

(2014) 02 BOM CK 0107

In the Bombay High Court

Case No : Writ Petition No. 6594 of 2013

Ravindra and Visnhu

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

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

Citation : (2014) 4 ALLMR 213 : (2014) 4 MhLj 443

Hon'ble Judges : Z.A. Haq, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : P.B. Patil, for the Appellant; T.R. Kankale, A.G.P. for Respondent Nos. 1 and 2, Mr. R.N. Ghuge, Advocate for Respondent Nos. 4 to 12 and Mr. D.A. Sonone, Advocate for Respondent No. 13, for the Respondent

Judgement

B.P. Dharmadhikari, J.—Heard Shri P.B. Patil, learned Counsel for the petitioners, Shri T.R. Kankale, learned A.G.P. for respondent nos. 1 and 2, Shri R.N. Ghuge, learned Counsel for respondent nos. 4 to 12, Shri Sonone, learned Counsel for respondent no. 13. Looking to the nature of controversy, we have heard matter by issuing Rule and making it returnable forthwith. By inviting attention to the proceedings of no confidence meeting conducted on 06.08.2013 Shri Patil, learned Counsel appearing on behalf of the petitioners points out that the motion of no confidence was not moved therein as mandated by the Bombay Village Panchayat (Meeting) Rules, particularly Rule 17 thereof. He submits that thus the motion of no confidence was not moved on 06.08.2013, and hence, the second such attempt in pursuance of notice dated 07.12.2013 issued by the respondent no. 2 Tahsildar convening meeting on 13.12.2013 is, without jurisdiction and bad. He relies upon the express language of Section 35(3-A) of the Bombay Village Panchayat Act, 1958 for said purpose. In order to show how the motion is required to be moved and the ensuing consequences, if those mandatory compliance are not made, he relies upon a Division Bench judgment reported at Vishnu Ramchandra Patil and Others Vs. Group Gram Panchayat and Others etc. etc., . He points out that a Full Bench judgment of this Court reported at Shri

Viswas Pandurang Mokal Vs. Group Gram Panchayat Shihu and Others, is relied upon by the said Division Bench. He further contends that respondents were aware of requirement of moving and cannot claim ignorance of provisions of law and hence, as there is a failure to comply with Rule 17, the provisions of bar contemplated by Section 35(3-A) of the Act operates.

2. Shri Kankale, learned A.G.P. appearing on behalf of respondent nos. 1 and 2 and Shri Ghuge, learned Counsel appearing for respondent nos. 4 to 12 oppose the petition. Shri Ghuge, learned Counsel relies on the Division Bench judgment reported at Prakash Patil Vs. The State of Maharashtra and others, , particularly paragraph no. 7 to urge that provisions relating to bar and provisions of Meeting Rules need harmonious construction and this Division Bench has rightly found that the words "not moved" are synonymous with "when motion is not carried out". He also seeks support from the judgment of Hon"ble Apex Court reported at Ramesh Vs. Sheshrao and Others, to urge that when meeting in which such motion is cleared by majority is found vitiated on technical grounds, bar u/s 35(3-A) does not operate.

3. In the background of arguments advanced we have perused the papers, as also considered the judgments. On 06.08.2013 a meeting was conducted by the competent officer and petitioners did not attend said meeting. The proceedings show that no confidence was expressed on 10 counts and after debate on those 10 points, voting by secret ballot was taken. 9 Members voted in favour of motion, while only One opposed it. The Presiding Officer accordingly declared that motion of no confidence was carried out on 6.8.2013.

4. In further challenge to this resolution before the Collector, Buldhana the said Authority has found service of notice of said meeting upon petitioners defective. It also found that there could not have been a joint notice of no confidence motion against the Sarpanch and Upa-Sarpanch. Lastly, need to adhere to provisions of Rule 17 in the light of Full Bench Judgment (supra), is also emphasized. Thus, on technical grounds a motion of no confidence which became a resolution and otherwise cleared by majority is, found to be vitiated. It was therefore, set aside.

5. After it was set aside, the respondents submitted fresh requisition on 07.12.2013 and accordingly the Tahsildar and Presiding Officer has issued a notice convening meeting for the said purpose on 13.12.2013. That notice dated 07.12.2013 is questioned in the present petition.

