
(2013) 01 BOM CK 0090
In the Bombay High Court
Case No : Writ Petition No. 48 of 2013

Pravin Shripati Yadav

APPELLANT

Vs

Grampanchayat, Minche, Tal. Hatkanangale, Dist. Kolhapur
and Others

RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 320, 320(3)(c)

Citation : (2013) 2 ABR 611 : (2013) 3 ALLMR 647 : (2013) 3 BomCR 729 :
(2013) 2 MhLj 934

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

Bench : Single Bench

Advocate : U.R. Mankapure, for the Appellant; A.M. Adagule, for the Respondent Nos. 5 to 13 and Mr. S.D. Rayrikar, AGP, for the Respondent Nos. 15 to 18, for the Respondent

Final Decision : Dismissed

Judgement

B.R. Gavai, J.—Rule. Rule made returnable forthwith. The Petition takes exception to the concurrent order passed by the Additional Collector, Kolhapur dated 14th August, 2012, thereby rejecting the dispute filed by the present Petitioner challenging the No Confidence Motion passed against him on 19th June, 2012 and the order passed by the Divisional Commissioner, Pune dated 2nd January, 2013 thereby dismissing the Appeal filed by the present Petitioner.

2. The facts in brief giving rise to the Petition are as under:-

The Petitioner was elected as a member of Grampanchayat-Minche, Taluka Hatkanangale, Dist. Kolhapur in the general election which was held in the year 2012. The Petitioner had contested and elected for the seat reserved for OBC. The post of the Sarpanch was reserved for OBC and the Petitioner came to be elected on the said post. A notice was issued to the Tahsildar-Hatkanangale purportedly by nine members of village panchayat proposing to move No Confidence Motion against the Petitioner. In pursuance to the notice, meeting for

considering No Confidence Motion was conveyed by the Tahsildar on 19th June, 2012. In the said meeting, No Confidence Motion came to be passed by the majority of nine members. The Petitioner made a complaint on the said date that the signature of one member Smt. Lokare was forged one and raised a grievance regarding that. Being aggrieved thereby, the Petitioner preferred a dispute before the Collector which was dismissed by the Additional Collector on 14th August, 2012. Being further aggrieved, the Petitioner approached the learned Divisional Commissioner by way of an Appeal. During the pendency of the Appeal, the Petitioner also obtained an opinion regarding genuineness of the signature of said Smt. Lokare from a private handwriting expert which opinion, according to the Petitioner, is in his favour. An application was made to the Divisional Commissioner for sending signature of Smt. Lokare to hand-writing expert which was not decided, and therefore, the Petitioner was required to approach this Court by way of Writ Petition No. 11973 of 2012. This Court in the order dated 20th December, 2012 observed that the fact that the person whose signature is in dispute was present in the No Confidence Motion and has voted against the Petitioner is not in dispute, and further observed that the said issue can be looked into even after the Commissioner decides his Appeal. Subsequently the Appeal has been dismissed. Being aggrieved thereby, the present Petition.

3. Shri Mankapure, the learned counsel appearing for the Petitioner has raised following propositions in support of the Petition:

I) that while conducting the meeting in which No Confidence Motion was passed, Rule 17 of the Bombay Village Panchayats (Meetings) Rules, 1959 (hereinafter referred to as "Meetings Rules") was not followed. The learned counsel in this respect submits that the Full Bench of this Court in the case of Shri Viswas Pandurang Mokal Vs. Group Gram Panchayat Shihu and Others, has held that the Meeting Rules are applicable even to a meeting which considers No Confidence Motion and as such by non compliance with the said rules, the entire proceeding stands vitiated. It is submitted that Rule 17 requires that No Confidence Motion has to be moved by the proposer and seconded by the Secunder. It is submitted that since the motion is not moved by the proposer and seconded by the seconder, the entire proceeding of the meeting shall stand vitiated.

