

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

WRIT PETITION NO. 6377 OF 2015

Sau. Usha Vishnu Akolkar,
Age: 36 years, Occup. Agril.,
R/o at Dangewadi, Post Sakegaon,
Tal. Pathardi, Dist. Ahmednagar

...PETITIONERS

versus

1. The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai -32
2. The District Collector, Ahmednagar,
Dist. Ahmednagar.
3. The Sub-Divisional Officer,
Pathardi Division, Tal. Pathardi,
Dist. Ahmednagar.
4. Sau Bebitai Dnyandeo Kelgandre,
Age: 40 yrs, Occu. Household,
R/o at post Pagori Pimpalgaon,
Tal. Pathardi, Dist. Ahmednagar.
5. Sau Sumantai Rajendra Khedkar,
Age : 36 yrs, Occu. Household,
R/o at post Chinchpur Pangul,
Tal. Pathardi, Dist. Ahmednagar.
6. Sau Kalawati Janardhan Gawali,
Age: 65 yrs. Ococu. Household,
R/o an: At Post Miri, Tql. Pathardi,
Dist. Ahmednagar.
7. Kashinath Radhkisan Lawande,
Age: 65 yrs. Occu. Agri.,
R/o : at post Pagori Pimpalgaon,
Tal. Pathardi, Dist. Ahmednagar.
8. Devidas Limbaji Khedkar,
Age: 38 yrs, Occu. Agri,
R/o Behind Govt. Godown, Pathardi,
Tal. Pathardi, Dist. Ahmednagar.
9. Sambhaji Kisan Palwe,
Age: 42 yrs, Occu. Business/Agri.,
R/o At post Kolhar, Tal Pathardi,
Dist. Ahmednagar.

...RESPONDENTS

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Mr. Prashant R. Nangare, Advocate for Petitioner
Mr. S.K. Tambe and Mr. S.P. Daund, A.G.Ps. for respondents No. 1 to 3
Mr. S.S. Thombre, Advocate for respondents No. 4 to 9
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CORAM : SUNIL P. DESHMUKH, J.

DATED : 20th JULY, 2015

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard the learned counsel for parties finally, with consent.

2. The petitioner is chairman of Panchayat Samiti, Pathardi. Said Panchayat Samiti consists of eight members. Respondents No. 4 to 9 are the members of Panchayat Samiti, Pathardi. On 19-06-2015, respondents No. 4 to 9 submitted requisition pursuant to section 72(2) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (hereinafter "Z.P. Act") to the collector-respondent No. 2, requesting him for calling special meeting. Acting upon requisition, respondent No. 2 purportedly issued order dated 19-06-2015, in exercise of powers under section 72(4) of the Z.P. Act, authorizing sub-divisional officer to preside over special meeting on 25-06-2015 around 11.00 a.m. at the auditorium of Panchayat Samiti, Pathardi and further directed him to make report along with minutes on the very same day. On the very day of submission of requisition, respondent No. 2 purported to issue notice to all members of Panchayat Samiti with reference to section 72(3) of the Z.P. Act informing that on 25-06-2015 at 11.00 a.m., a meeting has been scheduled for discussing "*No confidence motion*" against the petitioner.

3. Petitioner - chairman is before this court questioning validity of aforesaid notice dated 19-06-2015, *inter-alia*, contending that scheduled

meeting is bad and is in contravention of mandatory provisions referred to under section 111(4) of the Z.P. Act.

4. Learned counsel for the petitioner had submitted that meeting was scheduled to be held on 25-06-2015 without reference to mandate under section 111(4) of the Z.P. Act requiring intervention of seven days and, as such, meeting is *per-se* bad. Learned counsel further placed reliance on a decision of division bench reported in 1963 Mh.L.J. 503 (*Haribhau Govindrao Bobde and others Vs. Maharashtra State through Secretary, Rural Development and Co-operation Department and others*). The division bench had observed that :-

"The provisions of sub-section (4) of section 111 of the Zilla Parishads and Panchayat Samitis Act are mandatory. The general provisions of section 111 will apply in the case of the meeting convened by the Commissioner under section 72(4) for consideration of a resolution of no-confidence against the Chairman of the Panchayat Samiti. A notice of 10 days is essential. If the notice is short, the notice and the meeting convened by such notice will be both illegal"

5. Mr. Nangare, learned counsel appearing for petitioner submits that it would be pertinent to refer to certain alterations that had taken place in respect of number of days, by virtue of section 118 of the Z.P. Act. As such, according to him, for special meeting "ten" days as appearing in section 111(4) of Z.P. Act would have to be read as "seven" days.

6. Taking into account aforesaid submissions, under interim order dated 24-06-2015, operation and effect of order/notice dated 19-06-2015 had been stayed by this Court. Subsequently, civil application came to be moved on behalf of respondents No. 4 to 9 praying for vacating aforesaid interim relief granted by this court. Pursuant to the request of learned counsel appearing for the respondents, the matter is

being taken up for final disposal.

