
(2012) 07 BOM CK 0167

In the Bombay High Court

Case No : Writ Petition No. 2267 of 2012

Punjaji Kadam and Others

APPELLANT

Vs

The Divisional Commissioner, Aurangabad Division,
Aurangabad and Others

RESPONDENT

Date of Decision : 16-07-2012

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 35

Citation : (2012) 6 ALLMR 235 : (2013) 3 BomCR 230

Hon'ble Judges : R.M. Borde, J

Bench : Single Bench

Advocate : S.J. Salunke, for the Appellant; S.D. Kaldote, A.G.P. for Respondent Nos. 1 to 3. Mr. K.J. Suryawanshi, for the Respondent

Final Decision : Allowed

Judgement

R.M. Borde, J.—Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties. The petitioners are challenging order dated 09.12.2011, passed by Divisional Commissioner, Aurangabad, in Appeal No. 104/2011, whereby the appellate authority allowed the appeal presented by Respondent No. 4 herein and quashed and set aside the decision of village panchayat expressing no confidence against Respondent No. 4, in a meeting dated 26.08.2011.

2. Respondent No. 4 is the Sarpanch of village panchayat Futana. A motion of no confidence was moved against the Sarpanch by six members out of total strength of seven members, by presenting a requisition in that behalf on 20.08.2011 to the Tahsildar, Kalamnuri. The Tahsildar directed issuance of notice to the Sarpanch and convened a meeting for consideration of no confidence motion on 26.08.2011 at the office of village panchayat. The meeting was attended by six members, whereas, Respondent No. 4 - Sarpanch of village panchayat remained absent. The motion of no confidence was passed against Respondent No. 4 by all the six members of village panchayat casting their vote

in favour of the motion.

3. The Resolution adopted in the meeting expressing no confidence against the Sarpanch was subjected to challenge in an appeal presented to the Additional Collector, Hingoli. It is contended in the memorandum of appeal by Respondent No. 4 that he has not been served with the notice of meeting and the alleged service of notice on the mother of Respondent No. 4, who is a female member of the family, is not in consonance with Rule 7 of the Bombay Village Panchayats (Meetings) Rules, 1959 and as such, the motion of no confidence passed against him deserves to be quashed and set aside. The Additional Collector, Hingoli, was not convinced by the arguments and referring to sub-rule (2-B) of Rule 2 of the Bombay Village Panchayats Sarpanch and Up-Sarpanch (No Confidence Motion) Rules, 1975, it is recorded that the notice shall have to be construed as validly served if it is handed over to the adult member of the family.

4. The decision rendered by the Additional Collector, Hingoli, was subject matter of appeal at the instance of Respondent No. 4 before the Divisional Commissioner, Aurangabad, who accepted the argument advanced by appellant - Respondent No. 4 herein in respect of invalid service of notice and proceeded to quash and set aside the proceedings of meeting dated 26.08.2011, including the Resolution of no confidence passed against Respondent No. 4.

5. I have heard arguments advanced by learned Counsel for respective parties. It is contended by learned Counsel for the petitioners that provisions of sub-rule (2-B) of Rule 2 of the Bombay Village Panchayats Sarpanch and Up-Sarpanch (No Confidence Motion) Rules, 1975, would govern the aspect of service of notice and once it is established that the notice is served on the adult member of the family, it is sufficient compliance of the requirement. It is contended that even if it is held that Rule 7 of the Bombay Village Panchayats (Meetings) Rules, 1959, is applicable, the condition requiring tendering of notice on the adult male member of the family shall have to be construed as directory since it is merely a procedural part. It is contended that by construing the condition prescribed in the Rules as directory, the object of provisions of the enactment would be achieved in stead of holding the same as mandatory. It is contended that the object of enactment would be defeated if the rule governing service of notice on the adult male member, as contemplated by Rule 7, is construed as mandatory.