6. The need to comply with the provisions of Rule 17 of the Meeting Rules, 1959 is not in dispute. Facts show that said requirement is not satisfied on 06.08.2013 as motion of no confidence was neither proposed nor seconded by anybody. However, the bar contained in Section 35(3-A) of the Act, is in the following words:-- "If motion is not moved or is not carried". Thus in a meeting, if it is validly convened, if there is a failure to move the motion, the first part of bar under sub-section (3-A) can be said to be satisfied. However, we need not go

into that controversy because the Division Bench of this Court in case of Prakash Barku Patil vrs. State of Maharashtra and others (supra), has looked into it in the background of provisions of Rule 2(3) of the Bombay Village Panchayats Sarpanch and Upa-Sarpanch (No Confidence Motion) Rules, 1975 and held that if both the provisions were to be made effective, harmonious construction was necessary. Division Bench has thus held that the words "motion is not moved" is synonymous and amounts to same thing as "motion is not carried". Here we have already noted that motion was carried on 6.8.2013 and no confidence was expressed against the petitioners.

7. In Prakash Rarku Patil Vs. State of Maharashtra and others (supra), this Court had no occasion to consider the applicability of Rule 17 of the Meeting Rules and to note how the motion is required to be moved in the meeting of the Gram Panchayat. Effect of failure to record technical compliance with ingredients of Rule 17 did not figure for its consideration. It did not have the advantage of Full Bench (supra) ruling of this Court or the Supreme Court precedent in case of Ramesh vrs. Sheshrao and others (supra). This Division Bench can not be construed as equating situation where motion is not moved with one in which motion fails after it is moved as it is not supported by the majority.

8. Later Division Bench in 1998 (5) LJ 168-- Anant Ganu Gaikwad Vs. State of Maharashtra & Ors. concurs with this earlier view in Prakash Rarku Patil Vs. State of Maharashtra and others (supra). This Division Bench of this Court held that the meeting to be held on 23 January, 1998, would have been non-est in law and, therefore, was rightly cancelled by the Tahsildar on 22nd January, 1998. That being the legal position, the bar contained in sub-sec. (3A) of sec. 35 would not be applicable. It was not a case where the motion could have been moved in the meeting dated 23rd January, 1998 but was not moved or was moved but was not carried by a majority of the total number of members. The bar against moving of a fresh motion contained in sub-sec.(3A) of sec. 35 applies only when the earlier motion is not moved or is not carried by majority of the total number of members. This contemplates that at a validly convened meeting, the motion of no confidence could have been moved. In the facts before it the Division Bench held that the convening of the meeting on 23rd January, 1998 was totally impermissible in law and was in the teeth of the proviso to sub-sec.(3) of sec. 35 and, therefore, was wholly impermissible and void. There was, therefore, no question of a motion of no confidence being not moved or not carried in the meeting of 23rd January, 1998. Since the meeting itself could not have been held, in as much as, it was not permissible in law to hold such a meeting on 23rd January, 1998, the bar contained in sub-sec. (3A) of sec. 35 of the Act was held not applicable.

9. The Hon"ble Supreme Court has in case of Ramesh vrs. Sheshrao and others (supra), found that when such meeting in which motion is carried out, is found vitiated on account of technical lacunae like non service of notice, bar contemplated u/s 35(3-A), does not operate.

10. We find that the motion can not be said to be "not carried" unless and until it is "moved" legally. It fails only after it is so moved and is voted against. Thus "not carried" is a later stage reached after it is "moved" as per law and becomes legally available for debate in the meeting. Therefore "not moved" is not same as "not carried". Section 35(3A) contemplates two distinct situations - one at threshold of a legal/valid meeting while the later at the end of such meeting though the consequences of both are same. "Not moved" bar is attracted only when it is shown that the meeting was legally convened and therefore, the motion could have been moved in it. Said bar is attracted only when the motion is not moved deliberately when members after due deliberation take a decision not to press it i.e., they give up desire to remove the Sarpanch or Up-sarpanch. When the meeting is held illegal or the motion could not have been moved/considered at all in it, the bar is not attracted. "Not carried" bar becomes operational only when the motion is legally moved and rejected in the meeting. Motion "not moved" can not reach the stage of "not carried". "Not carried" shows failure or rejection of motion of no confidence while "not moved" is the step or decision of the requisitionists not to press no confidence motion at all.

11. We in present facts find that there was no refusal by the respondents to move the motion. On the contrary, everybody has participated in the meeting under the belief or impression that motion had been moved, that it was validly moved and was available for discussion. Accordingly, everybody participated in said meeting and voted in favour of no confidence motion. A resolution expressing no confidence was thus passed against petitioner. It has been set aside only on technical ground not even in contemplation on the date of that meeting. Hence, we find no substance in the technical objection being raised by the petitioner. Writ Petition accordingly deserves to be dismissed, the same is accordingly dismissed. Rule discharged. No costs. Shri Patil, learned Counsel for petitioner at this seeks continuation of interim relief, already granted for a period of one week more. Shri Kankale, learned A.G.P. and Shri Ghuge, learned Counsel appearing for respective respondents strongly oppose this request. Taking over all view of the matter, we are not inclined to continue the interim relief.