

(2002) 04 BOM CK 0085
In the Bombay High Court
Case No : Writ Petition No. 963 of 2002

Indubai Vedu Khairnar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 24-04-2002

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 35(3B), 35(3C)
Bombay Village Panchayats Sarpanch and Up-Sarpanch (No confidence Motion) Rules,
1975 — Rule 2(2)

Citation : (2002) 4 ALLMR 110 : (2003) 2 BomCR 239

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

Bench : Single Bench

Advocate : S.P. Deshmukh, for the Appellant; M.L. Dharashive, A.G.P. for respondents 1 to 5, P.S. Patil, for respondents 6 to 17 and C.S. Kulkarni, for respondents 18 to 21, for the Respondent

Final Decision : Allowed

Judgement

D.G. Karnik, J.—Heard.

2. Rule made returnable forthwith by consent.

3. The village panchayat Chaitane consists of 17 elected members. The petitioner was elected as a Sarpanch by the elected members some time in the year 2000. The respondent No. 21 was elected as Upsarpanch at the same time. Respondents 6 to 21 are the other members of the village panchayat out of them respondents 18 to 20 and the Upsarpanch i.e. respondent No. 21 supported the petitioner. The respondents 1 to 4 are the State and Government authorities are represented by learned Assistant Government Pleader who supports the judgment of the Additional Commissioner confirming the judgment of the Additional Collector.

4. Shri N.Y. Pagare, respondent No. 8 and 8 other members of the Gram Panchayat, Chaitane gave a notice to the Tahsildar of motion of no confidence

against the Sarpanch and separate notice was also issued for a notice of no confidence against the Upsarpanch. In pursuance of the said notice, the Tahsildar convened a special meeting of the village panchayat for considering the motion of no confidence against the Sarpanch and Upsarpanch on 13th September, 2001. The notice of the meeting dated 13th September, 2001 was issued on 10th September, 2001. In pursuance of the said notice, the meeting was held on 13th September, 2001. 11 out of 17 members personally attended the meeting. 12th member was ill and hospitalised and therefore did not personally attend the meeting. However, the said member was brought in an ambulance outside the meeting hall and it appears that though the said 12th member was not personally present in the meeting hall, her wishes were ascertained by the Tahsildar who was as presiding over the meeting. The Tahsildar held that the said 12th member also supported the motion of no confidence. All the 11 members who were in the meeting voted in favour of the motions of no confidence and both motions were therefore, declared to be passed by a vote of 12 verses Nil. The petitioner and respondents 18 to 21 were present in the meeting. According to the petitioner, notice was not served on the petitioner at all. It is alleged that notice was not served on respondent No. 21 personally but was served on a female member in her family. It is also contended that the notices were not served personally on respondents 18 and 20 but was served on his mother. The petitioner Sarpanch filed a dispute before the Collector under sub-section 3(B) of section 35 of the Bombay Village Panchayat Act, 1958 (for short the Act) challenging the Resolution of no confidence passed against him. Respondent No. 21 also filed similar dispute and Writ Petition No. 964/2002 arises out of the dispute filed by respondent No. 21.

5. The petitioner contended that the Resolution expressing no confidence against her was bad in law inter alia on the following ground:

(i) Notice of meeting dated 13th September, 2001 was not served on the petitioner at all. She was not aware of the meeting and hence could not remain present and thus did not have an opportunity to defend herself. (ii) The notice of the meeting was not served on the respondent Nos. 18 and 21 in accordance with law inasmuch as the notice was not served on respondent Nos. 18 and 21 personally nor on the male members of their family nor by affixing on the doors but was delivered to the female members in the family. (iii) The Resolution was not passed by requisite majority of 2/3rd of the total number of members. The total members of the village panchayat are 17 and therefore minimum 12 votes were necessary in favour of the Resolution. Only 11 members were present at the meeting. 12th member was not present and therefore, could not have voted. The Tahsildar erred in leaving the place of the meeting, going outside and ascertaining the wishes of respondent No. 15 who was not present but was brought outside the meeting hall in an ambulance.

6. All the grounds were rejected by the Collector. The petitioner therefore, filed an appeal under sub-section 3(C) of section 35 of the Act before the

Commissioner. Appeal was assigned to the Additional Commissioner who by order dated 16th February, 2002, dismissed the same. The petitioner challenges the order of the Additional Commissioner in this appeal.

