

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO. 19919 OF 2015

Smt. Sakhubai B. Bhasma and ors. .. Petitioners
vs.
Shri. Madhukar M. Fasale and ors. .. Respondents

Mr. A.R. Pitale for the Petitioners.
Mr. Sagar Kasar for Respondent No.1.
Mr. S.D. Rayrikar, AGP for Respondent Nos.3 and 4.

CORAM : M. S. SONAK, J.
DATE : 9 FEBRUARY 2016.

P.C. :-

1] The challenge in this petition is to the order dated 30 April 2015 made by the Collector, Thane setting aside the motion of no confidence purported to have been passed against the Respondent No.1 in the meeting convened by the Tahsildar on 5 November 2014.

2] The Collector, Thane, in the impugned order, has faulted the passage of no confidence motion on two grounds:

a] That, prior to the Petitioners serving a notice dated 27 October 2014, expressing want of confidence against the Respondent No.1, the Petitioners, had made no complaints either against the Respondent No.1 or his style of functioning; and

b] That there is breach of the mandatory provision contained in Section 35(2) of the Maharashtra Village Panchayats Act, 1959 (said Act), inasmuch as the Tahsildar, in the present case, did not convene the special meeting of the Panchayat for considering the motion of no confidence against Respondent No.1, within a period of seven days from the date of receipt of notice under Section 35(1) of the said Act.

3] Mr. Pitale, learned counsel for the Petitioners, has submitted that the Collector, Thane is wrong on both the grounds relied upon by him in making the impugned order. Mr. Pitale submitted that the circumstances that there were no complaints made earlier, is irrelevant. Secondly, in this case, the Collector, in computing the period of seven days, had failed to exclude the Sunday, which intervened as also the public holiday on Moharrum, which was declared on 4 November 2014. Mr. Pitale submits that if these two days are excluded from consideration, then, there is compliance with the mandate of Section 35(2) of the said Act. Finally, Mr. Pitale submitted that for some technical difficulty, for which, the Petitioners are in no manner responsible, the Respondent No.1, who

has lost confidence of majority, should not be permitted to continue as a Sarpanch. For all these reasons, Mr. Pitale submitted that the impugned order made by the Collector deserves to be set aside and the motion of no confidence be declared as validly passed against Respondent No.1.

4] Mr. Sagar Kasar, learned counsel for Respondent No.1, has defended the impugned order by pointing out that the provisions contained in Section 35 (2) are mandatory and any motion of no confidence in breach of such provision is a nullity. Mr. Kasar relied upon the decision of this Court in case of *Mandalbhai B. Rohom and ors Vs. Ashok Fakira Chandar & ors.*¹ and *Ganesh R. Samel vs. The State of Maharashtra & ors.*²

5] The rival contentions now fall for determination.

6] Mr. Pitale, is right in his first submission that the Collector, could not have faulted with the passage of no confidence motion on the ground that the Petitioners, prior to the issue of notice dated 27 October 2014 may not have made any complaints against

1 2002(2) ALL MR 316

2 2002 (4) ALL MR 213

Respondent No.1. That by itself, is indeed an irrelevant circumstance. As long as, the prescribed majority of the Members of the Panchayat have lost the confidence of Sarpanch, they are entitled to move a motion of no confidence. In doing so, no doubt, they are required to comply with the provisions of the said Act, as applicable in this regard. However, a motion of no confidence, validly passed, cannot be defeated on the ground that the proposers of such motion, in the past has made no complaints against the Sarpanch or the Upa-Sarpanch, as the case may be. Therefore, that part of the impugned order as well as the reasoning to that extent is not approved.

