

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

906 WRIT PETITION (STAMP) NO. 11907 OF 2017

SHAIKH AKIL SHAIKH SHAMAD
VERSUS
THE ADDITIONAL COLLECTOR AURANGABAD AND OTHERS

...
Advocate for Petitioner : Mr.Gore Ravindra Vitthal
AGP for Respondent State: Mr. S.K.Tambe
Advocate for respective respondents: Mr. S.S.Thombare

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CORAM : P.R. BORA, J.
Dated: April 07, 2017
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PER COURT :-

1. The petitioner has filed the present petition against the order passed by the Additional Collector on 3rd of April, 2017, whereby he has rejected the application of the present petitioner taking exception to the no confidence motion passed against him.

2. It is the contention of the petitioner that though the notice for holding the meeting in which no confidence motion was to be discussed was directed to be held in the Office of the Gram Panchayat, the same was not held in the office of the Gram Panchayat but was held in the Anganwadi school building which is far away from the Office of the Gram Panchayat. It is the further contention of the petitioner that the petitioner as

well as two other members could not attend the said meeting since they were not aware of the change of the venue of the meeting and no notice was issued, informing them the change in the venue of the meeting.

3. Learned Counsel appearing for the petitioner submitted that as provided under Section 35(2) of the Maharashtra Village Panchayats Act, 1959, the petitioner was having every right to participate in the said meeting, as also to vote in the said meeting, however, the petitioner as well as the other two members have been deprived of the said right. Learned Counsel has relied upon the judgment of this Court in the case of Indubai Vedu Khairnar V. State of Maharashtra and others (2003 (2) Bom.C.R. 239) and another judgment delivered by this Court in Writ Petition No.8795 of 2012.

4. Learned Counsel submits that today, at 2 p.m., a meeting is scheduled for election of the Sarpanch and if no interim orders are passed, and if the election process proceeds further, the present petition would become infructuous. Learned Counsel, therefore, prayed for staying the process of election, to be held today for electing Sarpanch of village Ranjangaon Tanda.

5. Shri Thombre, learned Counsel appearing for respondent nos. 4 to 9, has strongly opposed for granting any such relief. Learned Counsel submitted that since last one year no meetings of the Gram Panchayat have been held in the office of the Gram Panchayat, and this fact is well within the knowledge of the present petitioner. Learned Counsel further submits that even the meeting in which the petitioner was elected as Sarpanch, was also held at Anganwadi building at which place the meeting for no confidence motion was held. Learned Counsel has tendered across the Bar copy of letter dated 2nd of March, 2017, written by the Gram Sevak to Tehsildar informing therein that the Gram Panchayat Office is now situated in the Anganwadi building. Learned Counsel submitted that when all other members did know the venue and they attended the meeting, it cannot be accepted that the petitioner and other two members were not aware of the venue. Learned Counsel has placed reliance on the judgment of the Division Bench in the case of Sau.Sangeeta w/o Ramesh Ranvir vs. The Presiding Officer/Tahsildar & others (1999 (2) Bom.C.R. 213). Learned Counsel has more particularly relied upon the observations made by the Division Bench in paragraph no.7 of the said judgment.

6. Learned Counsel further submits that the no confidence motion was passed by two third majority. There are total nine members of the Gram Panchayat and out of those nine members, six have voted against the petitioner and by majority of six, the no confidence motion has been passed. Learned Counsel submits that even if any fresh meeting is held, the result is not likely to be changed since the six members who have voted against the petitioner are firm on their stand. In these circumstances, learned Counsel has prayed for dismissal of the petition so filed by the petitioner.

7. Learned A.G.P. appearing for the respondent State submits that in the order passed by the Additional Collector, Aurangabad, which has been impugned in the present petition, it has been clearly observed that since last one year the affairs of the Gram Panchayat are being conducted temporarily from the Anganwadi building, and it is well within the knowledge of all the members of the Gram Panchayat including present petitioner, and other two members, who remained absent in the meeting held for discussing the no confidence motion. Learned A.G.P. submitted that the writ petition is devoid of substance and no relief deserves to be granted in favour of the

petitioner.

8. I have carefully considered the submissions advanced on behalf of the respective parties. As has been argued, and as is revealing from the averments in the petition, the only argument is that change in the venue of the meeting was not informed to the petitioner and two other members and they, therefore, could not attend the meeting called for discussing the no confidence motion against the present petitioner. Learned Counsel has emphasized the provision under Section 35(2) of the Maharashtra Village Panchayats Act, 1958, which reads as under:

35.

(2) Within seven days from the date of receipt by him of the

notice under sub section (1), the Tahasildar, shall convene a special meeting of the panchayat for considering the motion of no confidence at the office of the Panchayat at a time to be appointed by him and he shall preside over such meeting. At such special meeting, the Sarpanch or the Upa-Sarpanch against whom the motion of no confidence is moved shall have a right to speak or otherwise to take part in the proceedings at the meeting (including the right to vote).

