
(2015) 01 BOM CK 0284
In the Bombay High Court
Case No : Writ Petition No. 6786 of 2014

Surekha	Vs	APPELLANT
The State of Maharashtra and Others		RESPONDENT

Date of Decision : 30-01-2015

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 35, 35 (3-A), 37

Citation : (2015) 01 BOM CK 0284

Hon'ble Judges : N.W. Sambre, J

Bench : Single Bench

Advocate : R.S. Deshmukh, for the Appellant; Y.M. Kshirsagar, AGP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

N.W. Sambre, J—Heard respective counsel.

2. With the consent of learned advocates for the parties taken up for final disposal.

3. The petitioner to the resent petition claimed to have elected as a member of Gram Panchayat Bhatapur, Taluka-Mukhed, District Nanded, in the year 2010 and thereafter was elected Sarpancha of said Gram Panchayat.

4. It is claimed by the petitioner that respondents No. 6 to 10 had moved a requisition against the petitioner before Tahsildar, Mukhed, resulting into convening a special meeting, in which no confidence motion was passed against the petitioner. Said motion was set aside by this Court at the behest of the petitioner in writ petition No. 353 of 2013 by its judgment dated 17th July, 2013 holding that the notice of no confidence motion meeting was not served on the petitioner.

5. As a consequence of the above judgment, respondents No. 6 to 10 moved a fresh requisition of no confidence motion against the petitioner before

respondent No. 4 Tahsildar, Mukhed. Respondent No. 4 Tahsildar, accordingly convened a special meeting pursuant to the notice of requisition dated 13th November, 2013, on 19th November, 2013, wherein the motion came to be passed against the petitioner.

6. Being aggrieved by said motion of no confidence, the petitioner preferred a dispute before Additional Collector, Nanded on 25th November, 2013, which came to be rejected on 7th July, 2014. As such, the present writ petition.

7. Learned counsel for the petitioner, with an intention to object the order passed by the Additional Collector, Nanded, has invited my attention to following grounds:--

"a) That the notice of special meeting dated 19th November, 2013, in which motion of no confidence was to be considered against the petitioner, was not served on the petitioner in accordance with statutory provisions of the Act.

b) The meeting should have been held in accordance with section 35 of the Bombay Village Panchayat Act, 1958 (herein after shall be referred to as "said Act" for brevity), in the office of Gram Panchayat, however the meeting was held in Samaj Mandir.

c) The meeting ought not to have been convened within a period of six months of failure of the last motion, and as such, there is a violation of provisions of section 37 of the Act.

d) That the thumb impressions on the acknowledgments or otherwise are not verified by competent authority i.e. no independent identification of the service of notice on such persons, who have acknowledged the notice through thumb impression, was made."

8. Learned counsel for the petitioner has invited my attention to the judgment of this Court delivered in writ petition No. 353 of 2013 pronounced on 17th July, 2013, so as to canvas that the notice should have been served on the person of the petitioner or in absence thereof on any adult male member of the house, where she resides. According to him, affixing of notice on the conspicuous part of the house is the last resort. The petitioner submits that the notice was neither tendered to the petitioner nor any endorsement to that effect was made in the Panchanama drawn, so as to demonstrate service of notice on the petitioner and as such, affixing of notice on the conspicuous part of the house where the petitioner resides is not service within the meaning of law. The petitioner further urged that, the fact that the house where the petitioner was residing was under construction and said construction was duly attended by her father in law, namely Goipkrao Rangoji Jadhav. The petitioner has sworn an affidavit dated August 2, 2014 which is placed at page 122 of the record wherein the petitioner has narrated that she was residing in house No. 38 of village Bhatepura, which was undergoing construction for last more than one year and as such, she was residing at house No. 41, which is owned and possessed by her real brother in

