

(1997) 03 SC CK 0022

In the Supreme Court Of India

Case No : Civil Appeal No. 2271 of 1997 Arising out of SLP (C) No. 24572 of 1996

Ramesh

APPELLANT

Vs

Sheshrao and Others

RESPONDENT

Date of Decision : 21-03-1997

Acts Referred:

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

Citation : AIR 1999 SC 1607 : (1998) AIRSCW 4141 : (1998) 9 SCC 113

Hon'ble Judges : V. N. Khare, J;S. P. Kurdukar, J;J. S. Verma, J

Bench : Full Bench

Final Decision : Allowed

Judgement

1. Leave granted.

2. Sheshrao, Respondent 1, was the Sarpanch of Gram Panchayat, Thanegaon, Tahsil Karanja, District Wardha. A motion of no confidence was moved against him which was passed by majority of the panchas in a meeting held on 8-3-1995. Respondent 1 challenged the same by raising a dispute under the Bombay Village Panchayats Act, 1958 before the Additional Collector of the District who rejected the same on 21-4-1995. Respondent 1 then preferred an appeal before the Divisional Commissioner which was allowed by order dated 22-1-1996 on the ground of want of a valid notice. The effect of the order was that the motion of no confidence was treated to be invalid. Thereafter, another motion of no confidence was moved by 8 out of 11 panchas on 3-2-1996. The motion was passed by an overwhelming majority of the panchas on 9-2-1996. Respondent 1 then raised a dispute before the Additional Collector who rejected the same. An appeal to the Divisional Commissioner by Respondent 1 has been allowed by the order dated 14-8-1996. The appellant who is one of the panchas filed a writ petition in the High Court challenging the Commissioner's order. That writ petition has been dismissed by the impugned order dated 14-10-1996. Hence, this appeal by special leave.

3. The point which arises for decision is to be answered with reference to Sub-section (3-A) of Section 35 of the Act, which reads as under:

"35(3-A).-- If the motion is not moved or is not carried by a majority of not less than two-thirds of the total number of the members (other than associate 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."

4. The Commissioner has taken the view that the no-confidence motion having been passed on 8-3-1995, the moving of the second motion on 3-2-1996 was even a period of one year of the date of the first motion on account of which it was barred by Sub-section (3-A) of Section 35 of the Act. The question is whether the view taken by the Commissioner which has been upheld by the High Court is correct.

5. The significant words in the above provisions are "if the motion is not moved or is not carried", then "no such fresh motion shall be moved ... within a period of one year" from the date of rejection of the motion. The question is whether the first motion which ended in the manner indicated above can be treated as a motion not moved or not carried by the requisite majority. In our opinion, the first motion does not fall in this category. The first motion which was passed on 8-3-1995, was carried by the requisite majority but it became ineffective because the Commissioner on appeal by the Sarpanch held the motion of no confidence to be invalid for want of the requisite notice of holding the special meeting on 8-3-1995. The bar contained in Sub-section (3-A) of Section 35 of the Act does not cover such a situation.

6. The provision clearly is in respect of a motion which though valid, is not carried by the requisite majority of members because of its not being moved or being passed by the requisite majority. No such defect was found in the first motion in the present case which was carried by the requisite majority and not rejected in the meeting. The object of the provision clearly is to prevent frivolous no-confidence motions repeatedly within one year, if the earlier one has not been even moved or has been defeated because want of the requisite majority for passing the same. In the present case, the first motion was not of the kind which attracted Sub-section (3-A) of Section 35. Accordingly, there was no ground for the Commissioner to allow the appeal since Sub-section (3-A) of Section 35 was not available in the present case.

7. For the aforesaid reasons, the appeal is allowed. The order dated 14-8-1996 passed by the Commissioner and the order dated 14-10-1996 passed by the High Court are set aside.