7. Respondents No. 2 and 3 in their reply to writ petition contended that section 111(4) of Z.P. Act may not hold field in the instant case, since section 72 of the Act, which is a special provision, prescribes procedure for passing "*No confidence motion*" against chairman and vice-chairman of the Panchayat Samiti, under which it also prescribes about the period of convening meeting. Reply does not comment upon the decision relied on, on behalf of the petitioner referred to hereinabove. Learned Assistant Government Pleader thus contends that impugned order does not call for any interference with the same.

8. Learned counsel for respondents No. 4 to 9 Mr. S.S. Thombre draws attention to section 72 of the Z.P. Act and submits that section 72 of the Z.P. Act has been amended after 1963. Learned counsel submits that ruling (*Supra*) had been given while in the first place chairman of Panchayat Samiti was obliged to convene the meeting and on his failure it was the commissioner who was authorized to convene the meeting for consideration of "*No confidence motion*". In the course of his submissions, he contends that section 72 of Z.P. Act having been amended after decision had been rendered by the division bench, said ruling may not be applicable to the amended provisions. He refers to earlier provisions under section 72 of Z.P. Act, which read thus-

“Section 72 (1) *A motion of no-confidence in the Chairman or Deputy Chairman of a Panchayat Samiti may be made by a requisition from not less than one-fourth of the total number of the members(other than associate members) after giving a notice thereof in such form and in such manner as may be prescribed by the State Government.*

(2) The Chairman of a Panchayat Samiti shall convene a meeting of the Panchayat Samiti to consider such motion within ten days of the receipt of notice.

(4) If no such meeting is convened by the Chairman of Panchayat Samiti within the period specified in sub-section (2), all or any of the members who have given, notice of motion of no-confidence, may forward to the Commissioner a copy of the notice (together with a copy of the motion) and request him to convene a meeting of the Panchayat Samiti. The commissioner shall within ten days of the receipt of such communication by him, convene the meeting of the Panchayat Samiti for the consideration of the motion at the office of the Panchayat Samiti at a time appointed by him, and shall authorise such person as he deems fit to preside over such meeting."

9. According to him, the amended provisions will have to be re-looked into. He further submits that the circumstances as had been prevailing when the decision (supra) had been rendered may not contain the issue. Amended section 72 reads as under:

"Section 72 (1) *A Chairman or Deputy Chairman shall cease to be the Chairman or the Deputy Chairman, as the case may be , if a motion of no-confidence is passed at a special meeting of the Panchayat Samiti by[a majority of two-third] of the total number of members who are for the time being entitled to sit and vote at any meeting of the Panchayat Samiti and the office of such Chairman or Deputy Chairman shall thereupon be deemed to be vacant.*

[Provided that, where the office of the Chairman being reserved for a woman, is held by a woman Chairman, such motion of no-confidence shall be passed 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 Samiti.

[Provided also that], no such motion of no-confidence shall be brought within a period of six months from the date of the election of the Chairman or the Deputy Chairman, as the case may be, of a Panchayat Samiti.

(2) The requisition for such special meeting shall be signed by not less than (one-third) of the total number of members who are for the time being entitled to sit and vote at any meeting of the Panchayat Samiti and shall be delivered to the Collector. The requisition shall be signed by the requisitionists and shall be made in such form and in such manner as may be prescribed by the State Government.]

(3) The Collector shall within seven days from the date of receipt of the requisition under sub-section (2) convene a special meeting of the Panchayat Samiti. The meeting shall be held on a date not later than thirty days from the date of issue of the notice of the meeting.

(4) The meeting shall be presided over by the Collector or any officer authorised by him in this behalf. The Collector or such Officer shall, when presiding over such meeting, have the same powers as the Chairman when presiding over a Panchayat Samiti Meeting has, but shall not have the right to vote.

(5) The meeting called under this section shall not, for any reasons, be adjourned.

(6) The names of the members voting for and against the motion shall be read in the meeting and recorded in the minute-book kept under section 118 read with sub-section (13) of section 111.

(7) If the motion of no-confidence is not moved or, as the case may be, is rejected, no fresh motion of no-confidence shall be brought before the Panchayat Samiti within a period of [one year] from the date of the special meeting convened under sub-section (3).]"

10. Learned counsel Mr. Thombre submits that section 72(2) speaks of requisition of special meeting, and, such a special meeting would have to be convened within seven days. In such a scenario, provisions of section 111(4) with amendment to section 72 may not hold sway, albeit, to buttress his submission, learned counsel Mr. Thombre has not produced any material.

