

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10402 OF 2014

Sou. Vijaya Sampatrao Kirdat & ors. .. Petitioners

VS.

Shri. Laxman Tukaram Patil & ors. .. Respondents

Mr. Ashutosh Kulkarni for the Petitioners.

Mr. Ashutosh Gole for Respondent No.1.

Ms Aparna Vhatkar, AGP for Respondent No.4.

CORAM : M. S. SONAK, J.

DATE : 05 FEBRUARY , 2015

P.C. :-

1] The parties were already put to notice that this matter would be finally disposed of at the stage of admission itself. Accordingly, Rule. Rule is made returnable forthwith.

2] This petition takes exception to the order dated 5 November 2014 made by the Additional Collector, Sangli setting aside the no confidence motion passed against respondent No.1 in the meeting of panchayat held on 27 August 2014, on the sole ground that there was breach of Rule 17 of the Bombay Village Panchayats (Meeting) Rules 1959 (said Rules)

3] In doing so, the Additional Collector has placed reliance upon the decision of the Division Bench of this Court in case of *Vishnu Ramchandra Patil vs. Group Gram Panchayat and ors.*¹. However, recently, the Full Bench of this Court in case of *Shri Tatyasaheb Ramchandra Kale vs. Shri Navnath T. Kakde*², by its judgment and

1 Letters Patent Appeal No.203 of 2011 in WP No.167 of 2011 decided on 6 March 2013

2 2014(6) Mh.L.J. 804

order dated 9 October 2014, has in terms ruled that Rule 17 of the said Rules is only directory in nature and no confidence motion passed without compliance thereof, cannot be invalidated. Accordingly, the impugned order dated 5 November 2014 shall have to be set aside on this ground alone.

4] However, Mr. Gole, learned counsel for respondent No.1 made the following submissions, in support of the plea that no confidence motion ought to be set aside:

(a) That in the present case, requisition by more than one third members of the Panchayat was served upon the Tahsildar on 20 August 2014. But the Tahsildar has specially convened the meeting to consider the motion of no confidence only on 27 August 2014. This was beyond the period of seven days as prescribed by Section 35 (2) of the Bombay Village Panchayats Act, 1958 (said Act), Mr. Gole placed reliance upon the decision of this Court in case of *Ganesh R. Samel vs. State of Maharashtra & ors.*³, which lays down that the meeting convened after the stipulated period of seven days would be invalid and the motion of no confidence passed thereat shall have to be set aside;

(b) That in the present case, there was no compliance with the procedure prescribed under the sub-rules 2(A) and 2(B) of Rule 2 of the Bombay Village Panchayats Sarpanch and Upa-Sarpanch (No Confidence Motion) Rule 1975. This is because there is no material that notice convening the special meeting was published by placing the same on the notice board in the office of Tahsildar and Panchayat's office and further, there

3 2002(4) Bom.C.R.425

was never any attempt to serve the notice upon the respondent No.1 in person, or upon any adult member from his house, before proceeding to purportedly paste it on the house of respondent No.1.

5] Apart from the aforesaid, Mr. Gole also pointed out that there is no clarity as to whether the Bombay Village Panchayats (Second Amendment) Act 2012 has at all come into the force. In the event, same has not come into force, then the petitioner shall have remedy of approaching the Commissioner by way of an appeal against the impugned order. For this reason, Mr. Gole submitted that this Court ought not to exercise its jurisdiction, if an alternate and efficacious remedy is available to the petitioners.

6] In so far as the objection based on availability of an alternate remedy is concerned, it is to be noted that the submission only is that there is no clarity as to whether the Amendment Act has come into the force or not. Therefore, there is no certainty as to whether or not such alternate remedy is still available to the petitioners. Be that as it may, the availability of an alternate remedy is not a bar to entertainment of the writ petition, particularly in a situation where the only point on which the impugned order is based, stands nullified by the decision of the Full Bench of this Court in case of *Tatyasaheb Kale (supra)*. Accordingly, there is no reason to non-suit the petitioners on the ground of availability of the alternate remedy.

7] In so far as the remaining submissions urged by Mr. Gole are concerned, at the outset it needs to be noted that such grounds were not even raised by respondent No.1 in the memo of appeal

before the Additional Collector. The panchanama produced on record does make a note that consequent upon refusal of respondent No.1 to accept notice, the same came to be affixed upon his house under a panchanama and in presence of two witnesses. The factual disputes cannot be gone into by this Court, particularly where the same were not even alleged in the memo of appeal by respondent No.1. There was no allegation in the memo of appeal that the notice was not published in the Panchayat's office or Tahasildar's office. The provisions of sub-rule 2(B) undoubtedly permit service by affixation where the Sarapanch or Upa-Sarapanch has refused to accept the notice. The only allegation in the memo of appeal is that respondent No.1 did not receive notice and further could not remain present on the date when the motion of no confidence was considered, as respondent No.1 was attending some Government workshop. All this is by no means sufficient to make out any case of breach of Rule 2 or sub-rules thereof.

8] In the present case, it can be safely said that the special meeting had been convened within seven days from the date of requisition. This is because, in construing such period, there is no question of taking into consideration the date upon which such requisition was made. Rightly, therefore, such an objection was not even raised by respondent No.1 in the memo of appeal. In case of *Ganesh Samel (supra)*, the requisition in-question was served on 20 September 2001 and the meeting specially convened for the purposes of consideration of no confidence motion was on 29 September 2001. Accordingly, the ratio of the said decision would not apply to the fact situation in the present case.

9] For all the aforesaid reasons, the impugned order dated 5 November 2014 made by the Additional Collector is set aside.

10] Rule is made absolute in terms of the prayer clause (b) to this petition. There shall be no order as to costs.

11] Learned counsel for respondent No.1 seeks a stay on the implementation of this order. In the present case, out of nine members, which constitute the Panchayat, six members have voted against respondent No.1. The decision impugned in this petition, was totally contrary to the decision of the Full Bench of this Court in case of *Tatyasaheb Kale (supra)*. In these circumstances, there is no reason to grant any stay on the implementation of the no confidence motion, as otherwise the same would enable respondent No.1 to continue as a Sarpanch, even though he has lost will of the majority. The motion for stay is, accordingly, denied.

(M. S. SONAK, J.)

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