

(2002) 03 BOM CK 0070

In the Bombay High Court

Case No : Writ Petition No. 4349 of 2001

Durgadas Ukhaji More and Others

APPELLANT

Vs

Additional Commissioner, Nashik Division and Others

RESPONDENT

Date of Decision : 21-03-2002

Acts Referred:

Bombay Village Panchayats Act, 1959 — Section 35, 35(1)

Citation : (2002) 3 BOMLR 747 : (2003) 1 MhLj 420

Hon'ble Judges : D.G. Karnik, J

Bench : Single Bench

Advocate : D.P. Palodkar, holding for Girish Rane, for the Appellant; M.N. Deshpande, A.G.P. for Respondent Nos. 1 to 3, R.C. Patil and M.G. Kolshe Patil, for the Respondent

Judgement

D.G. Karnik, J.—In pursuance of the notice before admission issued by this court the respondents 1 to 8 appeared through their respective counsel. Respondent No. 9 though served is absent. By consent of all, heard finally.

2. Respondent No. 4 was elected as a Sarpanch of respondent No. 3 Village Panchayat. Respondents 5 to 8 are the elected members of respondent No. 3, village panchayat who are supporting respondent No. 4 Sarpanch. The petitioners and respondent No. 9 are members of Village Panchayat who had moved the resolution of no confidence against respondent No. 4.

3. The petitioners and the respondent No. 9 gave a notice of their desire to move a motion of no confidence against respondent No. 2 to the Tahsildar u/s 35 of the Bombay Village Panchayat Act 1958 (for short the Act) read with Rule No. 2 of Bombay Village Panchayat, Sarpanch and Upsarpanch (No Confidence Motion) Rules 1975 (for short the Rules). The notice was accompanied by 7 additional copies thereof and was in the form prescribed under Rule 2 of the Rules. In pursuance of the said notice dated 30th May 2001, a special meeting of the village panchayat was called by the Tahsildar on 4th June 2001. In the meeting the resolution of no confidence was passed by a majority of 2/3 of the total

members of panchayat. 10 out of 15 members voted in favour of the resolution. Respondent Nos. 4 to 8 voted against resolution. The resolution was thus carried by the requisite majority. The Tahsildar accordingly declared that the resolution was passed and sent the communication of the passing of the resolution to the concerned authorities under Rule 3 of the Rules.

4. The respondent No. 4 being aggrieved by resolution filed a dispute to the Collector u/s 35(3-B) of the Act. The learned Additional Collector who heard the appeal held that notice was proper but one line in the verification clause of the notice was not typed and that notice was not served on the Zilla Parishad by the Tahsildar as was required under Rule 2(2). The Additional Collector held that defects viz. (i) an error in the typing of the verification Clause committed by the petitioners and (ii) non service of notice on Zilla Parishad by Tahsildar did not affect the merits of the resolution and therefore dismissed the dispute raised by respondent No. 4. Being aggrieved by decision of the Additional Collector, respondent No. 4 filed an appeal u/s 35(3-C) of the Act to the Commissioner. The learned Additional Commissioner by an order dated 28th September 2001 allowed the appeal and set aside the order of the Additional Collector. The learned Additional Commissioner recorded following findings of facts.

(1) The verification clause was not properly typed. Only the words "we declare" were typed and the rest of the words "the facts stated above are true to the best of our information and knowledge" had remained to be typed in the notice.

(2) Though seven additional copies of the notice as required by the Rules were filed by petitioner, and Tahsildar had sent copies to all but one authorities mentioned in Rule 2(2) of the Rules, the copy was not sent to the Zilla Parishad.

5. In view of this, the Commissioner held that the mandatory provisions of the Rules were violated and therefore, resolution of no confidence was invalid. The two findings of fact recorded by the Additional Commissioner are the concurrent findings of facts and cannot be challenged in the writ jurisdiction, as it is not shown that the said findings are based on no evidence or are so perverse that no reasonable man could have reached those conclusions. It is however, submitted by the learned counsel for the petitioner that in spite of the said two findings, the Additional Commissioner ought not to have interfered with the order of the Additional Collector.

6. Sub-rule (2) of Rule 2 of the Rules read as under; "(2) The notice under Sub-rule (1) shall be accompanied by seven additional copies thereof, and the Tahsildar shall send one copy to the Sarpanch, one to the Upa-Sarpanch and one each to the Zilla Parishad, the Panchayat Samiti, the Collector and the Commissioner. One copy shall also be given to the Secretary."

7. What the persons who wish to move the no confidence resolution are required to do is to give the notice to the Tahsildar along with seven additional copies thereof. Once they do so, their responsibility ends. The further responsibility of sending the copies to the Sarpanch, Upsarpanch, Zilla Parishad, Panchayat

Samiti, Collector and the Commissioner is that of the Tahsildar. The issuers of the notice of the motion of no confidence have no control over the Tahsildar. Therefore, they cannot be faulted for any technical breach committed by the Tahsildar. In my opinion, where the duty to do a certain thing is cast upon a government officer and the citizen has no control over the actions of such government officer he cannot be prejudiced for fault of the government officer to perform his duty. The provision of law requiring the government officer to perform the particular duty which affects the rights of a citizen would have to be held to be directory qua the citizen who has no control over the actions of such government officer. I am fortified in this view by a judgment of this court in the case of Punjabrao and Ors. v. V.M. Molkar and Ors. reported in 1974 Mh.LJ. 428 of the report, the Court observed :

"It is well settled that generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of the Courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done."

The present petitioners who had given notice of no confidence motion therefore cannot suffer on account of the failure of the Tahsildar to give notice to Zilla Parishad. The Tahsildar had admittedly given the notice to the respondent No. 4 Sarpanch and all other persons/authorities mentioned in Sub-rule (2) of Rule 2. Thus there was substantial compliance of the Rule 2(2).

8. Rule 2(2) of the Rules provides that the notice shall be given in the form appended to the Rules. At the end of the Rules, a form of the notice is given which prescribes that the notice must state reasons why proposers of the resolution have "no confidence" on the Sarpanch or Upsarpanch. The persons giving notice are required to state "We declare that the facts stated above are true to the best of our information and knowledge." It is submitted by the learned counsel for petitioners that the form of the notice as also a declaration prescribed under the Rules is directory and not mandatory. The Section 35 does not lay down that the notice of motion of no confidence should contain any grounds nor does it require that the contents of the notice should be verified like a verification" of a plaint required under Code of Civil Procedure. Requirement of grounds of motion of no confidence and verification are imported in the form prescribed under the Rules. u/s 35 of the Act, motion of the no confidence is required to be moved by not less than 1/3 of the total members of the panchayat and is required to be passed by majority of not less than 2/3 of the total number of members. Thus already strict conditions are imposed for the passing of resolution of no confidence against the Sarpanch. In a democratic society, the

Chairman, the President, the Sarpanch or all other persons who are elected by indirect method (i.e. by the votes of the elected representatives of the people) enjoy the position so long as they enjoy the confidence of the majority. It would be difficult to say that the majority while expressing no confidence must also give reasons why they have no confidence on the Chairman, the President or the Sarpanch as the case may be. There is a difference between the motion of no confidence and a motion of Censure. While it is generally necessary in the case of Censure to set out the grounds or charge on which it is based, a motion of no confidence ordinarily need not set out the grounds or the charge. The vote of censure presupposes that the person censured is guilty of some impropriety or lapse by act or omission and it is because of that lapse or impropriety that he is being censured. It may therefore, be necessary to specify the impropriety or a lapse or charge while moving vote of censure; no such consideration arises when the motion of no confidence is moved. Although the grounds may be mentioned in a notice of no confidence or in the debate over the motion of no confidence, the existence of the grounds is not a prerequisite of a motion of no confidence. There is no legal bar for the passing of no confidence motion against the authority without any charge or impropriety or lapse on the part of the authority. The essential connotation of a no confidence motion is that the party against whom such motion is passed, has ceased to enjoy the confidence of the requisite majority of the members. The reference in this connection may be made to the decision of the Apex Court rendered in the case of Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and Others, .

