

(1998) 07 BOM CK 0053

In the Bombay High Court

Case No : Writ Petition No. 2931 of 1998

Nimba Rajaram Mali

APPELLANT

Vs

Collector, Jalgaon and others

RESPONDENT

Date of Decision : 23-07-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1999 Bom 335 : (1998) 4 ALLMR 479 : (1999) 1 BomCR 546

Hon'ble Judges : N.P. Chapalgaonker, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : A.B. Naik, for the Appellant; K.G. Paul, A.G.P for State and N.H. Patil, for the Respondent

Final Decision : Dismissed

Judgement

B.H. Marlapalle, J.—Heard the learned counsel for respective parties.

The Village Panchayat Shrisoli Pr. Nashirabad, tq. & dist. Jalgaon has 13 elected members and the petitioner came to be elected as Sarpanch. A Notice of No Confidence Motion was issued by 7 members of the said Village Panchayat on 22nd April, 1998 against the petitioner and submitted to the Tahsildar who convened a Special Meeting for the purpose of discussion regarding the said Notice on 27th April, 1998. In the said meeting, 11 out of the 13 elected members were present. The Motion of No Confidence came to be passed by majority of 7 Vs. 4. A dispute filed u/s 35(3B) of the Bombay Village Panchayat Act, 1958 came to be dismissed by the Additional Collector, Jalgaon. The said dispute was registered as dispute No. 37/98. Appeal No. 49/98 filed u/s 35(3C) before the Divisional Commissioner, Nasik Division, Nasik, against the order passed by the Additional Collector on 25-5-1998, also came to be dismissed by judgment and order dated 8-7-1998. Being aggrieved by Motion of No Confidence passed against the petitioner and the concurrent findings recorded by the Additional Collector and the Additional Commissioner, the petitioner has approached this Court with a prayer to quash and set aside the impugned

resolution as well as the orders.

2. The grounds of challenge, as argued by the learned counsel for the petitioner, are as under:

(a) The resolution of No Confidence passed against the petitioner was in violation of Rule 2(1) of the Bombay Village Panchayat Sarpanch and Upsarpanch (No Confidence Motion) Rules, 1975 (Hereinafter referred to as No Confidence Motion Rules for short) in as much as Notice dated 22nd April, 1998 did not give specific reasons and the reasons given were vague;

(b) resolution passed was in violation of requirement of Rule 2(2) of the No Confidence Motion Rules in as much as a copy of the notice under sub-rule (1) was not sent to the Chief Executive Officer, Zilla Parishad, Jalgaon;

(c) two of the 13 members viz. Shri Vikram Ukhardu Bobade and Kashiram Ramdas Mali were not served the notice of Special Meeting convened by the Tahsildar, under Rule 2(3) of the No Confidence Motion Rules in as much as notice to Kashiram Ramdas Mali was served on his brother and the allegations - that family members of Vikram Ukhardu Bobade did not accept the notice in his absence - were false and the Panchanama drawn of service of notice on Shri Vikram Ukhardu Bobade was suspicious and could not be relied upon as valid Panchanama of service; and

(d) the Additional Collector disposed of the dispute at a preliminary stage and without issuing notice to the respondent and without considering the affidavits, filed by two persons, who were shown to be Panchas to the Panchanama drawn regarding service of notice on Shri Vikram Ukhardu Bobade.

3. In support of his argument on the first issue, the learned counsel for the petitioner has relied upon the judgments of this court in the following cases :

(i) 1965 Mh.L.J Note 102.

(ii) Ganeshsinha Domansinha Hajari vs. Commissioner, Nagpur Division, Nagpur, 1963 Mh.L.J 569.

(iii) Dhrupad Bhagwan Sawale vs. Collector, Buldhana, 1986 Mh.L.J 996.

(iv) Bandopant Shankarrao Mallewar vs. State of Maharashtra, 1997 (1) Mh.L.J 52. Rule 2(1) of No Confidence Motion Rules read as under :

The members of a Panchayat who desire to move a motion of no confidence against the Sarpanch or the Upsarpanch shall give notice thereof in the form appended hereto to the Tahsildar of the taluka in which such Panchayat is functioning. Where the members desire to move the motion of no confidence against the Sarpanch as well as Upsarpanch, they shall give two separate notices.

