
(1963) 03 BOM CK 0002

In the Bombay High Court

Case No : Special Civil Application No. 403 of 1962

Ganeshsinha Domansingha Hajari

APPELLANT

Vs

Commissioner, Nagpur Division

RESPONDENT

Date of Decision : 07-03-1963

Acts Referred:

Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 — Section 72
Maharashtra Zilla Parishads Presiding Authorities (No-confidence Motion) Rules, 1962
— Rule 2

Citation : (1963) 65 BOMLR 722 : (1963) MhLj 569

Hon'ble Judges : Kotval, J;Gokhale, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Kotval, J.—In this petition we are concerned with a notice given to move a no-confidence motion against the Chairman of the Panchayat Samiti of Nagpur, u/s 72 of the newly enacted Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (No. V of 1962), (hereinafter referred to as the Act).

2. The petitioner was elected Chairman of the Panchayat Samiti, Nagpur, on August 7, 1962, after the last elections to the Zilla Parishads. On October 10, 1962, four members of the Samiti who are respondents Nos. 2 to 5 gave a notice of their intention to move the no-confidence motion. That notice is at annexure B. Annexed to that notice was a copy of the resolution at annexure A. The petitioner who received the notice in his capacity as Chairman of the Panchayat Samiti ruled it out of order, and the order which he passed on the same day that he received the notice is at the foot of annexure B as follows:

There is no necessity for convening the meeting to consider the motion of no confidence as the notice is not according to rule. Therefore, the notice is cancelled.

3. Consequent upon this order of the petitioner, the four members who had given

notice moved the Commissioner, Nagpur Division, and the Commissioner issued the order impugned in this petition on October 23, 1962. The order of the Commissioner inter alia states that "whereas the requisite number of members of the Panchayat Samiti had given a notice of a motion of no-confidence in the Chairman of the said Samiti on 10-10-62" and the Chairman of the Samiti declined to consider the said motion, the Commissioner, in exercise of his powers u/s 72(4) of the Act was directing that a meeting of the Panchayat Samiti should be held for consideration of the said motion of no-confidence in the Chairman on October 29, 1962, at 1 P.M. The Commissioner also authorised the Tahsildar, Nagpur, to preside over the said meeting. It is against that order of the Commissioner that the petitioner has filed the present petition and in respect of the order he has made two prayers, firstly, that the order of the Commissioner dated October 23, 1962, be quashed, and secondly, that a writ of mandamus be issued restraining respondents Nos. 2 to 5 from holding any meeting pursuant to the notice dated October 10, 1962. The respondents have in their turn not merely justified the order of the Commissioner but have disputed that the notice could be quashed in the circumstances.

4. The notice of a no-confidence motion has to be given under the provisions of Section 72(7) of the Act and the Commissioner's powers are indicated in Section 72(4) of the Act. The relevant provisions of Section 72 are as follows:

72. (1) A motion, of no-confidence in the Chairman or Deputy Chairman of a Panchayat Samiti may be made by a requisition from not less than one-fourth of the total number of the members (other than associate members) after giving a notice thereof in such form and in such manner as may be prescribed by the State Government.

(2) The Chairman of a Panchayat Samiti shall convene a meeting of the Panchayat Samiti to consider such motion within ten days of the receipt of the notice....

(4) If no such meeting is convened by the Chairman of a Panchayat Samiti within the period specified in Sub-section (2), all or any of the members who have given notice of motion of no-confidence, may forward to the Commissioner a copy of the notice (together with a copy of the motion) and request him to convene a meeting of the Panchayat Samiti. The Commissioner shall, within ten days of the receipt of such communication by him, convene the meeting of the Panchayat Samiti for the consideration of the motion at the office of the Panchayat Samiti at a time appointed by him, and shall authorise such person as he deems fit to preside over such meeting.

5. Now, the reason why the petitioner ruled the notice out of order was that the notice was not accompanied by any grounds on which it was proposed to move the motion. Neither Sub-section (1) nor Sub-section (2) of Section 72 as such require that the notice should state the grounds; but provision in that behalf is made in the rules u/s 274(2)(x). These rules are known as the Maharashtra Zilla

Parishads Presiding Authorities (No-confidence Motion) Rules, 1962. For the purposes of the points raised in this petition Rule 2 is material. Rule 2 prescribes:

Form of notice,-The notice of a requisition for a motion of no-confidence in the President or Vice-President or both shall be in the form hereto appended. The notice-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.

The form is appended to the rules and entry No. 2 of the form says, "A copy of the motion proposed to be moved is enclosed", thus indicating that it is a requirement that a copy of the motion should be enclosed along with the notice in the said form. That was admittedly done in the instant case though the grounds as required by the rule were not stated. Entry No. 3 of the form says, "The motion will be moved by Shri...", thus indicating that the name of the mover of the motion must be given in the notice. We state these requirements of the form because they impinge upon the construction of Rule 2.

6. The latter part of Rule 2 is somewhat curiously worded. It says that the notice shall be accompanied by the text of the motion proposed to be moved specifying therein the grounds etc. and the name of the mover. One of the points which was argued before us is with reference to the use of the words "specifying therein" in Rule 2. The question is : Does the word "therein" refer to the notice or the motion? We have already shown that in entry No. 3 in the form the name of the mover of the resolution has to be mentioned. That would suggest that "the name of the councillor who shall move the motion" has to be stated by virtue of Rule 2, in the notice. If so, the same reasoning would apply to the clause "the grounds on which it is proposed to move the motion." The two clauses are merely joined together by an "and", and so whatever is the construction we put upon the word "specifying therein" in their application to the second clause "the name of the Councillor who shall move the motion" will also have to be given to those words in regard to the first clause "the grounds on which it is proposed to move the motion". On the one hand, it was thus argued that the word "therein" obviously refers to the form of the notice, whereas on the other hand, it was urged that it could not be the form of the notice that was intended by the use of the word "therein" because that word is followed by the words "the grounds on which it is proposed to move the motion."