7. Shri S.P. Deshmukh, learned Advocate appearing on behalf of the petitioner urged before me the very grounds which were urged before the learned Additional Commissioner as mentioned above. In the enquiry of the dispute u/s 3(B) of section 35 before the Collector, the petitioner made an application dated 9th October, 2001 in which it was stated that the notice of the meeting was not received by her; on receipt of the certified copy, it appeared that there is a thumb impression showing the receipt of the notice, but the thumb impression was not her and therefore the said thumb impression appearing on the acknowledgment of the notice and the real thumb impression should be sent to the finger print expert for the purpose of verification and report. No order was passed on this application. The Collector merely held that Talathi had taken the thumb impression of the petitioner on serving the notice though it was not attested by any witness; this was a technical error. When the petitioner had specifically denied the receipt of the notice it was necessary to hold an enquiry as to whether the said thumb impression was of the petitioner or any person from her family. The petitioner had specifically made application to refer the thumb impression to the finger print expert. In my opinion, the Collector ought to have sent the thumb impression to the finger print expert when the thumb impression was denied and was not attested even by Tahsildar who purporting served the notice. There was thus no evidence before the Collector that the thumb impression on acknowledgement receipt of the notice was that of the petitioner. The contention of the petitioner that she had no receipt of notice of the meeting ought to have been accepted by the Collector. Sub-rule (2) of Rule 2 of the Bombay Village Panchayat Sarpanch and Upsarpanch (No Confidence Motion) Rules, 1975 (for short No Confidence Motion Rules), lays down that notice should be served on the Sarpanch, Upsarpanch and other authorities. So far as the service of notice on the person against whom the motion of no confidence is moved, the provision must be held to be mandatory because the person has to have an opportunity of defending himself/herself. Under sub-section (2) of section 35 Sarpanch or Upsarpanch against whom Notice of Motion of no confidence is moved has a right to speak. This right to speak cannot be exercised by the person if he has no notice of the meeting. Thus the mandatory requirement of serving of notice on the person against whom motion of no confidence is proposed was not followed vitiating the motion of no confidence.

8. Shri Patil, learned Counsel for respondents admit that Hirabai Jagannath Salve (respondent No. 15 in this petition) was ill and could not remain personally present in the meeting hall. However, she was brought outside the meeting hall in an ambulance. Her presence outside the meeting hall, according to the learned Counsel for the respondents should be considered as presence in the meeting. Furthermore, Tahsildar had personally gone outside the meeting hall, met her and ascertained her wishes. She had expressed that she wishes to vote in favour

of the motion of no confidence. Relying on the judgment of the Division Bench of this Court rendered in the case of Tarvindarsingh Mahendrasingh Dhillon Vs. State of Maharashtra and Others, , it was contended that it was competent for the Presiding Officer to render assistance to the voter and to help him/her cast the vote. The voter may be blind and therefore, may be unable to identify the names and/or signs of the candidates in which case the voter can seek assistance of the Presiding Officer and there is nothing wrong in the Presiding Officer giving such assistance. The circumstances, when such assistance can be given manifold. There is however, distinction between giving assistance to the voter in the hall in which voting took place and rendering of the assistance outside the hall or the place of voting. Assistance can be rendered inside the meeting hall or inside the hall in which voting is to take place. Rendering of the assistance outside hall is different. If it were to be held that Presiding Officer can go out and ascertain the wishes of the member who had come in ambulance outside the hall then there would be no bar in Presiding officer going to the hospital and ascertaining the wishes of the member; if the matter is stretched to the logical conclusion then voter may be in the hospital outside the town and the Presiding Officer would be permitted to go outside the town to ascertain the wishes of such hospitalised member. In my opinion, this cannot be done. Assistance must be restricted to the assistance at the place of the voting or in the meeting hall. No authority was cited before me showing that the assistance can be extended by the Presiding Officer going outside the meeting hall. Therefore, the Tahsildar erred in going outside the meeting hall to the ambulance and ascertaining and recording vote of Mrs. Hirabai Salve, the respondent No. 15 herein. If the vote of Hirabai Salve is excluded then the votes cast in favour of the Resolution were only 11. There were in all 17 members of the village panchayat. As per law the meeting of no confidence must be passed by a vote of not less than 2/3 of the total number of members. Therefore no confidence motion required minimum 12 votes in its favour. In the present case, there were only 11 votes in favour of the Resolution. Therefore, the motion of no confidence was not passed by requisite majority of 2/3 number of members.

9. In this view of the matter, petition must be allowed. Rule is accordingly made absolute in terms of Prayer Clauses "B" and "C". In the circumstances of the case, parties shall bear their own costs.