II) Signature of one of the Applicants on the notice to the Tahsildar was forged signature and as such the requisition for holding the meeting to consider No Confidence Motion did not have requisite number of members. It is submitted that since the fraud vitiates everything, the meeting which was conveyed on the basis of such fraudulent notice itself was not valid and as such resolution passed therein was not sustainable.

III) That, on account of the proposer and seconder not speaking in meeting, the Petitioner was not made aware as to what are the allegations against him and as such he did not have any opportunity to meet the said allegations and as such great prejudice has been caused to the Petitioner thereby vitiating the entire proceeding of the No Confidence Motion.

4. The learned counsel submits that the Division Bench of this Court in Letters Patent Appeal No. 268 of 2012 along with companion matters, has prima facie found that Rule 17 of the Meetings Rules is mandatory and has therefore quashed and set aside the orders passed by the Single Judge of this Court dismissing the Writ Petitions on similar ground. It is submitted that the Division Bench has remanded the matters to the Single Judge after quashing and setting aside the orders passed by the Single Judge. It is therefore submitted that the Division Bench having held the rules to be mandatory, this Court should allow the Petition in as much as the proceedings conducted are in breach of Rule 17 of the Meetings Rule. Mr. Mankapure, the learned counsel also relied upon the judgment of the learned Single Judge of this Court in the case of Vijay Ramchandra Katkar Vs. Group Gram Panchayat Pali and Others, , in support of the contention that Rule 17 of the Meetings Rules is mandatory.

5. As against this, Mr. Adagule, the learned counsel appearing on behalf of the Respondent Nos. 5 to 13 submits that the Petitioner having lost the confidence of the majority of the members, is not entitled to invoke the equitable jurisdiction of this Court. The learned counsel submits that in democratic set-up what is important is, will of the majority. The learned counsel further submits that the question as to whether Rule 17 is directory or mandatory is itself kept open by the Full Bench. The learned counsel submits that in the facts of the present case, the provisions of Rule 17 cannot be held to be mandatory, but will have to be held as directory. The learned counsel therefore prays for rejection of the Petition.

6. For appreciating rival controversy, it will be relevant to refer to Section 35 of the Bombay Village Panchayat Act, 1958 which reads thus:-

35. Motion of no confidence.-[(1) A motion of no confidence may be moved by not less than [one third] 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. [Such notice once given shall not be withdrawn.]

(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 at for considering the motion of no confidence at the office of the panchayat 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 not less than two-third of], the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat 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 (3-B); and thereupon the office held by

such Sarpanch or Upa-Sarpanch shall be deemed to be vacant:

[Provided that, where the office of the Sarpanch being reserved for a woman, is held by a woman Sarpanch, such motion of no-confidence shall be carried only by a majority of not less than three-fourth of the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat:]

[[Provided further that], no such motion of no-confidence shall be brought within a period of six months from the date of election of Sarpanch or Upa-Sarpanch.]

(3A) If the motion [is not moved or is not carried] by [a majority of not less than [or, as the case may be, three-fourth, of] the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat, no such fresh motion shall be moved against the Sarpanch or, as the case may be, the Upa-Sarpanch within a period of [[one year] from the date of such special meeting.]

(3B) If the Sarpanch or, as the case may be, the Upa-Sarpanch desires to dispute the validity of the motion carried under sub-section (3), he shall, within seven days from the date on which such motion was carried, refer the dispute to the Collector who shall decide it, as far as possible, within fifteen days from the date on which it was received by him; and any such decision shall, subject to an appeal under sub-section (3C), be final.

(3C) Any person aggrieved by the decision of the Collector may, within seven days from the date of receipt of such decision, appeal to the Commissioner who shall decide the appeal, as far as possible, within fifteen days from the date on which the appeal is received by him and any such decision shall be final.

