

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5418 OF 2013

**AJINATH SAMPAT KADAM
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for the Petitioner : Shri Hange Rajendra G.
AGP for Respondents 1 and 2 : Shri S.K.Tambe.
Advocate for Respondents 3 to 7 : Shri Dhase Rahul P..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 29th November, 2018

Per Court:

1 This Court (Coram : R.G.Ketkar, J.) had heard the learned Advocates for the respective sides and had passed a detailed order running into 24 pages on 08.07.2013. Every contention of the Petitioner and the Respondents was considered. After dealing with all the contentions of the litigating sides and on perusing the law cited, this Court drew conclusions on the merits of the matter in paragraph 17 of it's order dated 08.07.2013, which reads as under :-

"17] Perusal of the minutes of the Special Meeting dated 14th May, 2013 shows that all the seven members of Panchayat were present. The Tahsildar confirmed from Gramsevak Shri S.T.Bade that the persons who were present in the meeting are the members of Grampanchayat. Respondent No.5 herein suggested to read out the charges/ reasons for no confidence motion

against the petitioner. Accordingly, those charges/ reasons were read out. The discussion took place and the members, who had submitted requisition, reiterated that the charges/ reasons set out are correct and they maintain those charges. The petitioner was called upon to speak at the meeting. The petitioner expressed his views and thereafter, gave written application for taking votes by secret ballots. The voting by secret ballot was taken and the motion of no confidence was carried by 5 versus 2 votes. It was declared that the resolution is passed by requisite majority of 2/3rd. The minutes of the meeting were read out to the members and it was declared that the meeting is over. In the impugned order, the Addl. Collector, after considering the minutes of the special meeting, held that the resolution was passed in accordance with law. Thus, perusal of the minutes of special meeting clearly shows that the charges against the petitioner were read out. The petitioner was given full opportunity to speak at the meeting. The voting also took place by secret ballot. In my opinion, there is substantial compliance of Rules 17 and 18 of the Meeting Rules. The petitioner has not demonstrated that any prejudice is caused to him. Since the resolution is passed by requisite majority, no case is made out for grant of any interim relief."

2 In view of the above and upon considering the judgment delivered by the learned Full Bench of this Court in the case of **Viswas Pandurang Mokal vs. Group Gram Panchayat Shihu and others, 2011 (3) BCR 495 : 2011 (3) ALL MR 778**, this Court expressed a view that whether, the compliance of Rules 17 to 26 of the Meeting Rules would be mandatory or directory in nature. As this Court was of the opinion that the verdict as regards this aspect is required from a larger bench, the following order was passed in paragraph 18, which reads as under :-

"18] In view thereof, the Registry is directed to place the papers and proceedings of this petition as per Rule 7 of Chapter 1 of the Bombay High Court Appellate Side Rules, 1960, before the Hon'ble the Chief Justice for referring the following question to the larger bench :-

(i) Whether the Meeting Rules and in particular, Rules 17 to 26, are mandatory, and violation to apply these Rules to a meeting for consideration of motion of no confidence, vitiates the entire proceedings of the special meeting as also the resolution passed therein?"

3 It needs mention that though the Honourable the Chief Justice of this Court constituted a Full Bench to deal with the said aspect, a similar issue, in the meanwhile, on reference to the Larger Bench, was taken up by the learned Full Bench of this Court in the matter of **Tatyasaheb Ramchandra Kale vs. Navnath Tukaram Kakde** and others, which was decided vide the judgment dated 09.10.2014 reported at **2014 (6) Mh.L.J. 804**. In the said judgment, the learned Full Bench arrived at its conclusions in paragraphs 18 and 21, which read as under :-

"18 Since much stress 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 res-integra 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 non-compliance 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 non-compliance on the validity or otherwise on the confidence motion, the full bench observed that it was not deciding that question since the 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 res-integra 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 vis-a-vis 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."

4 It was thus, settled that Rule 17 is directory in nature and there is no reason that a motion of no confidence would be rendered a nullity if the motion is not supported by a proposer or seconder.

5 However, pursuant to the order of this Court dated 08.07.2013, the learned Full Bench of this Court delivered its judgment on 02.11.2018. The observations of this Court in paragraph 18 would indicate that it is in agreement with the view taken in ***Tatyasaheb Kale (supra)***. However, in view of the reference terms, the learned Full Bench has taken the matter a little further than the conclusions in ***Tatyasaheb Kale (supra)*** since the reference made by this Court was as to whether, Rules 17 to 26 are mandatory and as such, the learned Full Bench concluded that Rules 18 to 26 are all directory in nature. Paragraph 18 of the said judgment reads as under :-

"18. So far as Rule 17 is concerned, the Full Bench in *Tatyasaheb Ramchandra Kale's case (supra)* has finally put the matter in perspective and answered the reference to the effect that 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. Rules 18 to 26 are in sequel to Rule 17 of the Meeting Rules. Thus, the same

answer to the reference as above would be applicable to Rules 18 to 26 which prescribe the procedure to the events happened in terms of provisions of Rule 17. Hence, we hold that Rules 18 to 26 are also directory in nature in tune with the reference answered by the Full Bench of the Principal Seat in Tatyasaheb Ramchandra Kale's case (supra) and the test laid down in Section 44(3) of the Act of 1958 would have to be applied, if a challenge is raised to such a motion in terms of Rules 18 to 26. We accordingly answer the reference and remit the matter back to the learned Single Judge for deciding Writ Petition No. 5418 of 2013 on merits."

6 In view of the above, since this Court has already dealt with all the contentions of the Petitioner in its order dated 08.07.2013, this Writ Petition is devoid of merits and is, therefore, dismissed.

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(RAVINDRA V. GHUGE, J.)