

(2010) 03 MAD CK 0292

In the Madras High Court

Case No : Writ Appeal No. 220 of 2010 and M.P. No. 1 of 2010

G. Alayamani

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 24-03-2010

Acts Referred:

Tamil Nadu Panchayats (Election) Rules, 1995 — Rule 78
Tamil Nadu Panchayats (Procedure for Convening and Conduct of Meetings of
Panchayat Union Council and its Committees) Rules, 1999 — Rule 14, 3(3), 7, 9
Tamil Nadu Panchayats Act, 1994 — Section 207, 207(1), 207(12), 207(3), 207(5)

Citation : (2010) 5 MLJ 11

Hon'ble Judges : H.L. Gokhale, C.J;V. Dhanapalan, J

Bench : Division Bench

Advocate : Chitra Sampath, for the Appellant; P.S. Raman, General assisted by
M. Sneha, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Gokhale, C.J.—The appeal seeks to challenge the order passed by a learned single Judge whereby the learned single Judge by her order dated 2nd February, 2010 dismissed the petition filed by the appellant herein. The said writ petition sought to challenge the Minutes of the Meeting of the Thiruppanandal Panchayat Union Council held on 04th December, 2009, as recorded by the second respondent-Revenue Divisional Officer. The minutes recorded that a No Confidence Motion had been passed against the appellant by show of hands.

2. The appeal raises a question as to whether, in the facts of this case, the second respondent was correct in allowing the decision on the No Confidence Motion to be taken by show of hands or whether, the second respondent ought to have taken it by a secret ballot. The question for consideration is as to which of the two methods is contemplated to arrive at the "result of voting" under Sub-section (12) of Section 212 of the Tamil Nadu Panchayats Act, 1994 (for short "the Act").

3. The short facts leading to this appeal are this wise:

(a) The appellant was elected to the Thiruppanandal Panchayat Union Council in the election held some time in October, 2006. The panchayat union consists of, in all, 17 members. Though the panchayats are supposed to function on non-party basis, in the election, the political composition of the members elected was as follows:

(i) Dravida Munnetra Kazhagam (DMK) -- 10 (ii) Indian National Congress (INC) -- 3 (iii) Pattali Makkal Katchi (PMK) -- 3 (iv) Independent -- 1

The appellant belongs to the PMK party.

(b) It so transpired that on 16th June, 2009, the independent member was disqualified on the ground of he being in employment, and necessary Government Order vide G.O.Ms. No. 50, Rural Development and Panchayat Raj Department was issued to that effect. The appellant filed writ petition before this Court being W.P. No. 13258 of 2009, but no stay was granted thereon. Consequently, the bye-election was held for that seat, and a Congress candidate has got elected.

(c) On 2nd November, 2009, 14 members of that Panchayat Union gave a petition to the second respondent-Revenue Divisional Officer that they have lost confidence in the appellant. As per law, notice was given to the appellant on 7th November, 2009, to which the appellant gave an explanation on 15th November, 2009. By notice dated 16th November, 2009, the Revenue Divisional Officer called a meeting on 4th December, 2009. On 3rd December, 2009, the other two members of PMK asked the Revenue Divisional Officer to hold a secret ballot, which was followed by a reminder on 4th December, 2009 when the motion was moved for that purpose. Without giving any decision on these representations, either accepting or rejecting that request, the second respondent proceeded to put to vote the No Confidence Motion, which was carried by 14 versus 3 votes on 4th December, 2009. Sub-section (3) of Section 212 of the Act, requires notice to be given by 3/4th of the elected members. The figure of 3/4th members comes to 10.2, which means that the minimum member will be 10 or 11 members. The motion of No Confidence was signed by 14 members. For passing the resolution, 4/5th of the members have to vote in support of the No Confidence motion. In the house of 17 members, 4/5th comes to 13.6 members, which, if rounded off, will be 14. In the instant case, 14 members voted in favour of the No Confidence Motion by raising hands. Therefore, the second respondent-Revenue Divisional Officer has recorded in his minutes dated 4th December, 2009 that No Confidence motion has been passed.

