
(2013) 03 BOM CK 0081

In the Bombay High Court

Case No : Letters Patent Appeal No. 203 of 2011 in Writ Petition No. 167 of 2011, Letters Patent Appeal No. 204 of 2011 in Writ Petition No. 2481 of 2011, Letters Patent Appeal No. 206 of 2011 in Writ Petition No. 7753 of 2010, Letters Patent Appeal No. 208 of 2011

Vishnu Ramchandra Patil and Others	APPELLANT
Vs	
Group Gram Panchayat and Others etc. etc.	RESPONDENT

Date of Decision : 06-03-2013

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 35

Citation : (2013) 3 ABR 214 : (2013) 3 ALLMR 16 : (2013) 3 BomCR 517 : (2013) 3 MhLj 133

Hon'ble Judges : K.K. Tated, J;A.M. Khanwilkar, J

Bench : Division Bench

Advocate : C.G. Gavnekar in Letters Patent Appeal No. 203 of 2011 in Writ Petition No. 167 of 2011, Letters Patent Appeal No. 206 of 2011 in Writ Petition No. 7753 of 2010 and Letters Patent Appeal No. 237 of 2011 in Writ Petition No. 4601 of 2010, Mr. Sandeep Salunke in Letters Patent Appeal No. 204 of 2011 in Writ Petition No. 2481 of 2011 and Letters Patent Appeal No. 214 of 2011 in Writ Petition No. 2444 of 2011, Mr. R.R. Salvi in Letters Patent Appeal No. 208 of 2011 in Writ Petition No. 8520 of 2010 and Mr. Rakesh Bhatkar in Letters Patent Appeal No. 39 of 2013 in Writ Petition No. 9907 of 2012, for the Appellant; V.S. Gokhale, A.G.P. for the State in Letters Patent Appeal No. 203 of 2011 in Writ Petition No. 167 of 2011, Letters Patent Appeal No. 204 of 2011 in Writ Petition No. 2481 of 2011, Letters Patent Appeal No. 206 of 2011 in Writ Petition No. 7753 of 2010, Letters Patent Appeal No. 208 of 2011 in Writ Petition No. 8520 of 2010, Letters Patent Appeal No. 214 of 2011 in Writ Petition No. 2444 of 2011, Letters Patent Appeal No. 237 of 2011 in Writ Petition No. 4601 of 2010 and Letters Patent Appeal No. 39 of 2013 in Writ Petition No. 9907 of 2012, Mr. C.G. Gavnekar for Respondent Nos. 1 to 6 in Letters Patent Appeal No. 208 of 2011 in Writ Petition No. 8520 of 2010, Mr. S.A. Sawant A/w Mr. Ketan Joshi for Respondent Nos. 1, 3 and 5 to 10 in Letters Patent Appeal No. 237 of 2011 in Writ Petition No. 4601 of 2010 and Mr. P.D. Dalvi for Respondent No. 5 to 10 in Letters Patent Appeal No. 39 of 2013 in Writ Petition No. 9907 of 2012, for the Respondent

Judgement

K.K. Tated, J.—Heard learned counsel for the parties. In these Letters Patent Appeals, common question of law has been argued and, therefore, we are disposing of the same by this common judgment. Each of these Appeals challenge the order passed by the learned single Judge dated 26th July, 2011 and 11th December, 2012 by which their Writ Petitions challenging the order of the Collector and the Commissioner of the concerned districts dismissing the dispute and the Appeals which were preferred to question the no confidence motion passed against Appellants herein were dismissed.

2. The Appellants are either the Sarpanch or Up-Sarpanch of the concerned Gram Panchayats. In terms of the statutory provisions the members of the Panchayat are entitled to bring a motion of no confidence against the Sarpanch or the Up-Sarpanch. The statutory provision in that regard is in section 35 of the Bombay Village Panchayats Act, 1958 (for short "the said Act") which reads thus:

35. Motion of no confidence.- (1) A motion of no confidence may be moved by not less than (one-third) 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. (Such notice once given shall not be withdrawn).

