
(2007) 12 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No's. 6811 and 6895 of 2007

Prabhawati Vijaykumar Khivsara

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 03-12-2007

Acts Referred:

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

Constitution of India, 1950 — Article 227

Mysore Town Municipalities Act, 1951 — Section 27(3)

Citation : (2008) 3 BomCR 755 : (2008) 2 MhLj 274

Hon'ble Judges : B.R. Gavai, J

Bench : Single Bench

Advocate : V.M. Chate, for the Appellant; N.N. Jadhav, AGP, V.H. Dighe, AGP, R.N. Dhorde and Nitin K. Choudhari, for the Respondent

Final Decision : Dismissed

Judgement

B.R. Gavai, J.—Since, in both the petitions, a common question of law is involved, they are being heard and disposed of by this common order.

2. The petitioner in Writ Petition No. 6811/2007 was Sarpanch and the petitioner in Writ Petition No. 6895/2007 was Upsarpanch of Grampanchayat Jamthi, Tal. Bodwad, Dist. Jalgaon. A notice of no-confidence motion was moved against the said petitioners and subsequently a motion of no-confidence came to be passed in a Meeting held on 7th August, 2007, by a majority of six against one in a Grampanchayat, which is consisting of nine members.

3. A dispute as provided u/s 35(3B) of the Bombay Village Panchayat Act, 1958 and further appeal as provided u/s 35(3C) of the said Act, before the Collector and Divisional Commissioner came to be rejected by the orders dated 29th September, 2007 and 2nd November, 2007. Being aggrieved thereby, the present petitions.

4. Shri V.M. Chate, learned Counsel appearing on behalf of the petitioners in both

these petitions, submits that the notice of Meeting of no-confidence motion was not served on the Sarpanch. He submits that a farce was created about the service of notice by showing that the notice was served on the son of the petitioner Sarpanch. He submits that the son of the Sarpanch is a student of Engineering and taking education at Jalgaon, and therefore, by no stretch of imagination, a notice could have been served upon him.

5. Shri V.M. Chate, learned Counsel relies on the Judgment of the Division Bench of this Court in the case of Shri Ashok Krishnakant Mehta Vs. State of Maharashtra and others, in support of the proposition that the weight of numbers is not an answer to a fundamental defect 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.

6. He also relies on the Judgment of this Court in the case of Indubai Vedu Khairnar Vs. State of Maharashtra and Others, in support of the proposition that the service of notice on the person against whom no-confidence motion is being considered, is mandatory and that non-service of such notice would vitiate the proceedings.

7. Shri R. N. Dhorde, learned Counsel appearing on behalf of Respondent Nos. 6 to 11 in both the writ petitions, submits that motion of no-confidence has been passed by majority of six against one. He submits that the notice was duly served on the son of the Sarpanch-petitioner in Writ Petition No. 6811/2007, as it was reported that the petitioner had gone for pilgrimage to Zarkhand. He further submits that both the learned authorities below, have concurrently held against the petitioners. Therefore, under Article 227 of the Constitution of India, no interference is warranted in the present petitions.

8. In the case of Indubai Vedu Khairnar v. State of Maharashtra and Ors. (supra), the learned Single Judge of this Court has held that a notice on the member against whom no confidence motion is moved has to be validly proved.

9. Insofar as the reliance on the Judgment of the Division Bench of this Court in the case of Ashok Krishnakant Mehta v. State of Maharashtra and Ors. (supra), is concerned, in the Meeting held for considering no-confidence motion, one of the members of the Grampanchayat had sought permission to address the Meeting. However, the same was rejected by the Tahsildar and being aggrieved thereby, the matter was carried up to this Court. In the said case, upon considering the relevant Rules, the Division Bench of this Court has reached to the conclusion that it was necessary to follow the Rules, which requires that the member should be given an opportunity to address the Meeting. It was held that non following of the said Rules, vitiate the proceedings of the Meeting. It has been held that the weight of numbers is not an answer to a fundamental defect and that right of a member to speak, cannot be suppressed by a authority, on the basis of number who cast their vote in support of a resolution.

10. Insofar as the petitioner in Writ Petition No. 6895/2007 is concerned, the

Upsarpanch was present in the Meeting and he had also addressed the Meeting.

11. Insofar as Writ Petition No. 6811/2007, is concerned, upon perusal of the record, the authorities below i.e. the Collector and Commissioner have concurrently held that it was duly proved that the Gramsevak has duly served the notice of the Meeting upon the son of the petitioner. Normally, this Court, while invoking the jurisdiction under Article 227 of the Constitution of India, would not interfere with the concurrent finding of fact.

