Ghare, the learned advocate appearing for the petitioner, has raised following challenges:

- i) The resolution of No Confidence was neither moved nor seconded in the meeting and without discussion it was put to vote and this is contrary to the mandate of the provisions of Section 27 of the Maharashtra Act XX of 1964;
- ii) The provisions of bye-law no. 41 of the respondent no. 16-Committee is to the effect that the voting should be by secret ballot and that the resolution is passed by raising of the hands by the members at the meeting and it is contrary to the bye-law no. 41 and, therefore, it is illegal;
- iii) The respondent nos. 13, 14 and 15 ceased to be the members of the respondent no. 16-Committee as per the provisions of Section 24 of the Maharashtra Act XX of 1964 as they did not attend three consecutive meetings held on 10.10.2013, 09.11.2013 and 12.11.2013;
- iv) The requisition for convening the special meeting itself was illegal as it was signed by the respondent nos. 13, 14 and 15, who ceased to be the members of the respondent no. 16-Committee.

4. Shri Ghare, the learned advocate for the petitioner, has submitted that Section 27 of the Maharashtra Act XX of 1964 lays down that the meetings, quorum and procedure of the Market Committee shall be regulated in accordance with the bye-laws made for the purpose. According to Shri Ghare, the bye-laws have been made for the respondent no. 16-Committee and bye-law no. 40(1) lays down that except the resolution and supplementary instructions proposed by the President at the meeting, all other resolutions and supplementary instructions are required to be proposed and seconded and the No-Confidence Motion was neither proposed nor seconded by the members at the meeting and it was directly put to vote and, therefore, it is unsustainable in law being contrary to the mandate of bye-law no. 40(1).

5. Shri Ghare, the learned advocate, in support of his submissions has relied on

the judgment of Full Bench reported in Shri Viswas Pandurang Mokal Vs. Group Gram Panchayat Shihu and Others, and the judgment reported in Pravin Shripati Yadav Vs. Grampanchayat, Minche, Tal. Hatkanangale, Dist. Kolhapur and Others, . The learned advocate has relied on the provisions of bye-law no. 41 and has submitted that five members of the respondent no. 16-Committee, including the petitioner, had given a written application to the Presiding Officer on 26.12.2013 stating that a complaint was submitted on 06.12.2013 to the Collector pointing out that the No-Confidence Motion was being moved under the pressure of Shri Anil Deshmukh, the Hon"ble Member of Legislative Assembly and the members were being pressurized and, therefore, to have a fair consideration of the No-Confidence Motion, it was necessary to consider the No Confidence Motion by secret ballot. The learned advocate has submitted that the Presiding Officer was under an obligation to consider the abovementioned application submitted by the five members in view of bye-law no. 41(1), which lays down that if three members seek voting by secret ballot, then the voting has to be by secret ballot and the violation of bye-law no. 41(1) by the Presiding Officer and allowing the motion to be passed by members by raising of hand, vitiates the impugned resolution.

6. Shri, Ghare, the learned advocate, has submitted that the respondent nos. 13, 14 and 15 remained absent in the meetings of respondent no. 16-Committee held on 10.10.2013, 09.11.2013 and 12.11.2013 and, therefore, in view of the mandate of provisions of Section 24 of the Maharashtra Act XX of 1964, they ceased to be the members of the respondent no. 16-Committee and consequently they could have neither signed the requisition nor could have attended and voted at the meeting. The learned advocate has submitted that the cessation of the members of respondent no. 16-Committee for not attending the three consecutive meetings is automatic and is not dependent on any decision or order in the matter. The learned advocate has relied on the judgment given by this Court in the Writ Petition No. 6532/2013 and has submitted that the Collector, should not have convened the special meeting to consider the No-Confidence Motion until the respondent no. 17-District Deputy Registrar submitted his report regarding the controversy and the Collector has not applied his mind and has not considered the effect of the abovementioned judgment given by this Court. The learned advocate for the petitioner has submitted that for the abovementioned reasons, the impugned resolution is illegal and unsustainable in law and has to be quashed.

