

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 14585 OF 2018

Sou. Sandhya Rahul Kale ...Petitioner

Versus

Sou. Sangita Dattatray Nimbalkar
And others ...Respondents

WITH

Writ Petition NO. 14579 OF 2018

Shri. Abhaysinh Vitthalrao Nimbalkar ...Petitioner

Versus

Sou. Sangita Dattatray Nimbalkar
And others ...Respondents

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Mr. Uday Warunjikar, a/w. Akshay A. Deshmukh, Advocate for the Petitioners.

Mr. Vishwajit Sawant i/b. Veerdhaval Kakade, Advocate for Respondents No.1 to 13.

Mr. S.H. Kankal, A.G.P., for Respondents No.17 & 19-State.

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CORAM : R. G. KETKAR, J.

DATE : 21st DECEMBER, 2018

P.C.

1. Not on board. At the request of Mr. Warunjikar taken up for admission.
2. Heard Mr.Uday Warunjikar, learned counsel for the petitioners, Mr.Vishwajit Sawant, learned counsel for respondents No.1 to 13 and Mr.S.H. Kankal, learned A.G.P. for respondents No.17 & 19-State, at length.

3. Writ Petition No.14585/2018 is instituted by the petitioner, who is Sarpanch of Grampanchayat Sansar, Taluka – Indapur, District – Pune (for short, 'Grampanchayat'). This Petition takes exception to the order dated 14.12.2018 passed by respondent No.19, the Collector, Pune in Dispute Petition No.SR/1210/2018. The petitioner had instituted that dispute petition under Section 35(3-B) of the Maharashtra Village Panchayats Act (for short, 'Act') challenging the resolution of no-confidence passed against her in the Special Meeting of the Grampanchayat convened on 17.11.2018. By the impugned order, respondent No.19 has dismissed the dispute petition filed by the petitioner.

4. Writ Petition No.14579/2018 is instituted by the petitioner, who is Upa-Sarpanch of the Grampanchayat challenging the order dated 14.12.2018 passed by respondent No.19, the Collector, Pune in Dispute Petition No.SR/1211/2018. The petitioner had instituted that dispute petition under Section 35(3-B) of the Act challenging the resolution of no-confidence passed against him in the Special Meeting of the Grampanchayat convened on 17.11.2018. By that order, respondent No.19 has dismissed the dispute petition filed by the petitioner.

5. As common questions of law and facts arise in these petitions the same can conveniently be disposed of this common order. For appreciating the controversy raised in the petitions, the facts from W.P.

No.14585/2018 are taken into consideration. The relevant and material facts, giving rise to filing of this petition, briefly stated, are as under.

6. The elections of Grampanchayat were held on 14.8.2015. The Grampanchayat consists of 17 members. The petitioner was elected as a Sarpanch. On 13.11.2018, the Tahsildar, Indapur issued notice to 17 members of the Grampanchayat intimating them that notice of no confidence against Sarpanch and Upa-Sarpanch is received in his office on 12.11.2018 and that the Special Meeting is, therefore, convened on 17.11.2018 at 1:00 p.m. in the office of the Grampanchayat. On 17.11.2018, Special Meeting was presided over by the Tahsildar. Out of 17 members, 13 members were present. All 13 members voted in favour of no-confidence motion against the Sarpanch. After conclusion of the meeting, the Tahsildar declared that the motion of no-confidence is carried out. Aggrieved by this decision, the petitioner instituted dispute under Section 35(3-B) of the Act before the Collector, Pune. Respondents No.1 to 13 resisted the dispute by filing reply dated 11.12.2018. The petitioner filed written arguments before the Tahsildar. Respondents No.1 to 12 & 14 filed written arguments. After considering the material on record, the Collector dismissed the dispute. It is against this order, present petition is instituted.

7. In support of W.P. No.14585/2018, Mr. Warunjikar raised following contentions:

- i. The petitioner was out of town along with her family members from 11.11.2018 and returned in the evening of 15.11.2018. Till that time she was not served with the notice.
- ii. There is no proposer and seconder in the Special Meeting and, therefore, the resolution passed in that meeting itself is *void ab initio*.
- iii. The petitioner was not given fair and reasonable opportunity in the Special Meeting. She was not allowed to speak in the meeting.

8. In support of W.P. No.14579/2018, Mr. Warunjikar submitted that the petitioner was elected as Upa-Sarpanch. His father suffered heart-attack on 14.11.2018 and was hospitalized initially in Giriraj Hospital, Baramati. On medical advice of Dr. Bhoite, petitioner's father was admitted in Rubi Hall Clinic, Pune on 15.11.2018 and was discharged on 23.11.2018. He submitted that the petitioner did not receive the notice dated 13.11.2018 issued by the Tahsildar, Indapur. He, therefore, could not participate in the Special Meeting. The petitioner was not given fair and reasonable opportunity in the Special Meeting. He was not allowed to speak in the meeting. Mr. Warunjikar reiterated his submissions that there is no

proposer and seconder in the Special Meeting and, therefore, the resolution passed in that meeting itself is *void ab initio*.

