
(2002) 12 BOM CK 0069

In the Bombay High Court

Case No : Writ Petition No. 4346 of 2001

Sanjay Chavan and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 16-12-2002

Acts Referred:

Bombay Village Panchayats Act, 1959 — Section 35, 35(1), 35(3)

Citation : (2003) 4 ALLMR 242 : (2003) 2 BOMLR 771 : (2003) 3 MhLj 596

Hon'ble Judges : A.B. Naik, J

Bench : Single Bench

Advocate : R.N. Dhorde, instructed by N.R. Bhavar, for the Appellant; P.S. Patil, A.G.P. for respondent No. 1 and M.Y. Deshmukh, for the Respondent

Judgement

A.B. Naik, J.—In this petition, a short question arises for my consideration as to whether the order passed by the Additional Commissioner, Nasik Division, Nasik, allowing the appeal filed by the present respondent No. 5, declaring the meeting dated 2-7-2001 as vitiated on the ground that the meeting was not convened within seven days from the receipt of notice of no confidence motion by the Tahsildar and the minutes of the meeting were not properly written, can be sustained.

2. The undisputed facts can be briefly stated thus :

The petitioners and the respondent No. 5 were elected as members of Gram Panchayat of village Jeur Kumbhari, Tq. Kopargaon, District Ahmednagar. The term of the office of the petitioners and respondent No. 5 commenced in the month of October 2000 and would come to an end in October 2005. The respondent No. 5 is elected as Sarpanch (hereinafter referred to as "Sarpanch") of the said Village Panchayat. The members of the said Village Panchayat noticed that respondent No. 5 is not carrying the obligation and duties cast upon him by the statute in conducting the affairs of the Village Panchayat. The members were dissatisfied about the functioning of the Sarpanch. Considering these aspects, the members by their notice dated 25-6-2001 gave a notice as required u/s

35(1) of the Bombay Village Panchayats Act, 1958 (hereinafter referred to as "the Act") to the Tahsildar for convening the meeting to consider the no confidence motion. The notice is part of the paper book at Exhibit-A. The notice states that the members desire to move no confidence motion against the Sarpanch on the grounds stated in it. The notice is signed by eight members out of eleven members of the said Village Panchayat. Though there is a dispute that not 8 but only 7 members have signed the requisition, but considering the fact that the notice is to be issued by not less than 1/3rd members of the Panchayat who are for time being entitle to sit and vote at the meeting, even if 7 members have given notice to convene the meeting for considering no confidence motion against the Sarpanch, it could not be treated as invalid notice, as admittedly, it is signed by more than 1/3rd members. On receipt of the requisition/notice from the members, the Tahsildar by his notice dated 26-6-2001 convened the meeting to consider no confidence motion moved by the members against the Sarpanch on 2-7-2002. On the date fixed for the meeting, the Tahsildar conducted the meeting and in the said meeting 9 members were present who unanimously resolved to pass a resolution expressing their no confidence in the Sarpanch. The minutes of the meeting are at Exhibit-C to the petition. Admittedly, the respondent No. 5 - Sarpanch was not present in that meeting.

3. On passing of the resolution of no confidence, the Sarpanch, by invoking the provisions of Section 35(3B) of the Act, filed a dispute before the Collector, Ahmednagar. The memo of dispute filed before the Collector, Ahmednagar, is at Exhibit-D. After filing of the dispute, it appears that the Collector has issued notice to the members and the members have filed their say to the said dispute. Their say is part of the paper book at page 28.

4. Considering the rival contentions raised by the parties and considering the evidence produced on record, the Additional Collector dismissed the dispute by his order dated 6-8-2001.

5. Feeling aggrieved by the order dated 6-8-2001 passed by the Additional Collector, Ahmednagar, in dispute No. 35/2001, the Sarpanch preferred appeal before the Additional Commissioner u/s 35(3C) of the Act. The appeal memo filed before the Additional Commissioner is part of the paper book at Exhibit-G. On filing of the appeal, the Additional Commissioner noticed the members and the members submitted their say to the said appeal. The Tahsildar also submitted his reply on 3-9-2001. The Additional Commissioner, after considering the rival submissions of the parties, came to the conclusion that the minutes of the meeting, which was convened for considering no confidence motion, were not properly written. He found that the notice u/s 35(1) and (2) was not issued within seven days and its copy has not been given to the Sarpanch and the Upa Sarpanch. He also recorded a finding that the Tahsildar has sent copies of the notice to the Commissioner, Collector and the Chief Executive Officer. The Additional Commissioner found fault with the writing of the minutes of the meeting and considering this aspect and noticing the same lacunae in conducting

the meeting and in sending the notice, the Additional Commissioner came to the conclusion that the meeting is not properly convened and, therefore, it is vitiated for the reasons recorded in his order and accordingly, by order dated 29-9-2001, he allowed the appeal and set aside the order passed by the Additional Collector, Ahmednagar, and declared the no confidence motion as invalid.

6. The order passed by the Additional Commissioner, Nashik Division, Nashik in Appeal No. GP/Appeal/46/2001 dated 29-9-2001 is impugned in this writ petition. This writ petition was lodged in this Court on 12th October, 2001 and this Court, on 3-12-2001, issued Rule nisi. Thereafter the petition was moved for out of turn hearing and accordingly this Court, by order dated 30th August, 2002, directed the petition to be heard peremptorily and accordingly the petition is listed before me for hearing.

7. Shri Dhorde, learned advocate instructed by Shri N.H. Bhavar, advocate, submitted that the points which were agitated before the learned Additional Commissioner were not at all raised before the Additional Collector. Shri Dhorde contended that question of writing of minutes was not at all raised in memo of appeal or even remotely suggested at the time of arguments before the Additional Collector. Before the Additional Collector, the only question raised was regarding service of notice to the Sarpanch and, therefore, Shri Dhorde contended that the Sarpanch cannot make out a case to find fault with the matter of writing the minutes. Shri Dhorde rightly contended that the minutes were not written by the members of the Panchayat and they were written by the Presiding Officer and/or Secretary of the Panchayat and the said Officer has filed a detailed reply accepting the contents of the minutes of the meeting and, therefore, Shri Dhorde contended that it was not proper on the part of the Additional Commissioner to ponder upon the said issue which was not at all raised before the Additional Collector. Shri Dhorde further contended that the only point which should have been really considered in its proper perspective is regarding the notice of the meeting. Shri Dhorde contended that the Additional Commissioner has proceeded on the footing that the meeting was not convened within 7 days from the receipt of the notice by the Tahsildar. In fact on considering the observations and the reasons of the Additional Commissioner, Nashik Division, Nashik, it is clear that he has not considered this aspect in proper perspective. The observation that is made by the Additional Commissioner is writing of the minutes of the meeting. The Additional Commissioner observed thus:

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8. Shri Deshmukh, learned advocate for the respondent No. 5 - Sarpanch strenuously urged that in fact the notice was received by the Tahsildar on 25th June, 2001 itself and the Tahsildar issued notices on 26-6-2001 convening the meeting on 2nd July 2001. Considering this aspect, Shri Deshmukh contended that the day of receipt of the notice by the Tahsildar has to be included and then 7 days period shall be calculated accordingly. Shri Deshmukh, relying on the provisions of Section 35(2) of the Act, contended that the Tahsildar should have convened the meeting within 7 days from the date of receipt of the notice from the members. Shri Deshmukh brought to my notice an unreported judgment of this Court in W. P. No. 575/2001 decided on 13th June, 2001 (Coram : R. M. S. Khandeparkar, J.) [since reported in Mandabai Balnath Rohom and Others Vs. Ashok Fakira Chandar and Others,].

9. On the other hand, Shri Dhorde placed strong reliance on the judgment of this Court in the case of Pandhari Shripati Patil v. State of Maharashtra and Ors. reported in 2002(5) Mh.L.J. 171 = 2002(1) All M.R. 848. Shri Dhorde submitted that the question of calculating the period of notice is no more res integra in view of the judgment of this Court in Pandhari's case. Shri Dhorde further submitted that even assuming that the notice was issued on 25-6-2001, but the 7th day from 25-6-2001, being Sunday and, therefore, convening the meeting on the next day is not invalid. Shri Dhorde also placed reliance on the judgment of the Apex Court in the case of Manohar Joshi Vs. Nitin Bhaurao Patil and Another, .

10. Shri Patil learned Assistant Government Pleader has filed affidavit of Vasant Ramgir Gosavi, Tahsildar, Kopargaon in reply to the petition and stick up to the stand taken in the reply. He submitted that the minutes were properly written and the observations of the Additional Commissioner are unwarranted. Besides this, he has not made any submission and stated that the submissions incorporated in the said affidavit-in-reply be accepted.

11. In view of the positive record, the reasoning given by the Additional Commissioner to set aside the Resolution passed against the Sarpanch is invalid, though not perverse, the Additional Commissioner, it appears that, has no noticed the statutory provisions on the subject. A meeting to consider no confidence motion against the Sarpanch/Upa Sarpanch is to be convened as per Section 35 of the Act. Such meeting is governed and regulated by the Bombay Village Panchayat Sarpanch and Upa Sarpanch (No Confidence Motion) Rules, 1975 (hereinafter referred to as "Rules"). It appears that the learned Commissioner has not even referred to the statutory provisions. Provisions of Section 35(2) reads thus:

"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 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)"

Sub-section (2) of Section 35 gives a right to the Sarpanch to speak and to take part in the meeting. In the present case, the Sarpanch (respondent No. 5) was not present in the meeting, he has not taken part in the meeting. In such situation, the Additional Commissioner should not have allowed him to raise technical points in order to overturn the wishes of majority.

That apart, if he has considered Rule 2(3), then the Additional Commissioner might not have come to the conclusion that the meeting was not called properly, and the notice so given is not proper. Sub-rule (3) of Rule 2 cast a duty on the Tahsildar to satisfy himself about (i) that notice has been given by not less than 1/3rd of total number of members who are for the time entitled to sit and vote in the meeting (ii) then convey the meeting within seven days. These provisions are not considered by the Additional Commissioner. It is not disputed that the members who have signed the requisition, admittedly more than 1/3rd strength then it is immaterial whether the eighth member has signed it or not.

It is to be noted that the tenure of the office of Sarpanch is wholly at the pleasure and will of the majority of the members of the Panchayat. He has no right to that office except save and otherwise provided u/s 35(3) of the Act. He can occupy" that office so long he enjoys the confidence of majority of the members. He cannot stick to the office when he loses the confidence of majority of the members. He has to vacate the office immediately. The majority express their confidence or no confidence. As soon as he loses the majority, he is not entitled to continue with the office. The learned Commissioner should have considered these aspects and should not have on very technical point set aside the order of the Additional Collector or the resolution of no confidence passed against the Sarpanch, by the majority, as invalid.

12. Having given anxious consideration to the abovesaid aspects, I am of the view that the order of the Additional Commissioner cannot stand to the reason for the following reasons :

(i) That the points which were raised before the Additional Collector were not at all pressed in service before the Additional Commissioner.

(ii) The points, which were pressed in service before the Additional Collector stated in the dispute, are at Grounds No. 4, 5, 6, 7 & 8. The Additional Collector, on the evidence produced on record, came to the conclusion that the Sarpanch has received the notice on 28-6-2001 and the Sarpanch has submitted his resignation after receipt of the notice.

