

IN THE HIGH COURT OF JUDICATURE OF BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 870 OF 2015

Shri Vikramsinh S/o Babanrao Kalamkar ... Petitioner

VERSUS

The Tahsildar, Parner,
Tal. Parner, District Ahmednagar
& others ... Respondents

.....
Mr. Sandip R. Andhale, Advocate for petitioner
Mr. D.R. Korde, A.G.P. for respondent No. 2 / State
Mr. R.R. Karpe, Advocate for respondent Nos. 2 to 7
.....

CORAM : RAVINDRA V. GHUGE, J.

DATED : 27th JANUARY, 2015

PER COURT :

1. I have heard the learned Advocate for the petitioner, learned A.G.P. appearing on behalf of respondent No. 1 and Shri Karpe, learned Advocate appearing on behalf of respondent Nos. 2 to 7.

2. Grievance of the petitioner is that he was not given an opportunity of hearing while passing the 'no confidence' motion against him as a Sarpanch of Village Padali Ranjangaon, Tq. Parner.

3. There are nine members to the Village Panchayat. Six members moved a requisition dated 05-12-2014, requesting the Tahsildar to convene a special meeting for considering the 'no confidence' motion moved against the petitioner-Sarpanch. By a common notice dated 05-12-2014, the special meeting was convened on 11-12-2014. It is not disputed that the petitioner had received the said notice.

4. On 11-12-2014, only six members out of the nine were present and participated in the meeting. The petitioner along with two members namely Anna @ Tukaram Sathe and Smt. Mirabai Manik Auti were shown to be absent in the meeting. The 'no confidence' motion was carried by 6 = 0 vote count.

5. The petitioner contends that he was physically prevented from participating in the special meeting by those respondents herein who had voted in favour of the 'no confidence' motion. He was physically threatened and was forcibly dis-allowed from attending the meeting. This contention has been raised before the Additional Collector in Grampanchayat Dispute Application No. 54 of 2014 while challenging the resolution passed in the said meeting.

6. The petitioner submits that his right to speak and defend himself against the motion and convince the members present to defeat the motion, has been infringed by the conduct of the said six members. The resolution passed is, therefore, unsustainable and needs to be set aside.

7. The Additional Collector, while considering the challenge posed by the petitioner, has not considered this vital aspect while delivering the impugned judgment dated 29-12-2014 by which the application of the petitioner was rejected. The learned Advocate for the petitioner further contended that he had tried to approach the Police Station and they have refused to entertain his complaint. He, therefore, submits that the respondents had preplanned to disallow, the petitioner from attending the meeting and had passed the resolution in less than 40 minutes.

8. The petitioner has relied upon the following judgments in support of his case :-

a] *Shri Ashok Krishnakant Mehta Vs. State of Maharashtra and & others, reported at 2004 (4) Bom.C.R. 724.*

b] *Shivkant Haribhau Bangar Vs. Gramsevak & Ors., reported at 2010 (4) Bom.C.R. 191.*

c] *Surekha s/o Eshwar Jadhav Vs. Nirmala w/o Madhavrao Jadhav & others, reported at 2013 (5) Mh.L.J. 710*

d] *Jeevan s/o Punya Bhavare Vs. The State of Maharashtra & others in Writ Petition No. 2716 of 2012 along with other petitions, by judgment of this Court dated 02-07-2012.*

e] *Namdeo Ragho Arote Vs. State of Maharashtra & others, reported at 1979 (0) BCI 49.*

f] *Bhika Narayan Gangurde & others Vs. State of Maharashtra and others, reported at 2002 (1) Bom.C.R. 186.*

g] *Nagnath Subhash Netake Vs. The State of Maharashtra & others, reported at 2014 (5) ALL MR 249.*

In the light of the ratio laid down in the above said judgments, he submits that the impugned resolution is in contravention of Section 35 (2) and 35 (3) of the Maharashtra Village Panchayat Act and is, therefore, unsustainable in law.

9. The learned A.G.P. appearing on behalf of the State has defended the order passed by the Additional Collector. It is contended that the grounds raised by the petitioner have been considered and since there was no evidence to support his allegations, his contentions were negated.

10. A short affidavit has been filed on behalf of respondent Nos. 2 to 7 through one member of the Village Panchayat namely Vinayak s/o Bhausahab Ubale. Allegations made by the petitioner

have been refuted. It is stated that the petitioner and two of his supporters chose to remain absent. There was no physical threat or intimidation by the respondents which can be said to have prevented the petitioner and his two supporters from attending the meeting. It is therefore, prayed that petition be dismissed.

11. It is apparent that the petitioner had lodged his appeal before the Additional Collector on 16-12-2014. A police complaint was lodged on 27-12-2014 which is two days prior to passing of the impugned order. Be that as it may, disputed questions as to whether the petitioner was physically threatened or was prevented from attending meeting, cannot be gone into in the Writ jurisdiction of this Court.

12. The proceedings indicate that the Tahsildar, has recorded the absence of the petitioner and two other members. There is a contention by the petitioner that the concerned police authorities refused to register an F.I.R. or register a complaint which the petitioner had sought to lodge prior to the filing of the appeal before the Additional Collector. It is nowhere stated in the petition that the petitioner had attempted to lodge a police complaint on the very same day on which he was allegedly threatened and prevented from attending the meeting.

13. The judgments cited by the petitioner pertain to ambit of Section 35 of the Maharashtra Village Panchayat Act and the right of a member to express an opinion in the special meeting. None of these judgments cited are with regard to a contention similar to the one canvassed by the petitioner.

14. In the case of *Shri Ashok Krishnakant Mehta's judgment* (supra), the issue was that the Tahsildar had recorded in the proceeding book that he had permitted the Sarpanch alone to speak since he was facing the 'no confidence' motion and, therefore, other members desirous of speaking were precluded from doing so. As such, the ratio laid down in the said judgment would not apply to the case of the petitioner.

15. In the light of the above, I do not find that the impugned order and the passing of the 'no confidence' motion calls for any interference. In so far as the police complaint lodged by the petitioner on 27-12-2014 is concerned, the same is left to the appropriate authority to investigate into it. Writ Petition, is therefore, dismissed.

(**RAVINDRA V. GHUGE, J.**)