(d) It is material to note that, as pointed out earlier, the independent candidate, who was disqualified, had filed a writ petition. It came to be allowed on 29th January, 2010. The fact, however, remains that during the period when the representation was given by 14 members to the second respondent-Revenue Divisional Officer that they had lost confidence in the appellant, until passing of

the No Confidence vote on 4th December, 2009, the initially elected independent member was not in the panchayat union. That seat was occupied by a congressman, who supported the No Confidence motion.

(e) Being aggrieved by the Minutes of this meeting dated 4th December, 2009 whereby the appellant was voted out of power, he filed writ petition bearing W.P. No. 25925 of 2009 challenging that decision wherein he prayed that the Minutes of the Meeting be quashed.

(f) The submission of the appellant before the learned single Judge was that when two members had given application that the voting be held by a secret ballot, the Revenue Divisional Officer ought to have proceeded to conduct the secret ballot and not to have taken a decision to conduct voting by show of hands. After considering the relevant provision, the learned single Judge held that the submission was not tenable, and therefore, the learned single Judge dismissed the petition. Aggrieved by that judgment and order, this appeal has been filed.

(g) Inasmuch as the appeal was filed immediately, the learned Advocate General has taken instructions and has stated that since the appeal was being heard finally at the earliest, the notification arising out of the passing of the vote of confidence against the appellant and holding of the fresh election will not be issued.

4. Mrs. Chitra Sampath, learned Counsel appearing for the appellant, submitted under Sub-section (1) of Section 212 of the Act, a motion expressing want of confidence in the Chairman or Vice-Chairman of a Panchayat Union Council has to be made in accordance with the procedure laid down in the section. Sub-section (1) of Section 212 of the Act speaks of the motion being passed in accordance with the procedure laid down herein. Mrs.Chitra Sampath submits that it means that the procedure, which is provided under this section, and not elsewhere.

5. For ready reference, we quote Section 212 which reads as follows:

212. Motion of no confidence in [Chairman or Vice-Chairman] of Panchayat Union Council.- (1) Subject to the provisions of this section, a motion expressing want of confidence in the [Chairman or Vice-Chairman] of a Panchayat Union Council may be made in accordance with the procedure laid down herein.

(2) Written notice of intention to make the motion, signed by members of the Panchayat Union Council not less in number than three fourth of the sanctioned strength of the Panchayat Union Council, together with a copy of the motion which is proposed to be made and a written statement of the charges against the Chairman or Vice-Chairman, shall be delivered in person to the Revenue Divisional Officer of the division by any two of the members of the Panchayat Union Council signing the notice.

(3) A copy of the statement of charges along with the motion shall be caused to

be delivered to the concerned Chairman or Vice-Chairman by the Revenue Divisional Officer and the Chairman or Vice-Chairman shall be required to give a statement in reply to the charges within a week of the receipt of the motion by the [Chairman or Vice-Chairman].

(4) The Revenue Divisional Officer shall then convene a meeting for the consideration of the motion at the office of the Panchayat Union Council at a time appointed by him.

(5) The Revenue Divisional Officer shall give to the members notice of not less than fifteen clear days of the meeting and of the time appointed therefor.

(6) The Revenue Divisional Officer shall preside at the meeting convened under this section, and no other person shall preside thereat. If within half an hour after the time appointed for the meeting, the Revenue Divisional Officer is not present to preside at the meeting, the meeting shall stand adjourned to a time to be appointed and notified to the members by the Revenue Divisional Officer under Sub-section (7).

(7) If the Revenue Divisional Officer is unable to preside at the meeting, he may, after recording his reasons in writing adjourn the meeting to such other time as he may appoint. The date so appointed shall not be later than thirty days from the date appointed for the meeting under Sub-section (4). Notice of not less than seven clear days shall be given to the members of the time appointed for the adjourned meeting.

(8), Save as otherwise provided in Sub-sections (6) and (7), a meeting convened for the purpose of considering a motion under this section shall not for any reason be adjourned.

