

(2002) 04 BOM CK 0092

In the Bombay High Court

Case No : Writ Petition No. 1413 of 2002

Prabhakar Madhav Jadhav

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 08-04-2002

Acts Referred:

Bombay General Clauses Act, 1904 — Section 10
Bombay Village Panchayats Act, 1958 — Section 35(1)
General Clauses Act, 1897 — Section 9

Citation : (2003) 2 BomCR 871

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

Bench : Single Bench

Advocate : Vinay Mugalikar and L.C. Patil, for the Appellant; A.D. Rakh, A.G.P. for Respondent-State, for the Respondent

Judgement

D.G. Karnik, J.—Heard.

2. The petitioner was elected as Sarpanch of Village Grampanchayat, Sunderwadi, Tq. Omerga, Dist. Osmanabad. 1/3 of the members of the Grampanchayat issued a notice of motion of no confidence against the petitioner under sub-section (1) of section 35 of the Bombay Village Panchayat Act, 1958 (hereinafter referred to as the Act) to the Tahsildar under sub-section (2) of section 35 of the Act. Accordingly the Tahsildar convened a special meeting of the panchayat for considering the motion of no confidence against the Sarpanch on 13th November, 2001. The notice of the meeting to be held on 13th November, 2001 was despatched on the date of receipt of the requisition itself i.e. on 6th of November, 2001.

3. Relying on the judgment of this Court in the case of Mandabai Balnath Rohom and Others Vs. Ashok Fakira Chandar and Others, . It was contended by the learned Counsel for the petitioner that not only is the notice of the meeting required to be sent within 7 days but also the meeting must be convened within 7 days of the receipt of the requisition under sub-section (1) of section 35 of the

Act. It was contended that since the requisition was received on 6th November, 2001 and the meeting was convened on 13th November, 2001, the meeting was convened on the 8th day and not within 7 days as provided under sub-section (2) of section 35.

Sub-section (2) of section 35 of the Act reads as under :

"Section 35-MOTION OF NO CONFIDENCE.---(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 Upasarpanch 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)."

Thus it is necessary to convene the meeting within 7 days from the date of receipt of the notice under sub-section (1) of section 35 of the Act.

4. Section 10 of the Bombay General Clause Act, 1904 which is *pari materia* with section 9 of the General Clauses Act, 1897 which reads as under :

10.(1) In any Bombay Act or Maharashtra Act made after the commencement of this Act it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from" and, for the purpose, of including the last in a series of days or any other period of time, to use the word "to".

(2) This section also applies to all Bombay Acts made before the commencement of this Act.

5. Thus when the period of limitation is prescribed for doing of a thing and the word "from" is used for computing the commencement of the period of limitation, the first in the series of days from which the period of limitation is to be counted is to be excluded. In the present matter, meeting is required to be convened within 7 days "from" the date of the receipt of notice under sub-section (1) of section 35 of the Act. Therefore, the date on which the Tahsildar receives the notice under sub-section (1) of section 35 of the Act is to be excluded while computing the period of 7 days. Therefore, 6th of November, 2001 being the day on which Tahsildar received the notice is to be excluded for the purpose of computing the period of 7 days. Thus calculated the 7th days expires on the 13th November, 2001. The meeting of no confidence motion convened on 13th November, 2001 was thus within 7 days from the date of receipt of the notice under sub-section (1) of section 35 of the Act. The contention that the meeting was not validly convened is therefore rejected.

6. I am fortified in this view by the Division Bench of this Court rendered in *Manjuli Vs. Civil Judge, Senior Division, Wardha and Others*, . In that case, the election results were declared on 31st May, 1966 and the Election petition was

presented on 15th June 1966. Section 15 of the Village Panchayat Act provides that the petition is to be filed within 15 days after the date of the declaration. While interpreting this section, it was held that first day i.e. day of declaration of the election results was to be excluded while computing the period of limitation and the last date was to be included.

7. No other point was canvassed. Petition rejected summarily.

Petition rejected.