
(2015) 01 BOM CK 0259
In the Bombay High Court
Case No : Writ Petition No. 11788 of 2014

Jivan Somarya Thakare

APPELLANT

Vs

Additional Collector and Others

RESPONDENT

Date of Decision : 09-01-2015

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 35

Citation : (2015) 5 ALLMR 292 : (2016) 1 BomCR 555 : (2015) 3 MhLj 590

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

Bench : Single Bench

Advocate : R.R. Deshmukh holding for Sharad V. Natu, for the Appellant; K.M. Suryawanshi, AGP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

R.V. Ghuge, J.—The issue raised by the petitioner in this Writ Petition for my consideration is, whether, section 35 of the Maharashtra Village Panchayats Act mandates that each and every member of the Gram Panchayat, while participating in a special meeting discussing "No Confidence Motion", shall necessarily have to speak and shall be under a compulsion to speak. The petitioner was an elected Sarpanch of the Gram Panchayat, Kalmadi, Taluka Shahada, District Nandurbar. The Gram Panchayat comprises of 09 members. On 4-6-2014, more than 1/3rd members of the Gram Panchayat moved a requisition proposing a motion of no confidence against the petitioner-Sarpanch. The Tahasildar, who received the requisition, issued the notice dated 4-6-2014 for convening a special meeting on 10-6-2014. Accordingly, the special meeting was held on 10-6-2014. All 09 members were present in the said meeting. The motion was carried by six votes as against three and thereby, the mandate of section 35(3) of the Maharashtra Village Panchayats Act was satisfied.

2. The petitioner raised the Gram Panchayat Dispute No. 3/2014 before the Additional Collector, Nandurbar. By the impugned judgment dated 30-9-2014 the said dispute was rejected and it was concluded that the No Confidence Motion

was valid and the petitioner was, therefore, removed as Sarpanch of the Village Panchayat.

3. The petitioner, while stating the above recorded facts, submits that a single ground is being raised in this petition. According to the petitioner, only three members, namely, Shri Gorakh Jhambar Pawar, Smt. Minabai Gajesingh Rajput and Smt. Sumabai Uttarya Bhil have participated in the said proceedings. As such, though the motion was carried by six as against three votes, the number of votes in favour of the motion is immaterial since the mandate of section 35 requires that in such a meeting while considering the motion of no confidence, each and every member present in the meeting shall necessarily have to speak either in favour or against the motion.

4. The petitioner points out, from the conclusions drawn by the Additional Collector which are based on the record of the proceedings, that only above mentioned three members had spoken and five members had not spoken. The petitioner in his capacity as Sarpanch had presented his case and had refuted all the allegations made against him and had prayed that the motion be defeated in the light of the extraordinary work done by him in the said Gram Panchayat.

5. The petitioner further submits that if all members do not speak in such a special meeting, the business in such meeting shall be rendered a nullity. Reliance is placed upon the Division Bench judgment of this Court (Coram: A.P. Shah and Dr. D.Y. Chandrachud, JJ.), delivered in the case of Shri Ashok Krishnakant Mehta Vs. State of Maharashtra and others, AIR 2001 Bom 55 : (2000) 3 ALLMR 772 : (2000) 4 BomCR 724 : (2000) 4 MhLj 197 .

6. The contention of the petitioner is specific. The petitioner interprets section 35 to mean that each and every member of the Gram Panchayat has to necessarily and compulsorily speak in the meeting. The silence of even a single member would be fatal to the business transacted in such meeting.

7. The petitioner specifically points out paragraphs 4, 5 and 6 of the Ashok Mehta's judgment (supra). It would be apposite to reproduce the said paragraphs as under:

"4. The main issue that requires to be considered is whether a resolution of no confidence passed at a meeting during the course of which members constituting the Village Panchayat were not permitted to speak, would be invalid. The Presiding Officer took the view that it was only the Sarpanch against whom the resolution was sought to be passed who was entitled to speak at the meeting. Reference may be made to the provisions of sub-sections (1), (2) and (3) of section 35 of the Bombay Village Panchayat Act, 1958 which provides as follows:--

"35. (1) A motion of no confidence may be moved by not less than one fifth of the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat against the Sarpanch or the Upa-Sarpanch

after giving such notice thereof to the Tahsildar as may be prescribed.