(9) As soon as the meeting convened under this section has commenced, the Revenue Divisional Officer shall read to the Panchayat Union Council the motion for the consideration of which it has been convened, the statement of charges and the statement, if any, of the [Chairman or Vice-Chairman] in reply to the said charges.

(10) There shall be no debate on any motion under this section.

(11) The Revenue Divisional Officer shall not speak on the merits of the motion, nor shall he be entitled to vote thereon.

(12) A copy of the minutes of the meeting together with a copy of the motion and the result of the voting thereon shall forthwith on the termination of the meeting be forwarded by the Revenue Divisional Officer to the Government.

(13) If the motion is carried with the support of not less than four-fifth of the sanctioned strength of the Panchayat Union Council, the Government shall, by notification, remove the 1[Chairman or Vice-Chairman] of the Panchayat Union Council.

(14) If the motion is not carried by such a majority aforesaid, or if the meeting cannot be held for want of the quorum referred to in Sub-section (13), no notice of any subsequent motion expressing want of confidence in the same [Chairman or Vice-Chairman shall be received until after the expiry of one year from the date of the meeting.

(15) No notice of a motion under this section shall be received within one year of the assumption of office by the (Chairman or Vice-Chairman.)

6. Mrs. Chitra Sampath, learned Counsel appearing for the appellant, submits that the idea behind these provisions is to give protection to the elected Chairman and not to destabilize him, unless overwhelming majority of the council members are against him. She relied upon Sub-sections 1 to 15 of Section 212 of the Act in this behalf. She submitted that Sub-section (2) of Section 212, states that the Motion for No Confidence has to be signed by not less in number than three-fourth of the sanctioned strength of the panchayat union. Earlier, the requirement was one half. By amendment, it has been raised to three-fourth. Sub-section (15) lays down that after the election of Chairman or Vice Chairman, notice of motion cannot be moved for a period of one year. Sub-section (14) lays down that in the event, the motion is not carried by the majority, as provided, another notice of motion for No Confidence cannot be moved until after the expiry of one year from the date of that meeting. For passing a resolution, 4/5th of the members have to vote to remove the Chairman or Vice-Chairman as provided under Sub-section (13) of this Section. The allegations against the Chairman or Vice Chairman are only to be read out. There shall be no debate on any motion, as laid down under Sub-section (10). Sub-section (9) states that after the meeting is convened, the statement of the Chairman or Vice-Chairman in reply, if any, alone is to be read out. Sub-sections 6 & 7 lays down that if for any reason, the Revenue Divisional Officer is not present within half-an-hour of convening the meeting, the meeting shall be adjourned. Sub-section (7) makes a further peculiar provision that if the Revenue Divisional Officer is unable to preside over the meeting (in the sense, if there is any disturbance in the meeting), he may record his reasons for his inability to preside over the meeting and adjourn it. It indicates that there can be disturbance in the meeting. It is, therefore, submitted that when a secret ballot is specifically asked, there is no reason why it should have been denied. Sub-section (12) speaks about the voting on the motion of No Confidence. When an application is given by two voters seeking that decision be taken by a secret ballot, it implies that they did not want their identities to be disclosed, and also perhaps of some others, who will be voting in this election. Mrs. Chitra Sampath submits that since no particular mode of conducting voting is laid down, the Revenue Divisional Officer had erred in rejecting the application, which sought for the decision by secret ballot.

7. Per Contra, Mr. P.S. Raman, learned Advocate General, submitted that since the legislature wanted to make some specific provision for procedure, it has

enacted the same. Thus, when it comes to the election of a Chairman or Vice Chairman of the Panchayat Union Council, the Tamil Nadu Panchayat (Election) Rules, 1995 specifically provide in Rule 78 that if the number of candidates is more than one, the votes of the ward members present at the meeting shall be taken by ballot in the manner laid down in these Rules. Thus, where there are more than two candidates and one has to be elected to the post of Chairman, it has to be done by a secret ballot. But there is no such similar procedure when it comes to No Confidence Motion. Mr. Raman, therefore, submits that it is implied that for No Confidence motion, the method to pass a resolution will only be by show of hands.

