

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1273 OF 2015

Bajarang Vitthal Dargude	..	Petitioner
VS.		
The Additional Collector, Pune & Ors.	..	Respondents

Mr. Dilip Bodake for Petitioner.
Ms M. S. Bane - "B" Panel – AGP for Respondent Nos. 1 and 2.

CORAM : M. S. SONAK, J.
DATE : 06 FEBRUARY, 2015

P.C. :-

- 1] **Not on Board. Upon production, taken on board.**
- 2] This petition questions the order dated 29 January 2015 made by the Additional Collector, Pune, dismissing the petitioner's appeal under Section 35(3-B) of the Bombay Village Panchayat Act, 1958 ("said Act").
- 3] By the impugned order, the Additional Collector has refused to interfere with the no confidence motion passed against the petitioner on 17 November 2014.
- 4] Mr. Dilip Bodake, the learned counsel for the petitioner

basically made three submissions in support of the petition:

- (A) That one of the members of the Panchayat has ceased to be so, on account of her absence for six consequent months from the meetings of the Panchayat, without the leave of the Panchayat. Accordingly, the strength of the Panchayat would stand reduced to eight members. Thus there were only two votes in favour of the motion, when strength of the Panchayat is eight members. This would be in breach of the provisions contained in Section 35(3) of the said Act, which provides that motion is required to be carried by a majority of not less than two third of the total number of members who are for the time being entitled to sit and vote at any meeting of the Panchayat;
- (B) That there has been a breach of Rule 17 of the Bombay Village Panchayats (Meetings) Rules 1959 ("said Rules"), in as much as there was no proposer or seconder to the motion of no confidence. It was submitted that such Rule is mandatory in nature and any breach renders the no confidence motion invalid;
- (C) That Section 35(2) specifically provides that the Sarpanch against whom no confidence motion is moved, shall have a right to speak or otherwise take part in the proceedings at the meeting including the right to vote. In the present case, such right to speak was denied to the petitioner.

5] In so far as the first contention is concerned, the same is premised upon Section 40 of the said Act, which reads thus:

*“40. **Leave of absence** :- (1) Any member of Panchayat who, during his term of office,*

(a) is absent for more than four consecutive months from the village [(such absence not being on account of his being a Chairman or Deputy chairman of a Panchayat Samiti)], unless leave not exceeding six months so to absent himself has been granted by the Panchayat or

(b) absents himself for six consecutive months from the meetings of the Panchayat without the leave of the said Panchayat, shall cease to be a member and his office shall be vacant,

[(2) If any question whether a vacancy has occurred under this Section is raised by the President of a Zilla Parishad suo motu or on an application made to him in that behalf, the President shall as far as possible decide the question within sixty days from the date of receipt of such application. Until the President decides the question, the member shall not be disabled from continuing to be a member of the Panchayat. Any person aggrieved by the decision of the President may, within fifteen days from the date of such decision, appeal to the State Government and the decision of the State Government in appeal shall be final.

Provided that, no decision shall be given under this sub-section by the President against any member without giving him a reasonable opportunity of being heard.]

(3) Whenever leave is granted under sub-section (1) to a member who is an Upa-Sarpanch another member shall, subject to the conditions to which the election of the Upa-Sarpanch so absenting himself was subject, be elected to perform all the duties and exercise all the powers of an Upa-Sarpanch during the period for which such leave is granted.”

6] There is undoubtedly a provision contained in Section 40(1) (b) that any member of the Panchayat who absents for six consecutive months from the meeting of the Panchayat without the leave of the said Panchayat, ceases to be a member and his office shall be vacated. However, sub section (2) of section 40, in terms provide that if any question arises as to whether vacancy has arisen or not then the same shall have to be determined by the specified authorities. Further, until such determination, the member shall not be disabled from continuing to be a member of the Panchayat.

7] Besides, the learned counsel for the petitioner points out that by order dated 29 December 2014 i.e. after the passage of motion of no confidence, Smt. Fulbai Balaso Bayakhor, one of the members of the Panchayat has been disqualified. Such subsequent disqualification, would not affect the motion of no confidence passed on 17 January 2014. This is because the provisions of Section 40 sub section (2) in terms provides that only the President decides the question as to whether the vacancy has arisen, the member shall not be disabled from continuing to be a member of the Panchayat. This is an additional ground for rejecting the petitioner's first contention.

8] In so far as the second contention is concerned, the same

stands squarely answered by the Full Bench of this Court in the case of *Tatyasaheb Ramchandra Kale vs. Navnath Tukaram Kakde & Ors.*¹ The Full Bench has in terms held that Rule 17 of the said Rules is only directory and any non compliance thereof, does not render the motion of no confidence invalid.

9] The third contention also cannot be accepted. The minutes record that the petitioner was permitted to participate. The impugned order also records that there was discussion on the motion of no confidence. There is no reason to disbelieve either the minutes or the statement in the impugned order.

10] The learned counsel for the petitioner relied upon the decision of the Division Bench of this Court in the case of *Ashok Krishnakant Mehta vs. State of Maharashtra & Ors.*², which lays down that the right to speak guaranteed by Section 35 (2) of the said Act is a statutory right and the same, if breached, would invalidate the motion of no confidence that may be passed. There can obviously be no quarrel with such proposition. In fact, Section 35(2) of the said Act specifically says so. However, in the present case, from the material produced on record, it is not established that this right was denied to the petitioner.

1 2015 (1) ABR 775 Full Bench

2 2000 (4) Bom. C.R. 724

11] Finally, it must be noted that the very continuance of the petitioner as a Sarpanch depends upon the will of the majority. In this case six out of nine members of the Panchayat have expressed lack of confidence in the petitioner. There is no breach of any statutory provisions in the passage of the no confidence motion. Accordingly, no case is made out to interfere with the impugned order. This petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka