

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

WRIT PETITION NO. 8994 OF 2015

Anil s/o Senapati Jaybhaye
Age 35 years, occup. Chairman,
Panchayat Samiti, Potoda,
R/o Anpatwadi, Tal. Potoda,
Dist. Beed. .. Petitioner

versus

1. The State of Maharashtra
Through it's Secretary,
Rural Development Department,
Mantralaya, Mumbai
2. The District Collector, Beed,
Dist. Beed.
3. Dadasaheb s/o Vithal Dhanvade,
Age 32 years, occup. Agri/Member,
R/o Pimpalwand, Tal. Patoda,
Dist. Beed
4. Jayshree w/o Kiran Bangar,
Age 28 years, occup. Household/
Member, R/o Bhayala, Tal. Patoda,
Dist. Beed
5. Pramlabai Jalinder Sagale,
Age 45 years, occup. Household/
Member, R/o Saglewadi Post
Dhaspimpalgaon, Tal. Patoda,
Dist. Beed.
6. Shirole Ravindra Dharma
Age 47 years, occup. Agril./Member
R/o Muggaon, Tq. Patoda, Dist. Beed. .. Respondents

Mr. Avinash D. Aghav, Advocate for petitioner
Mr. R.V.Dasalkar, Asstt. Govt. Pleader for respondents no.1 and 2
Mr. N.L. Jadhav, Advocate h/f Mr. M.S. Bhosale, Advocate for
respondents no. 3 to 6.

CORAM : SUNIL P. DESHMUKH, J.
15TH OCTOBER, 2015

ORAL JUDGMENT:

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

2. Petition has been moved, challenging validity and legality of requisition for no confidence motion and notice issued by Collector, Beed - respondent no. 2, dated 29-08-2015, calling a special meeting with reference to section 72 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (ZP Act). The requisition is by four members from the total six members of *Panchayat Samiti*, Patoda, moving a motion of no-confidence against petitioner - *Sabhapati* of the *Panchayat Samiti*.

3. Petition has been moved on two grounds;

(I) the requisition is not in accordance with concerned rule, rule 2, of the Maharashtra Zilla Parishads Presiding Authorities (No Confidence Motion) Rules, 1962 (ZP NCM Rules) which reads :

“ 2. *Form of requisition* :- The requisition to call a special meeting to consider a motion of non-confidence in the President or Vice-President or both shall be in the form hereto

appended. The requisition shall be accompanied by the text of the motion proposed to be moved specifying therein the grounds on which it is proposed to move the motion and the name of the Councillor who shall move the motion. ”

According to the contentions on behalf of petitioner, the motion of no-confidence does not contain the grounds as ordained under aforesaid rule and what has been appended to the same is the proposed resolution which would not answer or meet the requirements under said rule 2.

(II) This ground is with reference to section 72 and sections 111 (4) read with section 118 (1-d) of the ZP Act, alleging that the meeting cannot be held unless period of seven days (pursuant to the amendment) intervenes before the meeting is held. According to the petitioner, since the requisition is of 28-08-2015 and notice is issued on 29-08-2015 and meeting is scheduled on 03-09-2015, it is before expiry of seven days and as such is illegal, unauthorized and thus untenable. There is also no dispute about that, the requisition had been filed on 28-08-2015 and aforesaid notice came to be issued on 29-08-2015 by respondent no.2 scheduling the meeting on 03-09-2015.

GROUND NO. I

4. There is not much dispute on the position that requisition is in prescribed form and that appended to it, is a proposed resolution referring to that *Sabhapati* - petitioner herein continues to remain absent, behaves arrogantly and is passive in approach in respect of development work and does not take into confidence the members of the *Panchayat Samiti*. The proposed resolution, albeit does not refer to any specific date, however, it refers to proposer and seconder and has been signed by four members who had requisitioned the special meeting.