(3D) Where on a reference made to him under subsection (3B), the Collector upholds the validity of the motion carried under sub-section (3) and no appeal is made by the Sarpanch or the Upa-Sarpanch under subsection (3C) within the limitation period specified in that sub-section, or where an appeal is made under subsection (3C) but it is rejected by the Commissioner, the Sarpanch or, as the case may be, the Upa-Sarpanch shall cease to hold office in former case immediately after the expiry of the said limitation period and, in the latter case, immediately after the rejection of the appeal, and thereupon the office held by such Sarpanch or Upa-Sarpanch shall be deemed to be vacant.]

(4) In cases where the offices of both the Sarpanch and Upa-Sarpanch become vacant simultaneously, the District Village Panchayat Officer or such other officer as he may authorise in this behalf shall, pending the election of the Sarpanch exercise all the powers and perform all the functions and duties to the Sarpanch but shall not have the right to vote in any meeting of the panchayat.

7. It will also be relevant to refer to Rule 2 of the Bombay Village Panchayats Sarpanch and Up-sarpanch (No Confidence Motion) Rules, 1975 (hereinafter referred to as "No Confidence Motion Rules") which reads thus:-

2. (1) The members of a panchayat who desire to move a motion of no-confidence against the Sarpanch or the Upa-Sarpanch 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 the Upa-Sarpanch, they shall give two separate notices.

2) The notice under sub-rule (1) shall be accompanied by [nine additional copies] thereof, and the Tahsildar shall send one copy to the Sarpanch, one to the Upa-Sarpanch and one each to the Zilla Parishad, the Panchayat Samiti, the Collector and the Commissioner. One copy shall also be given to the Secretary.

[(2-A) The Tahsildar shall also publish the said notice by placing the same on the notice board at the office of the Panchayat and Tahsildar office.

(2-B) Every notice under sub-rule (1), wherever it may be practicable, be served by delivering or tendering it to the Sarpanch or Upa-Sarpanch to whom it is addressed or, where such person cannot be found, by delivery or tendering it to any adult member of his family residing with him; and if no such adult member can be found or, where the Sarpanch, Upa-Sarpanch or such adult member, as the case may be, refuses to accept the notice, it shall be served by affixing it, in the presence of two witnesses, on the outer door or some other conspicuous part of the house in which such Sarpanch or Upa-Sarpanch ordinarily dwells. The notice served in this manner shall be deemed to be served or tendered or delivered to the concerned Sarpanch or Upa-Sarpanch.]

3) The Tahsildar shall, immediately on receipt of notice under sub-rule (1), satisfy himself that the notice has been given by not less than one-third of the total number of members (other than associate members) who are for the time being entitled to sit and vote at any meeting of the panchayat and then convene a special meeting for the purpose within seven days from the date of receipt of such notice.

8. It will also be relevant to refer to Rule 17 of the Meetings Rule.

17. (1) A member who has given notice of a motion shall, when called on, either,

(a) state that he does not wish to move the motion, or

(b) move the motion in which case he shall commence his speech by a formal motion in the terms appearing on the list of business, after the motion is duly seconded.

(2) If a member when called is absent, any other member may, with the permission of the person presiding, move the motion standing in the name of the absent member, if permission is not granted to the other member to move the motion, the motion shall lapse.

9. It can thus clearly be seen that sub-section 1 of Section 35 provides that a Motion of No Confidence can be moved by not less than 1/3rd of the total

number of members who are for the time being entitled to sit and vote at any meeting of the Panchayat. Sub-section 2 thereof provides that within seven days from the date of receipt by him of the notice under sub-section (1), the Tahasildar 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 such a meeting will be required to be presided over by the Tahsildar. The said proviso also provides that 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 a right to vote. Sub-section 3 thereof provides that if the motion is carried by a majority of not less than two-third of the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat 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. However, this is made subject to the resignation earlier to this period or the dispute regarding the validity of the motion being carried as provided in sub-section (3B). Proviso provides that if the office of the Sarpanch which is reserved for a woman, is held by a woman Sarpanch, such motion of no-confidence shall be carried only by a majority of not less than three-fourth of the total number of the members who are for the time being entitled to sit and vote at any meeting of the Panchayat). However, the said proviso would not be relevant for adjudication in the present matter.