(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 not less than two-third 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.

Provided that, where the office of the Sarpanch being reserved for a woman, is held by a woman Sarpanch, such motion of no-confidence shall be carried only by a majority of not less than three-fourth of the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat.

Provided further that no such motion of no confidence shall be brought within a period of six months from the date of election of Sarpanch or Upa-Sarpanch.

(3-A) If a motion is not moved or is not carried by a majority of not less than two-third of or, as the case may be, three-fourth, of the total number of the

members who are for the time being entitled to sit and vote at any meeting of the panchayat, no such fresh motion shall be moved against the Sarpanch, or, as the case may be, the Upa-Sarpanch within, a period of one year from the date of such special meeting.

(3-B) If the Sarpanch or, as the case may be, the Upa-Sarpanch desires to dispute the validity of the motion carried under sub-section (3), he shall, within seven days from the date on which such motion was carried, refer the dispute to the Collector who shall decide it, as far as possible, within fifteen days from the date on which it was received by him; and any such decision shall, subject to an appeal under sub-section (3-C), be final.

(3-C) Any person aggrieved by the decision of the Collector may, within seven days from the date of receipt of such decision, appeal to the Commissioner who shall decide the appeal, as far as possible, within fifteen days from the date on which the appeal is received by him, and any such decision shall be final.

(3-D) Where on a reference made to him under sub-section (3-B), the Collector upholds the validity of the motion carried under sub-section (3) and no appeal is made by the Sarpanch or the Upa-Sarpanch under sub-section (3-C) within the limitation period specified in that sub-section, or where an appeal is made under sub-section (3-C) but it is rejected by the Commissioner, the Sarpanch or, as the case may be, the Upa-Sarpanch shall cease to hold office, in the former case, immediately after the expiry of the said limitation period and, in the later case, immediately after the rejection of the appeal, and thereupon the office held by such Sarpanch or Upa-Sarpanch shall be deemed to be vacant.

(4) In cases where the offices of both the Sarpanch and Upa-Sarpanch become vacant simultaneously, the District Village Panchayat Officer or such other officer as he may authorise in this behalf shall, pending the election of the Sarpanch exercise all the powers and perform all the functions and duties of the Sarpanch but shall not have the right to vote in any meetings of the panchayat.

3. The Bombay Village Panchayats (Meetings) Rules, 1959 provides for procedure to be followed in the case of notice for no confidence motion. Therefore, some of the relevant provisions of the Bombay Village Panchayats (Meetings) Rules, 1959 are necessary to be reproduced: Rules 17, 18, 19, 20, 21, 24 and 26 of the Bombay Village Panchayats (Meetings) Rules, 1959 are read thus:

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.

(2) If a member when called is absent, any other member may, with the

permission of the person presiding, move the motion standing in the name of the absent member, if permission is not granted to the other member to move the motion, the motion shall lapse.

18. After a motion has been moved and seconded the person presiding shall propose the question by reading the motion for the consideration of the panchayat.

19. After a motion has been moved and seconded it shall not be withdrawn or altered in substance, except with the consent of the member who seconded it.

20. (1) After a motion has been proposed and seconded any, member may propose an amendment thereto.

(2) Every amendment must be relevant to, and within the scope of, the motion to which it relates.

(3) No amendment shall be moved which has merely the effect of a negative vote.

(3-A) (a) An amendment to an amendment may be moved with the permission of the person presiding.

(b) When an amendment to an amendment is moved, the amendment sought to be amended shall, so long as the amendment by which it is sought to be amended is under discussion, be deemed to be the substantive motion before the meeting.

(4) An amendment in the alternative shall not be moved.

(5) Any number of amendments may be moved to the same motion but no member shall move more than one amendment to the same motion.

(6) The person presiding may disallow any amendment which is, in his opinion, irrelevant or frivolous.

21. (1) A member desiring to propose and discuss any motion shall rise in his seat when speaking and address his speech to the person presiding;

Provided that the person presiding may, at the commencement of the meeting, declare that the business of the meeting shall be transacted sitting or may be permit any member to address the meeting sitting.

