

(2012) 08 BOM CK 0157

In the Bombay High Court

Case No : Writ Petition No. 8412 of 2011

Ramkrishna Patil and Others

APPELLANT

Vs

The State of Maharashtra and Arjun Marathe

RESPONDENT

Date of Decision : 23-08-2012

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 35(1)

Citation : (2012) 6 ALLMR 64 : (2012) 6 MhLj 948

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : P.B. Patil, for the Appellant; K.M. Suryawanshi, A.G.P. for Respondent Nos. 1 to 3 and Mr. G.V. Wani, Advocate, for the Respondent

Judgement

S.S. Shinde, J.—Rule made returnable forthwith. With consent of the parties heard finally. This writ petition takes exception to the judgment and order dated 5th October, 2011 passed by the Additional Divisional Commissioner, Nashik Division, Nashik in Grampanchayat Appeal No. 66 of 2011.

2. The background facts for filing this writ petition, as disclosed in the writ petition, are as under.

It is the case of the petitioners that, there are total number of 7 members in the Village Panchayat, Varkhedi, Taluka Erondol, District Jalgaon. On 30th March, 2011 the petitioners herein, who are the members of village panchayat Varkhedi moved the Tahsildar, Erondol for bringing "No Confidence Motion" against the respondent No. 4 who is Sarpanch of the village by taking recourse to the provisions of Section 35(1) of the Bombay Village Panchayat Act, 1958 (for short, "said Act"). On 30th March, 2011 respondent No. 3 Tahsildar, Erondol issued notices to the petitioners herein, as well to the Sarpanch taking recourse to the provisions of Section 35(2) of the said Act, specifically intimating by way of said notices that, on 6th April, 2011 special meeting will be convened at 11-00 a.m. It is the case of the petitioners that, notices are served upon the petitioners and the respondent No. 4 Sarpanch as well.

3. It is further case of the petitioners that, on 6th April, 2011, the respondent No. 3 has convened special meeting of the Panchayat for considering the motion of "no confidence" against respondent No. 4 Sarpanch. There were five members out of seven members present in the meeting, respondent No. 3 herein, has read over points of "no confidence motion" and thereafter, the petitioners raised three points for bringing "no confidence motion". In the said meeting, there was voting by raising hands and "no confidence motion" came to be passed against respondent No. 4 Sarpanch, since five members out of seven, have voted against respondent No. 4. The respondent No. 4 voted against "no confidence motion".

It is the contention of the petitioners that, in the said meeting, respondent No. 4 did participate and debated and also voted against "no confidence motion". Respondent No. 3 declared that, motion is carried out by majority of five members out of seven. Respondent No. 3 has noted details of said special meeting in the proceedings and obtained signature of five members along with signature of respondent No. 4 Sarpanch.

4. Being aggrieved by the special meeting of no confidence motion" held on 6th April, 2011 by respondent No. 3, respondent No. 4 filed Grampanchayat Dispute Application No. 11 of 2011 before respondent No. 2, challenged the legality of the said meeting. Respondent No. 2 herein, dismissed the said Grampanchayat Dispute vide its judgment and order dated 1st June, 2011 and confirmed the proceedings in meeting dated 6th April, 2011 held by respondent No. 3.

Being aggrieved by the judgment and order dated 1st June, 2011 passed by the Additional Collector, Jalgaon, respondent No. 4 herein filed Grampanchayat Appeal No. 66 of 2011 before respondent No. 1 Additional Divisional Commissioner, Nashik Division, Nashik. Respondent No. 1 allowed the said appeal, hence this writ petition.

5. The learned Counsel appearing for the petitioners submits that, the record shows and respondent No. 4 also admitted before respondent No. 1 that, he received notice of special meeting dated 6th April, 2011 but notice of no confidence motion is not actually received by him. Even Gramsevak of said village Panchayat also admitted in her affidavit that, Sarpanch has received notice of special meeting and record of said proceedings shows that, respondent No. 4 has participated in such meeting. It is further submitted that, record of special meeting dated 6th April, 2011 itself shows that, respondent No. 4 Sarpanch was present in the special meeting and participated and debated in the said meeting and voted against no confidence motion and made his own signature on the said proceedings, therefore, it is clear that, it was within the knowledge of respondent No. 4 that, there was such meeting. It is further submitted that, no confidence motion convened by the Tahsildar moved against only Sarpanch, and therefore, no question arises to give two separate notices and there is no provision to give separate notice of proposal of no confidence motion. It is submitted that, respondent No. 4 has already admitted that he has received notice of meeting dated 6th April, 2011, and in absence of provisions to

give notice of requisition of no confidence motion, respondent No. 4 can not raise objection that, notice of requisition of no confidence is not received by him.

The learned Counsel appearing for the petitioners pressed into service the reported judgment of this Court in the case of Yamunabai Laxman Chavan vs. Sarubai T. Jadhav and others [2004 (Suppl.) Bom.C.R. 1031] and reported judgment of the Supreme Court in the case of Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and Others, . The learned Counsel further submits that, the Hon''ble Supreme Court in paragraph-8 of the judgment in the case of Babubhai Muljibhai Patel (supra) held that, "it is no doubt true that accordingly to the form prescribe the ground for the motion of no confidence has to be mentioned in the notice of intention to move a motion of no confidence. It does not, however, follow there from that the ground must also be specified when a motion of no confidence is actually passed against a President."

The learned Counsel further pressed into service the judgment of this Court in the case of Yamunabai Laxman Chavan (supra) and submitted that, in that case, meeting was convened by requisite number of members, resolution was debated and discussed and both Sarpanch and Up-Sarpanch participated in meeting, resolution duly carried by majority of 2/3. In the present case also, respondent No. 4 participated, resolution debated and discussed. reported judgment of this Court in the case of Durgadas Ukhaji More and Others Vs. Additional Commissioner, Nashik Division and Others, , in which this Court held that, "the form of notice prescribe by sub rule (2) of Rule 2 of the Bombay Village Panchayats Sarpanch and Up-Sarpanch (No Confidence Motion) Rules, 1975 (for short "said Rules") should be directory and not mandatory. The learned Counsel also relied upon the reported judgment of this Court in the case of Appa Munjaji Pawar vs. Divisional Commissioner and others [2009 (5) Bom.C.R. 691] in which this Court held that, it is difficult to appreciate that when all other members have received notice of no confidence motion, it is only petitioner who has not received notice of no confidence motion. Once person loses confidence of majority, as required under statue, he has no right to continue in office and thrust himself against wishes of majority of members. In a democratic society will of the majority is paramount. The Counsel further submits that, motion of no confidence passed by the requisite 2/3rd majority should not fail only on technical ground, respondent No. 1 authority failed to appreciate that, the petitioners made compliance of Rule 2(2) of the said Rules and it is further duty of the concerned Officer to made compliance.

6. The learned Counsel appearing for the petitioners pressed into service the exposition of this Court in the case of Yamunabai Laxman Chavan (supra) and submitted that, this writ petition deserves to be allowed.

7. On the other hand, the learned Counsel appearing for respondent No. 4 invited my attention to the reasons recorded by respondent No. 1 and submitted that, the appeal is rightly allowed by the appellate authority and therefore, this Court may not interfere. The learned Counsel appearing for respondent No. 4 submits

that, motion of no confidence was moved against him and meeting was convened on 6th April, 2011 and though, the respondent No. 4 had received the notice of meeting, however, he had not received the copy of no confidence motion along with the said notice which incapacitated him from addressing said meeting properly. It is further submitted that, though the respondent No. 4 attended the meeting, he could not address the meeting properly as he was not aware of the grounds on which no confidence motion had been moved against him. The learned Counsel further submits that, due to lack of knowledge of the said grounds, attending the meeting has been completely a formality which is not certainly a compliance of the procedural law. He further submits that, it is almost necessary that, a person who is to face a meeting of no confidence motion is aware of the points raised against him and likely to be dismissed in the said meeting. It is further submitted that, in the instant matter, it is admitted fact that, the notice of memorandum of no confidence motion was not available with him. The Village Development Officer Smt. Manisha Ahire has specifically stated that, respondent No. 4 was not served with a motion of no confidence though he was served with the notice of meeting, so also, the Talathi of village Varkhedi has specifically stated that, copy of no confidence motion could not be served on respondent No. 4 as they were not received from the concerned office. It is further submitted that, service of no confidence motion is a must as person against whom it has been moved can very well address the meeting on the issues that are raised against him.