(2) Within seven days from the date of receipt by him of the notice under sub-section (1), the Tahsildar shall convene a special meeting of the panchayat for considering the motion of no confidence at the office of the panchayat at a time to be appointed by him and he shall preside over such meeting. At such special meeting, the Sarpanch or the Upa-Sarpanch against whom the motion of no confidence is moved shall have a right to speak or otherwise to take part in the proceedings at the meeting including the right to vote.

(3) If the motion is carried by a majority of the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat, the Sarpanch or the Upa-Sarpanch, as the case may be, shall cease to hold office after seven days from the date on which the motion was carried unless he has resigned earlier or has disputed the validity of the motion so carried as provided in sub-section (3B): and thereupon the office held by such Sarpanch or Upa-Sarpanch shall be deemed to be vacant."

Section 35 expressly recognises that the Sarpanch against whom a resolution of no confidence is to be passed would be entitled to address the meeting. This requirement is embodied in the law as compliance with a basic principle of natural justice. A resolution of no confidence operates to remove a person from his position as Sarpanch or Upa-Sarpanch by expressing a lack of confidence in his ability to govern the affairs of the Village Panchayat. Bearing in mind the consequences of as well as the underlying basis for a resolution of no confidence, the law has incorporated a requirement of giving the Sarpanch or the Upa-Sarpanch, as the case may be, an opportunity of being heard before the members vote upon the resolution of no confidence. The Tahsildar and the authorities below erred in reaching into the requirement of giving an opportunity to the Sarpanch or Upa-Sarpanch as the case may be a rule of exclusion that would debar any other person apart from those against whom the motion of no confidence is being moved, from speaking at the meeting. A rule of exclusion is neither expressly contained in the statute nor does it follow by necessary implication. The object of permitting the members of the Village Panchayat to address the meeting of the Panchayat has a genesis which is distinct from the opportunity of being heard which is given to the Sarpanch or Upa-Sarpanch against whom the resolution of no confidence is being proposed. Every member of the Village Panchayat is entitled to participate in the affairs of the Panchayat. An expression of view point at the meeting of the Village Panchayat is a valuable right available to the members of the Village Panchayat. The elected bodies at the local level fulfil basic principles of democratic functioning which are to be found as well in larger bodies at other levels of the polity. The right of each member of the house to address the house is a valuable safeguard of democratic functioning. Unquestionably, that right can be regulated by the Presiding Officer so as to ensure the due and orderly course of debate on the floor of the representative body so as to ensure that the functioning of the body is not

disputed. But, to regulate the course of debate in the interests of ensuring due order in the course of the proceeding is quite a different thing from prohibiting members from speaking on the ground that the resolution does not pertain to the member who wishes to speak. Every member of representative, popularly elected bodies has a vital interest in the business which is transacted before that body. The right of a particular member who is sought to be proceeded against on account of a specific misconduct or for having incurred a particular disqualification cannot be equated or confused with the general right of all the members to discuss and debate. All members have a vital interest in expressing their view point subject to due regulation in the interest of preserving order in the course of proceedings. The authorities below have summarily rejected the submission made on behalf of the petitioner on the ground that by an overwhelming majority of 9 in a house of 17 the resolution came to be passed. The issue, in our view, is something far more fundamental and that goes to the root or the essence of democratic functioning. The weight of numbers is not an answer to a fundamental defect such as this and the Court ought not to countenance a suppression of the right to speak by a supposed justification on the basis of the number who cast their lot in support of a resolution. The exclusion of members from addressing the Village Panchayat was a fundamental flaw in the proceedings which would invalidate the resolution of no confidence.

