

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 5899 OF 2017**

Mr. Raghunath Abaji Lende

....Petitioner.

Vs.

The Collector, Pune & Ors.

....Respondents.

Mr. A.Y. Sakhare, Senior Advocate a/w Mr. R.S. Mirpury for the Petitioner.

Mr. A.B. Vagyani, Government Pleader a/w Mr. C.P. Yadav, AGP for Respondent Nos. 1 and 23.

Mr. Y.S. Jahagirdar, Senior Advocate a/w Mr. Vilas Tapkir for Respondent No.3.

CORAM : B.R. GAVAI AND

RIYAZ I. CHAGLA, JJ.

DATE : 5 JUNE 2017.

P.C.:-

Not on board. Mentioned. In view of urgency shown, taken on board.

2 The Petitioner challenges the No Confidence Motion passed by the requisite majority of the members of Respondent No.2- The Agricultural Produce Market Committee, Junnar.

3 Shri Sakhare, the learned Senior Counsel appearing on

behalf of the Petitioner submits that as per bye-laws 41 of the APMC, if 3 members of the APMC make a request for voting by Secrete Ballot, then such a request has to be accepted. He further submits that in the present case, though 3 members have made a request for Secret Ballot, the Presiding Officer had rejected the said request. The learned Senior Counsel therefore, submits that non-compliance of Rule 41 has vitiated the proceedings under Section 23-A of the APMC Act and as such, the said No Confidence Motion will have to be set aside.

4 Mr. Jahagirdar, the learned Senior Counsel, on the contrary, relied upon the Judgment of the Division Bench of this Court (Nagpur Bench) passed in Dinesh S/o Sheshrao Thakre Vs. the Collector, Nagpur in Writ Petition No. 105 of 2014, dated 12 February, 2014, and submits that the said bye-laws is not applicable to the meeting held for passing No Confidence Motion under Section 23-A of the APMC Act.

5 Undisputedly, the APMC consists of 21 members. Out of which, 18 are eligible for voting. Out of that, 15 members have

participated in the voting and 12 members voted against the Petitioner and only 3 have supported him.

6 The Division Bench of this Court (Nagpur Bench) in the case of Dinesh S/o Sheshrao Thakre (Supra) held that the provisions of Section 23A are self contained code in themselves and the bye-laws, which prescribe the procedure, for holding the Annual General Meeting, are not applicable for the meetings conducting the No Confidence Motion.

7 In any case, the learned Judges of the Apex Court in case of K. Narasimhiah Vs. H.C. Singri Gowda & Ors.¹ have held that in case of No Confidence Motion, unless non-compliance required under the rules has been found to be resulting into prejudice, such a non-requirement will have to be directory and not mandatory.

8 When a candidate has lost the will of majority, rather than wasting money on the lawyers and wasting the time of this Court, the Petitioner should have gracefully walked out of the office and given a

1 AIR 1966 S.C. 330

way to the members of the society, to exercise the franchise and elect the president of their choice.

9 The Writ Petition is without any substance and is disposed of accordingly. The Court would have considered imposing the costs upon the Petitioner, however the Petitioner would have already spent unnecessarily and that too heavily on the lawyers fees, as such we are refraining from imposing further costs on the Petitioner.

(RIYAZ I. CHAGLA J.)

(B.R. GAVAI J.)