

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1300 OF 2015

Mrs. Parvatibai w/o. Pandurang Bade
and ors. .. Petitioners

vs.
Mr. Pramod s/o. Tukaram Kondilkar and ors. .. Respondents

Deepak Natu a/w. Ms Sunita S. Ghone i/b N. Deepak & Co. for the
Petitioners.

Mr. Vishal Kanade a/w. Satish Raut for Respondent No.1.

Ms Neha Bhide B-Panel AGP for Respondent Nos.2 to 4.

CORAM : M. S. SONAK, J.

DATE : 13 FEBRUARY , 2015.

P.C. :-

1] Rule. With the consent of and at the request of learned
counsel for the parties, Rule is made returnable forthwith.

2] This petition challenges the order dated 23 December 2014
made by the Additional Collector, Raigad holding that no confidence
motion passed in the specially convened meeting of the Panchayat
on 17 June 2014 against respondent No.1 was not legal and valid.

3] The Village Panchayat of Kalamb comprises in all eleven
members. In the specially convened meeting held on 17 June 2014,
eight members expressed want of confidence against the
Sarpanch-respondent No.1. The minutes record that the respondent
No.1 was not even present at such meeting.

4] As against the passage of motion of no confidence, however, respondent No.1 lodged an appeal to the Additional Collector under Section 35 (3-C) of the Bombay Village Panchayats Act, 1958 (said Act). The Additional Collector by the impugned order dated 23 December 2014 has set aside the motion on the sole ground that the same was neither proposed nor seconded by any member thereby breaching Rules 17 to 26 of the Bombay Village Panchayats (Meeting) Rules 1959 (said Rules).

5] Mr. Deepak Natu, learned counsel for the petitioners submitted that the issue raised in this petition is no longer *res integra* in view of the decision of the Full Bench of this Court in case of *Tatyasaheb R. Kale vs. Navnath T. Kakde & ors.*¹, in which it has been held that failure to formally move and second the motion of no confidence as required by Rule 17 of the said Rules is not fatal and would not render the motion of no confidence passed by the requisite majority under Section 35 of the said Act as invalid.

6] Mr. Vishal Kanade, learned counsel for respondent No.1 however, submitted that in the present case, the minutes of the meeting would bear out that there was no discussion or debate of whatsoever nature in the course of passage of motion of no

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confidence. Mr. Kanade submitted that the Full Bench of this Court in case of *Tatyasaheb Kale (supra)* may have observed that failure to move or seconded motion may not be fatal, however, that does not imply that the requirement of having a discussion or debate in the course of passage of the motion is ruled out or done away. Relying upon the decision of this Court in case of *Vijay R. Katkar vs. Group Gram Panchayat Pali and ors.*², learned counsel pointed out that the opportunity for the members or for that matter the Sarpanch or Upa-Sarpanch who is facing the motion of no confidence to speak and express their views in the specially convened meeting, is a mandatory requirement, considering the Panchayat is a unit of democratically elected local self government. In the present case, since there was no discussion whatsoever post the proposing and seconding of the motion of no confidence, this statutory requirement has been breached. On this ground, learned counsel submitted that the view taken by the Additional Collector is a plausible one and therefore the same ought not be interfered with. In the alternative, Mr. Kanade submitted that the course adopted by this Court in case of *Vijay Katkar (surpa)*, that is, remand of the matter for re-conduct of the specially convened meeting could be adopted in the facts and circumstances of the present case.

2 2010 (4) ALL MR 707

7] Having heard learned counsel for the parties and perused the record, it is apparent that the impugned order made by the Additional Collector is solely based upon the non-compliance with the requirement prescribed under Rule 17 of the said Rules. The Additional Collector had observed that in the present case, none of the members formally moved or seconded the motion of no confidence, thereby breaching the provisions of Section 17 of the said Rules. The Additional Collector also relied upon the ruling of the Division Bench of this Court which had taken view that the provisions contained in Rule 17 of the said Rules are mandatory and failure of non-compliance would result in violation of the motion of no confidence.

