

(2014) 11 BOM CK 0051
In the Bombay High Court
Case No : Writ Petition No. 10229 of 2014

Gulab	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 19-11-2014

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 35, 35(3), 44(3)

Citation : (2015) 5 MhLj 113

Hon'ble Judges : R.V. Ghuge, J

Bench : Single Bench

Advocate : P.B. Rakhude, Advocate for the Appellant; S.A. Dhumal, A.G.P. and D.Y. Nandedkar, Advocate for the Respondent

Judgement

R.V. Ghuge, J.—Rule. Rule made returnable forthwith by the consent of the parties and heard finally.

2. The petitioner Sarpanch is aggrieved by judgment and order delivered by the Additional Collector, Nanded dated 30-10-2014, by which his appeal No. 53 has been rejected under Section 35(3-B) of the Maharashtra Village Panchayat Act, (here-in-after referred to as "MVP Act"). Having suffered passing of "no confidence" motion, he had moved an appeal before the Additional Collector, which has been turned down by the impugned judgment.

3. The contentions of the learned Advocate for the petitioner can be summarised in brief as follows :-

a] The petitioner was Sarpanch of Gram panchayat Chidgiri, Tq. Bhokar.

b] Earlier, a notice for moving no confidence motion dated 11-02-2014 culminated into a special meeting on 17-02-2014 when the motion was passed by seven votes as against two votes.

c] The petitioner had challenged the said outcome of the special meeting dated 17-02-2014 by filing an appeal No. 31 before the Additional Collector, Nanded

and the said appeal has been allowed by the judgment and order dated 18-06-2014.

d] It is informed that the Writ Petition challenging the said decision dated 18-06-2014 is pending before this Court and no interim orders have been passed.

e] A requisition for moving the no confidence motion was filed on 05-07-2014 by more than 1/3rd members of the said Gram panchayat.

f] The Tahsildar issued a notice for convening a special meeting on 11-07-2014.

g] The said motion was passed by 2/3rd majority since seven members voted in favour of the motion and only two members voted against the motion.

h] The petitioner moved Gram panchayat Appeal No. 53 before the District Collector, Nanded on 16-07-2014.

i] The contentions of the petitioner in the said appeal were as follows :-

i] No confidence motion cannot be moved within six months from the date of the earlier no confidence motion (special meeting).

ii] The no confidence motion was neither formally proposed nor seconded by any member of the Gram panchayat.

iii] The notice for convening a special meeting on 11-07-2014 did not follow the mandate of a minimum of four days notice to the Sarpanch against whom the motion was moved.

j] The Additional Collector considered the contentions of the petitioner and concluded that the notice for convening the special meeting on 11-07-2014 was served upon the petitioner two days prior to the date of the meeting (which was an admission on the part of the petitioner in his appeal)

k] The Additional Collector also concluded that the earlier meeting in which no confidence motion was passed dated 17-02-2014 has been set aside since the very notice issued for convening the meeting was defective and could not have been said to be a valid notice issued by the Tahsildar. It was, therefore, concluded that the meeting dated 11-07-2014 was rightly and legally conveyed.

l] The Additional Collector in the impugned judgment has also concluded that a formal proposer or seconder to the requisition for moving no confidence motion under Rule 17 of the Meeting Rules 1959 is not necessary.

m] The petitioner contends that the conclusions drawn by the Additional Collector are against the MVP Act, the Meeting Rules, 1959 and the Bombay Village Panchayats Sarpanch and Upa-Sarpanch (No Confidence) Rules, 1975.

It is, therefore, prayed that the petition be allowed and the impugned judgment of the Additional Collector, be quashed and set aside.

4. The learned A.G.P. appearing on behalf of respondent Nos. 1 & 2 has pointed

out that the 1975 Rules did not mandate a minimum of four days notice so as to render the Tahsildar under an obligation to serve the notice for convening the special meeting, on the petitioner facing the "no confidence" motion, at least four days prior to the meeting.

5. The learned A.G.P. has placed reliance upon the reported judgment of the Division Bench of this Court in the matter of Hindurao Dnyanu Shirtode and Another Vs. The State of Maharashtra and Others, , to assert that the claim/plea of three clear days notice under Rule 4 of the 1959 Rules has already been negated by this Court. Paragraph No. 7 of the said judgment is specifically cited.

6. The learned A.G.P. further submits that the earlier meeting dated 17-02-2014 has been set aside by the Additional Collector and this Court has caused no interference at the interim stage. She, therefore, contends that the said meeting having been set aside, would not exist in the eyes of law and, therefore, section 35(3A) of the MVP Act would not be of any assistance to the petitioner. She, therefore, prays that the petition be dismissed.