9. In support of these submissions, Mr. Warunjikar relied upon the decision of this Court in **Shri Ashok Krishakant Mehta Vs. State of Maharashtra & others, AIR 2001 BOMBAY 55**. In particular he relied upon paragraph-6 of that decision. In paragraph-6, the Division Bench referred to the Bombay Village Panchayats (Meetings) Rules, 1959 (for short, 'Meetings Rules') and observed thus:

“6. Rules 23 and 24 expressly postulate a debate on the motion which is being moved. Rule 24 provides that except for the mover or the seconder of the motion, no other member shall, without the express permission of the person presiding, speak more than once on the same motion except for the purpose of making a personal explanation. Rule 25 permits the Presiding Officer to fix a reasonable time limit for a speech. Rule 26 postulates that on the conclusion of a debate on a motion or where the person presiding is satisfied that the motion has been sufficiently discussed, he may put the motion to the vote of the meeting without further discussion. Rule 30 provides for decision on points of order. Rule 34 provides that any member who disregards the authority of the person presiding or is guilty of obstructive or offensive conduct at any meeting, may be suspended. These provisions highlight the safeguards of a free and orderly debate in the Village Panchayat. The importance of a free debate in the Panchayat cannot be under emphasised. It lies at the heart of democracy. The Village Panchayat is an institution for democratic self governance at the level of the village. Any effort to stifle debate must be looked upon by the law with disfavour.”

10. Mr. Warunjikar submitted that in the present case, as the notice was not served on the petitioners of convening the Special Meeting on 17.11.2018, they were prevented from participating in the meeting. They consequently could not express their views during the meeting.

11. On the other hand, Mr. Sawant supported the impugned order. He has tendered a photo-copy of the notice dated 13.11.2018 issued by the Tahsildar, Indapur to the members of the Grampanchayat for considering the no-confidence motion against the Sarpanch and Upa-Sarpanch. Same is taken on record and marked 'X collectively' for identification. A perusal of this notice clearly indicates that the notice was served on the Sarpanch and Upa-Sarpanch on 14.11.2018 and they have signed the said notice acknowledging receipt of the notice. He submitted that despite service, the Sarpanch and Upa-Sarpanch did not participate in the meeting. He submitted that in the minutes of the meeting, the Presiding Officer has recorded that the grounds were read out before the members and thereafter discussion took place. After the discussion was over the motion was put to vote. All the thirteen members unanimously voted in favour of the motion of no-confidence. He, therefore, submitted that the decision relied by the petitioners in the case of **Ashok Krishakant Mehta** (supra) is not applicable to the facts of the present case.

12. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As mentioned earlier, thirteen members had served the notice dated 12.11.2018 to the Tahsildar, Indapur. In pursuance thereof, on 13.11.2018 the Tahsildar, Indapur issued notices to the members of the Grampanchayat convening Special Meeting on 17.11.2018 for discussing the no-confidence motion against the Sarpanch and Upa-Sarpanch. A perusal of the notice dated 13.11.2018, at Exhibit 'X collectively', shows that same is signed by the Sarpanch as also Upa-Sarpanch on 14.11.2018. In view thereof, I do not find any merit in the submission of Mr. Warunjikar that the notice was not served on the petitioners. The contention that the petitioners were out of village Sansar between 11.11.2018 and 15.11.2018 is stated to be rejected. Thus, despite service of the notice, the Sarpanch and Upa-Sarpanch did not participate in the Special Meeting convened on 17.11.2018. A perusal of the minutes of that meeting shows that the grounds were read out to the thirteen members who were present in the meeting and thereafter discussion took place. After the discussion was over, the motion was put to vote and all the thirteen members voted in favour of the motion of no-confidence. The petitioners having not remained present cannot complain about violation of principles of natural justice. I have already held that the petitioners were duly served. If the petitioners, who were Sarpanch and

Upa-Sarpanch, were to remain present in the meeting and were prohibited or prevented from expressing their views then in that event the decision of **Ashok Krishakant Mehta** (supra) would be applicable. In view thereof, the reliance placed on the decision of **Ashok Krishakant Mehta** (supra) does not advance the case of the petitioners.

13. Mr. Warunjikar submitted that there was no proposer and seconder in the Special Meeting of 17.11.2018. In the case of **Tatyasaheb Ramchandra Kale Vs. Navnath Tukaram Kakde and others, 2014(6) Mh.L.J. 804**, the Full Bench of this Court has held that the requirement of Rule 17 of the Meeting Rules in the matter of proposing and seconding of motion is directory. It cannot impinge upon the validity of the motion of no-confidence which is passed by fulfilling the requirement of Section 35(3). In view thereof, I do not find any merit in the submission of Mr. Warunjikar.

14. Equally, I do not find any merit in the submission of Mr. Warunjikar that there is breach of principles of natural justice as the petitioners did not attend the meeting. In view thereof, no case is made out for invocation of powers under Articles 226 and 227 of the Constitution of India. Hence, petitions fail and the same are dismissed. Order accordingly.

(R. G. KETKAR, J.)