8. Mr. Raman, further, states that as far as the conduct of meeting of the Panchayat Union Council is concerned, the Tamil Nadu Panchayats (Procedure for Convening and Conduct of Meetings of Panchayat Union Council and its Committees) Rules, 1999 will apply. These rules are related to Sections 90, 94 and Section 242(2)(vii) of the Act. Section 242 lays down the power of the Government to make the Rules. Sub-section (2)(vii) thereof deals with procedure to be followed at meetings of the Panchayats and at Committees thereof and for the conduct of business and the number of members, which shall form a quorum at any meeting. Section 90 lays down that every Panchayat shall meet at such time and place and shall subject to the provisions of Section 89, observe such rules of procedure in regard to transaction of business at its meetings (including the quorum at the meetings) as may be prescribed. Section 89 provides that the President or Chairman, and in his absence, the Vice Chairman or Vice President shall preside at the meetings of the Panchayat. The proviso to Section 90 lays down that not more than 60 days shall elapse between any two meetings of the panchayat. Section 94 lays down that the proceedings of every Panchayat and its Committees shall be governed by such Rules as may be prescribed and by regulations, which shall not be inconsistent with the rules or provisions of the Act.

9. Rule 9 of these rules lays down that every meeting of the Panchayat Union Council shall be open to public. Rule 14 indicates that the procedure of holding meeting of the Panchayat Union Council was only by show of hands. The said Rule reads as follows:

14. Passing of resolution: Every question which may come before the Panchayat Union Council at any meeting shall be decided by a majority of the members present and voting at the meeting and in every case of equality of votes, the presiding member shall have and exercise a second or casting vote. In the case of any resolution not carried unanimously, the names of the members who voted for and against it shall be recorded in the minutes.

10. It is submitted that the wording of the rule indicate that it can be only by show of hands, because in the event of ballot such a situation will not arise. Mrs. Chitra Sampath, on the other hand, submitted that the title of these rules itself implies that they apply for convening and conducting of meetings of the panchayat union council. Rule 3(3) lays down that the panchayat union council

shall meet once in every month. Under Rule 7, the notice of the meeting with agenda is to be served on the members of the panchayat union council in advance. Under Rule 9 these meetings are open to public, though it is also provided that the presiding member will have the power to restrict the number of public to attend such meetings. The later part of Rule 14 lays down that in the case of any resolution not carried unanimously, the names of the members, who voted for and against, has to be recorded in the minutes. It is on this footing that Mr. Raman had submitted that it implies a voting by show of hands. Mrs. Chitra Sampath on the other hand submitted that if we look at all these rules, they are made for the general meetings of the panchayat union council.

11. Section 212(1) of the Act specifically states that a motion expressing want of confidence in the Chairman or Vice Chairman of a Panchayat Union Council may be made in accordance with the procedure laid down herein. Besides, this Sub-section lays down that the motion of no-confidence is subject to the provisions of this Section. Mrs. Chitra Sampath submitted that it is thus doubly made clear by the legislature that it is the procedure laid down in Section 212 alone which will apply to the motion of no confidence. If Sub-section (12) does not speak for a specific method of voting, the voting by show of hands cannot be imported and insisted merely because that would be inferred from Rule 14 of the above referred to Rules for the general meetings of the Panchayat Union Council. Similarly, she submitted that Section 78 of the Act lays down that when it comes to the election of Chairman or Vice Chairman, the votes of the ward members have to be taken by ballot. This also by implication cannot lead to mean that when it comes to no confidence, the vote by show of hands should be inferred. Show of hands or by ballot will have to be decided by looking into the provisions contained in Section 212 of the Act and nothing much beyond.