7. Shri Nandedkar, learned Advocate appearing on behalf of respondent Nos. 3 to 9 submits as under :-

a] Neither Rules of 1959 nor the Rules of 1975 lay down a mandate/ prescription that the petitioner should have been given at least four days notice before convening the special meeting.

b] Earlier meeting dated 17-02-2014 has been set aside by the learned Additional Collector since he concluded that the notice issued by the Tahasildar was not a requisite notice and it, therefore, did not remain to be a notice in the eyes of law.

c] Since the very notice of the special meeting was held to be bad in law, the business transacted in the meeting dated 17-02-2014 was non-est and void-ab-initio.

d] It is specifically pointed out that the Additional Collector, while allowing the appeal of the petitioner with regard to the no confidence motion dated 17-02-2014, has concluded that the said notice issued by the Tahsildar was no notice in the eyes of law and, therefore, passing of the no confidence motion in the said meeting could not be said to be business legally transacted in the meeting.

It is therefore, prayed that the petition be dismissed.

8. I have heard the learned Advocates for the respective sides and the learned A.G.P. on behalf of the State.

9. Section 35(3-A) reads as under :-

"If the motion [is not moved or is not carried] by [a majority of not less than two-third of [or, as the case may be, three fourth, of] the total number of the

members who are for the time being entitled to sit and vote at any meeting of the Panchayat, no such fresh motion shall be moved against the Sarpanch or, as the case may be, the Upa-Sarpanch within a period of [one year from the date of such special meeting]."

I find that Section 35(3-A) of the MVP Act prohibits a motion of no confidence to be brought up within a period of six months from the date of the earlier "no confidence" motion. Nevertheless, the Tahsildar after scrutinising the position has issued the notice for convening the special meeting for considering the said motion. When the notice dated 05-07-2014 was issued by the Tahsildar, the judgment of the Additional Collector dated 18-06-2014 setting aside the business transacted in the special meeting dated 17-02-2014 was already in place. No fault, therefore, can be found with regard to the issuance of the said notice.

10. Considering the contention of the petitioner that Rule 4 of the Meeting Rules 1959 mandates four days notice prior to holding the special meeting, I have gone through the Rules of 1959 and also the Rules of 1975 and did not find any such mandate under Rule 4 of both the Rules.

11. Nevertheless, this issue has been dealt with by the Division Bench of this Court in the case of *Hindurao Dnyanu Shirdode and Another Vs. The State of Maharashtra and Others*, of the said judgment reads thus :-

"7. In the instant case notice of No Confidence has been issued by the members on 11-4-1997. The Tahsildar by his notice dated 12th April, 1997 has convened a meeting to be held on 17th April, 1997 which is within a period of seven days. Moreover, all that Rule 4 of the Bombay Village Panchayats (Meeting) Rules, 1959 provides is that the secretary shall send intimation of the meeting which intimation has to be sent at least 3 days before the date fixed for the meeting. The said provision does not provide that the said notice has to be served upon the members three clear days before the date of the meeting. The second contention of Dr. Chowdhari, therefore, is rejected."

12. It is further observed in the *Hindurao* case (*supra*) that the Bombay Village Panchayats (Meeting) Rules, 1959 will not be applicable. The Bombay Village Panchayats Sarpanch and Upa-Sarpanch (No-Confidence) Rules, 1975 are applicable. The "no confidence" motion therefore will be governed only by the 1975 Rules and not by the 1959 Rules. In the light of the same, the plea taken by the petitioner that four days clear notice should have been given to him under the 1959 Rules, deserves to be negated.

13. The salient contention of the petitioner is that the meeting dated 11-07-2014 will have to be construed to have been held within six months from the date of the earlier "no confidence" motion.

14. The Division Bench of this Court in its judgment delivered on 26-02-2014 in the case of *Ravindra and Vishnu Vs. State of Maharashtra and Others*, is an answer to the said issue. Paragraph Nos. 7, 11 and 12 of the said judgment

would be of assistance and the same read as under :-

"7. The need to comply with the provisions of Rule 17 of the Meeting Rules, 1959 is not in dispute. Facts show that said requirement is not satisfied on 06.08.2013 as motion of no confidence was neither proposed nor seconded by anybody. However, the bar contained in Section 35(3-A) of the Act, is in the following words :--"If motion is not moved or is not carried". Thus in a meeting, if it is validly convened, if there is a failure to move the motion, the first part of bar under sub-section (3-A) can be said to be satisfied. However, we need not go into that controversy because the Division Bench of this Court in case of Prakash Barku Patil Vs. State of Maharashtra and others (supra), has looked into it in the background of provisions of Rule 2(3) of the Bombay Village Panchayats Sarpanch and Upa-Sarpanch (No Confidence Motion) Rules, 1975 and held that if both the provisions were to be made effective, harmonious construction was necessary. Division Bench has thus held that the words "motion is not moved" is synonymous and amounts to same thing as "motion is not carried". Here we have already noted that motion was carried on 6.8.2013 and no confidence was expressed against the petitioners.