6. Learned Counsel appearing for Respondent No. 4 contended that in view of decision of the Full Bench in the matter of Viswas Pandurang Mokal Vs. Group Gram Panchayat, Shihu and others, reported in 2011 (3) Mh. L.J. 500, the provisions of Bombay Village Panchayats (Meeting) Rules, 1959, are applicable for conduct of business of a special meeting of panchayat for consideration of motion of no confidence moved u/s 35 of the Bombay Village Panchayats Act. Reliance is placed on paragraph no. 17 of the judgment, which reads thus:

17 Thus, Rule 17 provides that the person who has submitted notice of the motion shall move the motion in the meeting. Rule 20 deals with how

amendments to the motion can be proposed. Rule 21 deals with how a person who wants to speak on a motion has to address. What should be the duration of the speech and what is the decorum to be following in speaking at the meeting. Thus, in these Rules provisions in detail have been made for the conduct of the meeting both ordinary and special of the village panchayat. Perusal of the No Confidence Motion Rules shows that they do not contain any provision in relation to the conduct of the meeting. Provisions for conduct of the meeting of the village panchayat are to be found in the Meeting Rules. The manner of submitting a requisition for convening a special meeting of the village panchayat to consider motion of no confidence against the Sarpanch or Up-Sarpanch is to be found in sub-sections (1) and (2) of section 35 and the No Confidence Motion Rules. But neither in section 35 nor in the No Confidence Motion Rules we find provisions made as how many days notice should be given to the members of the Special meeting to be convened u/s 35. Therefore, in our opinion, for that purpose one will have to follow the provisions of the Meeting Rules because they lay down as to how many days notice of special meeting is to be given to the members. Section 35 provides that the Sarpanch or Up-Sarpanch against whom the motion is to be moved is entitled to attend and participate in the meeting, and he is entitled to speak at the meeting. But there is no provision to be found made in section 35 or in the No Confidence Motion Rules as to the manner in which the Sarpanch or Up-Sarpanch can exercise his right to participate and speak at that meeting. Provisions for that purpose are to be found in the Meeting Rules. Neither section 35 nor No Confidence Motion Rules lay down as to what is to be done if the requisite quorum is not present at such meeting. But the meeting Rules contain provisions in that regard. Neither Section 35 nor No Confidence Motion Rules makes provision dealing with the situation when the members present in the meeting disregard the authority of the presiding officer. Those provisions are to be found in the Meeting Rules. In our opinion, therefore, there is no reason why the provisions of the Meeting Rules to 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. In our opinion, if the provisions of the Meeting Rules are held to be applicable to a meeting called u/s 35, it will facilitate holding of meeting u/s 35 effectively. Therefore, in our opinion, it can be safely said that the provisions of the Meeting Rules generally apply to a special meeting convened u/s 35. However, such provisions of the Meeting Rules which are found to be contrary to the provisions contained either in the Act in relation to the holding of the special meeting for consideration of motion of no confidence against Sarpanch or Up-Sarpanch or in the No Confidence Motion Rules would not apply to a meeting called u/s 35. Now taking up the question whether specifically provisions of Rule 17 of the Meeting Rules apply to a meeting called u/s 35 is concerned, in our opinion, the provisions of section 17 will apply in a meeting called u/s 35. As observed above section 35 contains a provision for submission of requisition by members to the Tahsildar for calling a special meeting of the village panchayat to consider the motion of no confidence against Sarpanch or Up-Sarpanch. It casts a duty on the Tahsildar to

call a meeting for that purpose within seven days of the receipt of the requisition. But section 35 does not contain any provision as to how that meeting is to be conducted, save and except to provide that the Sarpanch or Up-Sarpanch concerned shall have a right to attend and participate in that meeting. We have already observed above that perusal of No Confidence Motion Rules and the Form of the requisition shows that when the members of the village panchayat submit the requisition to the Tahsildar, what they actually do is that they request the Tahsildar to convene a special meeting of the village panchayat so that in that meeting they can move a motion of no confidence against Sarpanch or Up-Sarpanch. It is, thus, clear that moving of the motion of no confidence is not by submission of requisition to the Tahsildar. The requisition is only for calling a special meeting to facilitate moving of motion of no confidence. The motion of no confidence is actually moved in the meeting of the village panchayat and as there is no contrary provision to be found either in the Act or in the No Confidence Motion Rules, in relation to moving of a motion in a meeting of the village panchayat, Rule 17 of the Meeting Rules which makes such a provision will apply. In the Meeting Rules there is a provision made for calling a special meeting of village panchayat because a requisition is received from members. Therefore, concept of convening a special meeting of the village panchayat as a consequence of requisition received from the members is to be found in the Meeting Rules itself and therefore, all those provisions contained in the Meeting Rules in relation to convening and holding of a special meeting of the village panchayat will apply to the special meeting convened u/s 35, subject to there being any specific contrary provision in the Act or in the No Confidence Motion Rules.