12. Thereafter, Mrs. Chitra Sampath referred to the provisions of Section 207 of the Act, which deals with removal of Chairman of Panchayat Union Council, if the Government so desires or otherwise on the basis of application of members. Section 207 of the Act reads as follows: -

207. Panchayat Union Council.-

(1) If the Government-

(a) of their own motion, or

(b) on a representation in writing signed by not less than two-thirds of the strength of the Panchayat Union Council containing a statement of charges against the Chairman of the Panchayat Union Council and presented in person to any officer appointed by the Government in this behalf by any two of the members of the Panchayat Union Council,

are satisfied that the Chairman willfully omits or refuse to carry out or disobeys the provision of this Act, or any rules, bye-laws, regulations or lawful orders issued thereunder or abuses the powers vested in him, the Government shall, by

notice in writing, require the Chairman to offer within a specified date, his explanation with respect to his acts of omission or commission mentioned in the notice.

(2) If the explanation is received within the specified date and the Government considers that the explanation is satisfactory, the Government may drop further action with respect to the notice. If no explanation is received within the specified date or if the explanation received is in their opinion not satisfactory, the Government shall forward to the Revenue Divisional Officer of the division concerned a copy of the notice referred to in Sub-section (1) and the explanation of the Chairman with a proposal for the removal of the Chairman from office for ascertaining the views of the Panchayat Union Council.

(3) The Revenue Divisional Officer shall then convene a meeting for the consideration of the notice and the explanation, if any, and the proposal for the removal of the Chairman, at the office of the Panchayat Union Council at a time appointed by the Revenue Divisional Officer.

(4) A copy of the notice of the meeting shall be caused to be delivered to the concerned Chairman and to all the members of the Panchayat Union Council by the Revenue Divisional Officer atleast seven days before the date of the meeting.

(5) The Revenue Divisional Officer shall preside at the meeting convened under this section and no other person shall preside thereat. If within half an hour appointed for the meeting, the Revenue Divisional Officer is not present to preside at the meeting, the meeting shall stand adjourned to a time to be appointed and notified to the members by the Revenue Divisional Officer under Sub-section (6).

(6) If the Revenue Divisional Officer is unable to preside at the meeting, he may, after recording his reasons in writing, adjourn the meeting to such other time as he may appoint. The date so appointed shall be not later than thirty days from the date appointed for the meeting under Sub-section (3). Notice of not less than seven clear days shall be given to the members of the time appointed for the adjourned meeting.

(7) Save as provided in Sub-sections (5) and (6), a meeting convened for the purpose of considering the notice and the explanation, if any and the proposal for the removal of the Chairman under this section shall not for any reason, be adjourned.

(8) As soon as the meeting convened under this section is commenced, the Revenue Divisional Officer shall read to the Panchayat Union Council the notice of the Government and the explanation, if any, of the Chairman [and the proposal for the removal of the Chairman], for the consideration of which it has been convened.

(9) There shall be no debate in any meeting under this section.

(10) The Revenue Divisional Officer shall not speak on the merits of the notice or explanation nor shall he be entitled to vote at the meeting.

(11) The views of the Panchayat Union Council shall be duly recorded in the minutes of the meeting and a copy of the minutes shall forthwith on the termination of the meeting be forwarded by the Revenue Divisional Officer to the Government.

(12) The Government may, after considering the views of the Panchayat Union Council in this regard in their discretion either remove the Chairman from office by notification with effect from a date to be specified therein or drop further action.

(13) Any person in respect of whom a notification has been issued under Sub-section (12) removing him from the office of Chairman shall be ineligible for election as Chairman and for holding any of those offices until the expiry of three years from the date specified in the notification.

13(a). Mrs. Chitra Sampath then submitted that under this Section there are two methods of removal. One is by the Government on its own motion and the other is that two-thirds majority of the panchayat union council give a representation containing the statement of charges against the Chairman. The proposal is to be given to the appropriate officer by two third members of the panchayat union. In this case, the Government is to form an opinion on either of two aspects namely,

(i) that the Government is satisfied that the Chairman has willfully omitted or refuses to carry out or disobeys the provisions of this Act or any rules, bye-laws, regulations thereunder, and

(ii) that he has abused the power vested in him.

In that case, notice is to be given by the Government for these acts of commission and omission.

13(b). The Government has to take a decision whether the explanation offered is satisfactory or not. If it is satisfactory, the Government may drop further action and if not, the Government has to forward the proposal for removal of the Chairman. Sub-sections 2 to 10 are by and large *pari materia* with the similar provisions contained u/s 212. Here also there will be no debate in the house. Sub-section 11 lays down that the views of the panchayat union council are to be recorded in the minutes and the copy of the minutes is to be forwarded by the Revenue Divisional Officer to the Government. Sub-section (12) lays down that whatever may be the decision of the panchayat union council, the ultimate decision is with the Government. The Government may remove his name from the particular office occupied by him or drop any further action. Thus, when it comes to the removal of the Chairman by the Government or two-thirds majority members, the Government has to finally satisfy that the person deserves to be removed. As against that u/s 212, it is the 3/4th of the members, who move the no confidence motion and it is to be passed by 4/5th majority without any

discussion. The complaint and the reply are to be read out by the Chairman in the meeting of all the councillors and immediately thereafter they have to take a decision. Sub-section (6) of Section 212 provides for a situation where the Revenue Divisional Officer is unable to preside over the meeting. It indicates a situation for which the legislature wanted to make a provision namely, that in the absence of the Revenue Divisional Officer, a decision cannot be taken. The legislature has not permitted that. Sub-section (7) of Section 212 deals with the situation where the Revenue Divisional Officer is unable to preside over the meeting. Obviously, it implies a difficult situation and in that situation, it is laid down that the meeting will be adjourned by the Revenue Divisional Officer by giving reasons and it will be held within 30 days thereafter. This also indicates that the Legislature has taken care of a situation wherein there could be disturbance in the meeting. It is submitted by Mrs. Chitra Sampath that when the Legislature has taken care to mention a likely disturbance at the time of no confidence motion, it would be just and proper that where some members have requested for a secret ballot, from the point of view of free and fair decision on the no confidence motion, it would be desirable that it should be by ballot and not by show of hands.

14. Mr. Raman, learned Advocate General, on the other hand, laid greater emphasis on Paras.421 to 425 and 463 to 466 of the Judgment of the Constitution Bench of the Apex Court in the case of *Kuldip Nayar Vs. Union of India (UOI) and Others*, . In paragraph 421 of the judgment, the Apex Court relied on an earlier judgment of the Supreme Court in *A. Neelalohithadasan Nadar Vs. George Mascrene and Others*, wherein it was held that out of the two compelling principles, the purity of election principle must have its way and that the rule of secrecy cannot be pressed into service to suppress a wrong coming to light and to protect a fraud on the election process. In paragraph 424, the Apex Court has observed that for secret ballot to be the norm, it must be expressly so provided. Relying on this paragraph, Mr. Raman, submitted, that in the present case ballot is not provided. In paragraph 463 of the judgment, the Apex Court has laid down that the principle of secrecy is not an absolute principle. The legislative amendment cannot be struck down on the ground that a different or better view is possible.

15. Mrs. Chitra Sampath, submitted that the judgment in the case of *Kuldip Nayar (supra)* was distinguishable. That was a case where the Supreme Court was concerned with the election of Rajya Sabha members by the Lok Sabha members, and the constitutional provisions were specified, and defection was not contemplated. That is so because the members were elected on party lines and in the event, a secret ballot is permitted, there is a likelihood of a defection, which could be avoided, if there is show of hands. The panchayats are supposed to be the bodies at the grass root of the democracy, free from party politics, though the members are elected on the basis of parties. These members must be able to vote without fear or favour. If that is so, when a request is made to have the vote by ballot, it would be desirable that the Revenue Divisional Officer

accepts that request rather than rejecting it. It would be a decision against the wishes expressed by a few members to the contrary. This would be against the principle of good democratic governance.

