

(2003) 04 BOM CK 0038
In the Bombay High Court
Case No : Writ Petition No. 620 of 2003

Shital Sudhir Sonavle

APPELLANT

Vs

Group Gram Panchayat and Others

RESPONDENT

Date of Decision : 05-04-2003

Acts Referred:

Bombay Village Panchayats (Meetings) Rules, 1959 — Rule 17
Bombay Village Panchayats Act, 1958 — Section 176, 35, 35(1), 35(3)

Citation : (2003) 3 ALLMR 19 : (2003) 4 BomCR 31 : (2003) 3 MhLj 565

Hon'ble Judges : S. Radhakrishnan, J

Bench : Single Bench

Advocate : G.G. Gavnekar, for the Appellant; S.R. Borulkar, for Respondent Nos. 2 to 4 and 7 to 9 and Arun H. Palekar, A.G.P. for Respondent Nos. 10 to 12, for the Respondent

Final Decision : Dismissed

Judgement

S. Radhakrishnan, J.—By this petition, the Petitioner is challenging the order dated 31.10.2002 passed by the learned Additional Collector, Raigad and also the subsequent order dated 30.12.2002 passed by the learned Additional Commissioner in an appeal confirming the order passed by the learned Additional Collector.

2. Brief facts are that the Petitioner herein was elected as a sarpanch of Gram Panchayat, Waghoshi on 4.2.1999 and she was to remain as a sarpanch upto 3.2.2004. It appears that some of the members of the said Gram Panchayat wanted to move a resolution of no confidence motion against the Petitioner herein as per Section 35 of the Bombay Village Panchayats Act, 1958. In accordance with the requisition, the Tahsildar, Sudhagad had convened a special meeting for that purpose on 7.10.2002. On 7.10.2002, the Tahsildar held a special meeting of no confidence motion wherein the Petitioner was given a fair opportunity to defend herself with regard to the motion of no confidence. The Petitioner orally defended herself contending that she was not guilty of any of the

charges and had also made a written submission to the Presiding Officer contending that the complaints made against her were not genuine and were false. By the said written submission, the Petitioner had also requested that the voting of no confidence be taken by secret ballots. It may also be noted here that in support of the Petitioner, one, Uttam Narayan Deshmukh, a member of the Gram Panchayat also spoke in favour of the Petitioner opposing the motion of no confidence. However, other members of the Gram Panchayat as well as Upa-Sarpanch Mr. Surendra Balkrishna Khedekar justified the motion of no confidence. One Mr. Vithoba Sadharam Tupe also supported the Petitioner contending that the no confidence motion was not justified.

3. The minutes of the Tahsildar's meeting which was held on 7.10.2002 also indicate that the Presiding Officer had explained regarding the voting by secret ballot paper and also the likelihood of members committing mistakes in using such secret ballot papers. Thereupon six members who had signed the requisition for no confidence motion categorically opined that the voting should be by show of hand. In view thereof, two of the nine members who were belonging to Scheduled Caste had also stated that the voting should be by show of hand. As the majority of the members of the Panchayat were of the view that the voting should be by show of hand, the voting of no confidence motion took place by show of hand. Infact, three specific reasons were given for expressing no confidence against the Petitioner. With regard to those three reasons, the Petitioner had not only replied orally but also by writing and the two other members had also supported her and had spoke against the no confidence motion. Ultimately, the said motion was put to vote after the said discussion by the Presiding Officer and six of the members had voted in favour of the aforesaid motion of no confidence and three of the members were against the aforesaid motion of no confidence. In view of the fact that the majority i.e., 6 out of 9 had supported the motion of no confidence as per the provisions of Section 35(3) of the Bombay Village Panchayats Act, 1958, the Presiding Officer has recorded that the aforesaid resolution for motion of no confidence was duly passed. It may be noted that at the bottom of minutes which were recorded by the Tahsildar being the presiding officer, the Petitioner has also signed the same alongwith other members of the said Panchayat.

4. Aggrieved by the aforesaid passing of no confidence motion, the Petitioner had approached the Additional District Collector by way of a dispute. One of the main contentions of the Petitioner before the learned Additional Collector was that the aforesaid motion of no confidence was not moved by any member and also not seconded by any member. In view thereof, the aforesaid passing of no confidence motion has to be set aside. The Additional Collector by a detailed speaking order dated 31.10.2002 concluded that the said motion of no confidence was properly passed and that the dispute raised by the Petitioner had no substance and the said motion for no confidence passed on 7.10.2002 was upheld.

5. Thereafter, the Petitioner had again approached the Additional Commissioner,

Konkan Division by way of an appeal. Even the learned Additional Commissioner, Konkan Division by a detailed speaking order dated 30.12.2002 after giving fair opportunity of personal hearing to the Petitioner through her advocate and the other advocates, negated the contention that the above motion for no confidence was not moved and seconded by any member and as such, the same ought to be treated as not passed properly. In that behalf, the learned Additional Commissioner, Konkan Division has held that the Bombay Village Panchayats (Meeting) Rules, 1959 (hereinafter referred to as "Rules, 1959") would not be applicable as far as no confidence motion is concerned since on 7.10.2002 the only item which was considered on that day was the said no confidence motion and the proper rule which would be applicable would be the Bombay Village Panchayats Sarpanch & Up-sarpanch (No Confidence Motion) Rules, 1975 (hereinafter referred to as, "Rules, 1975"). It may be noted here that the said Rules, 1975 do not specifically provide for such a procedure of moving and seconding a Motion. What is contemplated is only that the members of a Panchayat who desire to move a motion of no-confidence against the Sarpanch or the Upa-Sarpanch shall give notice thereof in the form appended thereto to the Tahsildar of the taluka in which such panchayat is functioning. Where the members desire to move the motion of no-confidence against the Sarpanch as well as the Upa-Sarpanch, they shall give two separate notices in the prescribed form of motion of no-confidence to the Tahsildar. The Tahsildar, thereupon shall immediately on receipt of notice under Sub-rule (1), satisfy himself that the notice has been given by not less than one-third of the total number of members who are for the time being entitled to sit and vote at any meeting of the panchayat and then convene a special meeting for the purpose within seven days from the date of receipt of such a notice.

6. The said Rules do not contemplate anything about moving such a motion or seconding any such motion. The Petitioner had sought to contend before the learned Additional Commissioner that the Bombay Village Panchayats (Meeting) Rules, 1959 especially Rule 17 provides that the concerned member who was given notice of motion shall state whether he wishes to move or does not wish to move. Similarly, the motion will have to be seconded. The learned Additional Commissioner was of the view that special rules have been framed as far as no confidence motion is concerned and there is no mandatory provision of such moving of a motion as contemplated under the aforesaid general rules meant for the regular meeting as per the Rules, 1959.

7. Even the learned Additional Commissioner by his aforesaid order dated 30.12.2002 had upheld the order of the Additional Collector holding that the said motion of no confidence was properly and validly passed and that there is no flaw in the same. Shri Gavnekar, the learned Counsel appearing for the Petitioner very strongly assailed both the orders contending that unless and until a motion is specifically moved or seconded, such a motion could not have been put to vote at all as the same is contrary to the Rules, 1959. In that behalf, Shri Gavnekar brought to my notice that even Section 35(1) of the Panchayats Act, 1958

contemplates that a motion of no confidence may be moved by not less than 1/3 of the total members. Then he pointed out Clause (3) of Section 35 that if the motion is carried out by not less than 2/3 of the members, then motion should be deemed to have been passed. Therefore, he emphasised that the motion ought to have been proposed and seconded as was not done in the instant case, the entire proceedings are vitiated. Shri Gavnekar in that behalf referred to and strongly relied upon a Division Bench judgment of our High Court in *Kishore Ramchandra Phalak v. Vilas Damodar Mahajan and Ors.* 1997(3) Mh.L.J. 27 It may be noted here that the main issue before the Division Bench was whether it is imperative on the part of a presiding officer to record the votes by secret ballot on a motion expressing no confidence of the Sarpanch under the Bombay Village Panchayats Act, 1958 in the absence of any statutory rule to that effect. While dealing with that issue, when no such procedure is provided, general procedure as prescribed under the Rules, 1959 can be taken into account even when there is a no confidence motion is being passed. However, in the facts and circumstances of that case, it was also noted that even the majority of members in the meeting in that case did not decide that the votes should be by a secret ballot. In fact, the issue in the said judgment was not whether in case of a no confidence motion being moved, the motion ought to be proposed or second was not an issues at all in the said judgment. In the said judgment the issue was only whether the Rules, 1959 could be referred to when the Rules, 1975 did not provide with regard to votes by secret ballot or by show of hand. In that behalf, the Court referred and stated that there is no harm in relying upon the said Rules, 1959 for that purpose. Therefore, the above judgment does does not lay down that it is mandatory for a motion to be moved and second in case of no confidence motion. As far as no confidence motion is concerned, specific rules have been provided by way of Rules, 1975.

8. Shri Gavnekar thereafter referred to another judgment of our High Court in *Shri Ashok Krishnakant Mehta Vs. State of Maharashtra and others*, . The said judgment was also on a different issue in the sense that the person concerned against whom no confidence motion was sought to be moved was not even given a fair opportunity to defend himself during the proceedings which took place. In that context, the Court has observed that a village panchayat is an institution for democratic self governance at the level of the village land there should not be any effort to stifle debate while no confidence motion is being passed. In that context, the Court has also observed very clearly that the person concerned against who no confidence motion is being sought to be moved should be given an opportunity to speak against the said motion as well as others who also took part in the said discussion. The aforesaid judgment does not lay down any proposition to the effect that in every no confidence motion, the motion ought to be proposed or seconded.

9. Thereafter Shri Gavnekar also referred to another judgment fairly stating that the said judgment may be against the proposition which he is canvassing, namely, *Hindurao Dnyanu Shirtode and Another Vs. The State of Maharashtra*

and Others, wherein the precise issue involved was in the sense in case of a no confidence motion against a sarpanch or an upa-sarpanch whether Rules, 1959 would apply or only Rules, 1975 would apply. In that behalf, considering this very precise issue i.e., no confidence motion was not proposed by any members and not seconded by any members as contemplated under Rule 17 of the Rules, 1959, the Division Bench of our High Court has very clearly held that the Rules, 1959 especially rule 17 will have no application as far as no confidence motion is concerned and the said motion of no confidence would be governed by Rules, 1975. In that behalf, it would be relevant to quote paragraph 8 from the said judgment which reads as under:

"8. Dr. Chowdhary next contended that neither the Motion of No Confidence has been proposed by any member nor has the same been seconded by another member and hence the No Confidence Motion is illegal. He has placed reliance on Rule 17 of the Bombay Village Panchayats (Meetings) Rules, 1959. The relevant portion of the said section provides as under:

"17(1). A member who has given notice of a motion shall, when called on either:--

(a) state that he does not wish to move the motion, or

(b) move the motion in which case he shall commence his speech by a formal motion in the terms appearing on the list of business, after the motion is duly seconded."

This again in our view will have no application to a meeting to consider a No Confidence Motion which will be governed by the Bombay Village Panchayats Sarpanch and Upa-sarpanch (No Confidence) Rules, 1975. the aforesaid Rules namely Bombay Village Panchayats (Meeting) Rules, 1959. The Bombay Village Panchayats Sarpanch and Upa-Sarpanch (No Confidence) Rules, 1975 have been framed in view of the powers conferred on the State Government by Section 176 of the Act. The same section provides for making Rules for different purposes of the Act. Different Rules are therefore framed for achieving different objections and purposes of the Act. It will therefore be open to introduce one set of Rules while considering the provision of the other Rules which have been framed for distinct objects and purposes of the Act. Moreover, as far as the present Motion is concerned, the same is deemed to have been moved by the members who have signed the requisition and had voted for the same. Therefore, the said contention of Dr. Chowdhary is also rejected."

10. Shri Gavanekar therefore emphasised that the importance of interpreting the rules as they stand and in that behalf he referred to a judgment of the Hon"ble Supreme Court in Union of India (UOI) and Another Vs. Hansoli Devi and Others, wherein the Hon"ble Supreme Court has infact referred to an English judgment in Sussex Peerage case and has observed as under:

"If the words of the statute are in themselves precise and unambiguous, then no

more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver."

