

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 346 OF 2015

Sudhir Shrirang Vegurlekar	..	Petitioner
VS.		
Sunil Krishna Gurav & Ors.	..	Respondents

Mr. Nikhil Rajeshirke for Petitioner.

Mr. C. G. Gavnekar i/b. Mr. Prashant Raul for Respondent Nos. 1 to 8.

Mr. A. R. Metkari – AGP for Respondent Nos. 9, 11 and 12.

CORAM : M. S. SONAK, J.
DATE: 13 JANUARY 2015

P.C. :-

1] This petition is directed against the order dated 5 January 2015 made by the Additional Collector, Raigad, refusing to interfere with the no confidence motion passed against the petitioner and by which almost 8 out of 10 members of the Panchayat voted the petitioner out from the office of Sarpanch.

2] Mr. Nikhil Rajeshirke, the learned counsel for the petitioner, at the outset made reference to the provisions contained in Section 35(1) of the Maharashtra Village Panchayat Act, 1959 ("said Act"), which provide that a motion of no confidence may be moved 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 against the Sarpanch after giving such notice thereof to the Tahsildar as may be prescribed. Within seven days from the date of receipt of such notice by the Tahsildar, the Tahsildar is required to 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 further the Tahsildar is required to preside over such meeting. The learned counsel pointed out that in the present case 8 members of the Panchayat, which obviously constitute more than one third of the total number of members gave notice to the Tahsildar as contemplated by Section 35(2) of the Act on 25 November 2014. Curiously however, the Tahsildar, has issued a notice which is dated 24 November 2014 to the Sarpanch and Upa-Sarpanch of Panchayat, which includes the petitioner. Further a copy of this notice came to be marked to several Government authorities. In such circumstances, the learned counsel contends that there is a breach of the provisions contained in Section 35 of the said Act. The Tahsildar could never have issued any notice to convene special meeting of the Panchayat, even prior to the receipt of any requisition from the members of the Panchayat. Further, the learned counsel contends with vehemence that this is indicative of bias on the part of the Tahsildar who has obviously colluded with the 8 members at whose behest the no confidence motion came to be

ultimately moved. The learned counsel placed reliance upon the decision of this Court in ***Shivkant s/o. Haribhau Bangar vs. Gramsevak, Grampanchayat Office, Mauje Ratnapur & Ors.***¹ in support of the proposition that where the whole process leading to passage of no confidence motion is vitiated on account of non observance of mandatory procedure which is fundamental character, it is not open to contend that the motion having been carried by majority, ought not to be interfered with. The learned counsel submitted that the rule of majority can never prevail over a rule of law.

3] Mr. Gavnekar, the learned counsel who appears for respondent nos. 1 to 8, i.e. the requisitionists contended that notice in terms of Section 35(2) convening the special meeting was issued by the Tahsildar on 25 November 2014 after the receipt of requisition of no less than 8 out of 10 members of the Panchayat. Such notice has in fact been appended by the petitioner at Exhibit 'C' (page 21) to the petition. Besides, in the meeting which was held on 1 December 2014 to consider the motion of no confidence, the petitioner chose not to raise any objection with regard to the alleged defect in the issuance of notice as contemplated by Section 35(2). In such circumstances, the petitioner is clearly estopped from raising any such objection at a later stage. Relying upon the

1 2010(4) Bom. C.R. 191

decision of the Full Bench of this Court in the case of ***Shri Tatyasaheb Ramchandra Kale vs. Shri Navnath Tukaram Kakde & Ors.***², Mr. Gavnekar submitted that weightage has to be given to the democratic principle that an elected person is entitled to continue in office only till such time as he enjoys the confidence of the persons who comprise such bodies. For all such reasons, Mr. Gavnekar contended that this is not a fit case in which this Court should exercise its extra ordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

4] Having considered the rival contentions and upon perusal of the material on record, I am unable to persuade myself to exercise extra ordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India. The reasons for such disinclination are referred to hereafter.

5] Sections 35 (1) and 35(2) of the said Act, which are relevant to the issue raised in this petition read thus:

“35. Motion of no confidence.

(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 Upa-Sarpanch after giving such notice thereof to the

² Letters Patent Appeal No. 312 of 2013 decided on 9.10.2014

Tahsildar as may be prescribed. [Such notice given shall not be withdrawn].