law Tukaram Jadhav. She further urged that when the notice was affixed on house No. 38, her father in law was very much present at the site of construction and the notice, in accordance with the relevant statutory provisions, ought to have been served on father in law of the petitioner, being adult member. The petitioner further urged that non service of notice has denied her right to participate in the debate on the motion of no confidence and as such, the same is contrary to the fundamental principles underlying democratic functioning as is provided under the Act. According to her, said act since is contrary to the provisions of Sub-section (2) of section 35 of the Act, the motion is liable to be quashed and set aside. In addition to above, learned advocate for the petitioner submits that the very object of giving notice to the Sarpanch is that he/she has a right to speak or otherwise to take part in the proceedings, including that of right to vote and in such proceedings he/she can always impress upon members, who have moved the motion of no confidence. According to the petitioner, the denial of said right has rendered the motion illegal and as such, sought quashing of the same.

9. Per contra, learned advocate for the respondents urged that the very conduct of the petitioner of questioning the motion, which was passed by majority as is contemplated under the statutory provisions, reflects her intention to continue in the office, which according to the respondents is contrary to the very principles of democratic set up. The respondents further urged that once the Will of majority is against the petitioner, the elected representative, including that of the petitioner must honour the same. According to the respondents, the petitioner cannot question the resolution of no confidence on technicalities and it cannot be further faulted on the ground that there was no proper opportunity to the petitioner Sarpanch or a member.

10. Learned advocate for the respondents further urged that the record speaks of the reasons of holding the meeting in Samaj Mandir and not in the office of Gram Panchayat. The respondents further urged that the point as regards verification of thumb impression can be very well ascertained from the notings endorsed by the Tahsildar on the notice of no confidence motion, so also minutes of said meeting. As such, according to learned advocate for the respondents, in view of above the writ petition is liable to be rejected.

11. Having considered the rival contentions of the parties, it is noticed that the first no confidence motion was subject matter of writ petition No. 353 of 2013. In paragraph No. 20 of judgment delivered in said petition, it has been observed that notice of special meeting was not served on the petitioner. As such, the said development prompted the respondents herein to give fresh requisition. The contention of the petitioner that by not serving notice on her or on any adult male member of the family in absence of her, could have been treated as good service, however in the present case notice is sought to be served by affixing the same on the part of the house, where she was residing i.e. house No. 38. The petitioner, so as to substantiate said contention, has placed on record an affidavit

of her father in law, namely Gopikrao Rangoji Jadhav, who has stated that he is an adult member of the family consisting of himself, his wife, son Ishwar and his wife Surekha i.e. the present petitioner. They are residing in house No. 38 of the same village, however said house was under construction for last more than one year and as such, according to him, the whole family shifted to house No. 41, which is owned by Tukaram Jadhav. It is further stated in the affidavit that said deponent namely Gopikrao Jadhav has supervised construction of the house on plot No. 38 and according to him, he was very much present when the notice of special meeting was alleged to have been affixed on conspicuous part of said house. If said affidavit is carefully perused, it reflects that said pleadings are sought to be raised by the petitioner for the first time in the writ petition, as neither such case was canvassed nor any intimation to that effect was given by the petitioner, being Sarpanch, to the Gram Panchayat or before the Additional Collector. Furthermore, the very fact that the petitioner has sought to rely upon said affidavit itself falsifies the case of the petitioner of non service of notice on any adult male member of her family, as she has admitted in clear terms that the house was under construction and she was residing at a separate house. It is also to be taken note of the fact that the statement made by the father in law of the petitioner namely Gopikrao that he was supervising construction of the house on plot No. 38 cannot be stretched so as to form an inference that father in law Gopikrao was available at the site for service of notice.

12. Other facets to said story put forth by the petitioner about construction of house on plot No. 38 is also required to be scrutinized as to whether there was actual construction going on, on plot No. 38 or not. At the cost of repetition, it is observed that though said case was not canvassed by the petitioner before the Collector, however while examining the same, it is noticed from the record that the petitioner has not placed on record any sanction from the Gram Panchayat for carrying out the construction on said plot i.e. plot No. 38. If statement of the petitioner that she was residing on plot No. 38 and as there was construction going on, on plot No. 38, she has shifted to other place, is to be accepted, then the Sarpanch herself appears to have carried out construction contrary to the statutory provisions, i.e. without obtaining sanction from the Gram Panchayat or in other words, if said story is to be believed then the petitioner is trying to set up a case to be examined under writ jurisdiction, which involved disputed questions of facts.

13. It is required to be noted that the notice of no confidence motion was submitted to respondent-Tahasildar on 13th November, 2013 and in pursuance to the same, a notice of the same date i.e. 13th November, 2013 was drawn. The notice of the meeting was sought to be served through Talathi and as the petitioner was not available at home, said notice was affixed on her house i.e. plot No. 38. In support of the same, a Panchanama was drawn which is signed by in all five persons wherein it is specifically mentioned that the petitioner was not available at home and as such, the notice was affixed on the conspicuous part of house of the petitioner. Learned Collector, while considering said fact which was

sought to be urged before him, has taken into account affixing of notice and drawing of Panchanama on 15th November, 2013 in presence of Talathi and Police Patil and has believed the said document.

14. Reliance placed by learned advocate for the petitioner on the judgments of this Court in the matter of Bhika Narayan Gangurde and Others Vs. State of Maharashtra and Others, (2002) 1 BomCR 186 and in the matter of Shivkant Bangar Vs. The Gramsevak, Grampanchayat Office and Others, (2010) 4 BomCR 191 is hardly of any support to the present petitioner. Said judgments though endorse mandatory effect of the proceedings for service of notice on the elected member, however, in the present case, the facts on which the petitioner has questioned the non service of notice are altogether different than the one considered in both these judgments. In this case, the story of the petitioner, of construction of house at plot No. 38 and her non availability at that place, availability of her father in law at that place, affixing of notice of no confidence motion on said property, the affidavit of her father in law that construction was going on and that they were residing at some other place with the petitioner and reliance as it was placed by the petitioner, takes this Court to the only conclusion that the notice was rightly affixed on the conspicuous part of the house of the petitioner i.e. plot No. 38 and as such, there is sufficient compliance of Rule 2 of the Meeting Rules, 1959.

15. In my opinion learned counsel for the respondents has rightly placed reliance on paragraphs No. 25, 26 and 27 of the judgment in "Shivkant Bangar" (supra), which read thus--

"25. Reliance is also placed on the judgment in the matter of Nimba Rajaram Mali Vs. Collector, Jalgaon and others, AIR 1999 Bom 335 : (1998) 4 ALLMR 479 : (1999) 1 BomCR 546 . In para 13 of the judgment, it is observed thus:

"In a democratic society what is important is the Will of the majority and the elected representatives must honour the will of the majority. It is immaterial to analyse and debate on the reasons behind the will of the majority or the specific reasons for such will being expressed. The will of the majority is of paramount importance and it must be respected by all elected representatives responsible for the governance of such democratic institutions. As observed by the Apex Court in the case of Babubhai (supra), resolution of No Confidence Motion is different from Censure Motion and such a resolution cannot be faulted on the ground that there were no reasons or reasons were vague and lacked detailed specifications. Once the resolution of No Confidence Motion is passed by a clear majority and in keeping with the requirements of the concerned statutory provisions, the person against whom such a resolution is passed, must honour the will of the majority and make way for the new election of his successor. Unless it is shown that while passing such a resolution of No Confidence Motion, there was flagrant violation of any of mandatory procedure laid down, such a resolution cannot be interfered with by the Court or statutory authorities adjudicating such disputes. In the case at hand, both the authorities below, on

perusal of record before them, have recorded clear findings that the resolution was passed in keeping with the requirements of the No Confidence Motion Rules and there was no breach of any statutory provisions. These findings do not suffer from any error, leave alone error apparent, on the face of the record."

26. Although the Court has observed about importance of Will of the majority, however, at the same time, this Court has also cautioned against causing interference unless there was a flagrant violation of any mandatory procedure laid down. In the instant matter, there is violation of mandatory procedure and as such, merely because motion is carried with majority, will not, in itself, nullify the fundamental defects, which go to the root of the matter.

