

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2070 OF 2015

SANGITA BHASKAR INGALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Shri Deshmukh Rajendra S.
AGP for Respondents 1 to 4 : Shri Suryawanshi K.M.
Advocate for Respondent 5 : Shri Palodkar D.P.

...
CORAM : RAVINDRA V. GHUGE, J.
Dated: March 04, 2015
...

PER COURT :-

1. I have learned Advocates for the respective sides.
2. Shri Deshmukh, learned Advocate seeks leave to delete respondents 13 and 14 as they are the supporters of the petitioner and are formal parties. Leave granted. Deletion is at the risk of petitioner and be carried out forthwith.
3. Respondents 5 to 12 have together moved the requisition motion. All of them have moved a common appeal, under Section 35 of the said Act before the Additional Collector, Ambajogai. Shri Palodkar, learned Advocate, though appears on behalf of respondent No.5 / Caveator, states that he can represent the cause of respondents 5 to 12 in this matter.
4. The brief facts, as set out by the petitioner, are as under:-

- (a) The post of Sarpanch of village Rajegaon, Taluka Majalgaon was reserved for "Women - OBC".
- (b) The petitioner is a lady Member of the Gram Panchayat and belongs to OBC.
- (c) In March 2013, the petitioner was elected as a Sarpanch.
- (d) On 28.11.2014, respondent Nos.5 to 12 - Members of the Gram Panchayat moved a requisition to the respondent No.4 Tahsildar, proposing the motion of no-confidence.
- (e) Respondent No.4 received the requisition on 28.11.2014 and on the same date, issued the notice for convening a special meeting on 5.12.2014.
- (f) All eleven members were present in the special meeting on 5.12.2014.
- (g) The no-confidence motion was carried by 8:3 vote count.
- (h) Respondent No.4 rejected the result of the meeting in view of the fact that since the post of Sarpanch was reserved for a lady, the

no-confidence motion was required to be passed by 3/4th majority, in the light of the proviso to Section 35(3) of the Maharashtra Village Panchayat Act.

(i) Respondents 5 to 12, raised a dispute before the Additional District Collector, Ambajogai, challenging the decision of the Tahsildar.

(j) By the impugned judgment, dated 31.11.2015, the Additional District Collector, Ambajogai, on the one hand concluded that the necessary votes for achieving 2/3rd mandate, in favour of the motion, was 8.25 votes and on the other hand, he has concluded that the fraction of .25 needs to be ignored, while accepting the result of the no-confidence motion. He, therefore, concluded that the motion was legally carried.

5. The learned AGP appearing on behalf of the statutory authorities has submitted that since the fraction .25, over and above 8 votes was the issue before the competent authority, it has exercised its discretion and has accordingly held that since the fraction was not beyond .5, the vote count could be rounded off to 8.

6. Shri Palodkar, learned Advocate appearing on behalf of respondent No.5 - Caveator submits that the issue raised by the petitioner needs to be

ignored. By way of an interim order, the petitioner cannot be reinstated as a Sarpanch in the light of the judgment of the Apex Court, in the case of State of Uttar Pradesh and others Vs. Sandeepkumar Balmiki and others [(2009) 17 SCC 554].

7. Shri Palodkar, learned Advocate, submits that the motion was set aside by the Tahsildar on technical ground and as such, the said motion can only be said to be incorrect in the technical sense of the term. Nevertheless, the Collector has rightly considered the issue and has correctly passed the impugned order.

8. I have considered the submissions of the learned Advocates for the respective sides. In my view, this issue is no longer *res integra*. In the matter of Kailash Vilas Mane Vs. Gram Panchayat, Jamkhed - Writ Petition No. 1425 of 2015, dated 9.2.2015, I have taken a view on similar set of facts by placing reliance upon the judgment of this Court in the case of Tanaji Bhauso Mane and others Vs. Smt. Ushatai Balkrushna Mane and others [2013 (5) ALL MR 604].

9. Paragraph Nos. 10 and 11, As set out in the case of Kailash Mane's (supra), read as under:-

"10. In so far as calculation of the votes in the light of the provisions u/s 35 of the Maharashtra Village Panchayats Act is concerned, this court, in the case of Tanaji Bhauso (supra) has

concluded that even if 1/4th of a vote is the fraction required for achieving 3/4th of majority (read 2/3rd majority in this case), such a fraction cannot be ignored.

11. Paragraph No.7 of the Tanaji Bhauso judgment (*supra*) is relevant, which reads as follows :

“ On hearing the learned counsel for the parties and on a perusal of the provisions of Section 35 of the Act, as also the judgments relied on by the learned counsel for the parties, it appears that the law laid down by this Court in the judgment reported in 2013 (2) Mh.L.J. 630 that the rule of rounding off cannot be restricted to any particular kind of case or to cases of employment cannot be made applicable while considering whether a motion is carried by a majority, if the majority prescribed, falls short by a fraction. The respondent No.1 is duly elected as a Sarpanch by a democratic process and though the rule of rounding off is applied to the case of employment in the judgment reported in (2005) 2 Supreme Court Cases 10 and to a case of admission in the judgment reported in 2013 (2) Mh.L.J. 630, the rule of rounding off cannot be applied for removal of a Sarpanch if the majority required for the removal falls short by a fraction. In the full bench judgment of this Court, reported in 1988 Mh.L.J. 378, while considering the provisions of the Maharashtra Municipalities Act, this Court observed that the provision of carrying the motion by not less than a particular majority is mandatory and a fraction cannot be ignored as if the fraction is ignored, the majority will be less than the prescribed majority. This Court went on to add in the said reported judgment that the expression "not less than" being mandatory, the number of votes could not be less than the majority prescribed, though it could be more. Since, in the

instant case, if the fraction of $\frac{1}{4}$ th in $\frac{1}{4}$ th is ignored, the majority would be less than $\frac{3}{4}$ th and since the motion is required to be carried by a majority of not less than $\frac{3}{4}$ th of the number of members, who are for the time being, entitled to sit and vote in the special meeting, the fraction could not have been ignored in this case. The Tahsildar rightly held that the resolution was not passed by a majority of not less than $\frac{3}{4}$ th of the members of the Panchayat, and hence, the motion moved against the respondent - Sarpanch had failed."

As such, the submissions of Mr. Dhorde, learned Senior Advocate needs to be accepted that any fraction beyond 11 votes out of 17 needs to be rounded off to 12 votes so as to reach the $\frac{2}{3}$ rd majority requirement' in this case."

10. As is evident in the said case (supra), the issue was as regards requirement of a fraction of a vote for complying with the mandate of law in passing the no-confidence motion. I have held that any minuscule of vote, over and above the total votes required in favour of the motion, will have to be rounded off as a complete vote and therefore, the said fraction or minuscule cannot be ignored. As such, in the light of the law considered while passing the said order, I am of the view that the impugned judgment of the Additional Collector is unsustainable in law.

11. In this view of the matter and placing reliance upon the judgment of this Court in the matter of Kailash Mane (supra), this petition is allowed. The impugned order of the Additional Collector, dated 31.1.2015 is quashed and set aside. Consequentially, the view taken by the Tahsildar, in his

order dated 5.12.2014, is sustained. As such, the motion of no-confidence, against the petitioner, therefore, fails.

(RAVINDRA V. GHUGE, J.)

...

akl/d