7. On perusal of the judgment of the Full Bench in Viswas's case, it would be clear that the Full Bench has expressed an opinion that the provisions of Meeting Rules to the extent that no contrary provision either in the Act itself or in the No Confidence Motion Rules, 1975, would apply to a meeting called u/s 35. It is reiterated by the Full Bench that although provisions contained in Meeting Rules in relation to convening and holding of a special meeting of village panchayat will apply to a special meeting convened u/s 35, subject to there being any contrary provision in the Act or in the No Confidence Motion Rules. It would be, thus, clear that the provisions contained in the Meetings Rules in relation to convening and holding of a special meeting of village panchayat will apply to the special meeting. The objection raised in the instant matter by Respondent No. 4 to the validity of the meeting is on the ground of non observance of Rule 7 of the Meeting Rules in its strict sense. Since there is a specific provision contained in sub-rule (2-B) of Rule 2 the Bombay Village Panchayats Sarpanch and Up-Sarpanch (No Confidence Motion) Rules, 1975, in respect of service of notice on the adult member of the family, it cannot be insisted upon by Respondent No. 4 that the notice shall be served only on the adult male member of the family, as mandated by Rule 7 of the Meeting Rules of 1959. Sub-rule (2- B) of Rule 2 of the Bombay Village Panchayats Sarpanch and Up-Sarpanch (No Confidence

Motion) Rules, 1975, provides thus:

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 UpaSarpanch 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.

8. In the instant matter, there is evidence that the notice of no confidence has been served on the mother of Respondent No. 4. There is proper compliance of the requirement of sub-rule (2-B) of Rule 2 of the Rules. As such, it cannot be permitted to be contended by Respondent No. 4 that notice has not been properly served upon him. Considering the observations made by the Full Bench in paragraph no.17 of the judgment, quoted above, once there is observance of provisions of Sub-rule (2-B) of Rule 2 the No Confidence Motion Rules, 1975, in respect of service of notice, Respondent No. 4 cannot be permitted to insist upon compliance of Rule 7 of the Meeting Rules, 1959 and also cannot be permitted to contend that service of notice on the female member of the family is bad. The insistence made by Respondent No. 4 for strict compliance of Rule 7 of the Meeting Rules, 1959, inasmuch as service of notice on male adult member of the family, also cannot be said to be a mandatory requirement. The provisions of sub-rule (2-B) of Rule 2 the No Confidence Motion Rules, 1975, permit service of notice on the adult member of the family and as such, compliance of said sub-rule is sufficient to draw an inference in respect of validity of service of notice. The requirement of service of notice only on the male member of the family, as contemplated by Rule 7 of the Meeting Rules, 1959, cannot be construed as a mandatory requirement. The question, as to whether a Statute is mandatory or directory depends upon the intent of legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern and those are to be ascertained not only from the phraseology of the provision, but also by considering its nature, its design and the consequences which would follow from construing it, the one way or the other. The object of the provisions of Section 35 is to ensure democratic functioning of the local institutions and removal of office bearers who does not command confidence of majority. The decision taken by the majority cannot be permitted to be defeated for technical reasons.

9. In this context, reference can be made to the judgment Anandrao, reported in 1967 Mh. L.J. NOC 36, wherein, Division Bench of this Court, in para 16 has 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.

10. In the instant matter, Respondent No. 4 has lost confidence of the majority since all the six members out of total strength of seven members of the panchayat, have expressed their no confidence against him. Respondent No. 4 is, therefore, expected to respect will of the majority and make way for election of leader who holds confidence of majority. The decision rendered by Divisional Commissioner, Aurangabad, allowing the appeal presented by Respondent No. 4, is erroneous and, therefore, liable to be quashed.

11. In the result, order dated 09.12.2011, passed by Divisional Commissioner, Aurangabad, in Appeal No. 104/2011, is quashed and set aside. Rule is accordingly made absolute. There shall be no order as to costs.