16. Mr. Raman, learned Advocate General, brought to our attention a judgment rendered by a learned single Judge of the Andhra Pradesh High Court in the case of K.V. Subrahmanayam and Others Vs. Joint Collector, Cuddapah and Others, . That was a case concerning a no-confidence motion against the Vice-Chairman of a municipal council. The facts of the case show that the Joint Collector, who was presiding over the meeting initially, prescribed the vote by secret ballot, but it was given a go-by and the members present during the meeting voted by show of hands. The Vice-Chairman against whom the motion was carried filed a writ petition challenging the method of voting. The Joint Collector filed a counter in which he stated that all the members opted for the system of voting by show of hands. In paragraph-14 of his judgment, the learned single Judge referred to the judgment of a Division Bench of Andhra Pradesh High Court rendered as far as back in the year 1984 in the case of G. Narayana Sawamy Vs. Government of Andhra Pradesh and Others, . The Division Bench while interpreting the words "motion shall be put to vote" appearing in Section 46(9) of the A.P. Municipalities Act, 1965 held as follows:

It is patent from the provisions of the A.P. Municipalities Act that the modalities for election of Chairman and Vice-Chairman and no-confidence motion envisage a different and distinct bearing. Insofar as the election, the voting by secret ballot alone is postulated. In the context of set up of Section 46, similar connotation cannot be attributed to the expression "put to vote". The expression "put to vote" comprises wide coverage taking in its fold show of hands and secret ballot as well" The Collector or the Revenue Divisional Officer is obligated to convene the meeting for consideration of the no-confidence motion within one month from the date of the written notice. The mode of voting by ballot is time consuming process as ballot papers have to be printed and furnished to each of the voters and ballot boxes have to be arranged and after the votes are exercised the ballot boxes have to be opened and votes counted and the result declared thereafter. Section 46 provides a self-contained procedure whereby the expression of no-confidence is expected to be finalized within a short time and the voting by show of hands contributes to expedition.

17. Learned Advocate General also referred to the a Division Bench judgment of the Bombay High Court in the case of Kishore s/o Ramchandra Phalak v. Vilas s/o Damodar Mahajan and Ors. reported in 1997 (3) Mh.L.J 27. There also the question was whether it was imperative on the part of the Presiding Officer to record the votes by ballot on a motion expressing no confidence against a Sarpanch under the Bombay Village Panchayats Act, 1958. There also were two provisions, one governing the election of the Sarpanch and the other governing the no confidence motion. When it came to the election, the rules provided that voting shall be by show of hands, if, however, any person in the meeting so

demands, the voting shall be by ballot. Such a provision was not there when it came to the passing of the no-confidence motion. The Division Bench in paragraph-3 of the judgment held as follows:

In fact, those Rules do not provide for any special procedure in respect of recording of the votes of a motion expressing no confidence on the elected office bearers of the village panchayat. When no special procedure is prescribed, the general procedure prescribed for the meetings would be applicable. Rule 29(1) of the Bombay Village Panchayats (Meeting) Rules, 1959 lays down that the votes shall ordinarily be taken by word of mouth, or by show of hands, but if majority of the members decide to be taken by ballot. It, therefore, follows that the general procedure laid down for the business of the panchayat meetings requires that the voting shall be recorded either by voice vote or by show of hands and if the majority of the members so decide, then only by ballot. It is not the case of the parties before us that there was a majority decision to record the votes by ballot on a motion expressing no confidence on the Sarpanch, impugned in this writ petition.

18. The Division Bench of the Bombay High Court then referred to the submissions made on behalf of the petitioner and dealt with the same in paragraph-4 of the judgment as follows:

Shri Barlinge, learned Counsel for the petitioner submits that the purpose for providing the secret ballot while electing the Sarpanch and Up-Sarpanch, if any of the members so demands, is to ensure free exercise of the franchise without any coercion or pressure. The same is expected about the voting while expressing a no confidence and, therefore, to ensure that members vote freely, the same provision should be read in the Rules in absence of any specific provision contrary to the same. The first proposition is not acceptable on the face of it for the reason that election of Sarpanch is a normal and obligatory function of the members of the panchayat at the beginning of their term wherein they should be free to elect the officer bearers of their choice and if any member is apprehensive that he may be penalized or prized for exercising his franchise in a particular way, he can ask for a secret ballot. A motion of no confidence stands on a different footing. It is true that often the undemocratic methods are used to influence the voting in one way or the other. But it is for the Legislature and if the powers are so delegated then for the State to lay down as to what particular procedure should be followed on a particular occasion. We cannot read something in the Rules which is not there. This would be re-reading the Rules which is not permissible.