Second proviso provides that no such Motion of No Confidence shall be brought within a period of six months from the date of election of Sarpanch or Upa-Sarpanch.

Sub-section 3 provides that if the motion is not moved or is not carried by a requisite majority, such a No Confidence Motion cannot be moved against the Sarpanch for a period of one year from the date of such special meeting.

10. Sub-rule 1 of Rule 2 of the No Confidence Motion Rules provides that the members of a Panchayat who desire to move Motion of No Confidence against the Sarpanch or the Upa-Sarpanch, shall give notice thereof in the Form to the Tahsildar. The said sub-rule provides that where the motion is proposed to be moved against the Sarpanch as well as the Up-Sarpanch, two separate notices shall be given. Sub rule 2 of Rule 2 provides that the notice shall be accompanied by nine additional copies one of which is required to be sent to the Sarpanch and to the Upa-Sarpanch and one each to the Zilla Parishad, the Panchayat Samiti, the Collector and the Commissioner. One copy is also required to be given to the Secretary. Sub-rule 2A of the Rules requires the Tahsildar to publish the said notice by placing the same on the notice board at the office of the Panchayat and Tahsildar. Sub-rule 2B provides for the manner in which such notice shall be served on Sarpanch or Upsarpanch concerned. However, there is no dispute regarding the service of the notice on the Petitioner and as such the said rule would not be of much relevance in the present case. Sub-rule 3 provides that

Tahsildar shall, immediately on receipt of notice under sub-rule (1) satisfy himself that the notice has been given by not less than one third of the total number of members other than associate members, who are for the time being entitled to sit and vote at any meeting of the panchayat and then convene a special meeting for the purpose within seven days from the date of receipt of such notice.

11. Rule 17 of the Conduct of Meetings Rules provides that the member who has given the Notice of Motion when called on has an option to state that he does not wish to move the motion or move the motion. Clause (b) of sub-rule 1 of Rule 17 however, provides that if the member moves the Motion, he shall commence his speech by a formal motion in the terms appearing on the list of business, after the motion is duly seconded.

12. The question, as to whether Rule 17 of the Conduct of the Meetings Rules would also be applicable in the meetings which are convened for considering the No Confidence Motion was for consideration before the larger bench of this Court, in the case of Vishwas Mokal (supra).

13. The Division Bench of this Court has answered the issue in paragraph no. 17 by holding that Rule 17 of the Meetings Rules would apply even to the meetings convened for considering the No Confidence Motion. There can be no doubt in view of the law laid down by the larger bench that Rule 17 would be applicable to the meetings even convened for considering the No Confidence Motion. However the only question that would arise for consideration is as to whether the provisions of Rule 17 can be considered to be mandatory in nature so as to vitiate the proceeding in the meetings which have been conducted in contravention of provisions of Rule 17 of the Meetings Rules or not. It is pertinent to note the observations made by the larger bench in paragraph no. 18 of the aforesaid judgment which reads thus:-

18. We make it clear that though it is clear to our mind that the provisions of the Meeting Rules generally and Rule 17 in particular will apply to the above extent to a meeting called u/s 35, we are not deciding the question as to what is the consequence in relation to validity or otherwise of a motion of no confidence being passed against Sarpanch or Up-Sarpanch in violation or without following a particular Rule. That question will have to be decided in each case after considering the nature of the provision, whether the provision is mandatory or directory. In other words, though it is clear to our mind that the provisions of Rule 17 of the Meeting Rules are to be followed in passing the motion in a meeting called u/s 35, we are not deciding the question as to what is the consequence if the provisions are not followed and the motion is passed. Because, that question as to whether the provisions of Rule 17 are mandatory or directory has not been referred to us. In our opinion, therefore, the first question will have to be answered in the affirmative by holding that the provisions of the Meeting Rules generally and provisions of Rule 17 in particular apply to a meeting convened u/s 35.