11. We find that the motion can not be said to be "not carried" unless and until it is "moved" legally. It fails only after it is so moved and is voted against. Thus "not carried" is a later stage reached after it is "moved" as per law and becomes legally available for debate in the meeting. Therefore "not moved" is not same as "not carried". Section 35(3A) contemplates two distinct situations -one at threshold of a legal/valid meeting while the later at the end of such meeting though the consequences of both are same. "Not moved" bar is attracted only when the motion is not moved deliberately when members after due deliberation take a decision not to press it i.e., they give up desire to remove the Sarpanch or Up-sarpanch. When the meeting is held illegal or the motion could not have been moved/considered at all in it, the bar is not attracted. "Not carried" bar becomes operational only when the motion is legally moved and rejected in the meeting. Motion "not moved" can not reach the stage of "not carried". "Not carried" shows failure or rejection of motion of no confidence while "not moved" is the step or decision of the requisitionists not to press no confidence motion at all.

12. We in present facts find that there was no refusal by the respondents to move the motion. On the contrary, everybody has participated in the meeting under the belief or impression that motion had been moved, that it was validly moved and was available for discussion. Accordingly, everybody participated in said meeting and voted in favour of no confidence motion. A resolution expressing no confidence was thus passed against petitioner. It has been set aside only on technical ground not even in contemplation on the date of that meeting. Hence, we find no substance in the technical objection being raised by the petitioner. Writ Petition accordingly deserves to be dismissed, the same is accordingly dismissed. Rule discharged. No costs."

15. The Division Bench has therefore, concluded that moving a motion legally is

distinct and different from carrying the motion. A motion legally moved shall necessarily have to mean that the procedure adopted for moving the motion and for placing it in a special meeting fulfills the requirement of law. If the notice for convening a special meeting is not in tune with the provisions of law, such a notice will have to be construed to be an unsustainable notice. In such a situation, it was concluded that the motion will not be said to be moved as per law and, therefore, the entire business transacted in the meeting based on such a notice, will have to be watered down.

16. The Division Bench, therefore, had dismissed the petition filed by the said petitioner in the said case concluding that the earlier meeting is non-existent in the eyes of law. In the instant case, the judgment of the Additional Collector, dated 18-06-2014 clearly indicates that the notice for convening a special meeting was unsustainable and the meeting was, therefore, held to be illegally convened. As such, a nullity.

17. The Division Bench in the case of Ravindra (supra), had placed reliance upon the judgment of the Apex Court (three judges Bench) in the case of Ramesh Vs. Sheshrao and Others, . In the said judgment as well, the bar of moving a second "no confidence" motion within a certain period under Section 35(3-A) of the MVP Act was considered. In the said case the earlier motion was carried by requisite majority, but was held to be annulled due to absence of requisite notice and was held to be no meeting in the eyes of law. It was concluded that the earlier motion passed had become ineffective and the business transacted, was rendered invalid for want of requisite notice.

18. In so far as the last contention of the petitioner is concerned, that notice dated 05-07-2014 did not formally carry the names and signatures of the proposer and a seconder, the said issue is no longer res-integra. The Full Bench of this Court in its judgment dated 09-10-2014 delivered in LPA No. 312 of 2013 in the matter of Shri Tatyasaheb Ramchandra Kale Vs. Shri Navnath Tukaram Kakade and 17 others has laid the issue to rest.

19. The issue that was crystalised by the Division Bench and placed before the Full Bench was as under :-

"Whether failure to formally move and second a motion of no confidence as required by Rule 17 of the Bombay Village Panchayats (Meeting) Rules, 1959 would render the motion of no confidence carried by the requisite majority under Section 35 of the Bombay Village Panchayats Act, 1958, invalid?"

20. The said issue was answered by the Full Bench in the said judgment and paragraph 21 summarised their conclusions which are as under :-

"21. Finally to put the matter in perspective, the requirement of Rule 17 in the matter of proposing and seconding the motion cannot impinge upon the validity of the motion of no confidence which has otherwise been passed by fulfilling the requirement of Section 35(3) of the Bombay Village Panchayats Act, 1958. The

infraction that has occurred on account of the motion not being formally proposed and seconded cannot invalidate the motion if the same has been passed by fulfilling the requirements of Section 35(3) of the BVP Act, as the said infraction does not affect the merits of the case. Hence we hold that Rule 17 is directory, and the test laid down in Section 44(3) of the BVP Act, namely whether the defects affects the merits of the case, would have to be applied, if a challenge is raised to such a motion. We accordingly answer the reference and remit the matter back to the Division Bench for the above Letters Patent Appeal being decided on merits."

21. As such, Rule 17 in relation to Section 35(3) of the MVP Act is held to be directory in nature and not mandatory. When more than 1/3rd of the members of the Gram panchayat have moved the notice introducing the motion of "no confidence", a proposer and a seconder is not held to be mandatorily required.

22. In the light of the above, I do not find that the impugned judgment delivered by the Additional Collector, dated 30-10-2014 could be said to be erroneous or perverse.

23. The petition is devoid of merit and is, therefore, dismissed. Rule is discharged with no order as to costs.