5. A judgment is being referred to by learned counsel Mr. A.V. Aghav for the petitioner, which has been rendered by a division bench in the case of *Ganeshsinsha Domansinha Hajari vs. Commissioner, Nagpur Division, Nagpur and ors.*, reported in 1963 *Mh.L.J.* 569, wherein the court had considered that rule 2 of ZP-NCM Rules, is mandatory and in case grounds are not stated in the notice requisitioning the meeting, such a notice is illegal. In that case, it appears that motion did not spell out any grounds and yet, the meeting was directed to be held. Notice, as such, came to be quashed. This judgment is

being cited to support the first ground *supra*, that the requisition itself is bad for non compliance of rule 2 of the ZP Act.

6. Learned Assistant Government Pleader Mr. Dasalkar, appearing on behalf of respondents no. 1 and 2 refers to paragraph no. 2 of the affidavit-in-reply filed on behalf of respondent no. 2 on 09-10-2015, wherein it has been specifically averred that respondents no. 3 to 6 had submitted the requisition for non-confidence motion on 28-08-2015 signed by four members accompanied by resolution which indicates the grounds for calling no confidence motion against the petitioner and on the basis of the same notice had accordingly been issued on 29-08-2015 for convening a special meeting.

7. To deal with the contentions being raised on behalf of the petitioner about non compliance of rule 2 of the ZP Act referred to hereinabove, Mr. Jadhav learned advocate for respondents no. 3 to 6 refers to that on facts, there cannot be any dispute that requisition is as required in the form under rule 2. In present case, requisition refers to names of members who moved the motion of no-confidence against

Sabhapati of the *panchayat samiti*. It contains a motion in the form of proposed resolution referring to the grounds on which the no-confidence motion has been requisitioned. It further refers to the proposer and seconder and has been signed by the members of the *panchayat samiti*, requisitioning the special meeting.

8. He submits, in the circumstances, although it is being contended on behalf of the petitioner that the motion of no-confidence itself does not contain the grounds, such a contention is unsustainable having regard to factual position. Requirement under the rule is that the no-confidence motion should be accompanied by the “ *text of the motion proposed to be moved specifying therein the grounds on which it is proposed and the names of the members who shall move the same.* ” This particular requirement cannot be disputed to have been complied with, for, requisition in the form as required has been accompanied by the proposed resolution specifying grounds for no confidence. He, therefore, submits that there is no substance in the allegation in respect of non compliance of rule 2 for no-confidence motion.

9. Mr. Jadhav, learned counsel for respondents no. 3 to 6 has referred to a decision in *Bandopant Shankarrao Mallewar vs. State of Maharashtra and others* reported in 1997 (Supp.) Bom.C.R.178 which, according to him, comprehensively deals with the present situation. He particularly relies on paragraphs no. 26 and 27 therefrom which read thus;

“ 26. Coming to the third contention raised by Shri Patil, that the notice of meeting has to be held as illegal as it is for consideration of no confidence which is not disclosing any ground for moving the motion of no-confidence, in as much as the alleged grounds referred to therein are too vague or without any details and amount in fact giving no grounds at all, reference may now be made to the two decisions relied upon by Mr. Patil.

In Ganeshsinha Hajaris decision (cited supra) it is no doubt true that this Court has held the requirement of Rule 2 of the No-confidence Motion Rules that the grounds must be mentioned in the motion proposed to be moved, as a mandatory requirement and that if the grounds do not appear in the motion accompanying the notice, the notice would be vitiated. In Dhrupad Sawales decision (cited supra) reliance was placed on the decision in Ganeshsinha Hajaris case and further on the decision in Writ Petition No.2476/81 decided on 15-12-1981, (Shaligram v. Collector), which has followed the decision in Ganeshsinha Hajaris Case and it was held that the

notice dated 25-9-1986 convening the meeting for considering the motion of no-confidence against the President and the Vice-President of the Zilla Parishad, Buldhana was bad for want of grounds in the motion. It may be pointed out here that in the case of Dhrupad Sawale no grounds at all were mentioned in the motion of no-confidence. The motion was, since Shri Dhrupad Bhagwant Sawale has lost our confidence, we are proposing no-confidence motion against him, and nothing more. In Ganeshsinha's case also it is apparent from the judgment, notice was not accompanied by any grounds on which it was proposed to move the motion. Para 6 of the judgment indicates that only the name of the Councillor was mentioned in the motion appended to the notice but not the grounds and the grounds nowhere appeared in the motion itself or in the notice. The Court found that they should have been found place in the motion.

