

(2000) 05 BOM CK 0014

In the Bombay High Court

Case No : Writ Petition No. 1966 of 2000

Shri Ashok Krishnakant Mehta

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 03-05-2000

Acts Referred:

Bombay Village Panchayats (Meetings) Rules, 1959 — Rule 15(1), 17, 18, 19, 20
Bombay Village Panchayats Act, 1958 — Section 35(2)
Constitution of India, 1950 — Article 226

Citation : AIR 2001 Bom 55 : (2000) 3 ALLMR 772 : (2000) 4 BomCR 724 :
(2000) 4 MhLj 197

Hon'ble Judges : D.Y. Chandrachud, J;A.P. Shah, J

Bench : Division Bench

Advocate : P.K. Dhakephalkar and Ms. Suhasini Mutalik, for the Appellant; R.D. Rane, Addl. Govt. Pleader and C.G. Gavnekar, for the Respondent

Judgement

Dr. D.Y. Chandrachud, J.—Rule, returnable forthwith. Respondents waive service. By consent, the petition is taken up for final hearing.

2. By this petition under Article 226 of the Constitution, the petitioner has sought to impugn a decision of the Collector of Raigad and a decision rendered in appeal by the Divisional Commissioner, Kokan Division, rejecting the challenge preferred by the petitioner to a resolution of no confidence passed in the Village Panchayat of Pali in District Raigad. The grievance of the petitioner is that during the course of the meeting in the Village Panchayat, person who wished to speak on the resolution of no confidence were prevented from doing so by the Presiding Officer on the ground that the Rules only provide that an opportunity be given to the person against whom the no confidence motion is moved. The issue involved is whether the exclusion of the members of the Village Panchayat from participation in the debate on a motion of no confidence would be destructive of the fundamental principles underlying democratic functioning so as to render the consequent resolution of no confidence motion invalid.

3. On 10-12-1999, 5 members of the Village Panchayat of Pali gave a requisition notice to the Tahsildar stating that they proposed to move a resolution of no confidence against the petitioner who was the Sarpanch of the Village Panchayat. Pursuant thereto, by a notice dated 13-12-1999, the Tahsildar, Sudhagad convened a special meeting at 11 a.m. on 17-12-1999 for the purpose of the consideration of the motion of no confidence. On 17-12-1999 the meeting of the Village Panchayat was held. The Village Panchayat of Pali consists of 17 members of whom 16 were present at the time. The minutes of the meeting are annexed at Exhibit-C to the writ petition and it is an admitted position that at the said meeting the Tahsildar who was the presiding officer declined permission to any other members apart from the petitioner to speak and address the meeting. The Tahsildar was of the view that under the provisions of section 35(2) of the Bombay Village Panchayat Act, 1958, it was only the person against whom a motion of no confidence is sought to be moved who could be permitted to speak at the meeting. Consequently, one member of the Panchayat Shri Dinesh Shobhalal Shah who rose to speak on the motion was denied permission. The petitioner spoke at the meeting but 6 members left the meeting in protest against the decision of the Tahsildar not to allow them to address the meeting. The resolution of no confidence was passed by a vote of 9-0. Aggrieved by the resolution, the petitioner preferred a dispute, being Dispute No. 36 of 1999 under the provisions of section 3-B of the Act before the Collector. The Collector rejected the submission of the petitioner holding that (i) the requisition for the no confidence meeting had been moved by 5 out of 17 members and since u/s 35(2), 1/5th of the total membership had to move the requisition, the requisition was in order, (ii) the resolution of no confidence which had been passed a vote of 9-0 could not be invalidated on the ground that the members of the Village Panchayat who desired to speak were prevented from addressing the meeting. In appeal, the Joint Commissioner, Kokan Division, by his order dated 6-4-2000, affirmed the view taken by the Collector and it is against these orders which have upheld the validity of the resolution of no confidence that the petitioner has approached this Court.

4. The main issue that requires to be considered is whether a resolution of no confidence passed at a meeting during the course of which members constituting the Village Panchayat were not permitted to speak, would be invalid. The Presiding Officer took the view that it was only the Sarpanch against whom the resolution was sought to be passed who was entitled to speak at the meeting. Reference may be made to the provisions of sub-sections (1), (2) and (3) of section 35 of the Bombay Village Panchayat Act, 1958 which provides as follows:-

"35. (1) A motion of no confidence may be moved by not less than one fifth of the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat against the Sarpanch or the Upa-Sarpanch after giving such notice thereof to the Tahsildar as may be prescribed.

(2) 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 for considering the motion of no confidence at the office 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.

(3) If the motion is carried by a majority of the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat, the Sarpanch or the Upa-Sarpanch, as the case may be, shall cease to hold office after seven days from the date on which the motion was carried unless he has resigned earlier or has disputed the validity of the motion so carried as provided in sub-section (3-B) : and thereupon the office held by such Sarpanch or Upa-Sarpanch shall be deemed to be vacant."