19. A Division Bench judgment of the Andhra Pradesh High Court in *Re. R.P. Reddy* reported in AIR 1975 AP 123 was cited before the Division Bench of the Bombay High Court, so also before us now. The observations of the Division Bench are relevant for our purpose, which we reproduce herein below:

A resolution expressing want of confidence in a President cannot be equated to

an election to the office of the President. Section 33 clearly shows that a duty is caste on those who are signatories to the motion to speak openly and state the reasons for their attempt to dislodge a member who has been duly elected to the office of the President. Those opposing the motion have also a right to refute the charges leveled against the President. Therefore, no secrecy is attached nor such secrecy is intended when a no-confidence motion comes up for consideration or discussion. There is an open debate. It is for that reason that the secrecy of the ballot is waived under the Rules and open ballot is introduced.

20. We have noted the submissions advanced by both the learned Counsel. We have referred to the judgments of the Andhra Pradesh High Court and the Bombay High Court for the reason that the provisions of the State enactments over there are some what similar with a little variation. It is seen that two different methods are provided when it comes to election and when it comes to passing of vote of no-confidence. It is for the legislature, and if the power is delegated then it is for the State to lay down as to which particular procedure should be followed for a particular occasion. In the absence of any specific provision, it is not expected of the Court to read something in that rule which is not there.

21. The Bombay High Court in the above cited judgment relied upon the general procedure prescribed for the meetings when no special procedure was prescribed for deciding the no-confidence voting. That was precisely the submission of Mr. Raman, learned Advocate General, in the present case. Mrs. Chitra Sampath, learned Counsel appearing for the appellant, had submitted, on the other hand, that a reference to the general rules governing the meetings is not excepted, since Section 212(1) of the Act provides that motion of no-confidence is to be made in accordance with the procedure laid down herein meaning thereby in the very section. It was, therefore, submitted that when no procedure is laid down under Sub-section (12), there is no need to reject the request for ballot. Apropos this submission also, as held by the Apex Court in paragraph-424 in Kuldip Nayar's case (supra) for secret ballot to be the norm it must be so expressly provided. That was also the view of the Bombay High Court in the above cited judgment. In the context of elections to Rajya Sabha, the Apex Court had observed that purity of the election principle must have the way over the rule of secrecy, in the event of their being any conflict.

22. The Andhra Pradesh High Court, as well as the Bombay High Court have distinguished the motion of no-confidence from the vote for an election. In P.R. Reddy (supra), the Division Bench of the Andhra Pradesh High Court has observed that no secrecy is attached nor such secrecy is intended when a no-confidence motion comes up for consideration or discussion. The Bombay High Court has also observed that the members are expected to be fearless, while holding that the motion of no-confidence cannot be equated with the motion for electing a Sarpanch. We see no reason to take a different view.

23. In the instant case, the election is provided by ballot, whereas when it comes

to no-confidence motion, the ballot is not specifically provided. In a small body like that of a village panchayat, the views of the persons in favour of no-confidence and those against are known to each other. The statement of charges against the Chairman, and his statement, if any, in reply, is to be read out by the RDO under Sub-rule (9). Sub-rule (10) specifically provides that there shall be no debate on any motion under this section. It shows the urgency in taking a decision. As observed by the Division Bench of the Andhra Pradesh High Court in *G. Narayana Swamy (supra)*, the mode of voting by ballot is time consuming. The expression of no-confidence is expected to be finalized within a short time and the voting by show of hands contributes to expedition.

24. In the circumstances, we do not find any error in the method adopted for voting by show of hands while deciding the no-confidence motion against the appellant. There is no error on the part of the learned single Judge also in dismissing the petition. The appeal is, therefore, dismissed. No costs. Consequently, miscellaneous petition is closed.