12. Now, therefore, the only question that requires to be answered is, as to whether by non-service of the notice of a Meeting on the petitioner personally and the service of the notice on her son, whether the proceedings of no-confidence motion are vitiated or not?

13. The Apex Court in the case of K. Narasimhiah Vs. H.C. Singri Gowda, , had an occasion to consider as to whether the provisions regarding giving of three days notice of a special meeting to discuss resolution to express no-confidence is mandatory or not. In the said case, a notice of no-confidence motion was moved against the President. For considering the said notice of no confidence motion, a meeting was conveyed. As per the provisions of Section 27(3) of the Mysore Town Municipalities Act, 1951, it was required that the Municipal Councillor should receive three clear days notice of a special general meeting. However, some Municipal Councillor's had not received the three days clear notice. In the said meeting, out of 20 Councillors, 19 attended the meeting. Out of these 19, 15 voted in favour of the resolution of no-confidence motion. In this factual background the Apex Court has considered the question as to whether such a statutory provisions should be considered as to be mandatory.

14. The Apex Court in the paragraph 14 of the said Judgment, has observed thus:

(14) It is necessary also to remember that the main object of giving the notice is to make it possible for the Councillors to so arrange their other business as to be able to attend the meeting. For an ordinary general meeting the notice provided is of seven clear days. That is expected to give enough time for the purpose. But a lesser period - of three clear days - is considered sufficient for "special general meetings" generally. The obvious reason for providing a shorter period of such meetings is that these are considered more important meetings and Councillors are expected to make it convenient to attend these meetings even at the cost of some inconvenience to themselves. Where the special general meeting is to dispose of some matter of great urgency it is considered that a period of even less than three clear days notice would be sufficient.

15. The Apex Court in paragraph 20 of the said Judgment, has further observed thus:

(20) We are, therefore, of opinion that the fact that some of the Councillors received less than three clear days" notice of the meeting did not by itself make the proceedings of the meeting or the resolution passed there invalid. These

would be invalid only if the proceedings were prejudicially affected by such irregularity. As already stated, nineteen of the twenty Councillors attended the meeting. Of these 19, 15 voted in favour of the resolution of no-confidence against the appellant. There is thus absolutely no reason for thinking that the proceedings of the meeting were prejudicially affected by the "irregularity in the service of notice.

16. It could thus be seen that the Apex Court has clearly held that the proceedings would be considered to be invalid by an irregularity only when it is shown that such an irregularity has prejudicially affected the rights of the parties.

17. From the perusal of the Judgments, relied upon by Shri Chate, the learned Counsel, it does not appear that the aforesaid judgment of the Apex Court, has been brought to the notice of this Court. In that view of the matter and in view of a clear pronouncement of law by the Apex Court on the issue involved, I find that the reliance placed on the aforesaid judgments, would be of no use to the petitioners.

18. It could clearly be seen from the records that it has been proved that the son of the present petitioner in Writ Petition No. 6811/2007 was duly served with the notice and the notice could not be served on her as it was informed that she had gone for pilgrimage to Zarkhand. Since the motion has been carried by 2/3rd majority, which is requirement under the statute, no prejudice could be said to have been caused to the petitioner in Writ Petition No. 6811/2007.

19. The Division Bench of this Court in the case of Smt. Annapurnabai Ajabrao v. Annapurnabai Anandrao reported in 7967 Mh.LJ. NOC 36 while considering the challenge to the regularity of the proceedings of the meeting held to consider the resolution of no-confidence motion against the Sarpanch, observed thus:

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 registration straightway. 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 does not want her to hold that position.

20. The Division Bench of this Court, in the case of Nimba Rajaram Mali Vs. Collector, Jalgaon and others, , followed the aforesaid Judgment in the case of

Smt. Annapurnabai Ajabrao v. Annapurnabai Anandrao (referred supra) and observed thus:

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.

It appears that these Judgments of the Division Benches also have not been brought to the notice of the learned Judges who had decided the cases which are relied on by Shri Chate, learned Counsel.

21. In a democratic set up a person is expected to respect the mandate of majority. Support of a majority is fundamental in the democratic set up and particularly when no prejudice is pointed out by alleged departure from the procedural requirement, the mandate of the majority cannot be interfered with lightly by this Court. In that view of the matter, I am unable to find any merit in both the petitions. Both the petitions, are therefore, rejected.