14. It is thus clear that the larger bench had itself observed that though the provisions of the Meetings Rules generally and Rule 17 in particular will apply to the meetings called u/s 35, the Full Bench has not decided the question as to what is the consequence in relation to validity or otherwise of a Motion of No Confidence being passed against the Sarpanch or Upsarpanch in violation or without following a particular Rule. The Full Bench has observed that question will have to be decided in each case after considering the nature of the provision, whether the provision is mandatory or directory. The Full Bench has clearly observed that though the provisions of Rule 17 of the Meeting Rules are to be followed in passing the motion in a meeting called u/s 35, it has not decided the question as to what is the consequence if the provisions are not followed and if the motion is passed. The Full Bench further observed that the question as to whether the provisions of Rule 17 are mandatory or directory, the same has not been referred to the Full Bench. It is thus clear that the Full Bench has not considered the question whether the provisions of Rule 17 are mandatory or directory.

15. The bench of the Apex Court consisting of three Hon'ble Judges had an occasion in the case of K. Narasimhiah Vs. H.C. Singri Gowda, 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 the Town Municipality had 20 Councillors. Thirteen out of them had sent a requisition to the President to convene a special general meeting to discuss a resolution expressing no confidence in the President. The request was handed over to the President on 25th September, 1963. Since the President did not take any steps for convening the meeting, the Vice President acted in the matter calling a meeting to discuss the Resolution to express No Confidence in the President. A notice under the Vice-president's signature stating that it was proposed to hold a special general body meeting of the Municipality on the 14th October, 1963 at 10.00 a.m. in the office premises and asking the members to be present in time was served on the Councillors. One copy of the notice was also posted up at the Municipal Office. The notice was dated 10th October, 1963. Out of the 20 Councillors, the notice was served on 15 Councillors on the very same day. The notice was served on the three Councillors including the President on 13th October. The other two Councillors were served on 11th October and 12th October respectively. In the meeting which was held on the scheduled date i.e. 14th October, 1963, 19 out of 20 Councillors including the President were present. However, the President left the meeting and then the meeting was held under the president-ship of the Vice-President. The No Confidence Motion was passed against the President since the 15 Councillors had supported the No Confidence Motion. The legality of the proceedings was challenged before the High Court by way of a Writ Petition. The High Court rejected the Petition. An Appeal was carried before the Apex Court. The main contention that was raised before the Apex Court was that the three days notice of the Special General Meeting was not given, and as such, the meeting was invalid. The Apex Court

therefore considered the question as to whether the provisions of three days notice was mandatory or directory.

16. It will be relevant to refer to the following observations of the Apex Court in the case of K. Narasimhiah (*supra*), in paragraph nos. 12 to 14.

12. The question then is: Is the provision of three clear days notice mandatory, i.e., does the failure to give such notice make the proceedings of the meeting and the resolution passed there invalid ? The use of the word "shall" is not conclusive on the question. As in all other matters of statutory construction the decision of this question depends on the ascertainment of the legislature's intention. Was it the legislature's intention in making the provision that the failure to comply with it shall have the consequence of making what it done invalid in law ? That is the question to be answered. To ascertain the intention the Court has to examine carefully the object of the statute, the consequence that may follow from insisting on a strict observance of the particular provision and above all the general scheme of the other provisions of which it forms a part. In the State of U.P. Vs. Manbodhan Lal Srivastava, where the question arose whether the provisions of Art. 320(3)(c) of the Constitution are mandatory (which provides that the Union Public Service Commission or the State Public Service Commission shall be consulted on certain disciplinary matters), this Court laid stress on the fact that the proviso to the Article contemplates that the President or the Governor as the case may be make regulations specifying the matters in which either general or in any particular class or in any particular circumstances, it shall not be necessary for the Public Service Commission to be consulted. Speaking for the Court Sinha J. observed:-

If the provisions of Art. 320 were of a mandatory character, the Constitution would not have left it to the discretion of the Head of the Executive Government to undo those provisions by making regulations to the contrary.