27. These two decisions, therefore, dealt with a case where no ground was at all mentioned in the motion proposed to be moved. Such is not a case in the instant matter. Undisputedly the grounds are given in the motion of no-confidence proposed. The contention, however, is that the alleged grounds referred to in the motion of no-confidence are too vague, without any details and amount in fact giving no grounds at all. We are unable to accept this contention. ”

10. Mr. Jadhav refers to paragraph no. 28 of said judgment in order to further reinforce his submissions, which

reproduces the text of the judgment in the case of *Surendra v. Commissioner, Nagpur Division, Nagpur*) 1967, MH.L.J. Note No. 23.

11. In the present case, although it is being contended by petitioner that requisition does not contain grounds for motion of no confidence, yet, the requisition is in prescribed format is not in dispute and further, accompaniment of the requisition is text of the motion proposed to be moved specifying therein the grounds on which it is proposed to move the motion. In the circumstances, the citation in *Ganeshsingha's* case reported in 1963 *Mh.L.J.* 569, *supra*, hardly would affect the factual position in the present matter and govern the case.

12. Perusal of rule 2 of the ZP rules shows that a requisition is required to be in the prescribed form appended with the rule and further that the " requisition shall be accompanied by the text of the motion proposed to be moved specifying therein the grounds on which it is proposed to move the motion and the names of the Councillors who shall move the motion. " Having regard to that the factual position not being much disputed, it cannot be said that there are no grounds specified in the text of motion proposed to be moved and as such, requirement under the rule appear to

have been to large extent satisfied. As such, objections on the ground of resolution not being proper and no meeting can be called on the basis of the same are unsustainable and are negatived.

GROUND – II

13. Canvassing IInd ground *supra*, Learned counsel Mr. Aghav for the petitioner relies on judgment of this court rendered by a division bench in *Chaitram Dagadoo vs. Malecaon Panchayat Samiti and others*, reported in 1965 Mh.L.J. 663 which dealt with situation under section 72 of the ZP Act as had been prevailing before amendments to said section in 1964. It was dealing with a situation wherein a notice of motion of no-confidence in chairman of panchayat samiti was given under section 72 (2) of the ZP Act. Notice of no-confidence motion was given on 07-05-1964 and the notice calling meeting for consideration of the motion which was scheduled to be held on 27-06-1964 was given on 16-05-1964. The motion was carried. Its' validity was challenged on the ground that the meeting should have been held within ten days from the date of receipt of notice for the same. The court had considered that the requirement under the provisions is that the notice should be issued within ten days from the date of requisition

and it was not necessary to hold the meeting within ten days from the date of receipt of notice. Learned counsel thus places heavy reliance on said judgment, submitting that the meeting in the present matter is scheduled within seven days and the requirement of intervening period of seven days pursuant to section 111 (4) and 118 (1-d) of the ZP Act is not satisfied and as such, the meeting scheduled is apparently and patently illegal.

14. Learned counsel for the petitioner refers to and relies on another judgment in *Haribhau Govindrao Bobde vs. Maharashtra State*, reported in 1963 Mh.L.J. 503 for the very same purpose, wherein it has been held that having regard to section 111 (4) of the ZP Act, notice with an intervention of ten days is essential, otherwise the meeting and notice both will be illegal.