(2) A member shall confine his speech strictly to the question before the meeting and shall cease to make remarks which are held by the person presiding to be irrelevant or offensive.

(3) Members shall not talk among themselves in the meeting so as to disturb the proceedings or a member who is speaking.

24. The mover, or if the mover waives his right, the seconder, of a substantive motion may reply at the conclusion of the debate thereon but 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 but in such cases, no debatable matter shall be brought forward.

26. (1) 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.

(2) The votes shall be taken in the following manner:-

(a) when there is only one amendment to the motion, -

(i) the amendment shall first be put to vote;

(ii) if the amendment is lost, the motion shall then be put to vote; or

(iii) if the amendment is carried, the amended motion shall be put to vote;

(b) when there are more than one amend, -

(i) the amendments shall first be put to vote one after another in such order as the person presiding may decide;

(ii) if all the amendments are lost, the motion shall then be put to vote;

(iii) if all or any of the amendments are carried, the amended motion shall be put to vote.

4. At the same time, it is necessary to reproduce some of the provisions of the Bombay Village Panchayats Sarpanch and Up-Sarpanch (No Confidence Motion) Rules, 1975 i.e. Rules 2, 3 and Form of notice of motion of no confidence which are as under:

2. (1) 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 hereto 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.

(2) The notice under sub-rule (1) shall be accompanied by seven additional copies thereof, and the Tahsildar shall send one copy to the Sarpanch, one to the Upa-Sarpanch and one each to the Zilla Parishad, the Panchayat Samiti, the Collector and the Commissioner. One copy shall also be given to the Secretary.

(2-A) The Tahsildar shall also publish the said notice by placing the same on the notice board at the office of the Panchayat and Tahsildar Office.

(2-B) Every notice under sub-rule (1), wherever it may be practicable, be served by delivering or tendering it to the Sarpanch or Upa-Sarpanch to whom it is addressed or, where such person cannot be found, by delivery or tendering it to any adult member of his family residing with him; and if no such adult member

can be found or, where the Sarpanch, Upa-Sarpanch or such adult member, as the case may be, refuses to accept the notice, it shall be served by affixing it, in the presence of two witnesses, on the outer door or some other conspicuous part of the house in which such Sarpanch or Upa-Sarpanch ordinarily dwells. The notice served in this manner shall be deemed to be served or tendered or delivered to the concerned Sarpanch or Upa-Sarpanch.

(3) The Tahsildar 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 (other than associate 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 notice.

3. 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."

....

FORM OF NOTICE OF MOTION OF NO-CONFIDENCE

To

The Tahsildar,

....

Place....

Date....

Sir,

We, the undersigned members of the village panchayat of.... give you notice that we propose to move a motion of no-confidence against the Sarpanch Upa-Sarpanch.... in the meeting of the panchayat for the following reasons:-

....

....

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....

.....

We declare that the facts stated above are true to the best of our information

and knowledge.

5 The issue involved in the present Appeals is whether it is necessary to follow the procedure prescribed in Rule 17 of the Bombay Village Panchayats (Meetings) Rules, 1959 while moving no confidence motion.

6. The learned counsel appearing on behalf of the Appellants submits that admittedly before passing no confidence motion as per section 35 of the Bombay Village Panchayats Act, 1958, the Respondents failed to comply with the procedure prescribed by the Bombay Village Panchayats (Meetings) Rules, 1959 and, therefore, no confidence motion passed by the Panchayats against the Appellants is liable to be set aside for non-compliance of these rules.

