

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2151 OF 2016

Shri Chandrakant Dhanraj Kanase.] ... Petitioner

Versus

Tanaji Bapurao Anpat and Ors.] ... Respondents

Mr. L. S. Deshmukh i/b Mr. P. S. Hagare for Petitioner.
Mr. A. R. Metkari, AGP, for Respondent Nos.7 and 8.

CORAM :- M. S. SONAK, J.
DATE :- FEBRUARY 18, 2016

P. C. :-

1. **Not on board. Upon production, taken on board.**
2. The learned Counsel for petitioner challenges the order dated 08/01/2016 made by the Additional Collector, dismissing petitioner's appeal under Section 35 (3-B) of The Maharashtra Village Panchayats Act ('the said Act').
3. Mr. Deshmukh, learned Counsel for petitioner, submits that in this case, there has been no compliance with Rule 17 of The Bombay Village Panchayats (Meetings) Rules, 1959, inasmuch as, no confidence motion was neither proposed nor seconded by any of the

members. He submits that there is necessity to move and second a motion of no confidence in a meeting convened to consider such motion. He places reliance upon the decision in the case of ***Vishnu Ramchandra Patil Vs. Group Gram Panchayuat, Kharivli and others***¹.

4. The Full Bench of this Court, in the case of ***Shri. Tatyasaheb Ramchandra Kale vs Shri. Navnath Tukaram Kakde And Others***², has ruled that Rule 17 of the said Rules is only directory and any motion of no confidence passed without compliance with Ruled 17 cannot be set aside. The relevant observation in paras 18 and 21 read thus:-

“18. Since much store was laid on the judgment of the Division Bench of this Court in ***Vishnu Ramchandra Patil's*** case and since the Division Bench in the said case has relied upon the judgment of the full bench in ***Vishwas Pandurang Mokal's*** case it would be necessary to consider the said Division Bench Judgment. The Division Bench, in so far as the issue as to whether Rule 17 is directory or mandatory is concerned, relied upon the full bench judgment in ***Vishwas Pandurang Mokal's*** case and held that the said issue is no more resintegra in view of the full bench Judgment. In fact the full bench in ***Vishwas Pandurang Mokal's*** case has specifically held that the question as to the consequence of noncompliance of any rule will have to be decided in each case after considering the nature of the provision. The full bench has observed that as regards whether Rule 17 is mandatory or directory or consequence of noncompliance on the validity or otherwise on the confidence motion, the full bench observed that it was not deciding that question since the

¹ 2013(3) Mh.L.J. 133

² 2014 (4) Mh.L.J. 804

same was not referred to it. Hence the Division Bench in the instant LPA was right when it observed that the finding recorded by the Division Bench in **Vishnu Ramchandra Patil's** case that the issue as to whether Rule 17 is directory or mandatory is no more resintegra on account of the full bench judgment runs counter to the dictum of the full bench. After so observing the Division Bench in the instant LPA observed that it could not be persuaded to take the view as taken by the Division Bench in **Vishnu Ramchandra Patil's** case and therefore referred the issue to a larger bench. In so far as **Vishnu Ramchandra Patil's** case is concerned, it is required to be noted that Section 44(3) of the BVP Act was not brought to the notice of the said Division Bench as also the judgment in **K Narasimhiah's** case (supra) was not cited before it. Hence the Division Bench in **Vishnu Ramchandra Patil's** case has rendered its decision oblivious of the said provision as well as the judgment of the Apex Court in **K Narasimhia's** case. The judgment in **Vishnu Ramchandra Patil's** case therefore does not state the correct position in law visavis whether Rule 17 is directory or mandatory.

21. Finally to put the matter in perspective, the requirement of Rule 17 in the matter of proposing and seconding the motion cannot impinge upon the validity of the motion of no confidence which has otherwise been passed by fulfilling the requirement of Section 35(3) of the Bombay Village Panchayats Act, 1958. The infraction that has occurred on account of the motion not being formally proposed and seconded cannot invalidate the motion if the same has been passed by fulfilling the requirements of Section 35(3) of the BVP Act, as the said infraction does not affect the merits of the case. Hence we hold that Rule 17 is directory, and the test laid down in Section 44(3) of the BVP Act namely whether the defect affects the merits of the case, would have to be applied, if a challenge is raised to such a motion. We accordingly

answer the reference and remit the matter back to the Division Bench for the above Letters Patent Appeal being decided on merits."

5. The Full Bench of this Court has not approved the decision in the case of ***Vishnu Patil*** (*Supra*) upon which reliance has been placed by the petitioner.

6. In view of the aforesaid, this petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)