13. However, in the appeal against the said order, the Additional Commissioner

took a very curious view of the matter, as stated above, and held that because of the improper writing of the minutes of the meeting, the entire proceedings of the meeting to consider the no confidence motion is vitiated. It is to be noted here that writing of the minutes is not in the hands of the members nor in the hands of the Sarpanch. The minutes are admittedly written by the Gram Sevak and in this petition, by filing affidavit-in-reply, the Tahsildar, who presided over the meeting, has accepted that the minutes of the meeting were properly written.

14. It has come on record that though the Sarpanch has tendered his resignation, it was not accepted or granted till the resolution was passed. The Additional Collector, as a matter of fact, recorded findings thus:

(i) Sarpanch has received the notice of the meeting dated 2-7-2001 on 28th June, 2001.

(ii) On 6th July, 2001, the Gram Sevak, Jeur Kumbhari Village Panchayat informed in writing that the Sarpanch has received the notice on 28-6-2001 and thereafter the Sarpanch has tendered his resignation on 28-6-2001 personally to the Block Development Officer, and the Sarpanch stated that, as he has resigned, there is no necessity to pass resolution of no confidence,

(iii) Meeting was convened as per Section 35(1)(2) of the Act.

15. In the democratic process, the majority view cannot be flouted or thrown at winds by taking a technical view of the matter. In the present case, it is undisputed that 9 members were present in the meeting held on 2-7-2001 and they unanimously passed a resolution of no confidence against the Sarpanch expressing their no confidence in him. The learned Additional Commissioner should have given weightage to the views of the majority. In the democratic process, rule of majority always prevail and technicalities cannot come in the way of the majority. Therefore, in my opinion, when majority members of the Village Panchayat have expressed their no confidence in the Sarpanch, it was improper for the Additional Commissioner to allow the appeal on the ground that the minutes of the meetings were not properly written and the entire meeting is invalid.

16. In the present case, admittedly the Sarpanch was absent in the meeting held on 2-7-2001 and the reasons for his absence are twofold i.e. (i) that he has resigned from the post of Sarpanch on 28-6-2001; (ii) he has not received the notice of meeting. On both these counts, both the authorities below have negated the claim of the Sarpanch. Therefore, whether the minutes were properly written or not cannot be questioned by the person who remained absent in the meeting. In view of this aspect, the learned Additional Commissioner should not have interfered in the order passed by the Additional Collector and should not have interfered in the resolution passed by the majority of the members only on the ground that the minutes of the meeting were not properly written. In my judgment, the observations and findings of the Additional Commissioner, in that regard, are uncalled and not warranted as the Sarpanch

has not taken any part in the meeting. For these reasons, it is really not necessary to ponder upon the other issue i.e., as to whether the meeting was convened and held within 7 days from the date of receipt of the notice by the Tahsildar. Without going into the controversy, the following dates will speak for itself. The notice was received on 25-6-2001 and the Tahsildar has issued notice on 26-6-2001, for calculating 7 days, the day of receipt of notice has to be excluded and on excluding that day, the meeting was held on 7th day i.e. on 2-7-2001, which, in my judgment, is valid and proper. For the view, which I have taken, I am supported by the judgment of this Court and the Apex Court (supra).

17. With this background of the matter, I am of the view that the Additional Commissioner has committed an error apparent on the face of the record in passing the impugned order and that order cannot sustain.

18. Accordingly, the impugned order dated 29-9-2001 passed by the Additional Commissioner, Nashik Division, Nashik, is set aside by issuing a writ of certiorari. Rule made absolute in terms of Prayer Clause (B). There shall be no order as to costs. It is further held that the post of Sarpanch has fallen vacant as per Section 35(3) of the Act.

19. It is informed at the Bar that the respondent No. 5 - Sarpanch is holding the post till this date. The Tahsildar and the Collector is directed to convene the meeting to elect the Sarpanch of Village Panchayat Jeur Kumbhari, Tq. Kopargaon, District Ahmednagar, within two weeks from today. Shri Patil, learned Assistant Government Pleader is directed to communicate this order to the Tahsildar and the Collector forthwith.