15. As far as ground with regard to non compliance of intervening period of seven days for holding special meeting is concerned, Mr. N.L. Jadhav, learned counsel for contesting respondents no. 3 to 6 fairly concedes to the position emerging from the first two judgments cited *supra* and a decision by this court in writ petition no. 6377 of 2015, *Sau. Usha Vishnu Akolkar vs. The State of Maharashtra and others* delivered on

20-07-2015 in which decision in *Haribhau Govindrao Bobde vs. Maharashtra State*, reported in 1963 *Mh.L.J.* 503 *supra*, has been referred to. In said judgment in the case of *Sau. Usha Vishnu Akolkar, supra*, it has been considered, thus;

" 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 section 72(4) and 111(4) of the Z.P. Act, section 72(4) appears to be silent in respect of period of notice for convening special meeting. As section 72(4) makes a reference to special meeting, convening of meeting under section 72(4) of the 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 114(4) of the Z.P. Act is in any way attenuated. "

16. In the present case, having regard to aforesaid and also having regard to that the impugned notice had been issued on 29-08-2015 by respondent no.2 upon a requisition for no confidence against petitioner on 28-08-2015 scheduled meeting on 03-09-2015 before expiry of seven days of notice, it cannot be said that the notice had been in compliance of legal position emerging and as such deserves to be set aside. It would thus be necessary that seven days notice should be given pursuant to section 72(4) and sections 111 (4) and 118 (1-d) of the ZP Act and it should not be held later than thirty days from the date of issue of the notice. In view of above, impugned notice dated 03-09-2015 issued by Respondent No. 2 is set aside.

17. Mr. Jadhav requests for exclusion of period consumed during pendency of this writ petition for computation of period pursuant to section 72(4) and section 111 (4) of the ZP Act.

To supplement his request for exclusion of the period consumed during pendency of this writ petition, Mr. Jadhav refers to and rely on paragraph number 39 of the judgment in *Bandopant's case, supra*, which reads :

“ 39. The meeting scheduled to be held on 10-06-1996 admittedly could not be held. A contention was advanced that since the requisition remains operative for 7 days and since the Collector has to convene a special meeting within those 7 days, on a date not later than thirty days from the date of issue of the notice of the meeting, the special meeting on the basis of the requisition in the instant matter cannot now be called by the Collector, for the reason, that if the meeting cannot take place in the statutory period indicated in section 49, then the requisition lapses. We are unable to accept this contention. The contention as raised is no more *res integra*. As already pointed out, the meeting scheduled to be held on 10-6-1996 could not be held in the instant matter because of the stay granted by this Court in these petitions. This Court in *Pradeep Pawars case* (cited *supra*) has already held, with which we respectfully agree, as under :

The provision will have to be read to further its object. The purpose is to give an opportunity to the members to express their no-confidence on office bearers of the Zilla Parishad or Panchayat Samiti as the case may be and, therefore, if the Collector has failed in his duty or the meeting could not take place within the statutory outer limit, because of

the stay orders of any Court or for similar reasons (for example, meeting stayed by the State Government), it does not follow that the requisition would lapse. Unless the members are given an opportunity to consider the motion, there is no propriety in holding that the requisition would lapse unless statute provides for that. Requisition calling Collector to convene a meeting will stand or fall on the sole fact whether statutory requirement of section 72(2) and the Rules made therefor are followed or not. It will cease to exist only after meeting takes place and not otherwise. There is no provision in the statute for the lapse of requisition. Right of the requisitionist member to ask for the meeting continues despite meeting not having taken place within 30 days either because of inaction of the Collector or for any other reason.

What is stated in relation to section 72 in the aforesaid judgment will be fully applicable to the provisions of section 49 of the Zilla Parishads Act and the Collector, therefore, will have to convene a special meeting for the purpose of considering the motion of no-confidence as per requisition received by him in the instant matter. "

18. He further refers to paragraph number 19 of judgment and order in writ petition No.6377 of 2015 where specific period had been directed to be excluded from computation of period pursuant to sections 72(4) and 111(4) of the ZP Act.

19. Accordingly, the period consumed during pendency of this writ petition and uploading of its decision would be required to be excluded from computation of the period pursuant to sections 72 (4) and 111 (4) or 118 (1-d) of the ZP Act. It would thus be open for respondent no. 2 to act upon the requisition dated 28-08-2015 and comply with concerned provisions of the ZP Act with exclusion of the period from 29-08-2015 to 03-11-2015.

20. Writ petition thus stands allowed as referred to hereinabove and disposed of. Rule made absolute accordingly.

SUNIL P. DESHMUKH, J.

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