27. Reliance placed on the judgment in the matter of Arjun Sambhaji Khade and Others Vs. Mangal Ankush Kharmate and Others, (2003) 1 ALLMR 986 : (2003) 2 MhLj 295 , is in respect of interpretation of Rule 2(2) of the Rules and this Court has held that, "non observance of the procedure laid down in Rule 2(2) will not lead to nullifying the motion, which otherwise, is carried by majority". Similarly, Respondents have also sought leave to place reliance on the judgment in the matter of Durgadas Ukhaji More and Others Vs. Additional Commissioner, Nashik Division and Others, (2002) 3 BOMLR 747 : (2003) 1 MhLj 420 Bombay Cases Reporter 755, and contended that as the resolution of no confidence is passed by two third majority, same shall not be nullified on technical grounds and the office bearers, against whom motion is passed and who do not enjoy confidence of majority, should not be allowed to continue in the office and in fact they should leave the office gracefully. However, on account of non observance of mandatory procedure, which is of fundamental character, the whole process is vitiated and as such, it is not open to contend that the motion is carried by majority, therefore, no interference is permissible. There is something far more fundamental which goes to essence of democratic functioning and if there is a defect of fundamental character, the Court ought not to countenance a suppression of right of the elected representative by a supposed justification on the basis of majority view."

16. Reliance placed by learned advocate for the petitioner on paragraph No. 29 of said judgment, in my opinion, is wholly misplaced in the facts of the present case. Similar is the position qua, judgment reported in Bhika's case. In my opinion, the above referred issue is squarely covered by the judgment of this Court in the matter of Ms. Ins. Malhotra Vs. Dr. A. Kriplani and Others, (2009) ACJ 2284 : (2009) 2 CompLJ 472 : (2009) 2 CPJ 18 : (2009) 4 JT 266 : (2009) 154 PLR 481 : (2009) 5 SCALE 87 : (2009) 4 SCC 705 : (2009) 4 SCR 1062 . Paragraph 6 of said judgment is worth referring to quote, which reads thus--

"6. In my opinion, the proceedings of dispute being of plenary in nature, at the most minimum required adequate and appropriate facts ought to be pleaded in support of the dispute. Respondent No. 5 being the disputant, who challenged the motion of no confidence against him, was bound to discharge the initial burden of proof and that could not be done by inadequate and inappropriate

pleadings or on a vague ground, that is ground No. 6. The evidence may be in the form of affidavit, or as the case may be, could well be appreciated in the light of the pleadings of the parties. In the instant case, there is no foundation in the form of minimum required pleadings and consequently respondent No. 5 failed discharge initial burden of proof. In order to appreciate the contention raised by Mr. Patil that there is violation of Rule 7 relating to service of notice of meeting, I find that there is no pleading whatsoever that the adult member from the house of respondent No. 5 was present in the house and still there was no attempt to tender it to such adult member. No affidavit or evidence of any adult member of the house, who according to respondent No. 5 was present in the house, was filed or adduced before the Collector nor such a person was put to the test of cross-examination. There is no pleading or explanation on record as to where respondent No. 5 had gone from 11.7.2007 to 17.7.2007. It is not his case that he did not return to his village or house from 11.7.2007 to 17.7.2007 or that he never noticed the said notice of meeting affixed on the outer door of his house. It is not his case that such notice was not at all pasted on his house. On preponderance of probabilities, it is difficult to believe that respondent No. 5-Sarpanch of the village for no cause or reason would remain absent from a small village during this period of six days."