7. Shri Dangre, the learned advocate appearing for the respondent nos. 3 to 15, has submitted that:-

i) The special meeting for considering the No Confidence Motion against the Chairman or Vice Chairman has to be convened as per the provisions of Section 23-A of the Maharashtra Act XX of 1964;

ii) Section 23-A(2) of the Maharashtra Act XX of 1964 lays down that the requisition for special meeting has to be signed by not less than one half of the

total number of members (excluding the members who have no right to vote) and shall be sent to the Collector under intimation to the Director;

iii) Section 23-A(3) of the Maharashtra Act XX of 1964 lays down that the Collector shall convene the special meeting of the market committee within fifteen days from the date of receipt of the requisition;

iv) Section 23-A(4)(a) of the Maharashtra Act XX of 1964 lays down that the special meeting to consider the resolution of No-Confidence shall be presided over by the Collector or the Officer authorized by him in this behalf;

v) That, the reliance placed by the learned advocate for the petitioner on the provisions of Section 27 of the Maharashtra Act XX of 1964 and the bye-laws is misconceived;

vi) The scheme of the bye-law nos. 33 to 44 shows that they apply to the conduction of the Annual General Meeting of the Market Committee and not to the special meeting for considering the No-Confidence Motion;

vii) In any case, the bye-laws cannot override the provisions of Section 23-A of the Maharashtra Act XX of 1964;

viii) The record shows that the petitioner was having knowledge that the requisition was given for the special meeting to consider the No-Confidence Motion against him;

ix) The petitioner had addressed the members at the meeting held on 26.12.2013 for about 40 minutes and, therefore, he cannot make the grievance that he was not given an opportunity to put forth his defence against the No Confidence Motion.

8. Shri Dangre, the learned advocate, has submitted that the provisions of Section 23-A of the Maharashtra Act XX of 1964 lay down the procedure to be followed at the special meeting for considering the No Confidence Motion against the Chairman and Vice Chairman of the Market Committee and the special meeting dated 26.12.2013 had been requisitioned and conducted according to the provisions of Section 23-A of the Maharashtra Act XX of 1964 and, therefore, it cannot be said that the impugned resolution is illegal and unsustainable in law. According to the learned advocate for the respondent nos. 3 to 15, the bye-law nos. 33 to 44 show that they deal with the procedure to be followed for the Annual General Meeting of the Market Committee. Shri Dangre has pointed out that bye-law no. 40(1) lays down that except resolutions and supplementary instructions proposed by the President of the meeting, all other resolutions and supplementary instructions have to be proposed and seconded by the members at the meeting and if the special meeting considering the No-Confidence Motion has to be regulated by bye-law no. 40(1), then it will have to be construed that the No-Confidence Motion has to be proposed by the Collector or the officer authorized by him u/s 23-A(4)(a) of the Maharashtra Act XX of 1964. According to the learned advocate, this submission as made on behalf of the petitioner is

fallacious, as the Collector or the officer authorized by him to preside over the special meeting, cannot propose the No-Confidence Motion against the Chairman or Vice Chairman of the Market Committee, at the special meeting.

9. Shri Dangre, the learned advocate, has submitted that the documents on record show that the petitioner was aware about the requisition of the special meeting for considering the No-Confidence Motion against him. In the submissions filed on behalf of the respondent nos. 3 to 15, it is stated in paragraph 4 that all the members present at the meeting were given an opportunity to discuss and address the meeting and the petitioner had addressed the meeting. This is not controverted by the petitioner and, therefore, it cannot be said that the petitioner was not given an opportunity to defend himself and it cannot be said that the resolution is passed against the petitioner in breach of the principles of natural justice. The learned advocate for the respondent nos. 3 to 15 has submitted that the arguments on behalf of petitioner regarding the participation of the respondent nos. 13, 14 and 15 is inconsequential and irrelevant inasmuch as, even if the signatures on the requisition and the votes of the respondent nos. 13, 14 and 15 at the special meeting are excluded, the meeting is properly convened by a legal and valid requisition and the No-Confidence Motion is properly passed by the majority of two-third members as required by law. Shri Dangre, the learned advocate, has submitted that in fact, the respondent nos. 13, 14 and 15 have not ceased to be the members of the respondent no. 16-Committee and are entitled to sign the requisition and vote at the special meeting. In the alternative, he has submitted that the participation of the respondent nos. 13, 14 and 15 can be a procedural irregularity and it cannot affect the resolution of No-Confidence passed against the petitioner. Shri Dangre, the learned advocate, relying on the judgment reported in *Pravin Shripati Yadav Vs. Grampanchayat, Minche, Tal. Hatkanangale, Dist. Kolhapur and Others*, , has submitted that in any case, the proceedings of the meeting cannot be said to be invalid, as the facts stated above show that the proceedings were not prejudicially affected by the alleged irregularity.

10. Mrs. Joshi, the learned Assistant Government Pleader appearing on behalf of the respondent nos. 1, 2, 17 and 18, has supported the action of the respondents and has adopted the submissions made on behalf of respondent nos. 3 to 15 on the legal issues.

11. We have considered the submissions made on behalf of respective parties and have gone through the record with the assistance of the learned advocates.

12. The argument made on behalf of the petitioner that the procedure adopted at the special meeting is illegal as it is not according to the provisions of bye-law nos. 40(1) and 41(1) is not in consonance with the scheme of the Chapter III of the Maharashtra Act XX of 1964 and the bye-laws of the respondent no. 16-Committee. The reliance placed on behalf of the petitioner on the provisions of Section 27 of the Maharashtra Act XX of 1964 and the bye-laws is misconceived. Section 27 of the Maharashtra Act XX of 1964 deals with the meetings and

further provision, i.e. Section 27-A of the Maharashtra Act XX of 1964, provides for the procedure to be followed for holding the Annual General Meeting of the Market Committee.

Section 23-A of the Maharashtra Act XX of 1964 specially provides for the procedure to be followed for the special meeting for considering the No-Confidence Motion against the Chairman or Vice Chairman.

Section 23-A(1) of the Maharashtra Act XX of 1964 lays down that the Chairman or Vice Chairman would cease forthwith to be the Chairman or Vice Chairman, as the case may be, if the Market Committee by resolution passed by a majority of not less than two thirds of the total number of members (excluding the members who have no right to vote) at a special meeting, so decides.

Section 23-A(2) of the Maharashtra Act XX of 1964 lays down that the requisition of such special meeting shall be signed by not less than one half of the total members (excluding the members who have no right to vote) and shall be sent to the Collector under intimation to the Director.

Section 23-A(3) of the Maharashtra Act XX of 1964 lays down that the Collector shall, within fifteen days of the receipt of the requisition under sub-section (2), convene a special meeting of the Market Committee. The proviso below Section 23-A(3) of the Maharashtra Act XX of 1964 lays down that when the Collector convenes the special meeting of the Market Committee, he shall give an intimation thereof to the Chairman or, as the case may be, Vice Chairman and also to the Director.

Section 23-A(4) of the Maharashtra Act XX of 1964 lays down that the special meeting to consider the resolution under sub-section (1) shall be presided over by the Collector or the officer authorized by him in this behalf but, the Collector or such officer or the Director (if present) shall not have right to vote in such meeting. It lays down that the members of the committee, who have no right to vote, may take part in the discussions, but shall not vote.

Section 23-A(5) of the Maharashtra Act XX of 1964 lays down that if the motion of no confidence is not carried or if the meeting could not be held for want of quorum, no such requisition for considering a fresh motion expressing want of confidence in the same Chairman or Vice Chairman shall be made until after the expiry of six months from the date of such meeting. We find that Section 23-A of the Maharashtra Act XX of 1964 regulates the procedure to be followed for convening and conducting the special meeting for considering the Motion of No-Confidence against the Chairman or Vice Chairman.

