
(2000) 3 BomCR 196 : (2000) 2 MhLj 459

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 337 of 2000

Sow. Vijayatai Subhash
Gavhane and others

APPELLANT

Vs

The State of
Maharashtra and others

RESPONDENT

Date of Decision: March 23, 2000

Acts Referred:

- Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 - Section 111, 188, 3, 72(2), 72(6)

Citation: (2000) 3 BomCR 196 : (2000) 2 MhLj 459

Hon'ble Judges: D.S. Zoting, J; B.H. Marlapalle, J

Bench: Division Bench

Advocate: P.B. Shirsath, for the Appellant; E.P. Sawant, G.P., D.R. Irale Patil, P.F. Patni, R.N. Dhorde and A.M. Gaikwad, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

B.H. Marlapalle, J.

The petitioner Nos. 1 and 2 are Chairman and Vice-Chairman of the Sillod Panchayat Samiti and remaining petitioners are the members of the said Samiti. A motion of no confidence was moved by respondent Nos. 5 to 16 against petitioner Nos. 1 and 2 and the Collector at Aurangabad, acting on the same motion, as submitted u/s 72(2) of the Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 (the Act for short) issued a notice under sub-section (3) of the said section on 14th December, 1999 and a meeting was scheduled on 7th January, 2000. The meeting was held, as scheduled, and the motion was carried and passed with 12 to 9 votes. The Panchayat Samiti has in all 22 members. One Shri Mane Shankar Rama remained absent and remaining 21 members were present.

2. The petitioners have challenged the proceedings of the said meeting and contended that the motion of no confidence had lapsed and the resolution of no confidence was passed illegally and in breach of the provisions of the Act. The challenge is more particularly raised on the following points :

(i) The Collector did not issue a separate notice in respect of motion of no confidence against the Chairman and Vice-Chairman though the requisition was submitted separately on 14th December, 1999 and these requisitions were on different grounds/reasons.

(ii) In the meeting held on 7th January, 2000 there was no discussion on the grounds for no confidence.

(iii) The meeting commenced at 2.00 p.m. and was adjourned due to lack of coram and restarted at 2.30 p.m. on 7th January, 2000 and, therefore, pursuant to the provisions of section 72(5) of the Act the motion got automatically lapsed. Reliance, in this regard, has been placed on a judgment of this Court in the case of Baburao Atmaramji Lande v. Collector, Chandmpur and another 1983 M.L.J 792.

(iv) The petitioner Nos. 1 and 8 had demanded secret ballot for voting on the motion of no confidence and it was turned down by the Presiding Officer. This action of the Presiding Officer is contrary to the law laid down by this Court in the case of Maroti Bandu Patil v. The Village Panchayat, Sindhnerli and others 1981 B.C.R. 405 : 1981 M.L.J. 255 and in the case of [Kishore Phalak Vs. Vilas Mahajan and Others](#), .

(v) One of the members viz Smt. Nirmalabai Jarare was not willing to vote in favour of the no confidence motion and Smt. Basantibai Londhale had forcibly pulled the hand of Smt. Nirmalabai Jarare during the meeting. This has vitiated the proceedings.

3. Admittedly, there are no separate rules framed for conducting the meeting of no confidence under the Act. The scheme of section 72 of the Act does not mandate that in case of separate no confidence motions being moved against the Chairman and Vice-Chairman, the Collector must issue separate notices to the members and a composite notice would be per-se invalid. What is not incorporated in the law cannot be expected to be implicit in it and the composite notice issued by the Collector cannot be vitiated on such a ground. The notice issued by the Collector to the individual members makes it abundantly clear that there was a motion of no confidence against the Chairman as well as Vice-Chairman and so long as such a communication was explicit the members were aware of the fact that there were two separate motions of no confidence and they were individually against the Chairman and Vice-Chairman.

4. A perusal of the minutes of meeting held on 7th January, 2000 indicates that there was discussion for and against the motion of no confidence and four members from either side participated in the discussions. In the case of "Baburao Lande" (supra) such an issue was under consideration and this Court, in para 11 of the said judgment, observed :

"It may be that there may not be any deliberation in the meeting on the motion, but exhibition of approval or disapproval by exercising votes is absolutely necessary before a motion becomes a resolution or it is rejected."

The scheme of section 72 of the Act also does not envisage specifically a debate on the grounds of no confidence and, therefore, the challenge raised on this count must fail.

5. The minutes of the meeting also indicated that the meeting did not commence at 2.00 p.m. as scheduled on 7th January, 2000 and due to chaotic conditions prevailing in the meeting hall the meeting started belatedly at 2.30 p.m. The contentions that the meeting was adjourned due to lack of coram and it was restarted at 2.30 p.m. on completion of coram is unsustainable if we peruse the minutes and more specifically the words :

^fiBklu vf/kdkjh ;kauh IHksl x.kiwrh u >kY;kus IHkkxzgke/s dkagh lnL; tk.ks&;s.ks djhr vLY;kus 5 feuhV csy ns.;kr vkyh- iqUgk 15 feuhV osy nsġ½u fBd 2.30 oktrk fiBklu vf/kdkjh ĩġ½eglwYġ½ ;kauh x.kiqrh >kY;kus dkedkkl lq:okr dl.;kr vkyh-**

It is obvious that the meeting commenced at 2.30 p.m. instead of 2.00 p.m. and the minutes do not indicate that the meeting was commenced at 2.00 p.m. and it was adjourned due to lack of coram and was held at 2.30 p.m; afresh. Otherwise the minutes could have stated :

^nqikjh nksu oktrk lq: >kysyh IHkk x.kiwrh vHkkoh rgdgo dj.k;kr vkyh o x.kiwrh iw.kZ vkY;kuarj IHkk nqikjh vMhp oktrk ijr cksykiwu lq: dj.;kr vkyh-**

In this view of the matter the provisions of sub-section (5) of section 72 of the Act would not come into play in the present case. The facts and circumstances, in the case of Baburao Lande (supra) were totally different and the law laid down in that case is not applicable in the instant case.

6. So far as the issue regarding the demand for secret ballot is concerned, sub-section (6) of section 72 reads thus :

"The names of the members voting for and against the motion shall be read in the meeting and recorded in the minute book kept u/s 188 read with sub-section (13) of section 111."

The request for secret ballot was rejected by the Presiding Officer by relying upon the provisions of sub-section (6) of section 72 of the Act as quoted herein above. We approve of the action of the Presiding Officer in this regard and we do not find any illegality in the said order. The learned Counsel for the petitioners has relied upon two judgments of this Court (as cited above) and we must mention that both the judgments pertain to the motion of no confidence passed under the Bombay Village Panchayat Act wherein the provisions are different than the provisions of section 72 of the Act and, therefore, reliance on these enunciations of this Court is misplaced in the present case.

6-A. The motion of no confidence is passed by 12 against 9 votes. Mrs. Nirmalabai Jarare did not make any oral or written representation to the Presiding Officer to the effect that she was not willing to vote in favour of the no confidence motion but she was forced to do so by the acts of Mrs. Basantibai Londhale, as is clear from the minutes of the meeting and this also has not been disputed by the petitioners before us. On the face of the difference of three votes even otherwise this one vote would not have made a material difference so as to frustrate the resolution of no confidence impugned before us.

7. For the reasons discussed in the foregoing paragraphs the challenge to the resolution of no confidence motion as passed on 7th Jan. 2000 against the petitioner Nos. 1 and 2 is devoid of merits and the petition is, therefore, rejected summarily.

8. Petition rejected.