

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 10889 OF 2016

DROPADA SAMPAT RATHOD
VERSUS
THE TAHSILDAR AMBAD AND OTHERS

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Advocate for Petitioner : Mr. Sandip R. Andhale.

AGP for Respondent / State : Mr. S. K. Tambe.

Advocate for Respondent Nos.2 to 8 : Mr. Girish B. Kulkarni.

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CORAM : **T. V. NALAWADE, J.**

DATE : 25th October, 2016.

ORDER:

. Notice to Caveators. Mr. G. B. Kulkarni, learned counsel is present for the Caveators.

2 The petition is filed to challenge the order made by the learned Collector, Jalna in Dispute Application No.35 of 2016. Both the sides are heard.

3 In the dispute proceeding, the present Petitioner, Sarpanch had challenged the resolution of no confidence passed against her. Requisition for calling the meeting was given by seven members of Village Panchayat. The Village Panchayat consist of nine

members. Requisition was given on 6th August, 2016 and on the same day, the Tahsildar made an order and issued notices. He called the meeting on 12th August, 2016, within seven days, period fixed for holding the meeting. On 12th August, 2016, seven members attended the meeting and resolution of no confidence was passed by majority 7 Vs. 0 (by 3/4th majority).

4 In the dispute proceeding, the resolution was challenged on many grounds as follows:

- (i) Member Kavita Jadhav who belongs to the reserved category i.e. OBC category, had not produced caste validity certificate within the prescribed period of six months and so she was not eligible for voting in the meeting.
- (ii) As per Rule 2-A of the Meeting Rules, copies of notices were not sent to the Authority and the Village Panchayat.
- (iii) There was no procedure followed for passing of the resolution.

5 No ground was taken that the notice of the meeting was

not served on the Petitioner in the dispute application filed by the present Petitioner. It appears that there was only one member who could have supported her, but the Petitioner and the said person remained absent and only seven persons attended the meeting. The minutes of the meeting show that motion was read and it was made clear that all the seven members had moved the resolution. There was a discussion on the motion and after that resolution was put to voting. All the seven members voted in support of the resolution and so the resolution came to be passed.

6 The learned counsel for the Petitioner placed reliance on case of the Division Bench of this Court reported as **2013(3) Mh.L.J. 133** (Vishnu Ramchandra Patil Vs. Group Gram Panchayat, Kharivli and others). He submitted that the provisions of Rule 17 and 19 of the Meeting Rules are mandatory in nature and that procedure was not followed and so the resolution needs to be set aside. This proposition is not acceptable. The facts already quoted show that all the seven members had moved the resolution and then there was a discussion.

7 In view of the aforesaid circumstances, it was not necessary to mention the name of member, who had seconded the resolution. Such irregularity which can be found in the minutes cannot

vitiating result of the motion when the resolution is passed with necessary majority.

8 The learned counsel for the Petitioner placed reliance on other case of the Division Bench of this Court reported as **2000 (4) Bom. C. R. 724** (Shri Ashok Krishnakant Mehta Vs. State of Maharashtra and others). In this case, this Court has laid down that under Section 35(2), there is right to speak in the meeting not only to the member against whom the resolution is moved but that right is available to other members also. There is no dispute over this proposition. It is already observed that all the seven members were against the present Petitioner and nobody was there in the meeting who could have supported the present Petitioner.

9 In view of aforesaid circumstance, it cannot be said that procedure was not followed. Some other cases are cited as follows:

- i) **2010 (6) Mh.L.J. 149** (Shivkant s/o Haribhau Bangar Vs. Grmsevak, Mauje Ratnapur and others)
- ii) **2010 (1) Mh.L.J. 497** (Gita Rupchand Dekate Vs. State of Maharashtra and others)
- iii) **Writ Petition No.5686 of 2016** (Shankar s/o

Raghunath Devre (Patil) Vs. The State of Maharashtra and others, decided by this Court on 2nd September, 2016)

- iv) **Writ Petition No.2808 of 2015** (Sau Surekha W/o Vasant Jadhavar Vs. Shri Kisan S/o Pandurang Jadhavar and others, decided by this Court on 11th September, 2015)
- v) **AIR 1998 Madhyar Pradesh 81** (Nagsai Vs. State).

10 It was also submitted by the learned counsel that one member was already facing disqualification proceeding like Kavita Jadhav and so allowing her to vote itself is a ground for setting aside the resolution. The provisions of Section 16(2) of the Bombay Village Panchayats Act, 1958 needs to be kept in mind in this regard. The said provision shows that unless and until the order is made by the Collector of disqualification, a member cannot be prevented from functioning as a member.

11 The learned counsel for the Respondent placed reliance on the case reported as **2014 (6) Mh.L.J. 804** (Tatyasaheb Ramchandra Kale Vs. Navnath Tukaram Kakde and others). He

submitted that the Full Bench of this Court has now held that Rule 17 of the Meeting Rules is directory in nature and is not mandatory.

12 In view of aforesaid position of law, this Court holds that it is not possible to interfere in the order made by the Collector. In the result, the petition stands dismissed.

[T. V. NALAWADE, J.]

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