The above principle is well-known. Now the issue in this case is only whether Rules, 1975 would apply or Rules, 1959 would apply at the time when a no confidence motion is being passed. There is no question of interpreting any rule. The Rules are very clear. Shri Gavanekar also referred to another judgment of Rajasthan High Court in Laxman Meena Vs. State of Rajasthan and Another, wherein the Rajasthan High Court has observed that in case where a no confidence motion had been passed by a majority of members but the No Confidence Motion was not properly and legally initiated in the sense that it was not signed by required number of members at the time of its initiation and was also given to the Chief Executive Officer in a casual and cavalier manner on a plain paper and not in the prescribed form. That is not the case in the instant case. Even the aforesaid judgment will be of no use help to Shri Gavanekar.

11. Shri Palekar, the learned Assistant Government Pleader appearing for Respondents No. 10 to 12 contended that the no confidence motion was properly passed and there is no question of any proposing or seconding of any such no confidence motion and the Rules which have been made specifically for passing of such no confidence motion, namely, Rules, 1975 alone would apply and there is no question of looking at any other rules. In that context, Shri Palekar referred to a judgment of Division Bench of this Court in Smt. Annapurnabai Ajabrao v. Smt. Annapurnabai Anandrao 1967 Mh.L.J. 36 wherein this Court has very clearly observed as under:

"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 the Sarpanch of the Gram Panchayat. The 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, the proper attitude of the petitioner as a person working for democracy would have been to tender her resignation straightaway. At any rate, it does not behove of a democratic spirit to challenge the decision of the majority who unmistakably declared their want of confidence in their erstwhile leader. Democratic principles as also the sense of self-respect should have impelled the Petitioner and persons situated in the similar circumstances to gracefully submit to the decision of the majority and to walk out of the Gram Panchayat instead of raising frivolous contentions and forcing herself on the democratic institution which does not want her to hold that position."

12. Shri S.R. Borulkar, the learned Counsel appearing for Respondent No. 2 to 4 and 7 to 9 strongly referred to and relied upon the judgment of the Division Bench of our High Court in Hindurao Dnyanu Shirtode and Another Vs. The State

of Maharashtra and Others, contending that as far as on confidence motion is concerned, the only rules that would be applicable would be Rules, 1975 and seconding is concerned, only Rules, 1975 would be applicable and there is no question of referring and relying upon the Bombay Village Panchayats (Meeting) Rules, 1959. Shri Borulkar therefore contended that the very issue raised in this petition was also the issue in the above case as clearly mentioned in paragraph 8 in the said judgment as quoted hereinabove. Shri Borulkar also contended that in any event as far as the Petitioner was concerned, the Petitioner is fully aware of the charges levelled against her and the no confidence motion was initiated by the Tahsildar who presided over the said meeting and the minutes of the said meeting also indicate that the Petitioner was given a fair opportunity to defend herself. Apart from her, two other members also had defended her. Finally, six members have voted in favour of such motion of no confidence and three against no confidence motion i.e., to say 2/3 majority of members had approved the no confidence motion.

13. Shri Borulkar also strongly referred to and relied upon the judgment cited by Shri Palekar, the learned Assistant Government Pleader and contended that the Petitioner infact ought not to have challenged the said decision and should have gracefully tendered her resignation. Under the aforesaid facts and circumstances, it is explicitly clear that the said Division Bench judgment of our High Court in Hindurao Dnyanu Shirtode and Anr. v. State of Maharashtra and Ors. 1198 (3) Mh.L.J. 622 has clearly laid down in paragraph 8 that even if a no confidence motion which was neither proposed nor seconded would be immaterial so long as the same was duly approved by 2/3rd majority and that there is no need to look into general rules, namely, Bombay Village Panchayat (Meeting) Rules, 1959 in that behalf. As indicated hereinabove, this very issue has been raised and dealt with and finally decided by the above judgment in Hindurao Dnyanu Shirtode case. Under these circumstances, there is absolutely no substance in the Writ Petition. The Writ Petition stands dismissed with costs. In fact, as has been observed by the Division Bench in the case of Mrs. Annapurnabai Ajabrao case the Petitioner ought to have infact gracefully tendered her resignation rather than approaching two authorities and also this Court. Needless to say, the ad-interim relief granted earlier on 3rd February, 2003 also stands vacated.

14. Parties to act on a true copy of this order duly authenticated by the Court Associate.