8] The Full Bench of this Court in case of *Tatyasaheb Kale (supra)*, has however, taken the view that failure to formally move and seconded the motion of no confidence as may be required under Rule 17 of the said Rules is not fatal and the same would not render the motion of no confidence passed by the requisite majority under Section 35 of the said Act is invalid. To that extent, therefore, the impugned order made by the Additional Collector cannot be sustained and shall have to be set aside.

9] Insofar as, the contention of Mr. Kanade, learned counsel for respondent No.1 is concerned, the minutes of meeting held on 17 June 2014 make reference to discussions upon the motion of no confidence. True, such discussions may not post the proposing and seconding of such motion. Nevertheless, there is reference to discussions upon the motion in the meeting specially convened for the purpose.

10] Besides, it is significant that all the eight members who were present in the specially convened meeting have voted against respondent No.1 expressing the lack of confidence in him. Further, respondent No.1 chose not to remain present for such meeting.

11] This Court, in the case of *Vijay Katkar (supra)* relying upon previous decisions of the Division Bench has ruled that the provisions contained in Section 17 of the said Rules are mandatory and any breach thereof would render the no confidence motion passed, invalid. In light of view taken by the Full Bench of this Court in case of *Tatyasaheb Kale (supra)*, it is not possible to apply the principle in case of *Vijay Katkar. (supra)*, at this stage. In paragraph 21 of the decision in case of *Vijay katkar (supra)* upon which reliance was placed by Mr. Kanade, it has been observed that in

today's political scenario, even though discussions and speeches may have been reduced to ritualistic empty formality, legally it has to be presumed that elected representatives too make decisions after hearing of the sides. Therefore, unless all concerned are heard at such a meeting, a local self governing body cannot jump to the voting upon motion of no confidence. This Court went on to observe that the petitioner in the said case may not be a Mark Antony who by his legendary speech turned the tide after Julius Caesar was killed, but he could not have been denied the opportunity of being one, or for making an attempt to refute the charges and appeal to the conscience of those who were to vote at the motion.

12] Apart from the difficulty in applying the principles laid down in *Vijay Katkar (supra)*, in the facts and circumstances of the present case, it cannot be said that any of the members were deprived of any opportunity to either discuss, debate or make a speech at the specially convened meeting to consider the motion of no confidence. Respondent No.1, rather than avail of the opportunity to be a Mark Antony, chose to virtually run away from the meeting by remaining absent therefrom. In these circumstances, at least respondent No.1 cannot be heard to complain that he was deprived of any opportunity to make a speech or to take part in the debate or

discussion at the specially convened meeting. The records establish without any ambiguity that eight out of eleven members of the Panchayat have expressed want of confidence in respondent No.1. There is no breach of any statutory provisions in the passage of the motion of no confidence. The fact that motion was not formally moved or proposed in terms of Rule 17 of the said Rules, does not render the same as invalid in view of the decision of the Full Bench of this Court in *Tatyasaheb Kale (supra)*. Respondent No.1 has overwhelmingly lost the will of the majority consequently the Additional Collector was not right in permitting him to continue in the post of Sarpanch.

13] For all these reasons, this petition has to be allowed. The impugned order made by the Additional Collector on 23 December 2014 is set aside. Rule is made absolute in terms of prayer clause (c). There shall be no order as to costs.

14] At this stage, Mr. Kanade, learned counsel for respondent No.1 prays for stay, as respondent No.1 has continued in the post of Sarpanch, notwithstanding the passage of motion of no confidence on 17 June 2014. This judgment and order shall remain stayed for a period of two weeks from today. However, it is made clear that

during this period respondent No.1 shall not take any policy decision or decisions involving the finances of the Panchayat.

(M. S. SONAK, J.)

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