

Nagnath Subhash Netake Vs. the State of Maharashtra and Others

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Court : Mumbai Aurangabad

Decided On : Apr-23-2014

Judge : Ravindra V. Ghuge

Appeal No. : Writ Petition No. 8761 of 2013

Appellant : Nagnath Subhash Netake

Respondent : The State of Maharashtra and Others

Judgement :

Per Court:

1. Heard learned Advocates for the respective parties.

2. This matter was heard on 11.4.2014. The matter was adjourned in order to trace out the date on which the notice of no confidence motion was received by the Tahsildar. The submissions recorded by this Court in its order dated 11.4.2014 are as follows:-

"1. Heard learned Advocates for the respective parties.

2. Submission is that the petitioner was elected as a Sarpanch of village Dhutta in Osmanabad District. Six out of seven members of the village panchayat moved a no-confidence motion, dated 9.4.2013, before the concerned Tahsildar. Notice of the special meeting for considering the motion of no confidence was issued on

10.4.2013. The special meeting was convened on 18.4.2013. Out of six members present, inclusive of the petitioner, five have voted against him. The motion has, therefore, been passed.

3. The petitioner has challenged the said resolution by filing a proceeding before the learned Additional Collector, Osmanabad. In paragraph No.5 of the appeal memo, it was specifically averred that the meeting for considering the no confidence motion should have been convened within seven days from the date of receipt of the notice dated 9.4.2013 in the light of Section 35(2) of the Maharashtra Village Panchayats Act, 1958.

4. Contention of the petitioner is that the time limit of seven days under subsection (2) is mandatory and not directory in nature. It was, therefore, brought to the notice of the learned Additional Collector that the meeting was convened in violation of Section 35(2) of the said Act.

5. The petitioner has drawn my attention to the impugned order. I do not find any mention of the objection raised by the petitioner, much less, discussion and adjudication on the said issue. Shri Phatke, learned AGP submits that the R and P of the matter would throw light on this issue.

6. I find that the Additional Collector, Osmanabad has not taken up the preliminary objections raised by the petitioner and has rejected his appeal by the impugned order without dealing with the said objection. The notice dated 9.4.2013 bears the stamp of receipt / acknowledgment of having received notice of no confidence motion. It however, does not bear the date on which the Tahsildar actually received the notice, that I am of the opinion that the R and P of the matter need to be produced expeditiously.

7. As such, Shri Phatke, learned AGP for respondents 1 to 3 is directed to ensure that R and P pertaining to the said dispute be produced on/or before 22.4.2014 without fail. Place the matter on 23.4.2014 for further consideration."

3. Shri Phatke, learned AGP has placed before this Court the original record pertaining to the issue before this Court. He has identified the date on which the

Tahsildar has received the notice of no confidence motion, as being 9.4.2013. It clearly indicates that it was received on 9.4.2013. Seven days post receipt of the notice would end on 16.4.2013, as provided in Section 35(2) of the Maharashtra Village Panchayats Act ("the said Act").

4. Section 35(2) of the said Act reads as under:-

"35. Motion of no confidence:-

(1)

(2). Within seven days from the date of receipt by him of the notice under sub-section (1), the Tahsildar shall convene a special meeting of the Panchayat for considering the motion of no confidence at the office of the Panchayat at a time to be appointed by him and he shall preside over such meeting. At such special meeting, the Sarpanch, or the Upa-Sarpanch against whom the motion of no confidence is moved shall have a right to speak or otherwise to take part in the proceedings at the meeting (including the right to vote)....."

5. In the instant case, respondents 4 to 10 have been served but none appears for them.

6. It is not in dispute that the notice issued for convening a meeting to discuss and decide the no confidence motion, is dated 10.4.2013. It is also not in dispute that the special meeting in which the no confidence motion was passed by 3/4th majority was held on 18.4.2013. The learned Advocate for the petitioner, therefore, contends that Section 35(2) of the said Act which is a mandatory provision, has been violated.

7. Learned AGP has strenuously canvassed that a minor violation and that too as regards the number of days would not tantamount to a flagrant violation of the mandatory provision. He, further submits that there seems to be a delay of only two days in conducting the meeting and such a minor delay should not be considered to be fatal to the proceeding.

8. This Court in the case of Mandabai Balnath Rohom Vs. Ashok Fakira Chandar and others [2002 (1) Mh.L.J. 916] has come to a conclusion while dealing with an identical issue, that the Tahsildar has not only to issue the notice convening the meeting to deal with a notice of no confidence within seven days, but has also to convene the meeting itself within seven days to deal with the matter pertaining to the no confidence motion in terms of the notice received by him under Section 35(1) of the said Act.