11. Learned counsel Mr. Nangare submits that there is practically no difference at all, so far as convening the meeting is concerned, under erstwhile section 72 of Z.P. Act and in present provisions save and except that period of "ten" days as appearing in erstwhile provisions, has been reduced to "seven" days. He, therefore, submits that while division bench had considered the period of convening meeting had been "ten" days, its curtailing to "seven" days, would not at all alter the position under ruling that provisions of section 111 of the Z.P. Act would apply in case of meeting convened by collector under section 72(3) of the Z.P. Act. According to him, intervening period of "seven" days notice is a must. The division bench has considered that if the notice is issued holding meeting before expiry of ten days then the meeting convened pursuant to such notice, will be illegal. According to him, this position has not been altered with amendment.

12. Considering rival submissions, in my estimate, it would be pertinent to refer to phraseology used in section 72 before and after amendment for convening the meeting for 'No confidence motion' by the commissioner/collector. Section 72(4) before amendment reads thus :-

"(4) If no such meeting is convened by the Chairman of Panchayat Samiti within the period specified in sub-section (2), all or any of the members who have given, notice of motion of no-confidence, may forward to the Commissioner a copy of the notice (together with a copy of the motion) and request him to convene a meeting of the Panchayat Samiti. The commissioner shall within ten days of the receipt of such communication by him, convene the meeting of the Panchayat Samiti for the consideration of the motion at the office of the Panchayat Samiti at a time appointed by him, and shall authorise such person as he deems fit to preside over such meeting."

Whereas section 72(3) of Z.P. Act, after amendment reads thus-

“(3) The Collector shall within seven days from the date of receipt of the requisition under sub-section (2) convene a special meeting of the Panchayat Samiti. The meeting shall be held on a date not later than thirty days from the date of issue of the notice of the meeting”.

13. From aforesaid it surfaces that, practically, phraseology in both the provisions is almost similar, so far as it relates to convening meeting either by commissioner then or by collector now, with change of period from “ten” days to “seven” days. Section 72(3) of the Z.P. Act now refers to special meeting and puts a rider that the same be held not later than thirty days from the date of issuance of notice of the meeting.

14. Learned counsel for respondents No. 4 to 9 has submitted that section 111(4) of Z.P. Act falls in chapter 'conduct of business' of the Zilla Parishad, whereas section 72(2) of Z.P. Act is a special provision. However, it is not the case under section 111(4) of the Z.P. Act, earlier it used to be under different chapter. Division bench had already ruled while meeting is called by the commissioner, period as referred to under section 111(4) of the Z.P. Act would be mandatory for special meeting. In present subsisting position, section 72(4) of the Z.P. Act makes reference to the meeting to be special and section 111(4) of the Z.P. Act refers to notice of seven days for holding special meeting.

15. Ruling in 1963 judgment considers that section 111(4) of the Z.P. Act is mandatory provision while meeting is being convened by the commissioner. In the present case, meeting is being convened on authorization of the collector. Provisions of section 72(4) of the Z.P. Act do not refer to that meeting has to be held within seven days and puts a rider

that it should not be held beyond the period of 30 days from the date of notice, giving an indication that meeting is not expected to be held within seven days and as considered by the division bench necessary period for special meeting shall intervene.

16. Under the circumstances, on conjoint reading of sections 72(4) and 111(4) of the Z.P. Act, section 72(4) appears to be is silent in respect of period of notice for convening special meeting. As section 74(4) makes reference to special meeting, convening of meeting under section 72(4) of Z.P. Act will have to be considered along with provisions of section 111(4) of Z.P. Act and section 111(4) of Z.P. Act requires a notice of seven days (as per section 118) for a special meeting. Thus, aforesaid considerations infuse lot of substance in submissions of Mr. Nangare. It thus appears that ruling of division bench in cited judgment holding section 111(4) of Z.P. Act to be mandatory for the meeting convened by commissioner under section 72(2) of Z.P. Act can hardly be digressed from. As such, there appears little substance in the submissions of learned counsel for respondents No. 4 to 9 that after amendment of section 72 of Z.P. Act, rigour of application of section 111(4) of the Z.P. Act is in any way attenuated.

17. Thus, impugned notice dated 19-06-2015 issued by respondent No. 2, scheduling meeting on 25-06-2015 would not be in compliance of legal position emerging as aforesaid and, as such, deserves to be set aside. Under the circumstances, seven days notice would be necessary for holding meeting under section 72(4) of the Z.P. Act and that should be held not later than thirty days from the date of issue of the notice of the meeting.

18. Accordingly, notice dated 19-06-2015 issued by respondent No. 2 is set aside.

19. At this stage, Mr. Thombre makes a request that period consumed during pendency of this writ petition may be excluded from computation of period pursuant to sections 72(4) and 111(4) of the Z.P. Act. Request is reasonable. It would be open for the collector to act upon requisition dated 19-06-2015 and comply with the requirements of the provisions of Z.P. Act referred to hereinabove with exclusion of period from 19-06-2015 to 31-07-2015.

20. Writ petition is allowed in aforesaid terms. Rule is made absolute accordingly.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK
