

(2015) 02 BOM CK 0308
In the Bombay High Court
Case No : Writ Petition No. 306 of 2014

Vimalabai

APPELLANT

Vs

Ganesh and Others

RESPONDENT

Date of Decision : 25-02-2015

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 35

Citation : (2015) 02 BOM CK 0308

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

Bench : Single Bench

Advocate : H.V. Patil, for the Appellant; V.D. Salunke, Advocate h/f K.B. Jadhav, Advocates for the Respondent

Final Decision : Allowed

Judgement

N.W. Sambre, J—Rule. Rule made returnable forthwith. With the consent of the parties, heard finally.

2. The petitioner claiming to be an elected member of Grampanchayat Harshi (Kh). Taluka Paithan, District Aurangabad, subsequently elected as Sarpanch of the Village Panchayat, by way of present petition, has questioned the legality and validity of the order dated 03/01/2014 passed by the respondent-Additional Collector, Aurangabad confirming the resolution passed in special meeting dated 30/09/2013 against the petitioner passing No Confidence Motion.

3. It is claimed by the petitioner that on 24/09/2013 the members of Grampanchayat had given requisition to the Tahsildar to convene special meeting for consideration and discussing No Confidence Motion against the petitioner Sarpanch and also against Up-Sarpanch.

4. It is claimed by the petitioner that a common requisition notice was given against the petitioner-Sarpanch and Up-sarpanch requisitioning convening of special meeting. The petitioner claims that upon notice tendered by the respondent-Members, a notice dated 24/09/2013 was issued to the Members

convening special meeting on 30/09/2013 for consideration of "No Confidence Motion" against Sarpanch and Up-sarpanch. It is further urged that, on 30/09/2013, the resolution of "No Confidence Motion" was passed, which has prompted her to prefer an appeal bearing Appeal No. 80 of 2013. The appeal came to be dismissed by an order of respondent No. 8 on 03/01/2014. As such, present writ petition.

5. Learned Counsel for the petitioner would urge that, in view of Section 35 of the Bombay Village Panchayats Act, 1958 (hereinafter shall be referred to as "the Act" for brevity) and Rule 2 of Bombay Village Panchayats, Sarpanch and Upa-sarpanch (No-Confidence Motion) Rules, 1975, (hereinafter shall be referred to as "the Rule" for brevity), the very initiation of Motion of No-Confidence from the point of issuance of notice is vitiated. He would urge that, Rule 2 of the above rules was already held to be mandatory in the judgment of the Division Bench delivered by this Court in the matter of Chandrakala w/o Vaijanathrao Ghatul v. Kathalu S/o. Maroti Hatagale & Ors reported in 2009(3) Mh.L.J. 55, the very notice of No-Confidence Motion stands vitiated and as such, passing of Motion of No-Confidence and consequential order passed in appeal is liable to be set aside.

6. While countering the above referred submissions, Mr. Salunke, learned Counsel for the respondents Nos. 1 to 5 would urge that, the said rule in catena of decisions is held to be directory in nature. He would urge that, present petitioner has attended the special meeting which was scheduled on 30/09/2013 and has acknowledged her presence in the said meeting by putting her signature on the minutes of the meeting. He would further submit that, prejudice, if any because of submission of joint notice to the Presiding Officer for calling No-Confidence Motion meeting was neither established nor same has caused any prejudice, at least no such prejudice is demonstrated by the petitioner either before the Additional Collector or before this Court. He would further urge that, the petitioner has never raised any objection to that effect before special meeting.

7. In support of this contentions, he has sought to place reliance upon the judgment of the Apex Court in the matter of K. Narasimhiah Vs. H.C. Singri Gowda, AIR 1966 SC 330 : (1964) 7 SCR 618 , judgments of this Court in the matter of Nimba Rajaram Mali Vs. Collector, Jalgaon and others, AIR 1999 Bom 335 : (1998) 4 ALLMR 479 : (1999) 1 BomCR 546 , Arjun Sambhaji Khade and Others Vs. Mangal Ankush Kharmate and Others, (2003) 1 ALLMR 986 : (2003) 2 MhLj 295 , Smt. Yamunabai Laxman Chavan and Others Vs. Smt. Sarubai Tukaram Jadhav and Others, (2004) 3 ALLMR 93 : (2004) 2 MhLj 1004 , Appa Munjaji pawar v. Divisional Commissioner & Ors. [2009(5) Bom. C.R. 691] , Durgadas Ukhaji More and Others Vs. Additional Commissioner, Nashik Division and Others, (2002) 3 BOMLR 747 : (2003) 1 MhLj 420 , Prabhawati Vijaykumar Khivsara Vs. State of Maharashtra and Others, (2008) 3 BomCR 755 : (2008) 2 MhLj 274 , so as to canvass that, will of the majority in a democratic ruled body shall prevail. He has also relied upon the above referred judgment, so as to urge

that Rule 2 of the rules is held to be directory and not mandatory. He submits that, there is no violation of mandatory rights of the petitioner.