7. The learned counsel appearing on behalf of Appellants submits that the Full Bench of this Hon"ble Court in the matter of Shri Vishwas Pandurang Mokal vs. Group Gram Panchayat, Shihu and others reported in 2011 (3) of ALL MR 778 held that meeting for considering no confidence motion called u/s 35 of the said Act, the provisions of the Meeting Rules generally and provisions of Rule 17 in particular will apply to such a meeting in the absence of any contrary to the provisions in the said Act or in the Bombay Village Panchayats Sarpanch and Up-Sarpanch (No Confidence Motion) Rules, 1975. In support of this he relies on Paras 17 and 18 of the Judgment in the matter of Shri Vishwas Pandurang Mokal (supra), which read thus:

17. Thus, Rule 17 provides that the person who has submitted notice of the motion shall move the motion in the meeting. Rule 20 deals with how amendments to the motion can be proposed. Rule 21 deals with how a person who wants to speak on a motion has to address. What should be the duration of the speech and what is the decorum to be followed in speaking at the meeting. Thus, in these Rules provisions in detail have been made for the conduct of the meeting both ordinary and special of the village panchayat. Perusal of the No Confidence Motion Rules shows that they do not contain any provision in relation to the conduct of the meeting. Provisions for conduct of the meeting of the village panchayat are to be found in the Meeting Rules. The manner of submitting a requisition for convening a special meeting of the village panchayat to consider motion of no confidence against the Sarpanch or Up-Sarpanch is to be found in sub-section 1 & 2 of Section 35 and the No Confidence Motion Rules. But neither in Section 35 nor in the No Confidence Motion Rules we find provisions made as how many days notice should be given to the members of the Special meeting to be convened u/s 35. Therefore, in our opinion, for that purpose one will have to follow the provisions of the Meeting Rules because they lay down as to how many days notice of special meeting is to be given to the members. Section 35 provides that the Sarpanch or Up--Sarpanch against whom the motion is to be moved is entitled to attend and participate in the meeting, and he is entitled to speak at the meeting. But there is no provision to be found made in Section 35 or in the No Confidence Motion Rules as to the manner in which the Sarpanch or Up-Sarpanch can exercise his right to participate and

Speak at that meeting. Provisions for that purpose are to be found in the Meeting Rules. Neither Section 35 nor No Confidence Motion Rules lay down as to what is to be done if the requisite quorum is not present at such meeting. But the Meeting Rules contain provisions in that regard. Neither Section 35 nor No Confidence Motion Rules makes provision dealing with the situation when the members present in the meeting disregard the authority of the presiding officer. Those provisions are to be found in the Meeting Rules. In our opinion, therefore, there is no reason why the provisions of the Meeting Rules to the extent that no contrary provision is made either in the Act itself or in the No Confidence Motion Rules should not apply to a meeting called u/s 35. In our opinion, if the provisions of the Meeting Rules are held to be applicable to a meeting called u/s 35, it will facilitate holding of meeting u/s 35 effectively. Therefore, in our opinion, it can be safely said that the provisions of the Meeting Rules generally apply to a special meeting convened u/s 35. However, such provisions of the Meeting Rules which are found to be contrary to the provisions contained either in the Act in relation to the holding of the special meeting for consideration of motion of no confidence against Sarpanch or Up-Sarpanch or in the No Confidence Motion Rules would not apply to a meeting called u/s 35. Now taking up the question whether specifically provisions of Rule 17 of the Meeting Rules apply to a meeting called u/s 35 is concerned, in our opinion, the provisions of Section 17 will apply in a meeting called u/s 35. As observed above Section 35 contains a provision for submission of requisition by members to the Tahsildar for calling a special meeting of the village panchayat to consider the motion of no confidence against Sarpanch or Up-Sarpanch. It casts a duty on the Tahsildar to call a meeting for that purpose within seven days of the receipt of the requisition. But Section 35 does not contain any provision as to how that meeting is to be conducted, save and except to provide that the Sarpanch or Up-Sarpanch concerned shall have a right to attend and participate in that meeting. We have already observed above that perusal of No Confidence Motion Rules and the Form of the requisition shows that when the members of the village panchayat submit the requisition to the Tahsildar, what they actually do is that they request the Tahsildar to convene a special meeting of the village panchayat so that in that meeting they can move a motion of no confidence against Sarpanch or Up-Sarpanch. It is, thus, clear that moving of the motion of no confidence is not by submission of requisition to the Tahsildar. The requisition is only for calling a special meeting to facilitate moving of motion of no confidence. The motion of no confidence is actually moved in the meeting of the village panchayat and as there is no contrary provision to be found either in the Act or in the No Confidence Motion Rules, in relation to moving of a motion in a meeting of the village panchayat, Rule 17 of the Meeting Rules which makes such a provision will apply. In the Meeting Rules there is a provision made for calling a special meeting of village panchayat because a requisition is received from members. Therefore, concept of convening a special meeting of the village panchayat as a consequence of requisition received from the members is to be found in the Meeting Rules itself and therefore, all those provisions contained in the Meeting