17. This takes us to the next contention of the petitioner that the thumb impression of the respective parties were not independently verified. The petitioner has sought to place reliance upon judgment of this Court in the matter of Indubai Vedu Khairnar Vs. State of Maharashtra and Others, (2002) 4 ALLMR 110 : (2003) 2 BomCR 239 , particularly, paragraph No. 7 so as to canvas that thumb impressions on the notice or on the proceedings should have been independently verified. So far as above referred contention is concerned, perusal of notice of no confidence motion before Tahasildar reflects that the Tahasildar has acknowledged the same on 13.11.2013 and has specifically mentioned that notice is accepted after due verification of the identity of members. It is also recorded in the minutes of the meeting, which was held on 19.11.2013 that identity of all the six members, who were present in the meeting, was verified from the Gram Sevak Shri. Sayyad Ahamed Mainuddin. The above referred record depicts that the presiding officer of the meeting was vigilant enough while conducting the meeting, as regards identity of each of the member and their signatures on the notice and minutes of the meeting of no confidence motion. As such, said contention of the petitioner also stands rejected. It is worth to be observed that the judgment relied upon by the petitioner in Indubai's case, in which the point that felt for consideration in the background of facts of said case, was altogether different.

18. Next contention of the petitioner that the meeting ought to have been held in the office of Gram Panchayat and not at any other place, particularly in Samaj Mandir and as such, the proceedings of the meeting are vitiated, is also liable to be rejected in view of the fact that it has come on record that as there was certain construction work going on in the office of Gram Panchayat that has

prompted the presiding officer to hold the meeting in Samaj Mandir.

19. The last point that requires to be looked into at the behest of the petitioner is whether the meeting was rightly convened by the Tahasildar, as according to the petitioner, the earlier meeting was already held to be illegal for want of service of notice on the petitioner. In support of said contention, the petitioner though has sought to place reliance upon provisions of section 35 of the Act so as to canvass that second meeting ought not to have been convened within a period of six months from the judgment of this Court. According to the petitioner, the judgment was pronounced by this Court on 17th July, 2013 whereas the notice for convening new no confidence motion was presented on 13.11.2013. According to the petitioner, said notice was within period of six months and as such, the same is contrary to the provisions of section 35 of the Act. So far as the above referred issue is concerned, provisions of section 35 (3-A) of the Act are relevant. The Apex Court, while dealing with similar issue, in the matter of Ramesh Vs. Sheshrao and Others, AIR 1999 SC 1607 : (1998) 9 SCC 113 : (1998) AIRSCW 4141 has observed thus--

"5. The significant words in the above provisions are "if the motion is not moved or is not carried", then "no such fresh motion shall be moved..... within a period of one year" from the date of rejection of the motion. The question is whether the first motion which ended in the manner indicated above can be treated as a motion not moved or not carried by the requisite majority. In our opinion, the first motion does not fall in this category. The first motion which was passed on 8-3-1995, was carried by the requisite majority but it became ineffective because the Commissioner on appeal by the Sarpanch held the motion of no confidence to be invalid for want of the requisite notice of holding the special meeting on 8-3-1995. The bar contained in sub-section (3-A) of section 35 of the Act does not cover such a situation.

6. the provision clearly is in respect of a motion which though valid, is not carried by the requisite majority of members because of its not being moved or being passed by the requisite majority. No such defect was found in the first motion in the present case which was carried by the requisite majority and not rejected in the meeting. The object of the provision clearly is to prevent frivolous no confidence motions repeatedly within one year, if the earlier one has not been even moved or has been defeated because want of the requisite majority for passing the same. In the present case, the first motion was not of the kind which attracted Sub-section (3-A) of Section 35. Accordingly, there was no ground for the Commissioner to allow the appeal since sub-section (3-A) of section 35 was not available in the present case."

20. So far as the first meeting wherein no confidence motion was passed against the petitioner is concerned, it is required to be noted that said motion was carried by requisite majority, but it has become non implementable in view of judgment of this Court. Once, said outcome of the first meeting became non implementable in the light of verdict of this Court, the bar contained in Sub-

section (3) of section 35 does not cover such a situation. In that view of the matter, said issue is also liable to be rejected.

21. As such, present writ petition, which is devoid of merits, is liable to be rejected as such, stands rejected.