(2) Within seven days from the date of receipt by him of the notice under sub-section (1), the Tahasildar, shall convene a special meeting of the panchayat at for considering the motion of no confidence at the office of the panchayat a time to be appointed by him and he shall preside over such meeting. At such special meeting, the Sarpanch or the Upa-Sarpanch 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).

6] The obligation cast upon the Tahsildar is to convene special meeting within seven days from the date of the receipt by him of the requisition of no confidence motion under Section 35 (2) of the said Act. For this purpose, it is true that the Tahsildar may be required to issue a notice convening the special meeting and fixing some date and time for the purpose. If the notice dated 24 November 2014 which is annexed as Exhibit 'A' to the petition is perused, then it is clear that the same does not strictly speaking relate to the convening of meeting as contemplated by Section 35 (2) of the said Act. The notice dated 24 November 2014 is no doubt addressed to the Sarpanch and Upa-Sarpanch and copies thereof have been marked to various government agencies. However, the notice merely says that a copy of the requisition is being forwarded for

information of the addressees in terms of Rule 2(2). If this is compared with the notice dated 25 November 2014 at Exhibit 'C' (page 21 of the petition), then it is clear that the later notice which is admittedly dated 25 November 2014 is a notice as contemplated by Section 35(2) of the said Act. This is because it is this notice dated 25 November 2014 which actually convenes the special meeting of the panchayat for considering the motion of no confidence at the office of the Panchayat on 1 December 2014 at 11 a.m. and further requisitions of the members of the Panchayat to attend the same. The copy appended at Exhibit 'C' at Sr. No. 7 indicates name of the petitioner, against whom there is a tick mark. It is clear therefore that this is the notice which was in fact received by the petitioner in terms of Section 35(2) of the said Act. There is accordingly no breach of the provisions of either Section 35(1) or 35(2) of the said Act, which would vitiate the no confidence motion that came to be passed against the petitioner on 1 December 2014.

7] Undoubtedly, there is some discrepancy which arises on account of the notice dated 24 November 2014 marked as Exhibit 'A' (page 19 to the petition). The notice, though dated 24 November 2014, makes reference to the requisition dated 25 November 2014. This discrepancy however, is by no means of such nature as would suggest breach of any statutory provisions, much less provisions

contained in Section 35 of the said Act. Further, the discrepancy is also not suggestive of bias or collusion on the part of the Tahsildar. It is to be noted that in the present case there is no allegation that the Tahsildar, who in terms of Section 35(2) of the said Act, is required to preside over the special meeting where a motion of no confidence may be considered, has either inaccurately or incorrectly recorded minutes. There is no allegation against the Tahsildar with regard to any incorrect reflection of the will of the majority in the meeting held on 1 December 2014. In such circumstances, although it would have been appropriate if the Tahsildar had himself explained the discrepancy, nevertheless, it can be presumed that the discrepancy is more of a ministerial nature. On the basis of such discrepancy there is hardly any reason for a court exercising extra ordinary jurisdiction to interfere in the matter and to upset the will of the majority, which in the present case has been very solidly expressed against the petitioner. The Panchayat in the present case comprised 11 members out of which 1 member is stated to have been disqualified. Out of the 10 members entitled to sit and vote, 8 members have voted against the petitioner. As noted earlier, this is not a case where any statutory provisions have been breached. In the circumstances, no case is made out to interfere with the order.

8] In the meeting held on 1 December 2014 the petitioner chose to raise no objection with regard to any alleged breach of statutory procedure. The petitioner clearly acquiesced in the proceedings held on 1 December 2014. The issue as to whether there can be any acquiescence with regard to breach of mandatory provisions or not, does not arise in this petition particularly as in this case no breach of mandatory provision is observed. The circumstance that no such objection was raised in the meeting is suggestive of the fact that even the petitioner never regarded the so-called breach or the discrepancy in the date as material enough to question the will of the majority. The circumstances of the case are such as would not persuade this Court to exercise its extra ordinary jurisdiction at the behest of the petitioner. The petition is liable to be dismissed and is accordingly dismissed. In the facts and circumstances of the case there shall be no order as to costs.

(M. S. SONAK, J.)