Section 35 expressly recognises that the Sarpanch against whom a resolution of no confidence is to be passed would be entitled to address the meeting. This requirement is embodied in the law as compliance with a basic principle of natural justice. A resolution of no confidence operates to remove a person from his position as Sarpanch or Upa-Sarpanch by expressing a lack of confidence in his ability to govern the affairs of the Village Panchayat. Bearing in mind the consequences of as well as the underlying basis for a resolution of no confidence, the law has incorporated a requirement of giving the Sarpanch or the Upa-Sarpanch, as the case may be, an opportunity of being heard before the members vote upon the resolution of no confidence. The Tahsildar and the authorities below erred in reaching into the requirement of giving an opportunity to the Sarpanch or Upa-Sarpanch as the case may be a rule of exclusion that would debar any other person apart from those against whom the motion of no confidence is being moved, from speaking at the meeting. A rule of exclusion is neither expressly contained in the statute nor does it follow by necessary implication. The object of permitting the members of the Village Panchayat to address the meeting of the Panchayat has a genesis which is distinct from the opportunity of being heard which is given to the Sarpanch or Upa-Sarpanch against whom the resolution of no confidence is being proposed. Every member of the Village Panchayat is entitled to participate in the affairs of the Panchayat. An expression of view point at the meeting of the Village Panchayat is a valuable right available to the members of the Village Panchayat. The elected bodies at the local level fulfill basic principles of democratic functioning which are to be found as well in larger bodies at other levels of the polity. The right of each member of the house to address the house is a valuable safe-guard of democratic functioning. Unquestionably, that right can be regulated by the Presiding Officer so as to ensure the due and orderly course of debate on the floor of the representative body so as to ensure that the functioning of the body is not disputed. But, to regulate the course of debate in the interests of ensuring due order in the course of the proceeding is quite a different thing from prohibiting members from speaking on the ground that the resolution does not

pertain to the member who wishes to speak. Every member of representative, popularly elected bodies has a vital interest in the business which is transacted before that body. The right of a particular member who is sought to be proceeded against on account of a specific misconduct or for having incurred a particular disqualification cannot be equated or confused with the general right of all the members to discuss and debate. All members have a vital interest in expressing their view point subject to due regulation in the interest of preserving order in the course of proceedings. The authorities below have summarily rejected the submission made on behalf of the petitioner on the ground that by an overwhelming majority of 9 in a house of 17 the resolution came to be passed. The issue, in our view, is something far more fundamental and that goes to the root or the essence of democratic functioning. The weight of numbers is not an answer to a fundamental defect such as this and the Court ought not to countenance a suppression of the right to speak by a supposed justification on the basis of the number who cast their lot in support of a resolution. The exclusion of members from addressing the Village Panchayat was a fundamental flaw in the proceedings which would invalidate the resolution of no confidence.

5. The State Government has framed the Bombay Village Panchayats Sarpanch and Upa-Sarpanch (No confidence Motion) Rules, 1975 by a Notification dated 23-9-1975. Rule 2(1) relates to the service of notice on the Tahsildar of the proposed motion of no confidence. Rule 2(3) requires the convening of the meeting by the Tahsildar within seven days from the date of receipt of the notice. Rule 3 provides that immediately after the meeting, the Tahsildar shall communicate to the Zilla. Parishad, the Panchayat Samiti, the Collector and the Commissioner the names of all the members of the Panchayat who were present at the meeting, the decision taken on motion, and the number of votes in favour of, or against, the motion.

6. The State Government has, by a notification dated 1-7-1959 framed the Bombay Village Panchayats (Meetings) Rules, 1959. The Rules provide for convening of meetings, holding of meetings and transaction of business at meetings. Rule 7 makes provisions for the service of notice upon members. Rule 9 speaks of the quorum for the transaction of business. Rule 11 provides for voting by a majority and Rule 15(1) provides that every meeting shall be open to the public. Rules 17 to 20 make provision for the moving of the motion including an amendment thereto. Under Rule 21, a member desiring to propose and discuss any motion shall rise in his seat when speaking and address his speech to the person presiding. Rule 21(2) requires a member to confine his speech strictly to the question before the meeting and that he shall cease to make remarks which are held by the person presiding to be irrelevant or offensive. Rules 23 and 24 expressly postulate a debate on the motion which is being moved. Rule 24 provides that except for the mover or the seconder of the motion, no other member shall, without the express permission of the person presiding, speak more than once on the same motion except for the purpose of making a personal explanation. Rule 25 permits the Presiding Officer to fix a

reasonable time limit for a speech. Rule 26 postulates that on the conclusion of a debate on a motion or where the person presiding is satisfied that the motion has been sufficiently discussed, he may put the motion to the vote of the meeting without further discussion. Rule 30 provides for decision on points of order. Rule 34 provides that any member who disregards the authority of the person presiding or is guilty of obstructive or offensive conduct at any meeting, may be suspended. These provisions highlight the safeguards of a free and orderly debate in the Village Panchayat. The importance of a free debate in the Panchayat cannot be under emphasised. It lies at the heart of democracy. The Village Panchayat is an institution for democratic self governance at the level of the village. Any effort to stifle debate must be looked upon by the law with disfavour.

7. In the circumstances, we are of the view that the resolution of no confidence must be quashed and set aside. The impugned orders of the Collector and the Joint Commissioner are consequently also quashed. We make it clear that it would be open to the Tahsildar to reconvene a fresh meeting with reference to the requisition issued to him for holding a special meeting. The Tahsildar shall ensure that the meeting is held in accordance with the rules and in compliance with the provisions of law as interpreted by us.

8. In the circumstances, the petition succeeds. The impugned orders passed by the Joint Commissioner, Konkan Division on 6-4-2000 and the order dated 24-2-2000 passed by the Joint Collector, Raigad are quashed and set aside. We further quash and set aside the motion of no confidence passed against the petitioner in the Pali Village Panchayat Meeting held on 17-12-1999. We however make it clear that it would be now open to the Tahsildar to hold a fresh meeting with reference to the requisition received by him in accordance with law.

Rule made absolute in the aforesaid terms with no order as to costs.

All concerned parties to act on an ordinary copy of this order duly authenticated by the personal Secretary of this Court.

9. Rule made absolute.