9. This being the general provision of law, the form of notice prescribed by Sub-rule (2) of Rule 2 of the Rules should be construed as directory and not mandatory. Omission to specify grounds for moving motion of no confidence or error in typing of the verification clause would not by itself invalidate the notice under Sub-section (1) of Section 35 of the Act. While interpreting the provisions of Section 35 of the Bombay Village Panchayat Act, the Division Bench of this Court in Smt. Annapurnabai Ajahrao v. Smt. Annapurnabai Anandrao reported in 1967 MH.L.J. 36 held;

"The Gram Panchayat is essentially a democratic institution which must be run on democratic principles. When the majority of the members have clearly expressed that they do not desire the petitioner to be their leader and Sarpanch, the proper attitude of the petitioner as a person working for democracy would have been to tender her resignation straightway. At any rate, it does not behave of a democratic spirit to challenge the decision of the majority who unmistakably declared their want of confidence in their erstwhile leader. Democratic principles as also the sense of self-respect should have impelled the petitioner and persons situated in similar circumstances to gracefully submit to the decision of the majority and to walk out of the Gram Panchayat instead of raising frivolous contentions and forcing herself on the democratic institution which does not want her to hold that position."

10. In the present case resolution against the respondent No. 4 was passed by 2/3 majority of 10 out of 15 members. Respondent No. 4 should have therefore, gracefully walked out, instead she has chosen to challenge the resolution on technical grounds which is contrary to the observations made by this court in the case of Annapurnabai Ajabrao referred to supra. The decision of the Division Bench in Annapurnabai Ajabrao's case was followed by another Division Bench of this court in the case of Nimba Rajaram Mali Vs. Collector, Jalgaon and others, . In the said case, it was observed :

"Once the resolution of no confidence is passed by clear majority and keeping in mind the requirements of the concerned statutory provisions, the person against whom such a resolution is passed, must honour the will of the majority and make way for new election of successor. Unless it is shown that while passing such a resolution of no confidence motion, there was flagrant violation of any mandatory procedure laid down. Such a resolution cannot be interfered with by the court or statutory authorities attacking such disputes."

It is held by the Division Bench that the authorities concerned should not set aside the no confidence motion unless there was flagrant violation of mandatory procedure. As held earlier, the requirement of verification is only directory and not a mandatory requirement. In a given case, it may not be possible to give declaration in the manner provided in the form of notice. The last line of the form of the notice reads thus :

"We declare that the facts stated above are true to the best of our information and knowledge".

Thus the persons who give the notice are required to state that the facts are true both to their information and knowledge. Some facts in the notice of motion may be true only to the knowledge and some facts may be based only upon the information and not knowledge. In such circumstances, the person cannot make declaration that the facts are true both to the knowledge and information. In such a case the persons giving the notice cannot make the verification in the form prescribed. Is it the intention of the legislature that the resolution of no confidence against the Sarpanch cannot be moved unless the persons giving notice have both information and knowledge of all the facts? Again, as held by the Apex Court in the case of Babubhai Mulji Patel (supra) the motion of no confidence need not have any grounds. What is the necessity of the "verification clause" based both on information and knowledge when it is not necessary at all to state the grounds on which the resolution of no confidence is moved. I therefore hold that the form of notice given below the Rules is only directory and not mandatory.

11. In the present case, the substantial compliance was done. Notice was given. The present petitioners also typed the verification but there was a typing error inasmuch as one line was not typed due to error of the typist. To void the resolution of no confidence, which was passed by the 2/3 majority of the total

members on this technical ground would mean that the person who does not enjoy the confidence of the majority would continue as the Sarpanch against wishes of the majority. That could not be the intention of the legislature. The Rules also cannot go beyond the Act which only requires that the motion of no confidence must be passed by the requisite majority.

12. In the circumstances, the order of the Additional Commissioner dated 28th September 2001 is set aside and the order of the Additional Collector dated 12th September 2001 is restored.