

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11604 OF 2017

MAROTIRAO GANGARAMJI FEGDE AND OTHERS
VERSUS
THE GRAMSEVAK GRAM PANCHAYAT HINGOLI AND OTHERS

...
Advocate for Petitioners : Shri Mane D.A. h/f Shri Pawade N.R.
AGP for Respondents 1 & 2 : Shri Bhagat N.T.
Advocate for Respondents 3 to 5 : Shri Rakhunde P.B.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 10, 2019
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PER COURT :-

1. On 27.7.2019, I had passed the following order:-

"1. The petitioners, seven in numbers, are aggrieved by the order dated 16.8.2017 passed by the Additional Collector, Hingoli, thereby, setting aside the 'No Confidence Motion' passed against respondent No.4 - Sarpanch of village Reulgaon, Taluka Vasmat, District Hingoli.

2. I have considered the strenuous submissions of the learned Advocates for the petitioners, respondent No.4 and the learned AGP on behalf of respondents 2 and 3.

3. Issue notice before admission to the respondents, returnable on 17.11.2017. Learned AGP waives service for respondents 2 and 3. Shri Rakhunde, learned Advocate waives service for respondent No.4.

4. *It appears that the Additional Collector has set aside the 'No Confidence Motion' passed on 1.7.2017 by a vote count of 7:1 for the reason that the minutes of the special meeting have not been satisfactorily recorded by the Chairperson.*

5. *There is no dispute that the said Gram Panchayat has elected nine members. Seven amongst them are the petitioners, respondent No.4 is the Sarpanch and respondent No.5 is one such member, who was absent from the special meeting held on 1.7.2017.*

6. *Learned counsel for respondent No.4 - Sarpanch has strenuously contended that though the requisition motion proposing the 'No Confidence Motion' was signed by seven persons out of nine, the Tahsildar had convened a special meeting in the Gram Panchayat office. The venue was, however, altered and was shifted to the Zilla Parishad, High School in the same area. He, however, concedes on the basis of the record that not a single member, including the Sarpanch, out of the eight members present, raised any objection with regard to the change in venue and all participated in the said meeting. It is, however, contended that the Sarpanch had reached few minutes late and did not get a proper opportunity to defend herself.*

7. *I have perused the proceedings extracts placed on record in the petition paper book and which are undisputed. It indicates the manner in which, the business was transacted in the special meeting. The Tahsildar was the Chairperson. Eight members were present and who have signed in token of their*

attendance. The Sarpanch had spoken in the said meeting and had defended herself by stating that the members are not cooperating in the monthly meeting. Development projects in the village have been successfully completed.

8. After the conclusion of the speech of the Sarpanch, the Tahsildar put the motion to vote and 7 members, the petitioners herein, have voted in favour of the motion, which was passed by 3/4th majority. Even if respondent No.5, who was absent, is presumed to be supporting the Sarpanch, the vote count would be 7:2, on the basis of such assumption, which would still be 3/4th majority.

9. Prima facie, it appears that not a single member complained about the change in venue as it is stated that the Village Panchayat does not have a proper Panchayat Office / Hall.

10. It also appears that the Tahsildar has noted the minutes of the meeting and he has signed the minutes along with the Gram Sevak of the Gram Panchayat, respondent No.1 herein. I find that the Additional Collector has concluded that the reasons for moving the motion of 'No Confidence Motion' are not satisfactory. This aspect is beyond the purview of the Additional Collector. Whether the grounds for moving such a motion are enough to pass the motion or not is for the members to consider and cast their votes according to their conscience. The Additional Collector cannot step into the shoes of the members and conclude that the reasons are not satisfactory.

11. *Shri Rakhunde has strenuously contended that the Full Bench judgment in the matter of Vishwas Pandurang Mokal Vs. Group Gram Panchayat [2011 (3) BCR 495], would indicate that Rule 17 of the Bombay Village Panchayats (Meetings) Rules, 1959 is applicable in the light of the Bombay Village Panchayat Sarpanch and Up-Sarpanch (No Confidence Motion) Rules, 1975. It requires no debate that the Rules of 1959 and 1975 are applicable to such special meetings.*

12. *It cannot be ignored that the learned Full Bench of this Court in the matter of Tatyasaheb Ramchandra Kale Vs. Navnath Tukaram Kakde [2014 (6) Mh.L.J.804], has concluded in paragraph Nos.18 to 21, after considering the view in Vishwas's case (supra), that Rule 17 is directory in nature and not mandatory. A formal proposer and seconder is not required. In fact, in the Vishwas's case (supra), the Full Bench has concluded that the issue whether Rule 17 is mandatory or directory is kept open and is not being decided as the said issue was not referred to the Full Bench in the Vishwas's case (supra).*

13. *As such, the impugned order of the Additional Collector dated 16.8.2017 shall stand stayed. The Deputy Sarpanch shall take charge forthwith as the in-charge Sarpanch of the said Village Panchayat.*

14. *Until further orders in the matter, if a fresh election is conducted, the same shall be subject to the result of this petition.*

15. The litigating parties shall note that this matter would be considered finally at admission stage on the returnable date.

16. The petitioners shall file copies of the petition paper book for issuance of notice on/or before 6.10.2017, failing which, this petition shall stand dismissed without reference to the Court on 9.10.2017."

2. The learned Advocate for the Sarpanch / respondent No.4 has raised two grounds. Firstly, that the venue was changed and, therefore, respondent No.5, who was her supporter, could not attend the meeting. Secondly, the Tahsildar should have read out all the charges levelled by the seven members, in the meeting and sufficient opportunity was not granted to the Sarpanch to meet the said charges. Reliance is placed upon the judgment delivered by this Court in the matter of Govind Nivrutti Hipparkar Vs. Tahsildar, Taluka Sangola [2010 (Supp) Bom.C.R.489], wherein, it is observed in paragraph No.12 that the Tahsildar must provoke a discussion in the meeting. The proposer and the seconder have to speak and the Sarpanch then has to reply. If members are passive listeners, the proceeding would be untenable.

3. I find that this Court has now crystallized the law in the following judgments, that a person cannot be compelled to speak in

such a meeting:-

- (i) Pravin Shripati Yadav Vs. Grampanchayat, Ninche and others [2013 (2) Mh.L.J. 934] and
- (ii) Nimba Rajaram Mali Vs. Collector Jalgaon - [1998 (3) Mh.L.J. 204].

4. One who desires to speak can call upon the Tahsildar to grant an opportunity to speak. Whether the charges are proved in the meeting, is not the aspect to be considered as the special meeting is not convened for a fact finding enquiry, with regard to the charges levelled on the Sarpanch. So also, the record reveals that the Sarpanch had spoken in the meeting, had defended herself and had stated that the members are not cooperating in the monthly meetings and several development projects have been successfully completed.

5. In so far as the contention that one supporter of the Sarpanch did not participate in the meeting, this Court has already dealt with the said contention in paragraph No.8, reproduced above.

6. In view of the facts and circumstances recorded above, this petition is allowed. The impugned order dated 16.8.2017, passed by the Additional Collector, Hingoli is quashed and set aside.

(RAVINDRA V. GHUGE, J.)

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