5. The State Government has framed the Bombay Village Panchayats Sarpanch and Upa-Sarpanch (No confidence Motion) Rules, 1975 by a Notification dated 23-9-1975. Rule 2(1) relates to the service of notice on the Tahsildar of the proposed motion of no confidence. Rule 2(3) requires the convening of the meeting by the Tahsildar within seven days from the date of receipt of the notice. Rule 3 provides that immediately after the meeting, the Tahsildar shall communicate to the Zilla Parishad, the Panchayat Samiti, the Collector and the Commissioner the names of all the members of the Panchayat who were present at the meeting, the decision taken on motion, and the number of votes in favour of, or against, the motion.

6. The State Government has, by a notification dated 1-7-1959 framed the Bombay Village Panchayats (Meetings) Rules, 1959. The Rules provide for convening of meetings, holding of meetings and transaction of business at meetings. Rule 7 makes provisions for the service of notice upon members. Rule 9 speaks of the quorum for the transaction of business. Rule 11 provides for voting by a majority and Rule 15(1) provides that every meeting shall be open to the public. Rules 17 to 20 make provision for the moving of the motion including an amendment thereto. Under Rule 21, a member desiring to propose and discuss any motion shall rise in his seat when speaking and address his speech to the person presiding. Rule 21(2) requires a member to confine his speech strictly to the question before the meeting and that he shall cease to make remarks which are held by the person presiding to be irrelevant or offensive. Rules 23 and 24 expressly postulate a debate on the motion which is being moved. Rule 24 provides that except for the mover or the seconder of the

motion, no other member shall, without the express permission of the person presiding, speak more than once on the same motion except for the purpose of making a personal explanation. Rule 25 permits the Presiding Officer to fix a reasonable time limit for a speech. Rule 26 postulates that on the conclusion of a debate on a motion or where the person presiding is satisfied that the motion has been sufficiently discussed, he may put the motion to the vote of the meeting without further discussion. Rule 30 provides for decision on points of order. Rule 34 provides that any member who disregards the authority of the person presiding or is guilty of obstructive or offensive conduct at any meeting, may be suspended. These provisions highlight the safeguards of a free and orderly debate in the Village Panchayat. The importance of a free debate in the Panchayat cannot be under emphasised. It lies at the heart of democracy. The Village Panchayat is an institution for democratic self governance at the level of the village. Any effort to stifle debate must be looked upon by the law with disfavour."

8. The petitioner contends that his case is based upon the conclusions drawn by the Division Bench of this Court. Having gone through the conclusions drawn by the Division Bench in Ashok Mehta's case (supra), it is explicitly clear that in the said case certain members had expressed their desire to speak. It was established in the said case that they wanted to speak. The principle is that every individual has a right to express himself. The fundamental principle in a democratic set up is the right to speak and express one's opinion. There was a specific conclusion in Ashok Mehta's case that the Presiding Officer had precluded some of the members from speaking on the motion and that was held to be a serious flaw in the said proceedings rendering them invalid.

9. In the instant case, I had called upon the petitioner to specifically point out as to whether, any individual member had expressed his desire to speak and was precluded from speaking in the said meeting. I had called upon the petitioner to indicate from his Gram Panchayat dispute raised before the Additional Collector as well as from this petition as to whether, any case was made out as regards any member having expressed his or her desire to speak and the Presiding Officer having restrained such member. Neither was the petitioner able to point out such a facet from his case, nor do I find from the proceedings that any member desirous of speaking was prevented from doing so.

10. The Division Bench in Ashok Mehta's case (supra) had concluded that every member of the Gram Panchayat will have a right to speak. The interpretation of the said conclusion, by the petitioner is that this shall mean that every member of the Gram Panchayat present in the special meeting shall compulsorily have to speak and even if a member does not desire to speak, that would be fatal to the proceedings.

11. I find these submissions to be abstruse and an aberration. This cannot be the interpretation in view of the conclusions of the Division Bench in the Ashok Mehta case. A right to speak is distinct and different from there being a compulsion to

speak. Every member of the Gram Panchayat participating in a special meeting shall have a right to speak. However, if a member chooses to remain silent and does not desire to speak, section 35 cannot be interpreted to mean that every member shall be compelled to speak. In the light of the above, the contention of the petitioner is misconceived and unsustainable. The Writ Petition being devoid of merits, is, therefore, dismissed. No order as to costs.