9. The view expressed by this Court in the case of Mandabai (supra) and especially in paragraph Nos.11 and 15 of the said judgment, reads as under:-

"11. From the fact that the Section 35(2) of the said Act specifically provides an action on the part of the Tahsildar within time frame programme and further the legislative intention being made clear by the rules made under the said Act to the effect that the Tahsildar has to act immediately upon receipt of such notice under Sub-section (1) of Section 35 and has to get himself satisfied that the notice has been given by not less than one-third of the total number of members who are for the time being entitled to sit and vote at any meeting of the panchayat and thereupon, shall convene special meeting for the purpose for which the notice was served within seven days from the date of receipt of the notice, disclose that not only the issuance of notice for convening special meeting has to be issued within seven days but, the such meeting also should be held within seven days of the receipt of the notice by the Tahsildar. Considering the provisions relating to the period prescribed for holding ordinary and special meeting in the Meetings Rules, which provide for three days for ordinary meeting and one day for convening special meeting and Sub-rule (3) of Rule 2 of the No-confidence Motion Rules provides for convening the meeting within seven days from the date of receipt of notice, it is to be held that such meeting is necessarily to be held within seven days. That apart, Section 35(2) of the said Act, on the face by itself provides that action of the Tahsildar of issuing notice as well as holding meeting is to be within the period of seven days. That's why Sub-section (2) of Section 35 of the said Act opens with the expression "within seven days from the date of receipt". It is to be noted that the expression "convene" in Section 72(2) of the Samitis Act, has been interpreted by the Full Bench bearing in mind the provisions contained in Section

49 as well as 111 along with the said Section 72 of the Samitis Act. It has been observed therein thus:-

"Sub-section (2) of Section 49 almost in the same terms as Subsection (2) of Section 72. This required the President to convene a special meeting of the Zilla Parishad to consider the motion of no-confidence within ten days of its receipt. Under Sub-section (4) of Section 111, ten days notice of a special meeting has to be given. If, therefore, the word "convene" implied that the meeting must be held within ten days, then it would have not been possible to hold any meeting for considering a motion of no-confidence, for if the meeting was to be held within ten days, then clear days' notice of it could not have been given and if notice of a shorter period was given, the meeting would have been illegal, see *Haribhau v. State*. The above meaning did not, therefore, fit in in the context, for it would have made Section 49(2) ineffective and nugatory. On the other hand, if "convene" in this provision meant call or summon, then it was possible to hold the special meeting after giving the requisite notice. The Legislature could not have used this word in a sense in which it would have made the section in workable. It follows that in Section 49(2) "convene" meant call or summon; and it must bear the same meaning in Sub-sections (2) and (4) of Section 72, because the same word cannot have two different meanings in two provisions of the same Act almost identical in terms and enacted for the same purpose.

"15. The point for consideration, therefore, has to be answered as under:-

"Section 35(2) of the said Act requires that the Tahsildar shall not only issue the notice convening the meeting within seven days but, also convene the meeting itself within seven days to deal with the matter pertaining to the No-confidence Motion in terms of notice received by him under Section 35(1) of the said Act."

10. The learned Division Bench of this Court in the case of *Ganesh Raghunath Samel Vs. State of Maharashtra and others* [2002(4) ALL MR 213] has also dealt with an identical issue. The conclusion drawn by the learned Division Bench is that if a meeting for discussing and taking a decision on no confidence motion is convened after the stipulated period of seven days, the no confidence motion and all subsequent actions in pursuance to the said motion are liable to be quashed

and set aside. The judgments of this Court in the cases of Ankush Kushaba Margaje Vs. State of Maharashtra [Writ Petition No. 2078 of 2000], Chaitram Dagadoo Vs. Malegaon Panchayat Samiti [1965 Mh.L.J.663 FB] and Mandabai (supra) have been considered.

11. In my view, therefore, Section 35(2) of the said Act is a mandatory provision. Violation of the said provision, in any form, cannot be countenanced. The issue, therefore, is no longer res integra, in the light of the above reported judgments.

12. I, therefore, find that the impugned judgment and order dated 30.9.2013 passed by the Additional Collector, Osmanabad is not in conformity with the settled position of law. I find from the impugned judgment that the issue of delay of two days is neither discussed nor decided. Nevertheless, since the said issue is no longer res integra and in view of the fact that the record clearly indicates that seven days from the date of receipt of the notice of no confidence have expired on 16.4.2013 and the special meeting was convened on 18.4.2013, that the passing of the no confidence motion and all subsequent events in pursuance thereto are rendered unsustainable.

13. In this view of the matter, decision of passing no confidence motion and the impugned judgment are set aside.

14. Writ Petition is accordingly allowed. No order as to costs.

15. The original papers, which are part of the R and P have been returned forthwith to the learned AGP.

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