9. It is the contention of the petitioner that it was his statutory right to participate in the said meeting and had he remained present in the said meeting, he would have definitely convinced the members and no confidence motion perhaps may

not have been passed against him. It is further contention of the petitioner that it was mandatory on the part of the Tehsildar to inform the change in the venue of the meeting and since the same was not done and the meeting was held in breach of the mandatory provision, the business transacted in the said meeting, in any case, cannot be validated. Learned Counsel submitted that in such circumstances the transactions held in the said meeting deserve to be cancelled.

10 As stated earlier, learned Counsel has relied upon the judgment of this Court in Writ Petition No.8795/2012. Referring to the observations made and the conclusions arrived at by the learned Single Judge in the said writ petition, it is submitted by the learned Counsel that same course needs to be adopted in the present proceeding also. Learned Counsel invited my attention to paragraph Nos. 7 and 9 of the said judgment which read thus:

"7. The undisputed facts are:

- (a) The Tahsildar issued notice convening the special meeting at Grampanchayat office;
- (b) The Grampanchayat does not have office of its own.
- (c) All the meetings of the Grampanchayats were held in the house of Sarpanch i.e. the petitioner;
- (d) The meeting for considering No Confidence Motion was held at the Zilla Parishad School;

- (e) No communication of this change of venue was intimated to the petitioner.

9. The petitioner Sarpanch has right to participate in the meeting and the debate. When the meeting was not held at the venue suggested in the notice nor at the place where normally it were held but altogether at a new place and admittedly the petitioner was not intimated of the place where meeting was held, naturally his right to participate in the meeting and in the debate is lost. "

11. After having considered the submissions advanced by the learned Counsel appearing for the respective parties, it does not appear to me that any case is made out by the petitioner for grant of any relief in his favour. It is true that in the notice the place of meeting was stated to be Gram Panchayat office. It is further true that the meeting was not held in the Gram Panchayat Office; but, was held in the Anganwadi school building. However, as has come on record, the proceeding, which has been referred to in the order passed by the Collector, indicates that since last one year the office of the Gram Panchayat is being run from that Anganwadi building. In the petition, the petitioner has not even whispered about the said fact, or has not come out with any specific case that the observations so made are factually incorrect. It is not the case of the petitioner that all previous meetings were held in the Gram Panchayat Office and this was for the first time, that the

meeting was held in the Anganwadi building.

12. In the judgment relied upon by the learned Counsel, in Writ Petition No.8795/2002 also, the learned Single Judge has observed that the meeting was held altogether at a new place and was not held at the place where usually the meetings used to be held and that was the reason that the Court has passed further orders directing holding of fresh meeting for the same agenda and based on the same notice.

13. In the instant matter, it is difficult to accept that the petitioner was not knowing that the meeting may not be held in the Gram Panchayat office even though the venue of the meeting was stated to be Gram Panchayat Office in the notice dated 2nd of March, 2017. It further cannot be accepted that the petitioner was not aware of the fact that the present meeting is also likely to be held in Anganwadi building. The letter of the Gram Sevak which has been tendered across the Bar also reflects the said fact that the Gram Panchayat Office is being run from the Anganwadi building since last one year. All these circumstances indicate that the present petitioner was aware that though in the notice, the venue is mentioned as Gram Panchayat Office, in usual course, as earlier meetings

were held, and as the Gram Panchayat Office was being run from the Anganwadi building, meeting was likely to be held at the said venue.

14. In the case of Sau.Sangeeta w/o Ramesh Ranvir, cited supra, in paragraph no.7 of order, this Court (Coram: N.P.Chapalgaonker, J.) has made following observations:

" The provision will have to be read reasonably. A meeting is to take place in the office of the Panchayat so that everybody should know this place at which they have to gather. In the present case, construction material including sand and centring plates was stored in the office of Panchayat. One room adjacent to the office of the panchayat, in the same building, houses a school. Therefore, since the room which is called to be office of the Panchayat was not available and therefore, the meeting took place in the adjoining room. We do not think that there is any contravention of any mandatory provisions. If the room in which the Village Panchayat Office is situated, is not available for one or the other reason and just adjacent to it, in the same building, the meeting takes place, we are sure that every member, who intends to attend the meeting, would know that the meeting is taking place in the adjoining room. Therefore, even on this count we find that there was sufficient compliance. "

. It appears to me that the observations made in the aforesaid paragraph would squarely apply to the facts of the present case.

15. After having considered the material on record, from every angle, I do not find any case in favour of the petitioner. The petition being devoid of any substance, stands rejected.

(P.R. BORA)
JUDGE

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