The learned Counsel appearing for respondent No. 4 pressed into service the exposition of this Court in the case of Budhiya Dayaram Jamunkar vs. Additional Commissioner, Amravati and others reported in 2009(5) Mh.L.J. 835 and submitted that, since two separate notices were not given to respondent No. 4 and particularly in respect of "no confidence motion" no notice was given and therefore, "no confidence motion" passed against respondent No. 4 deserves to be quashed and set aside. The Counsel for respondent No. 4 submits that, in a similar factual scenario, this Court in the case of Budhiya Dayaram Jamunkar (supra), has taken a view that, there is non compliance of Rule 2(1) of the said Rules, and therefore, in the facts of that case, this Court has quashed and set aside no confidence motion passed against the petitioners therein. Therefore, the Counsel for respondent No. 4 submits that, this writ petition is devoid of any merits, same may be dismissed.

8. The learned A.G.P. appearing for the State invited my attention to the affidavit in reply filed by Mr. Tukaram s/o Tana Sonawane, working as Block Development Officer in the office of Divisional Commissioner Office, Nashik Division, Nashik on behalf of respondent Nos. 1 and 2 and submitted that, this writ petition may be dismissed.

9. I have given thoughtful consideration to the rival submissions. With the able assistance of learned Counsel appearing for the parties, perused the pleadings in the petition, annexures thereto, reply filed by the respondent State authorities,

written notes of arguments filed by the Counsel for the petitioners and also learned Counsel appearing for respondent No. 4 and the provisions of Bombay Village Panchayat Act, 1958, the relevant rules and also the judgments of this Court and the Supreme Court pressed into service by the Counsels appearing for the parties.

10. In the present case, the appellate authority held that, notice of the special meeting was received by respondent No. 4, however, the notice of proposed "no confidence motion" was not received by respondent No. 4. The appellate authority has taken a note of affidavit filed by Gramsevika Mrs. Manisha Tarachand Ahire and also affidavit of one Mr. Sushilabai Subhash Marathe, the member of the Gram panchayat and accepted the contentions of the appellant that, he did not receive notice of "no confidence motion". The appellate authority has also relied upon the statement of Talathi of village Varkhedi in which he has stated that, since he did not receive copy of notice of "no confidence motion." he could not serve the same upon respondent No. 4. Therefore, this Court has to proceed further to decide this petition in the aforestated background stating factual position in the matter that the copy of the notice of "no confidence motion" was not served upon the appellant.

11. However, it is admitted position that, the appellant did receive copy of the notice convening special meeting of the members of the Grampanchayat by respondent No. 3 herein, on 6th April 2011 at 11-00 a.m. In short, the appellant did receive notice of the special meeting which was to be conducted on 6th April, 2011 at 11-00 a.m. from respondent No. 3, however, did not receive copy of the notice of "no confidence motion".

The real question which arises in the facts of this case would be, "whether it would be permissible for the Courts to hold that, resolution which has been duly passed by 2/3rd majority of the Grampanchayat members of village "Varkhedi", against respondent No. 4 bringing "no confidence motion", upon requisition moved by 1/3rd members of the panchayat eligible to sit and vote, in a meeting convened by the Tahsildar on 6th April, 2011 in accordance with law, will stand invalidated, merely because the Tahsildar has not send copy of the actual requisition to the Sarpanch i.e. respondent No. 4 herein, and further whether such requirement can be read into the provisions of Section 35 (2) of the said Act."

12. This Court in the case of Durgadas Ukhaji More and others (supra), while interpreting the provisions of Section 35 of the said Act and Rule 2(2) of the said Rules, in paragraph-7 has held that, the persons who wish to move the no confidence resolution are required to give notice to the Tahsildar along with seven additional copies thereof. Once they do so, their responsibility ends. They cannot be faulted for failure on the part of the Tahsildar to give notice thereafter to the members of the Panchayat including Sarpanch or Up-Sarpanch, as the case may be against whom "no confidence motion" is moved by the Grampanchayat members by requisition signed by more than 1/3rd members of

the Pannchayat. This Court in the said authoritative pronouncement has taken a view that, once "no confidence motion" against Sarpanch is passed by 2/3rd majority, omission to specify grounds for moving motion of no confidence or error in typing of the verification clause would not by itself invalidate the notice, form of notice prescribed by rule 2(2) of the said Rules is directory and not mandatory.