7. In our opinion, the clause "the grounds on which it is proposed to move the motion and the name of the Councillor who shall move the motion" has reference to the words used in the opening clause of the sentence, "The notice shall be accompanied by the text of the motion proposed to be moved" and the word "therein" refers to "the text of the motion proposed to be moved" and not to "The notice". We cannot understand how the text of the motion can be divorced from the grounds on which it is proposed to move it. It could not have been the intention of the Legislative draftsman that the motion should accompany the notice but the grounds should be in the notice. On the other hand, it seems more

logical to hold that the motion itself should contain the grounds and that is also what the language of the rule, in our opinion, indicates. That the form of notice shows that the name of the mover has to be mentioned in the notice does not necessarily import that it has to be in the notice alone and not in the motion. On the other hand, it may well be that the rule provides by way of abundant caution that the name has to be mentioned in the notice a second time. In the instant case, the name of the Councillor has been mentioned in the motion appended to the notice but not the grounds. In fact, the grounds nowhere appear, either in the motion itself or in the notice. In our opinion, they should have found place in the motion.

8. The rules are framed under the provisions of Clause (x) of Sub-section (2) of Section 274 of the Act, which gives authority to the State Government to make rules "not inconsistent with the provisions of this Act" and Clause (x) states the purpose as "prescribing the form and manner of giving notice under Sub-section (1) of ...Section 72..." We have omitted the unnecessary words. Those are also the very words used in Section 72(1) "in such form and in such manner as may be prescribed by the State Government". It is clear, therefore, upon a plain reading of Rule 2 that there has been a breach of Rule 2 in the instant case in so far as respondents Nos. 2 to 5 failed to state the grounds on which they proposed to move the motion. In the present case the grounds have not been mentioned at all.

9. The next question is : What is the effect of that non-compliance? It was urged on behalf of the respondents by Mr. Mandlekar supported by Mr. Padhye on behalf of the Commissioner, that the requirement as to the grounds being mentioned is merely a directory provision of law and not mandatory and that even though a breach of that rule may have taken place, it does not affect the validity of the notice. It was also urged that even if such a breach has taken place it has not in any way prejudiced the parties.

10. We do not think that we can accept that contention. Section 72, Sub-section (1), clearly prescribes that a motion of no-confidence may be made only after giving a notice thereof in the form and in the manner prescribed. The form and manner are prescribed by Rule 2 which itself is couched in very mandatory language. It says that the notice of requisition for a motion of no-confidence "shall" be in the form appended to the rules and the notice "shall" be accompanied by the text of the motion proposed to be moved specifying therein the grounds etc. and the name of the mover. The word used is "shall" in either case, and we think that the word was advisedly used in framing the rule. The normal construction of such a word in the context in which it is used would be to make the rule mandatory. There is nothing else in the context of that rule or of any other rule or the Act to indicate that the provisions of the rule are directory. Upon a construction of Rule 2, we think that the requirement that the grounds must be mentioned in the motion proposed to be moved is a mandatory requirement and would vitiate the notice given if the grounds do not appear in

the motion accompanying the notice.

11. 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 October 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.

12. Then we turn to the other part of the case argued on behalf of the respondents. It was urged that the meeting having been convened by the Commissioner, this Court ought not to interfere at this stage but leave it to the Samiti to decide what to do. It was argued that it is the function of the Samiti itself to consider the objection raised to the notice and adumbrated in this petition. What is urged is that it is really a matter for the Samiti itself to decide whether the notice was a valid notice and whether upon that notice a no-confidence motion ought to be allowed to be moved or not and this Court ought not to take away that discretion of the Samiti. In this respect reference was also made to the powers of the Commissioner under Sub-section (4) of Section 72.

13. On behalf of the Commissioner, it was conceded that under Sub-section (4) of Section 72 he has not the power to adjudicate whether the notice was valid or invalid. But, on the other hand, it was submitted that if it was brought to his notice that the Chairman for some reason does not convene a meeting pursuant to a notice, the Commissioner was bound to convene a meeting irrespective of whether the notice is valid or invalid. We do not think that we need decide this question. We have already held the notice to be bad. If so, no meeting need be held to consider it and if such a meeting is held and considers the motion, whatever resolution that meeting would pass would have to be set aside for the reason that the notice itself was bad. In that view, assuming that the Commissioner had the power to convene the meeting, we do not see how any useful purpose will now be served by allowing the notice of no-confidence to go before the Samiti since it is patently not in compliance with Section 72 read with

the rules. Whether the Samiti passes or rejects the no-confidence motion, the defect is bound to remain and upon that defect whatever resolution they may pass would be subject to challenge. The matter is before this Court and since it is our view that the notice is bad, we think that it will be just and proper to intervene at this stage, ourselves declare that notice illegal and stop further proceedings upon that notice. Of course, what we have said does not preclude any member of the Samiti from taking fresh proceedings upon a proper notice.

14. In the result, we declare that the notice dated October 10, 1962, was illegal and not in compliance with the provisions of the Act and we quash the said notice. Upon this view, it must necessarily follow that the meeting called to consider it must be interdicted. The petition is allowed. Respondents Nos. 2 to 5 shall pay the costs of the petitioner.