8. Having considered the rival contentions of the parties, it is no doubt true that, in catena of judgments which are relied by the learned Counsel for the respondents, it is held that, will of the majority shall prevail in a body which is democratically ruled by the candidates like the petitioner and it is also required to be appreciated that, major part of Rule 2, was held to be directory, however, one cannot lost sight of the view taken by the Division Bench of this Court in the matter of Chandrakala w/o Vaijanathrao Ghatul (supra). In the said judgment, the Division Bench, while dealing with the issue as regards mandate of Rule 2 while giving notice requisitioning of special meeting for consideration of No-Confidence Motion against Sarpanch as well as Up-sarpanch observed in paragraph Nos. 8 and 9 thus:

"8. From the order of the Collector, and from the facts set out there, it is recorded that five members had preferred a notice of no confidence in the prescribed format to the Tahasildar Manwat on 18-10-2007. The Tahasildar issued a notice of special meeting containing the agenda of the meeting. The Special meeting was to be held on 23-10-2007, that is within seven days as required by the Rules. Notices were served on the members through the Talathi saza Sawargaon. The Collector recorded a finding on examining the service copy of the notice that both the appellants were served with the notice personally. The Panchayat consists of seven members and out of them five members cast their votes in favour of the no confidence motion and thus the resolution was passed by way of two-third majority.

We may note one aspect that though two notices were given of the motion of no confidence and duly signed by the members, in each notice the motion referred to removal of Sarpanch and Upasarpanch. On behalf of the contesting Respondents, learned counsel has produced certified copies of the notices for motion of no confidence, which shows that the notices in respect of Sarpanch and Upasarpanch were received independently on 18th and 19th October, 2007 respectively. The meeting was called, as can be seen from the writing on the notice, on 23rd October, 2007. With the above, we may now consider the Rule.

9. As we have seen, section 35 of the Village Panchayat Act requires that the motion has to be signed by at least one-third of the members, that has been done in this case. The motion has to be in the prescribed format in terms of subsection 35(1). The notice in fact was given as prescribed. The motion was carried out by two-third of the members. The only defect pointed out is that though two sets of notice for motion were taken out, reference was made to motion of no confidence against the Sarpanch and Upasarpanch in both the motions. The Rule sets out, that where members desires to move motion of no confidence against Sarpanch as well as Upasarpanch, they shall give two separate notices. In the instant case two separate notices were given. The only question is whether reference to Sarpanch and Upasarpanch in each of the

notices, invalidates the motion of no confidence.

While construing Rules of procedure, the Courts normally, will read them as directory and not mandatory unless the context otherwise requires. No doubt the Rule uses the expression "shall give two separate notices". The requirement of two separate notices is therefore mandatory and can not be read as directory, as it goes to the very root for considering the notices of motion of no confidence and issuing notice on each of the motion. Two separate notices were given. In other words, there has been compliance with the requirement of the Rule. If it was the contention that no two separate notices had been given, it would have been possible to hold considering the construction given, that the requirement of giving two separate notices being mandatory and if that had not been complied with, then the following of the meeting itself being contrary to the statutory provision, the motion passed would have to be held nullity at law. If reference is required, we may refer to the Judgment in Commissioner of Income Tax, Mumbai (supra). There though the issue was of construction of substantive provision of the Act, nonetheless the following observations of the Supreme Court would be relevant:--

"It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself..."

In our opinion, therefore, what is mandatory, would be giving two separate notices of the motion in the form prescribed against Sarpanch as well as Upasarpanch respectively."

9. The view in the matter of Chandrakala w/o Vaijanathrao Ghatul (supra) as regard issuance of two separate notices for the consideration of No Confidence Motion to the Presiding Officer, is not upset or reversed till date in any of the judgments including that of one cited by learned Counsel for the respondents.

10. From the above, it is required to be inferred that, provisions of Rule to the extent of issuance of notice requisitioning No Confidence Motion against Sarpanch and Upasarpanch in the light of provisions of section 35 and Rule 2 of the rules contemplates two separate notices. In the present case, it reflects from the notice dated 24/09/2013 forwarded by the respondents-Members to the Tahsildar that a common notice for convening of meeting of No Confidence Motion against Sarpanch and Upasarpanch was tendered. The text of the said notice is available on record at page 18.

11. It is not in dispute that, no separate notice requisitioning of meeting for consideration of No Confidence against the petitioner was issued.

12. In that view of the matter, having regard to the law laid down by the Division Bench of this Court in the matter of Chandrakala w/o Vaijanathrao Ghatul (supra), this Court is left with no other option but to allow the present petition. As such, writ petition is allowed in terms of prayer clause (B). Rule made

absolute in above terms.

13. It is clarified that, allowing of the present petition will not dis-entitled the respondent-Members from taking recourse to issuance of fresh requisitioning for special meeting against the petitioner, as bar provided under the statute in between two special meetings will not come in their way, as according to the petitioner, the meeting itself was not properly convened. As such, respondents are at liberty to submit fresh requisition of No Confidence Motion, if they so desire.