Rules in relation to convening and holding of a special meeting of the village panchayat will apply to the special meeting convened u/s 35, subject to there being any specific contrary provision in the Act or in the No Confidence Motion Rules.

Perusal of the provision of sub-section 3A of Section 35 shows that provision makes difference between moving of a motion and carrying of a motion by requisite majority. Provision of sub-section 3-A of Section 35 reads as under:

(3-A) If a motion (is not moved or is not carried) by (a majority of not less than two-third of) (or, as the case may be, three-fourth, of) the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat, no such fresh motion shall be moved against the Sarpanch, or, as the case may be, the Upa-Sarpanch within, a period of (one year) from the date of such special meeting.

It is clear that in a special meeting of the village panchayat called for the purpose of consideration of motion of no confidence against the Sarpanch or Up--Sarpanch, a motion is to be moved in the meeting.

18. We make it clear that though it is clear to our mind that the provisions of the Meeting Rules generally and Rule 17 in particular will apply to the above extent to a meeting called u/s 35, we are not deciding the question as to what is the consequence in relation to validity or otherwise of a motion of no confidence being passed against Sarpanch or Up-Sarpanch in violation or without following a particular Rule. That question will have to be decided in each case after considering the nature of the provision, whether the provision is mandatory or directory. In other words, though it is clear to our mind that the provisions of Rule 17 of the Meeting Rules are to be followed in passing the motion in a meeting called u/s 35, we are not deciding the question as to what is the consequence if the provisions are not followed and the motion is passed. Because, that question as to whether the provisions of Rule 17 are mandatory or directory has not been referred to us. In our opinion, therefore, the first question will have to be answered in the affirmative by holding that the provisions of the Meeting Rules generally and provisions of Rule 17 in particular apply to a meeting convened u/s 35.

(Emphasis supplied)

8. The learned counsel for the Appellants submits that the learned single Judge misinterpreted the decision rendered by the Full Bench of our High Court in the matter of Shri Vishwas Pandurang Mokal (supra). He submits that the learned single Judge committed an error in not accepting the decision of Full Bench that Rule 17 of the Bombay Village Panchayats (Meetings) Rules, 1959 read with other Rules are applicable and in the absence of compliance of the said Rules, the no confidence motion passed against the Appellants is illegal. He further submits that the learned Single Judge failed to consider that the Full Bench in the above said decision has held that Rule 17 applies to a meeting called u/s 35 of

the Bombay Village Panchayats Act, 1958 and the Bombay Village Panchayats Sarpanch and Up-Sarpanch (No Confidence Motion) Rules, 1975 provide for a requisition for calling a special meeting to facilitate moving of motion of no confidence and that moving of motion of no confidence is not by submission or requisition to the Tahasildar. He further submits that no confidence motion was not moved by the Respondents as per the procedure prescribed in the said Act and the said Meetings Rules and No Confidence Motion Rules. He submits that the Tahasildar on the basis of letter written by some of the members called meeting and in that meeting no confidence motion was passed against the Appellants without following procedure prescribed u/s 35 of the said Act and under the Rules of for conducting Meetings and therefore, the learned single Judge erred in dismissing their Writ Petitions.