4. The form of notice of Motion of No Confidence has been appended to the Rules and it provides for reasons in support of the No Confidence Motion to be incorporated in the notice. On perusal of the notice available on the record

indicates that two reasons were given in the said notice which is in the prescribed format and learned counsel vehemently submitted that reasons were vague and the petitioner who was elected as a Sarpanch could not be removed on the ground of such vague reasons. The learned counsel for petitioner submitted that reasons in support of the Motion of No Confidence must be specific so that an elected person who is facing such No Confidence Motion is able to give specific replies and defend his case. In the instant case, there is no doubt that the notice of No confidence Motion had incorporated reasons and the only question that is required to be considered is whether the said reasons even if assumed to be vague for a moment, would invalidate the resolution passed against the petitioner. This issue is no more *res Integra* and a Division Bench of this Court, in the case of *Bandopant Mallewar (supra)* has dealt with this aspect at length and held against the contentions of the present petitioner. After referring to the earlier judgments in the case of *Ganesh Sinha (supra)* and *Dhrupad Bhagwan Savale (supra)*, this court in para No. 27 of its judgment in the case of *Bandopant (supra)* observed that the provisions of Rule 2 of the No Confidence Motion Rules under the Maharashtra Z.P. and Panchayat Samities Act, required to incorporate the grounds of No Confidence in the No Confidence Motion and nothing more. Requirement of specifying the ground on which the Motion of No Confidence is proposed to be moved is by virtue of the provisions of Rule 2 of the No Confidence Motion Rules and not by any of the provisions of the Maharashtra Z. P. and Panchayat Samities Act, as such. In the said case, this court has further observed as under :

In the absence of any legal bar to the passing of the Motion of No Confidence against the President or Chairman of the subjects committees even without charging the authority with any impropriety or lapse on its part, it is difficult to accept the submission that giving of ground without any details amount to giving of no ground at all and therefore, the notice of meeting convened for considering No Confidence Motion without containing such grounds is illegal.

Relying upon the judgment of the Supreme Court in the case of *Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and Others*, dealing with the identical provisions as contained in Gujarat Municipalities Act, 1963, this Court proceeded to observe :

Thus if the existence of a ground is not a prerequisite of Motion of No Confidence and further if the essential connotation of No Confidence Motion is that the person concerned has ceased to enjoy the confidence of the requisite majority, non specification of the ground would not render Motion to be invalid.

5. The Apex Court in the case of *Babubhai Patel (supra)* made a distinction between No Confidence Motion and Censure Motion and observed that while it was necessary in the case of Censure Motion to set out the ground or charge on which it was based, the Motion of No Confidence need not set out ground or charge. It was further held that no such consideration arises when No Confidence Motion is moved, existence of a ground is not a prerequisite of No Confidence

Motion and there was no legal bar to passing of the No Confidence Motion against an authority in the absence any charge or impropriety or lapse on the part of that authority. The essential connotation of No Confidence Motion is that party against whom such a Motion is passed has ceased to enjoy the confidence of the requisite majority of the members, observed the Apex Court.

6. It is, therefore, well established that though the grounds of No Confidence Motion are required to be incorporated in the notice, the precision or specification or giving details of such reasons is not a prerequisite of a No Confidence Motion. Viewed through this angle, the alleged vagueness in the reasons given in the notice of No Confidence Motion does not invalidate the notice as well as motion passed on such a notice.

7. In the present case, even otherwise, we have gone through the minutes of the meeting held on 27-4-1998 and observed that each and every ground was discussed by the members present and thereafter, the No Confidence Motion was put to vote which was passed with a majority of seven against four members during the said special meeting. We, therefore, hold that the arguments of the learned counsel for petitioner on the first issue are fallacious and there was due full compliance of the requirements of rule 2(1) of the No Confidence Motion rules when the impugned resolution was passed against the petitioner.

8. Sub-rule 2 of Rule 2 of the No Confidence Rules, requires that notice under sub-rule (1) of the said rules shall be accompanied by seven additional copies thereof and the Tahsildar shall send one copy to Sarpanch, one to Upsarpanch and one each to the Z.P., Panchayat Samiti, the Collector, the Commissioner and the Secretary of the Village Panchayat. Thus, the Tahsildar is required to send one copy each to the seven authorities. In the instant case, the Tahsildar has sent copies to six authorities and there does not appear to be any proof on record that a copy of the said notice dated 22-4-1998 was sent to the Chief Executive Officer, Z. P., Jalgaon and the copies to remaining six authorities have been sent as is evident from the record. This lapse on the part of the Tahsildar would not amount to invalidation of the Motion of No Confidence, especially when other six authorities have been duly served and the observations of the Additional Commissioner in this regard deserve to be upheld.

9. On perusal of the proceedings of the special meeting held on 27th April, 1998, it is clear that the Talathi of village Shrisoli Pr. Nashirabad, tq. & dist. Jalgaon had gone to the house of Vikram Ukhardu Bobade on 23-4-1998 to serve the notice regarding the special meeting to be held on 27-4-1998 and when it was found that Vikram Ukhardu Bobde had gone out of station, notice was tried to be served on his family members and it was refused to be accepted. A report dt. 24-4-1998 submitted by the Talathis in this regard is available on record and a Panchanama was drawn on the same day in respect of this report. The said Panchanama has been signed by two witnesses in addition to the Talathi. It states that as the notice was not accepted by any of the family members of Shri Bobade, it was pasted on the door of his house. So far as Shri Kashiram Ramdas

Mali is concerned, the notice was served by the Talathi on his brother Bapu Ramdas who has signed the acknowledgment as is evident from the record. It is not the case of the petitioner that the said brother was a minor. We, therefore, hold that the notice was properly served on Vikram Ukhardu Bobade as well as Kashiram Mali and there is no merit in the contentions of the petitioner that there was failure to serve the notice and hence, the provisions of Rule 2(3) of the No Confidence Motion rules were violated.

