

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11602 of 2015

Sau Sangita w/o Bhausahab Patole
age: 35 years, occu: agriculture,
and sarpanch
r/o Peer Bawada,
Tq. Phulambri, Dist. Aurangabad

Petitioner

Versus

- 1 The State of Maharashtra
Through Its Secretary,
Rural Development Department,
Mantralaya, Mumbai 32
- 2 The Tahsildar, Fulambri
Tq. Fulambri, Dist. Aurangabad
- 3 Sau Rukminbai w/o Vittal Thombre
- 4 Nadeemkhan s/o Daudkhan Multani
- 5 Raosaheb s/o Motiram Ravan
- 6 Sopan s/o Ramdas Kale
- 7 Sau Shaheenbegum Rafique Shaikh
- 8 SAu. Heerbai w/o Ajinath Mule
- 9 Javed s/o Osman Shaikh

All age: Major, occu: Agriculture
r/o Peer Bawada, Tq. Fulambri
Dist. Aurangabad

10. The Village Panchayat
Peer Bawada, Tq. Fulambri
Dist. Aurangabad
through Its Village Development Officer

Respondents

Mr. V.D. Salunke advocate for the petitioner
Mr.P.S. Patil AGP for Respondent Nos. 1 & 2
Mr. R.V. Gore & Mr. M.Bodkhe Patil, Advocates for respondent No.3 to 9

CORAM : R.M. BORDE &
A. I. S. CHEEMA, JJ.

Dated : 1st DECEMBER, 2015.

ORAL JUDGMENT

(Per: R.M. Borde, J)

1 Heard.

2 Rule.

3 With the consent of the parties, taken up for final decision at admission stage.

4 At the request of learned counsel for the petitioner, name of respondent No.10 stands deleted.

5 The petitioner, who is Sarpancha of village Peer Bawada, Tq. Fulambri, District: Aurangabad, is questioning the validity of the notice issued by the Tahsildar on 24.11.2015, convening the meeting, for consideration of motion of no confidence, lodged against the petitioner.

6 The short point canvassed before us is that, in view of

provisions of section 35(2) of the Bombay Village Panchayat Act, 1958, responsibility is cast upon the Tahsildar to convene the meeting, for consideration of '*no confidence*' motion, within seven days from the receipt of requisition and in the instant matter, meeting that has been convened by the Tahsildar on 2.12.2015, is beyond the prescribed period of limitation and as such, being contrary to the substantive provision of law, is illegal.

7. Section 35(1) of the Bombay Village Panchayat Act reads thus:-

" (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 Up-Sarpanch after giving such notice thereof to the Tahsidlar as may be prescribed.

It also further provides that once such notice is given, it shall not be withdrawn. Sub Section (2) thereof which is relevant for the decision in the matter, reads thus:-

(2) Within seven days from the date of receipt by him of the notice under sub-section (1), the Tahsidlar 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 Sarpancha or the Upa-sarpancha 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. "

8 The provision relating to duty of the Tahsildar to convene the meeting within the period of seven days from the receipt of requisition, had fallen for interpretation in the matter of ***Mandabai Balnath Rohom & others Versus Ashok Fakira Chandar and others*** (2002 (2) Bom C.R 772). Learned single Judge, dealing with the challenge, has observed in para No.10 as quoted below:-

" 10. Plain reading of section 35(2) of the said Act discloses that the action on the part of the Tahsildar which is contemplated under sub-section (2) of section 35 is expected within a period of seven days. The question which arises for consideration is whether this action is restricted to the issuance of notice convening meeting to deal with no-confidence motion or would also include holding of such meeting itself. As already observed above, the Government has framed No Confidence Motion Rules, which deal with the procedural aspect of the proceedings relating to no confidence motion as and when moved by the members of the Panchayat, Sub-Rule (3) of Rule 2 of the said No-Confidence Motion Rules cast duty upon the Tahsildar to act swiftly on receipt of the notice under section 85(1) of the said Act. It provides, as observed above, that 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 who are for the time being entitled to sit and vote at any meeting of the Panchayat. The said sub-rule

further provides that on such immediate satisfaction of the Tahsildar regarding the notice having been given 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, shall convene a special meeting for the purpose within seven days from the date of receipt of such notice. If one reads section 35(2) of the said Act along with the sub-rule (3) of Rule 2 of the said No-Confidence motion Rules, it is apparent that the action on the part of the Tahsildar, which is contemplated under sub-section (2) of section 35 of the said Act is not only restricted to the issuance of notice, but, also relates to the holding of meeting of the panchayat pursuant to the receipt of notice by him under section 35 (1) of the said Act. At this stage, it is also to be noted that the Meeting Rules provide for a period of three days for convening an ordinary meeting and one day for convening special meeting. it cannot be disputed that the meeting to deal with the No-confidence Motion has to be a special meeting and in fact it is described in sub-rule (3) of Rule 2 of the said No-confidence Motion Rules. The expression 'special meeting' found in the Rules framed under various provisions of the section 176 of the said Act, is to be given same meaning in all such Rules framed by the Government under the said Act, unless the context requires otherwise. The expression used in sub-section (2) of section 35 of the said Act regarding such meeting dealing with the 'No confidence Motion, is also 'special meeting'. The said expression has not been defined either in the Act or the Rules made thereunder. However, the very expression itself signifies that it is the meeting convened for a very purpose which is not usual or common but exceptional in nature or being for specific purpose. Besides, while interpreting the provisions broadly relating to the No-confidence Motion and procedure in relation thereto in panchayat, one cannot

forget the following observations of the Full Bench in Chitrams case:

" We must not so interpret the provisions of the Act as to the defeat the intention of the legislature that a person who had lost the confidence of the members should not continue in the office. "

9 It would also be appropriate to refer to the Judgment of Division Bench of this Court in the matter of **Ganesh Raghunath Samel V/s State of Maharashtra and others** (2002(4) BCR 425). The Division Bench approving the decision of the learned single Judge, in the matter of **Mandabai Balnath Rohom & others Versus Ashok Fakira Chandar**, has held that, when the meeting was convened after stipulated period of seven days, action of passing no confidence motion and all consequential actions, in pursuance of the said no confidence motion, are required to be quashed and set aside. In the instant matter, notice issued by the Tahsidlar is dated 24.11.2015, convening the meeting for consideration of no confidence monition, lodged against the petitioner, being contrary to the provisions of section 35(2) of the Act, deserves to be quashed and set aside and same is accordingly quashed and set aside.

10 In the given facts, since the notice issued by the Tahsidlar is itself being quashed, in law, there is no motion for consideration of no confidence motion against the petitioner. The bar contained in

the aforesaid provisions in respect of lodging of the fresh motion of no confidence, would not be applicable. It would be open for the respondents herein, to lodge a fresh requisition against the petitioner with the Tahsildar and it would be open for the Tahsildar to take cognizance of the same and act in accordance with provisions of law.

11 Rule is accordingly made absolute.

12 There shall be no order as to costs.

(A. I. S. CHEEMA, J.)

(R. M. BORDE, J.)