
(1993) 11 BOM CK 0052
In the Bombay High Court
Case No : Writ Petition No. 4584 of 1993

Dinesh Eknath Patil

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 09-11-1993

Acts Referred:

Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 — Section 49(1), 49(2)

Citation : (1994) MhLj 632

Hon'ble Judges : N.D. Vyas, J; Ashok Agarwal, J

Bench : Division Bench

Advocate : C.J. Sawant with Nitin V. Pradhan and S.D. Khot and C.C. Gavnekar, for the Appellant; R.D. Soni, A.G.P., For State, M.V. Paranjape with S.R. Borulkar, For respondents Nos. 4 to 8, P.M. Shah, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Agarwal, J.—The right of respondents Nos. 4 to 8 to attend and vote at the meeting to consider "no confidence motion" to be held on the 12th of November, 1993 is questioned in the present petition. Few material facts of the case are as follows:

2. On the 11th of October, 1993 a "no confidence motion" against the President, the Vice-President and four Chairmen of Subjects Committees was submitted to the Collector. On 12th of October, 1993 five Councillors, who were working as Chairmen of Taluka Panchayat Samitis resigned. On 14th October, 1993 notice was issued by the Resident Deputy Collector, respondent No. 3 herein, for the meeting to be held on the 12th of November, 1993. On the 14th/15th October, 1993 a meeting was convened for electing the five Chairmen whose seats had become vacant on account of the resignations submitted on the 12th of October, 1993. On the end of October, 1993 four Chairmen were elected unopposed whereas one Chairman was elected after a contest. On 25th of October, 1993 names of the newly elected Chairmen were published. Thus, the vacancies were filled-up. On 27th of October, 1993 a notice and an agenda of the special

meeting of 12th of November, 1993 was sent to the five newly elected Chairmen. The notices were duly served on the five Chairmen on the 28th of October, 1993. The Special Requisition meeting, for considering the no confidence motion against the six office bearers is now scheduled to be held on the 12th November, 1993. The contention advanced on behalf of the petitioner is that respondents Nos. 4 to 8 were not the Chairmen of the Panchayat Samitis on the 11th of October, 1993 when notice of no confidence motion was submitted to the Collector. They were not the Chairmen on the day when the notice of the 14th of October, 1993 was issued by the respondent No. 3 convening the meeting of the 12th of November, 1993, hence, they are not entitled to vote at the meeting of no confidence to be held on the 12th of November, 1993.

3. The "no confidence motion" so far as it pertains to the President and Vice-President of the Zilla Parishad is covered by the provisions of section 49 whereas that of the Chairman of the Subjects Committee by section 87. The provisions are similar. For the sake of convenience we will examine the position in the light of the provisions of section 49, as the R.F.No. 80 provisions of section 49 are made applicable u/s 87 in relation to motion against Chairmen of the Subject Committees also as they apply in relation to President or Vice-President of the Parishad.

4. As required the requisition notice which is issued u/s 49(2) has been signed by not less than one-fifth of the total number of councillors, who for the time being, i.e. at the time of issue of the requisition were entitled to sit and vote at the meeting of the Zilla Parishad. Similarly, under the provisions of section 49(1) a no-confidence motion is required to be passed by a majority of the total number of councillors who are, for the time being, i.e. at the time the no-confidence motion is put to vote, entitled to sit and vote at the meeting of the Zilla Parishad. Hence, the total number of councillors would include the five Chairmen, who in the meanwhile, have been elected as such. The above construction is consistent with the view expressed by the full Bench in the case of "Namdeorao Madhavrao Thakre vs. Dulaji Sitaram Patil" reported in " 7969 Mh.L.J. 74 = 70 B.L.R. 843 " wherein, while interpreting the old section 49(7) it is inter alia held that the provision was enacted to indicate that the resolution must be passed by majority of Councillors who are, on the date of the "no-confidence motion" entitled to sit in the Zilla Parishad and vote on the "no-confidence motion". Section 49 has been subsequently amended after the aforesaid full Bench decision. In view of the aforesaid interpretation we have placed on the provisions of section 49(1) and 49(2) of the Zilla Parishad and Panchayat Samitis Act, 1961, we find that there is no substance in the contention of the petitioner that the respondents Nos. 4 to 8 are not entitled to vote at the ensuing meeting of no-confidence scheduled to be held on the 12th of November, 1993. In the circumstances, the petition fails and is summarily rejected. Expedite the issue of certified copy.