10. The Additional Collector, while deciding the dispute No. 37/1998 had called for record from the Tahsildar, pertaining to the meeting held on 27-4-1998 and the petitioner was duly heard. On perusal of the record, submitted by the Tahsildar, learned Additional Collector, Jalgaon was of the view that it was not necessary to hear the opposite party while deciding the dispute raised by the petitioner. Therefore, he passed the impugned judgment, without issuing any notice to the opponents before him. No prejudice has been caused to the petitioner by the procedure followed by the Additional Collector and specially when the dispute was decided by considering the record submitted by the Tahsildar. There is nothing to show that findings recorded against the petitioner contrary to the record. In such circumstances, the decision of the Additional Collector to proceed and decide the dispute without issuing notice to the opposite party will not be fatal to the order passed by him rejecting the petitioner's claim.

11. The petitioner's last contention that the affidavits of two witnesses who had allegedly signed the Panchanama dt. 23-4-1998 drawn out by Talathi were not considered by the Additional Collector does not appear to be well founded. The R & P in dispute No. 37/98 does not show that any such ground was raised before the Additional Collector and there were any affidavits, as alleged by the petitioner, on record. We, therefore, have no alternative than to reach to the conclusion that no such affidavits were filed and no such ground was raised before the Additional Collector in support of the contention of the petitioner that the notice of the special meeting was not validly served on Shri Bobade. Arguments of the petitioner on this ground must, therefore, fail.

12. In the case of Smt. Annapurnabai Ajabrao vs. Annapurnabai Anandrao, 1967 Mh.L.J NOC 36, validity of the No Confidence Motion passed against the Sarpanch was challenged on the ground that:

- (a) allegations with regards to the alleged mismanagement were too vague and did not furnish any particulars;
- (b) no evidence was placed before the meeting to support the resolution;
- (c) resolution was passed without sufficient discussion and in spite of explanation given by the petitioner and
- (d) names of the persons voting in favour of the resolution and their signatures were not appended to the proceedings.

The Division Bench of this Court, while rejecting the petitioner's claim, observed

as under :-

Even if it were to be assumed that there was some technical flaw in the proceedings of the meeting or in transmission of the results of the meeting to the Panchayat Samiti, we do not see how that could entitle the petitioner to claim to continue as Sarpanch of the Gram Panchayat. A Gram Panchayat is essentially a democratic institution which must be run on democratic principles. When the majority of the members have clearly expressed that they do not desire the petitioner to be their leader and Sarpanch, appropriate attitude of the petitioner as a person working for democracy whatever have been to tender her resignation straightaway. At any rate, it does not behave of democratic spirit to challenge the decision of the majority who unmistakably declared their want of confidence in their erstwhile leader. Democratic principles as has also a sense of self respect should have been impleaded the petitioner and persons situated in similar circumstances to graciously submit to the decision of the majority and to walk out of the Gram Panchayat. Notice raising frivolous contention and forcing herself on the democratic institution it docs not want her to hold that position.

13. In a democratic society what is important is the will of the majority and the elected representatives must honour the will of the majority. It is immaterial to analyse and debate on the reasons behind the will of the majority or the specific reasons for such will being expressed. The will of the majority is of paramount importance and it must be respected by all elected representatives responsible for the governance of such democratic institutions. As observed by the Apex Court in the case of Babubhai (supra), resolution of No Confidence Motion is different from Censure Motion and such a resolution cannot be faulted on the ground that there were no reasons or reasons were vague and lacked detailed specifications. Once the resolution of No Confidence Motion is passed by a clear majority and in keeping with the requirements of the concerned statutory provisions, the person against whom such a resolution is passed, must honour the will of the majority and make way for the new election of his successor. Unless it is shown that while passing such a resolution of No Confidence Motion, there was flagrant violation of any of mandatory procedure laid down, such a resolution cannot be interfered with by the court or statutory authorities adjudicating such disputes. In the case at hand, both the authorities below, on perusal of record before them, have recorded clear findings that the resolution was passed in keeping with the requirements of the No Confidence Motion Rules and there was no breach of any statutory provisions. These findings do not suffer from any error, leave alone error apparent, on the face of the record.

14. We are, therefore, of the view that no case has been made out for our interference under Article 226 of the Constitution of India to quash and set aside the impugned orders in this petition. The petition is, therefore, rejected summarily.