7] Insofar as the second contention is concerned, however, Mr.Pitale is not on a very strong wicket. If the calendar for the year 2014, which the Petitioners have appended to the petition is perused, then the seventh day fell on 3 November 2014. This is because the Petitioners had issued notice under Section 35(1) of the said Act on 27 October 2014. For the purposes of computation of period of seven days, the date of receipt of notice, which in the present case, is the same, i.e., 27 October 2014, is required to be excluded. Even after exclusion, the seventh day fell on 3 November 2014. Therefore, the Tahsildar, was required to convene the meeting

on or before 3 November 2014. The subsequent holiday of 4 November 2016, was really, of no avail to the Petitioner. So also, the the learned counsel for the Petitioners has not been able to point out any provision or authority on the basis of which the intervening Sunday of 2 November 2014 can be excluded from consideration in determining the period of seven days, as stipulated under Section 35(2) of the said Act. In this case, there is clear breach of the mandate of Section 35(2) and the impugned order of the Collector, therefore, cannot be faulted.

8] In case of *Mandalbhai Rohom (supra)*, the learned Single Judge of this Court has held that Section 35(2) of the said Act requires the Tahsildar not only issue the notice convening the meeting within seven days but , also convene the meeting itself within seven days to deal with the matter pertaining to the no confidence motion in terms of the notice received by him under Section 35(1) of the said Act. Similarly in case of *Ganesh Samel (supra)*, the Division Bench of this Court has held that no confidence motion and all consequential action in pursuance of no confidence motion in a meeting convening after the stipulated period of seven days under Section 35(2) of the said Act are liable to

be quashed and set aside. The impugned order, is consistent with the legal position set out in the said two decisions of this Court.

9] Mr. Pitale, however, relied upon the decision of this Court in case of *Pandhari s/o. Shripat Patil vs. State of Maharashtra and ors.*³, to contend that day of receipt of notice under Section 35 (1) is to be excluded and further, if the seventh day happens to be a holiday period would get extended till next following working day for considering motion. The decision is not of assistance to the Petitioners, in the facts and circumstances of the present case. In this case, even after exclusion of date of receipt of notice, seventh day fell on 3 November 2014, which was admittedly not a holiday. The decision in the case of *Pandhari Patil (supra)* is not an authority for the proposition that even intervening holidays or Sundays are required to be excluded for the purpose of determining the seven day period.

10] Although, no relief can be granted to the Petitioners, Mr. Pitale, learned counsel for the Petitioners, is right in his submission that in the present case, the democratic process of passage of no confidence motion has been defeated on account of default

3 2002 (5) Mh.L.J. 171

committed by the Tahsildar in not convening the special meeting within seven days from the date of receipt of notice under Section 35(1) of the said Act. The provision, which enables the Members of a Panchayat to vote out a Sarpanch or a Upa-Sarpanch, in whom, they may have lost the confidence, is an important provision in the democratic governance of the Panchayat, which is a unit of local self government. The Authorities and the Officers like Tahsildar, are therefore, required to act scrupulously within the confines of the law, so that such democratic process are not frustrated by their acts of omission or commission. In the present case, although, it has to be held that special meeting convened, was not in accordance with mandate of Section 35 (2) of the said Act, nevertheless, the material on record, bears out that six out of nine Members constituting the Panchayat, had expressed want of confidence against the Respondent No.1-Sarpanch. For no fault attributable to the Petitioners, i.e., six Members of the Panchayat, the Respondent No.1, who had, on the prescribed date lost the confidence of the majority, is now to continue as the Sarpanch. In these circumstances, although, the Collector, Thane may be right in making the impugned order, the Collector was duty bound to have ordered an enquiry to determine whether Tahsildar in not convening the special meeting

within seven days from the date of receipt of notice under Section 35(1) of the said Act, has acted *malafide* or whether, the lapse, was merely a *bona fide* mistake or an error of judgment. This was necessary, as otherwise Tahsildars, by not complying with the mandate of Section 35(2) of the said Act, might defeat the democratic process and the will of the majority. The Collector, Thane is, therefore, directed to hold an enquiry into the matter and take appropriate action on the basis of such enquiry. Such exercise to be completed within six months from today. Needless to add that full opportunity is to be afforded to the Tahsildar concerned, in the course of such enquiry.

11] In view of aforesaid, there is no case made out to interfere with the impugned order. This petition is therefore, dismissed, but with the aforesaid direction. There shall, however, be no order as to costs.

(M. S. SONAK, J.)