13. This appears to have been the main reason for the court's decision that the provisions of Article 320(3)(c) are not mandatory. Naturally, strong reliance has been placed on this decision on behalf of the respondents. It is pointed out that while providing that three clear days' notice of special general meeting shall be given to the Councillors, the legislature said in the same breath that "in cases of great urgency, notice of such shorter period as is reasonable should be given to the Councillors of a special general meeting." The decision of what should be considered to be a case of "great urgency" was left entirely to the President or the Vice-president on whom the duty to call such a meeting is given under s. 27(2). It is urged by the learned Counsel that if the intention of the legislature had been to make the service of three clear days' notice mandatory it would not have left the discretion of giving notice for a shorter period for some of the special general meetings in this manner. We see considerable force in this argument. The very fact that while three clear days' notice is not to be given of all special general meetings and for some such meetings notice only of such shorter period as is reasonable has to be given justifies the conclusion that the

"three clear days", mentioned in the section was given by legislature as only a measure of what it considered reasonable.

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.

17. No doubt, that clause 1B of Rule 17 of the Meetings Rules, uses the word "that shall commence speech by the formal motion". However, the question would be as to whether by using the word "shall" the Legislator intended the said provision to be made as mandatory. The question would be as to whether intention of the Legislator could be to invalidate the entire proceedings of the meeting in which No Confidence Motion is passed on account of non compliance with the requirement for Motion for No Confidence not being moved by the proposer as required by Rule 17 of the said Rules. Not only this, but while considering the question as to whether the said provision in Rule 17 which undisputedly is a subordinate legislation could be interpreted so as to negate the legislative intent as has been provided in the said Act which is the principal legislation. The perusal of sub-section 3 of Section 35 of the Bombay Village Panchayats Act, 1958 provides that if the No Confidence Motion is carried by the requisite majority, the Sarpanch or Upsarpanch 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 No Confidence Motion before the forum as provided in the said section. As such, the legislative intention in the principal legislation is clear. Once the motion is carried out by the requisite majority as provided in the statute, the Sarpanch or Upsarpanch ceases to hold the office. The subordinate legislation cannot be stretched to such an extent which will negate the legislative intention as provided in the principal legislation. In my considered view, the principal legislation specifically provides that once the motion is carried out by the requisite majority, the Sarpanch or the Upsarpanch ceases to hold office after seven days, however, subject to he resigning before that period or disputing the same in accordance with the statutory provisions.

18. It is further to be noted that the Rules only provide the procedure for conducting the meetings. However as to what is the requirement of Sarpanch or Upsarpanch ceasing the office on the No Confidence Motion carried against him has been provided in the main statute i.e. Subsection 3 of Section 35 of the said Act.

19. The provisions in subordinate legislation cannot be read in such a manner which will defy legislative intention as provided in the main statute.

20. It will also be relevant to refer to paragraph 20 of the judgment of the Apex Court in the case of K. Narasimhiah (supra) which reads 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.

(Emphasis supplied)

21. It can thus clearly be seen that the proceedings will be invalid only if the proceedings were prejudicially affected by such irregularity.

22. Though Shri. Mankapure has strongly urged that due to the manner in which the meeting was conducted a great prejudice has been caused to the Petitioner, it is difficult to accept the said contention.

23. Shri Mankapure, the learned counsel submitted that if the proposer and the seconder had given speeches, he would have known as to what are the allegations against him and attempted to meet those allegations. It is, therefore, submitted that the Petitioner has lost the valuable opportunity to meet the allegations against him. In my considered view, the No Confidence Motion cannot be equated with the departmental proceedings.

24. In this respect, it will be appropriate to refer to the following observations of the Apex Court in the case of Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and Others, .

It is pertinent in this context to observe that there is a difference between a motion of no confidence and a censure motion. While it is necessary in the case of a censure motion to set out the ground or charge on which it is based, a motion of no confidence need not set out a ground or charge. A vote of censure presupposes that the persons censured have been guilty of some impropriety or lapse by act or omission and it is because of that lapse or impropriety that they are being censured. It may, therefore, become necessary to specify the impropriety or lapse while moving a vote of censure. No such consideration arises when a motion of no confidence is moved. Although a ground may be mentioned when passing a motion of no confidence, the existence of a ground is not a prerequisite of a motion of no confidence. There is no legal bar to the passing of a motion of no confidence against an authority in the absence of any charge of impropriety or lapse on the part of that authority. The essential

connotation of a no confidence motion is that the party against whom such motion is passed has ceased to enjoy the confidence of the requisite majority of members.

(emphasis supplied)

25. It can thus be clearly seen that the Apex Court in an unequivocal term has held that the essential connotation of a no confidence motion is that the party against whom such motion is passed has ceased to enjoy the confidence of the requisite majority of the members. It has further been held that there is no legal bar for passing a motion of no confidence against an authority in the absence of any charge of impropriety or lapse on the part of that authority.

26. In any case the requisition contains a specific charge that the Petitioner was conducting the affairs of the Grampanchayat in an arbitrary manner without taking anybody in the confidence and without giving information to the other members regarding the work conducted. It is not in dispute that the Petitioner had received a copy of the said requisition. The Petitioner, for the reasons best known to him, has also given a detailed reply to the Tahsildar pointing out therein as to how the allegations are not correct. Not only this, but the proceedings of the meetings would show that after the Tahsildar initiated the proceedings and asked as to whether anybody would like to speak, it was the Petitioner alone who chose to speak. The details as to what has been spoken by the Petitioner have been stated in the minutes of the meeting. It is only after the Petitioner was given an opportunity of putting up his case the Resolution has been passed by the majority. It is thus very much clear that the Petitioner was very much aware of what are the allegations made against him and on what ground the No Confidence Motion was being moved against him. The Petitioner was given an opportunity to put-up his case and only thereafter the motion was considered. In that view of the matter, I find that the proceedings cannot be said to have been conducted in the manner which has prejudiced the present Petitioner.

27. Insofar as the next ground of the Petitioner that one of the signatures being fraudulent is concerned, the perusal of sub-section 1 of Section 35 of the said Act would reveal that the requisition as to No Confidence Motion is required to be signed by the 1/3rd of the total number of the members. Undisputedly, the total number of the members of the Grampanchayat concerned, is thirteen. Assuming for a moment that the signature of Smt. Lokare is not genuine and for a moment it is considered that she has not signed the requisition, still the requisition would consist of eight members inasmuch as there are nine persons who have signed the requisition including Smt. Lokare. In a Grampanchayat of 13 members, 1/3rd would come to 4.33. Giving an advantage of rounding off to the Petitioner, still the number would be five members. As such even if the signature of Smt. Lokare is excluded there would be still eight signature in support. It is apart from the fact that the said Smt. Lokare had participated in No Confidence Motion and supported the No Confidence Motion. Not only that but she has also filed the

affidavit before the Collector that she had signed the requisition and that she had participated in the proceedings and supported the No Confidence Motion. In that view of the matter, I find that the contention in that regard is also without any substance.

28. Insofar as the judgment of the Division Bench of this Court in Letters Patent Appeal No. 268 of 2012 is concerned, no doubt that the Division Bench has set aside the orders which were impugned in the bunch of Appeals before the Division Bench. It appears that in the judgments which were impugned, the learned Single Judge had held that Rule 17 was not applicable to the meeting convened for consideration of motion for no confidence. In that view of the matter, the Division Bench has observed thus in paragraph nos. 4 and 5 as under:-

4. The statement so made, we have no manner of doubt, is in the teeth of the legal position expounded by the Full Bench of our High Court in the case of Vishwas Pandurang Mokal vs. Group Gram Panchayat Shihu and ors. The Full Bench, in no uncertain terms, has opined that there is no reason why the provisions of the Meeting Rules at the extent that no contrary provision is made either in the Act itself or in the No Confidence Motion Rules should not apply to a meeting called u/s 35. The Court also proceeded to examine the question whether the provisions of Rule 17 of the Meeting Rules apply to a meeting called under Rule 35 and held that the provisions of Rule 17 will apply to a meeting called u/s 35.

5. In view of this exposition, it was not open to the Learned Single Judge to decide the matter on the basis of the view taken by him in the past in some other cases. We would proceed on the basis that the Full Bench Judgment of this Court was not brought to the notice of the Learned Single Judge. Be that as it may, the view taken by the Learned Single Judge, in the impugned decision, cannot be sustained in law and, since that is the basis for rejecting the Petitions, the only appropriate course is to set aside the impugned decisions rejecting the Petitions, the only appropriate course is to set aside the impugned decisions and relegate the parties before the Learned Single Judge for fresh hearing of the Writ Petitions on the other issues, on its own merits, in accordance with law. It is not necessary for us to advert to the other decisions, which Mr. Gavnekar wanted to rely, as this decision pertains to the merits of the controversy of the Writ Petitions and can be produced before the Learned Single Judge.

29. However, from the perusal of the entire judgment, it would not reveal that the Division Bench had expressed any opinion even which can be considered as obiter that the provisions of Rule 17 of the Meeting Rules are mandatory in nature. As already discussed hereinabove, the Full Bench had itself kept the question open as to whether, the provisions of Rule 17 are directory or mandatory. Since the said issue is kept open by the Full Bench, I have examined the question as to whether the provisions of the Rule 17 could be held to be mandatory in the facts of the present case or not. In that view of the matter, I

find that the reliance on the aforesaid judgment of the Division Bench would also be of no assistance to the case of the Petitioner.

30. Insofar as the judgment of the learned Single Judge of this Court in the case of Vijay Katkar (supra) is concerned, in my view, the said judgment would not be applicable to the facts of the present case inasmuch as in the said case, the Petitioner against whom the No Confidence Motion was passed was not given an opportunity to speak before the No Confidence Motion was considered by the Grampanchayat. In that view of the matter, the No Confidence Motion would be in breach of the provisions of sub-section 2 of Section 35 and as such the Motion would not be sustainable in law. Such is not the case here. In the present case, the Petitioner was given full opportunity of putting up his stand before the No Confidence Motion came for consideration. In that view of the matter, the said judgment would also not be applicable.

31. The Division Bench of this Court in the case of (Smt. Annapurnabai Ajabrao v. Annapurnabai Anandrao) reported in 1967 Mh.L.J. 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.

32. 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 Muljibhai Patel Vs. Nandlal Khodidas Barot and Others, , 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 away 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.

33. 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.

34. Things would have to be looked into from another angle. In the Grampanchayat concerned, there were thirteen members. Out of thirteen, nine members have lost confidence in the Petitioner. If the contention of the Petitioner is accepted and the Petitioner is thrust upon the Village Panchayat as Sarpanch, the entire functioning of the Grampanchayat will come to stand still. In as much as it would be difficult for the Petitioner to discharge his duties effectively as Sarpanch when the nine members out of the thirteen are opposed to his contention.

35. In that view of the matter, I do not find that a case is made out for interference in the extra ordinary jurisdiction of this Court under Article 226 and 227 of the Constitution of India. The Petition is therefore dismissed. Rule is discharged.

36. At this stage, Shri Mankapure, the learned counsel requests for direction to the Respondent not to take any steps for filling up the post of Sarpanch for a period of one week from today. In the light of the view that I have taken, I do not find that the case is made out for grant of the relief as prayed. Rejected.