9. The learned counsel for the Appellants submits that the single Judge erred in coming to the conclusion that "in the instance case I find that no prejudice is caused as there is substantial compliance with the requirement of Rule 17 assuming that it is acceptable". He further states that the learned single Judge contrary to the observations of the Full Bench held "it is clear that in a special meeting of the Village Panchayats called for the purpose of consideration of motion of no confidence against the Sarpanch or Up-Sarpanch a motion is to be moved in the meeting". He further submits that the observations made by the single Judge in Paras 23 and 24 of the impugned judgment are against justice, equity and good conscience and same are liable to be set aside. He further submits that the Tahasildar failed to consider that the notice required to be issued to the Appellant was required to be accompanied by the copy of requisition submitted by the members desirous of moving no confidence motion. He submits that it is an admitted fact that no such requisition was enclosed along with notice served by the Tahasildar on the Appellant and other members of the Gram Panchayat. Therefore, the convening of the meeting by the Tahasildar was illegal and, therefore, no confidence motion passed in the said meeting was illegal.

10. The learned counsel for the Appellants submits that in section 35 of the said Act, it is specifically stated that a motion of no confidence may be "moved"; the word "moved" is more important because unless and until procedure as prescribed under Meeting Rules is complied, no confidence motion cannot be moved. He submits that as per provisions of Section 35 of the said Act which provides the moving of a resolution by the members present in the meeting. He submits that the reading of the minutes recorded by Tahasildar, it is clear that no resolution of no confidence was moved by any of the members or the same was seconded by any of the members, hence, no confidence motion passed in the said meeting is illegal. He further submits that meeting conducted was contrary to section 35 of the said Act which provides for moving of resolution and under the Meeting Rules being Rules 17 to 26, a member who has given notice of motion is required to move the same and such motion is required to be seconded and it is only after such motion being moved and seconded, the same is required

to be kept for consideration. The said Rules further provide under Rule 26 that on conclusion of the debate on a motion and the Presiding Officer being satisfied that motion has been sufficiently discussed, the said motion is required to be put to vote. In the present case, the Tahasildar who presided over the said meeting put the motion to vote without the same being moved and seconded. It is, therefore, submitted that the entire procedure adopted by the Tahasildar was contrary to the rules and, therefore, the proceedings of the meeting and consequent resolution is illegal and liable to be set aside. On the basis of these submissions, the learned counsel for the Appellants submits that the common judgment passed by the single Judge in all these Appeals is liable to be set aside by allowing these Writ Petitions.

11. On the other hand, the learned counsel appearing on behalf of Respondents vehemently opposed the present Appeals. He submits that the Meeting Rules are directory Rules and not mandatory and, therefore, it is not necessary to comply with the provisions of Rule 17 of the Meeting Rules. He further states that nowhere it is specifically stated directly or indirectly in the said Act that for moving motion of no confidence it is mandatory to follow the procedure prescribed under Meeting Rules. He states that the learned single Judge rightly observed in Paras 23 and 24 of the judgment that in a meeting held by Tahasildar everybody fully participated in the discussion and after hearing everybody's speech, no confidence motion was passed and, therefore, it is not necessary to comply and/or mandatory to comply with the procedure prescribed under Rule 17 of the Meeting Rules. On the basis of these submissions the learned counsel for the Respondents submits that there is no substance in the present Letters Patent Appeals and the same are liable to be dismissed with costs.

12. After hearing both sides at length, in our opinion, two broad points would arise for our consideration:

(i) whether the procedure stipulated in Rule 17 of the Bombay Village Panchayats (Meeting) Rules, 1959, is a directory or mandatory procedure?

(ii) whether non-compliance of procedure stipulated in Rule 17 of the Meeting Rules would render the decision taken on the Motion of No Confidence passed in exercise of power u/s 35 of the Act invalid, in law?

