

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1051 OF 2018
(Sumanbai Soma Wagh Vs. The State of Maharashtra and others)

Mr.Paresh B.Patil h/f Mr.A.S.Sawant, Advocate for the petitioner.
Mr.S.K.Tambe, AGP for respondent Nos. 1 to 3.
Mr.V.C.Patil, Advocate for respondent No.4 and 6 to 11.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 29/01/2018

PER COURT :

1. Mr.Pawar, learned Advocate appearing for respondent No.7 seeks a discharge since Mr.Patil, learned Advocate has caused an appearance. As such, the appearance of Mr.Pawar is discharged.
2. The petitioner is aggrieved by the passing of the "No Confidence Motion" against her on 16/09/2017 and the order of the Additional Collector dated 17/11/2017 by which her Gram Panchayat Dispute No.32/2017 has been rejected.
3. I have considered the submissions of the learned Advocates for the petitioner, respondent Nos.4 and 6 to 11 and the learned AGP on behalf of respondent Nos. 1, 2 and 3.
4. The basic grievance of the petitioner is that in the special

meeting convened on 16/09/2017, in which the “No Confidence Motion” was moved, she was not given an opportunity to speak. Though the motion was moved enlisting certain reasons, the petitioner could have explained her position but was not allowed to speak. Reliance is placed upon the judgment of the learned Division Bench of this Court in the matter of Ashok Krishakant Mehta Vs. Vs. State of Maharashtra and others [AIR 2000 Bombay 55].

5. Learned Advocate for the Village Panchayat members who have voted against the petitioner, contends that everybody was allowed to speak. Learned AGP appearing on behalf of the State points out from the proceedings that the Chair Person of the special meeting has noted that the reasons mentioned for moving the "No Confidence Motion" were read out by the Chair Person to the 8 members present in the meeting. One member was absent. After reading of the reasons mentioned in the motion, a discussion took place and speakers spoke in the said meeting. Therefore, the motion was placed for voting and 7 votes were cast in favour of the motion and the petitioner alone opposed the motion of no confidence, but did not vote.

6. It requires no debate that in a special meeting, any elected

member of the gram panchayat who desires to speak, has to be allowed to speak. The learned Division Bench in the case of Ashok Mehta (supra) as well as this Court in Jivan Somarya Thakare Vs. Additional Collector, Nandurbr [2015(3) Mh.L.J.590] have concluded that if a member desires to speak, the said member is to be permitted to speak. There cannot be any compulsion that each member present in the meeting shall speak whether he desires or not.

7. In this backdrop, it must be noticed that certain members were precluded from speaking in the meeting which facts are noticed in the Ashok Mehta case (supra). The chair person had allowed only the Sarpanch to speak as the motion was moved against him. Other members were restrained by the Tahsildar and were precluded from participating in the discussion.

8. In the instant case, the Tahsildar has mentioned in the "Proceeding Book" that the reasons mentioned for moving the motion set out in the notice were read out to the members in the meeting and thereafter a discussion took place on the said issues. Prima-facie, this indicates that there was some discussion that had taken place in the form of a debate. Whether the petitioner expressed a desire to speak and was precluded from speaking or whether she has

actually spoken, but her contentions were not verbatim noted in the "Proceeding Book", will have to be scrutinized.

9. Since the Chair Person has written down in the proceeding book that a discussion took place in the meeting on the motion moved, the presumption is that those who desired to speak, have spoken. One can find a counter check to all situations wherein a member may have desired to speak and was precluded from speaking. This counter check is in the form of the signatures which the members affixed on the Roznama in the proceeding book. The proceeding book indicates the attendance of the members, who have signed initially to mark their attendance and thereafter after the proceedings have taken shape and the motion is put for voting. The members thereafter signed on the proceeding book to indicate that what is written in concise form in the proceeding book is correct.

10. The petitioner Sumanbai has signed on the proceeding book initially to mark her presence and thereafter below the brief writing of the business transacted by the Chair Person. If she was not allowed to speak, she could have written on the proceeding book itself that though she desired to speak, the Chair Person did not allow her to speak. In fact, the petitioner declined to vote in the said meeting

after the motion was placed for recording the votes of the members. Out of the 8 members present in the meeting and eligible for voting, 7 voted against the petitioner and the proceeding book indicates that she refused to cast her vote. In this backdrop, it appears to be an after thought that the petitioner is now contending that she was not allowed to speak in the said meeting. If that be so, she could have written on the proceeding book that she was not permitted to open her mouth and participate in the discussion.

11. One more ground has been raised by the petitioner as regards Rule 17 of the Bombay Village Panchayats Sarpanch and Up-Sarpanch (No Confidence Motion) Rules, 1975 to contend that there was no formal proposer and seconder to the motion, which was placed in the meeting. This issue has been dealt with by the Full Bench of this Court in the matter of Tatyasaheb Ramchandra Vs. Navnath Tukaram [2014(6) BCR 737] that the said Rule is directory in nature and if there is no formal proposer and seconder to the motion of the meeting, it would have no consequence. What is required u/s 35(3A) of the Maharashtra Village Panchayats Act is that the motion has to be moved or carried by the requisite majority. In the instant case, the motion has been carried by 7 x 0 vote count. The Hon'ble Apex Court in the matter of Ramesh Vs. Sheshrao and others (3

Judges Bench) AIR 1999 SC 1607 has concluded that when a person has lost the mandate of the majority, the vote of the majority cannot be ignored for technical reasons.

12. Considering the above, I do not find that the business transacted in the special meeting on 16/09/2017 could be faulted. The impugned judgment of the District Collector can neither be termed as being perverse nor erroneous.

13. This petition is, therefore, dismissed.

14. I, however, find it appropriate to observe, so as to enable the learned AGP to take up this issue with the concerned Department of the State, that those Tahsildars who conduct special meetings for elections of the Sarpanch / Up-Sarpanch or for passing No Confidence Motion against such elected office bearers, should be technically trained to write the details of the business transacted, in such special meetings in concise forms. They need to be trained and counselled so as to note down the actual business transacted rather than cursorily write/note that a discussion took place in the meeting on the reasons for the No Confidence Motion. Verbatim reproduction of the speeches delivered by the members in the No Confidence

Motion meeting, is not expected. They can nevertheless make a concise noting of the views expressed by the speakers in such meetings so as to avoid those type of allegations which are found in the present case in hand.

15. It is expected that the learned AGP would take up this issue with the Principal secretary, Rural Development Department so as to ensure that the Principal Secretary would issue necessary directions and instructions to be circulated to all the Tahsildars in the State through the District Collectors and the Deputy Collectors. The learned Registrar (Judicial) of this Court would also place a copy of this order before the Principal Secretary, Rural Development Department.

(RAVINDRA V. GHUGE, J.)