13. Section 27 of the Maharashtra Act XX of 1964 deals with the meetings, quorum and procedure to be adopted for meetings and lays down that it shall be made as per the bye-laws made for this purpose. As rightly submitted by Shri Dangre, the learned advocate, bye-law nos. 33 to 44 of the respondent no. 16-Committee deal with the procedure to be followed for convening and conducting

the Extraordinary Meeting and the Annual General Meeting. The bye-laws cannot override the provisions of Section 23-A of the Maharashtra Act XX of 1964. Moreover, the submission made on behalf of the petitioner relying on the bye-law no. 40(1), if accepted, will lead to a fallacious situation. Section 23-A(4)(a) of the Maharashtra Act XX of 1964 lays down that the special meeting to consider the Motion of No-Confidence against the Chairman or Vice Chairman of the Market Committee shall be presided over by the Collector or the officer authorized by him in this behalf. If it is to be considered that the special meeting for considering the No-Confidence Motion is regulated by bye-law no. 40(1) and the resolutions have to be proposed and seconded by the members attending the meeting except the resolution and supplementary instructions proposed by the President of the meeting, then it will permit the Collector or the officer authorized by him to preside over the special meeting to propose a resolution or supplementary instructions. It is factually inconceivable in law that the Collector or the officer authorized by him to preside over the special meeting to consider the resolution of No-Confidence, can be permitted to propose any resolution or supplementary instructions as contemplated by bye-law no. 40(1). We are of the view that the special meeting for considering the No-Confidence Motion against the Chairman or Vice Chairman of the Market Committee has to be convened and conducted as per the provisions of Section 23-A of the Maharashtra Act XX of 1964 and such meeting is not regulated by the bye-laws of the respondent no. 16-Committee.

The facts on the record show that the petitioner and the other members of the respondent no. 16-Committee throughout considered that the motion of No-Confidence was legally and validly introduced and considered in the meeting dated 26.12.2013. Neither the petitioner nor any other member of the respondent no. 16-Committee had taken any objection that the resolution of No-Confidence could not have been considered in the abovementioned meeting unless it is proposed or seconded. The petitioner has raised this challenge subsequently and this shows that it is the afterthought attempt to challenge the legality and validity of the No-Confidence Motion. It has come on the record that the petitioner has addressed the meeting and the petitioner has not pleaded and has not brought any material on record to show that during his address, he had objected to the legality and validity of the motion for No-Confidence on the ground that it is not proposed and seconded by the members.

14. Shri Ghare, the learned advocate for the petitioner, has submitted that the term "Mat-Nondani" as referred in bye-law no. 41(1) has to be given the meaning as mentioned in the Law Lexicon, which means "Poll". However, as we have held that the provisions of Section 23-A of the Maharashtra Act XX of 1964 regulate the special meeting for No-Confidence Motion and the bye-laws of the respondent no. 16-Committee are not applicable to the special meeting, we are not examining this submission.

15. The respondent no. 16-Committee is having 18 members and undisputedly

the requisition is signed by 13 members and the resolution for no confidence is passed by 13 members. Section 23-A(2) of the Maharashtra Act XX of 1964 lays down that the requisition for the special meeting has to be signed by not less than one half of the total number of members (excluding the members who have no right to vote) and shall be sent to the Collector under the intimation to the Director. If the respondent nos. 13, 14 and 15 are to be excluded from the process then, there will be 15 members of the respondent no. 16-Committee and the requisition will have to be signed by not less than 8 members. If the signatures of the respondent nos. 13, 14 and 15 on the requisition of the special meeting are excluded then, the requisition is signed by 10 members who have the right to vote at the special meeting. Thus, the requisition given for the special meeting is legal and valid as required by Section 23-A(2) of the Maharashtra Act XX of 1964. Similarly as laid down by Section 23-A(1) of the Maharashtra Act XX of 1964, the resolution of No-Confidence has to be passed by a majority of not less than two-thirds of the total number of members (excluding the members who have no right to vote), at the special meeting. Resolution of No-Confidence is passed as 13 votes are in favour of No-Confidence Motion. If the votes of respondent nos. 13, 14 and 15 are excluded, then 10 votes are in favour of No-Confidence Motion. Thus, 10 members have voted in favour of No-Confidence Motion out of 15 members, who are entitled to vote as submitted on behalf of the petitioner at the special meeting and considering the details, even if the votes of the respondent nos. 13, 14 and 15 are excluded, then also the No-Confidence Motion is passed by not less than two-thirds of the total number of members (excluding the members who have no right to vote). In view of this, the challenge as raised by the petitioner to the legality of the requisition of the meeting and the resolution of the No-Confidence Motion relying on the participation of the respondent nos. 13, 14 and 15 in the process, is of no consequence. For this reason, we are not going into the details about the entitlement of the respondent nos. 13, 14 and 15 to participate in the process and the challenge as raised by the petitioner relying on the judgment given by this Court in Writ Petition No. 6532/2013.

16. As stated earlier, the respondent nos. 3 to 15 in the submissions filed before this Court have stated in paragraph 4 that all the members present in the special meeting were given an opportunity to discuss and address the meeting and the petitioner has addressed the meeting. The petitioner has not controverted this factual aspect. In view of this, the submission made on behalf of the petitioner that he has not been given an opportunity to defend and the Motion of No-Confidence is passed in violation of the principles of natural justice, cannot be accepted.

17. The submission made on behalf of the petitioner that the voting at the meeting should have been held by secret ballot and it could not have been taken by raising of hands by the members, cannot be accepted in view of our finding that the procedure laid down in bye-laws of the respondent no. 16-Committee is not applicable to the special meeting and the special meeting is regulated by the

provisions of Section 23-A of the Maharashtra Act XX of 1964. The learned advocate on behalf of the petitioner has not been able to point out that the provisions of Section 23-A of the Maharashtra Act XX of 1964 cast an obligation on the President of the meeting to have the voting by secret ballot. Moreover, the respondent nos. 3 to 15 have placed on record the document at Annexure-R1, which shows that 13 members had given the representation on 26.12.2013 to the Returning Officer requesting that the voting should be by raising of hands. The petitioner is relying on the representation signed by five members asking for the voting by secret ballot. In this factual background, we are of the view that without there being any specific provision u/s 23-A of the Maharashtra Act XX of 1964, the acceptance of the request made by the thirteen members and rejecting the request of the five members by the Returning Officer, cannot be said to be illegal.

18. The judgment reported in *Shri Viswas Pandurang Mokal Vs. Group Gram Panchayat Shihu and Others*, relied upon by the learned advocate for the petitioner is regarding the consideration of Section 35(3B) of the Bombay Village Panchayats Act, 1958 and Rule 17 of the Bombay Village Panchayats (Meetings) Rules, 1959. The learned advocate on behalf of the respondent nos. 3 to 15 has rightly submitted that the reliance placed on behalf of the petitioner on the abovereferred judgment is misplaced as the provisions of Rule 17 of the Bombay Village Panchayats (Meeting) Rules, 1959 cannot be read into, while dealing with the controversy arising in the matter of special meeting under the provisions of Section 23-A of the Maharashtra Act XX of 1964. We have already held that Section 23-A of the Maharashtra Act XX of 1964 provides for regulating the procedure for the special meeting for No-Confidence and, therefore, the judgment relied upon by the learned advocate for the petitioner, is of no help to the petitioner. As far as the participation of the respondent nos. 13, 14 and 15 in the process is concerned, the challenge raised by the petitioner is of no consequence in view of the findings recorded by us on the point that the signatures of the respondent nos. 13, 14 and 15 on the requisition and their votes in the special meeting have not affected the validity and the legality of the resolution of No Confidence. In any case, as held by this Court in the judgment reported in *Pravin Shripati Yadav Vs. Grampanchayat, Minche, Tal. Hatkanangale, Dist. Kolhapur and Others*, , the participation of the respondent nos. 13, 14 and 15 in the process can, at the most, be said to be an irregularity while conducting the meeting and it is not of such a nature which has prejudicially affected the proceedings.

19. In view of the above, we find that there is no substance in the challenges raised by the petitioner. The writ petition is dismissed. In the circumstances, the parties to bear their own costs. Rule stands discharged. At this stage, Shri Ghare, the learned advocate for the petitioner, requests that the interim orders granted by this Court should be continued for a further period of six weeks.

Shri Dangre, the learned advocate for the respondent nos. 3 to 15, opposes the

prayer as made by the learned advocate for the petitioner. He submits that pursuant to the interim orders passed by this Court, the elections are held but, the charge is not handed over and consequently, the Office of the Chairman of Agriculture Produce Market Committee is vacant. In view of the reasons recorded by us in the judgment and in view of the submissions as made on behalf of the respondent nos. 3 to 15, we are of the view that the request as made on behalf of the petitioner, does not require any consideration and it is rejected.