13. Yet, in another authoritative pronouncement, the Division Bench of this Court in the case of Nimba Rajaram Mali vs. Collector, Jalgaon and others reported in 1998(3) Mh.L.J. 204, has taken a view on interpretation of Rule 2(2) of the said Rules, and in paragraph-8 of the said judgment held that, lapse on the part of Tahsildar in not serving copy of "no confidence motion" to all concerned, would not amount invalidation of "no confidence motion."

Yet, in another exposition of this Court in the case of Appa Munjaji Pawar vs. Divisional Commissioner and others [2009 (5) Bom.C.R. 691], this Court has taken a view that, once person loses confidence of majority, as required under statute, he has no right to continue in office and thrust himself against wishes of majority of members.

This Court in the case of Yamunabai (supra) while considering similar controversy raised, in the facts of that case, in paragraph-9 held as under.

9. Under the Bombay Village Panchayat Act, 1958, what is made mandatory is (i) The moving of a motion of no confidence by a stipulated number of members of the Gram Panchayat (one third); (ii) Those who move the motion must be entitled to sit and vote at a meeting of the panchayat; (3) The furnishing of a notice of requisition to the Tahsildar as prescribed; (iv) The convening by the Tahsildar of a special meeting of the Panchayat within a period of seven days of the receipt of the notice at the time and place specified; (v) The entitlement of the Sarpanch and Upa-Sarpanch to speak or to otherwise participate in the proceedings and to vote upon the resolution; and (vi) The passing of the motion by a majority of not less than two-thirds of the total members of the panchayat entitled to sit and vote. The provisions which the legislature considered as being mandatory in order to constitute a valid motion of no confidence have been specified in sub-section (1), (2) and (3) of Section 35. While construing the Rules what must be borne in mind is that the Act mandates the giving of a notice to the Tahsildar as prescribed, in construing as to which part of the Rules is mandatory, regard must be had to the provisions of the parent legislation because the legislature has indicated in clear terms therein those provisions in respect of which a punctilious compliance is expected. The members of the Gram Panchayat who seek to move a motion of no confidence against the Sarpanch or Upa-Sarpanch or both are required to furnish a notice of their intention to do so to the Tahsildar. Before he convenes the meeting, the Tahsildar has to be satisfied that the motion has been moved by one third of the total number of members entitled to sit and vote. The Act then provides that the Tahsildar must convene a meeting of the panchayat for consider the motion within a period of

seven days. When he convenes a special meeting of the Panchayat, the Tahsildar furnishes an intimation to the members of the Panchayat including the Sarpanch and Upa-Sarpanch of the convening of the meeting. Sub-Section (2) of Section 35 requires the Tahsildar to convene a special meeting of the Panchayat for considering the motion and it is implicit therein that an intimation has to be furnished to all members of the Panchayat including the Sarpanch and Upa-Sarpanch who are sought to be proceeded against. In the event that the Sarpanch and the Upa-Sarpanch seem, in addition, copies of the actual requisition that has been issued by the members of the Panchayat, it is open to them to move the Tahsildar by submitting an application. However, it would be impermissible for the Court to hold that resolution which has been duly passed by a two thirds majority, upon a requisition moved by one third of the members of the Panchayat eligible to sit and vote, at a meeting convened by the Tahsildar in accordance with law will stand invalidated merely because the Tahsildar has not send a copy of the actual requisition to the Sarpanch or the Upa-Sarpanch as the case may be. Such a requirement cannot be read into the provisions of section 35(2). The provisions contained in Rule 2(2) must be regarded as directory having regard to the true nature and purpose of a motion of no confidence. A motion of no confidence is not taken akin to disciplinary proceedings or a provision for removal for misconduct. A removal for misconduct is punitive. In such a case, a person who is sought to be proceeded against has to be furnished with a charge sheet and the removal must take place by following an enquiry that is consistent with the principles of natural justice. A motion of no confidence on the other hand, does not partake of a punitive character nor is it based on charges of misconduct which have to be proved. A motion of no confidence is the fundamental expression of the collective will of the members of a legislative body that they lack confidence in one of their own. The contention that the right to speak at the meeting given to a Sarpanch or Upa-Sarpanch requires that the requisition which has been moved be furnished to them cannot be accepted to. Should the Sarpanch or Upa Sarpanch seek to have copies of the requisition, it is open to them to apply to the Tahsildar. However, where as the present case the Sarpanch or Upa-Sarpanch chooses to participate in the meeting whereafter a resolution is duly passed by the requisite majority, it would stultify the democratic process if the Court were to nullify the resolution on the ground that a copy of the requisition was not furnished to the Sarpanch or Upa-Sarpanch.

(Emphasis supplied)

14. Upon careful reading of the paragraph-9 reproduced herein above from the judgment of Yamunabai (supra), it is abundantly clear that, it is impermissible for the Court to hold that, resolution which has been duly passed by two thirds majority, upon a requisition moved by one third of the members of the Panchayat eligible to sit and vote, at a meeting convened by the Tahsildar in accordance with law will stand invalidated merely because the Tahsildar has not send a copy of the actual requisition to the Sarpanch or the Upa-Sarpanch as the case may

be. Such a requirement cannot be read into the provisions of section 35(2). The provisions contained in Rule 2(2) of the said Rules, must be regarded as directory having regard to the true nature and purpose of a motion of no confidence. A motion of no confidence is not taken akin to disciplinary proceedings or a provision for removal for misconduct. A removal for misconduct is punitive. In such a case, a person who is sought to be proceeded against has to be furnished with a charge sheet and the removal must take place by following an enquiry that is consistent with the principles of natural justice. A motion of no confidence on the other hand, does not partake of a punitive character nor is it based on charges of misconduct which have to be proved.

In the said case, this Court has further taken a view that, a motion of no confidence is the fundamental expression of the collective will of the members of a legislative body that they lack confidence in one of their own. The contention that the right to speak at the meeting given to a Sarpanch or Upa-Sarpanch requires that the requisition which has been moved be furnished to them cannot be accepted to. Should the Sarpanch or Upa-Sarpanch seek to have copies of the requisition, it is open to them to apply to the Tahsildar.

In the exposition of this Court in the case of Yamunabai Laxman Chavan and others (supra), this Court has considered the judgment of Supreme Court in the case of Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and Others, and also judgments of this Court in the cases of Annapurnabai Ajabrao vs. Annapurnabai Anndrao [1967, Mh.L.J.36]; Nimba Rajaram Mali Vs. Collector, Jalgaon and others, ; Durgadas Ukhaji More and Others Vs. Additional Commissioner, Nashik Division and Others, and Arjun Sambhaji Khade and Others Vs. Mangal Ankush Kharmate and Others, and has taken a view that, the provisions contained in Rule 2(2) must be regarded as directory having regard to the true nature and purpose of a motion of no confidence. It is impermissible for this Court to hold that resolution which has been duly passed by a two-thirds majority, upon a requisition moved by one third of the members of the Panchayat eligible to sit and vote, at a meeting convened by the Tahsildar in accordance with law will stand invalidated merely because the Tahsildar has not sent a copy of the actual requisition to the Sarpanch or the Upa-Sarpanch as the case may be.

15. In the case in hand, "no confidence motion" is passed by 2/3rd majority. Out of seven panchayat members, five have voted against respondent No. 4 Sarpanch. The respondent No. 4 has voted against "No Confidence Motion". It is not in dispute that, requisition was properly moved by more than 1/3rd members of the panchayat and "no confidence motion" is passed by 2/3rd majority. Therefore, as held by this Court in the aforesaid pronouncement, requirement of Rule 2(2) is directory and not mandatory. If respondent No. 4 did not receive copy of the requisition of "no confidence motion", it was open for him to apply to the Tahsildar. Therefore, in my considered opinion, viewed from any angle, the judgment and order passed by the Additional Collector, Jalgaon was in accordance with law and same should have been maintained by the appellate

authority. The appellate authority, without any discussion about the relevant provisions and also authoritative pronouncements of this Court cited supra, has allowed the appeal of respondent No. 4, who has no right to continue as Sarpanch, since "no confidence motion" is passed against him by 2/3rd majority. Therefore, impugned judgment and order dated 5th October, 2011 passed in Grampanchat Appeal No. 66 of 2011 by the Additional Divisional Commissioner, Nashik Division, Nashik is quashed and set aside. The Judgment and order passed by the Additional Collector, Jalgaon in Grampanchayat Dispute No. 11 of 2011 stands confirmed. The writ petition is allowed to above extent. Rule made absolute on above terms. No order as to costs.