13. As regards the first point, the consistent view in the judicial pronouncements, while interpreting Rule 17 of the Meeting Rules, is that Rule 17 provides that the person who has submitted notice of the Motion shall move the Motion in the meeting. That procedure has been held to be mandatory procedure in relation to any other Motions moved before the Panchayat governed by the Meeting Rules. There is nothing in Rule 17 to suggest that the same must be construed as mandatory for general meetings and directory for meetings to consider No Confidence Motion. The question as to whether Rule 17 of the Meeting Rules applies to the Motion of No Confidence has already been answered by the Full Bench of our High Court in the case of Shri Vishwas Pandurang Mokal (supra). In

paragraph 17, the Full Bench unreservedly held that Rule 17 of the Meeting Rules will apply to a meeting called u/s. 35 of the Act of 1958. The Full Bench was conscious of the fact that section 35 by itself does not contain any provision as to how that meeting is to be conducted. Nevertheless, the Full Bench has expounded that it is amply clear that moving of the Motion of No Confidence is not by submission of requisition to the Tehsildar. Whereas, the requisition is only for calling a special meeting to facilitate moving of Motion of No Confidence. Further, the Motion of No Confidence is required to be actually moved in the meeting of the Village Panchayat. This exposition can be discerned from the highlighted portion of paragraph 17 of the Full Bench decision reproduced hitherto. No doubt, in paragraph 18, the Full Bench went on to observe that it was not deciding the question as to what is the consequence in relation to the validity of or otherwise of a Motion of No Confidence being passed against the Sarpanch or Up-Sarpanch in violation and/or without following a particular Rule. Further, that question will have to be decided in each case after considering the nature of the provision, whether the provision is mandatory or directory. However, this observation will have to be read in the context of the dictum found in paragraph 17 of the decision of the Full bench which has unambiguously concluded that moving of the Motion of No Confidence is not by submission of requisition to the Tehsildar but by moving a Motion of No Confidence in the meeting. In other words, the questions posed for consideration in the present appeals are no more *res integra* as the same are answered by the Full Bench of our High Court in the case of Vishwas Pandurang Mokul (*supra*).

14. It would be useful to advert to the decision of a Division Bench of our High Court in the case of Janardhan Shankar Watane vs. CEO, Zilla Parishad, Amravati in Special Civil Application No. 529 of 1963 dated 13.10.1964 (Coram: V.S. Desai and V.G. Wagle, JJ.) 1965 Mh.L.J. Note No. 2. The Division Bench, while considering somewhat similar grievance, held that the right to move the Motion of No Confidence against the Sarpanch or Up-Sarpanch is created by the Act which provides for the exercise of that right in the manner as prescribed under Rules framed under the Act. It is well established position that if a Statute prescribes a thing to be done in a particular manner, that thing ought to be done in that manner alone. In that case, the Court while accepting the argument that the procedure prescribed in the statutory Rules has not been followed concluded that the meeting held in contravention of the Rules is invalid and the No Confidence motion passed therein will be illegal.

15. Suffice it to observe, with due respect, that the logic applied by the learned Single Judge is not in conformity with the exposition of the Full Bench of our High Court. As aforesaid, the issues in the present appeals have already been answered by the Full Bench, in particular, in paragraph 17 of its decision and are no more *res integra*.

16. In the present case, it is indisputable that some of the members made application to the Tehsildar for requisitioning meeting to consider Motion of No

Confidence against the concerned appellants. On the basis of that requisition, the meeting was convened by the Tehsildar in which the resolution came to be passed against the respective appellants without moving a formal Motion of No Confidence. Keeping in mind the dictum of the Full Bench of our High Court, this lapse results in violation of requirement of Rule 17, which is mandatory. On this finding, it necessarily follows that the argument of no prejudice caused to the concerned person for having participated in the meeting wherein the resolution came to be passed, will be of no avail. For, as observed by the Full Bench of our High Court, it is essential to move a Motion of No Confidence in the meeting convened to consider such Motion.

17. As a result, we have no hesitation in allowing these Letters Patent Appeals and to set aside the decision of the learned Single Judge of this Court. Further, we set aside the direction issued by the concerned Authority and including the impugned No Confidence Resolution passed against the respective appellants by the concerned Panchayats, being illegal. No order as to costs.