

Chaya and Others Vs. Additional Collector, Gadchiroli and Others

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Court : Mumbai Nagpur

Decided On : Mar-19-2015

Judge : R.K. Deshpande

Appeal No. : Writ Petition Nos. 2331 of 2013, 5055 of 2014, 860 of 2015 & 2331 of 2013

Appellant : Chaya and Others

Respondent : Additional Collector, Gadchiroli and Others

Judgement :

Oral Judgment:

1. Rule, made returnable forthwith. Heard finally by consent of the learned counsels appearing for the parties.
2. The challenge in all these petitions is to the no-confidence motion passed by absolute majority against the Sarpanch of the Gram Panchayat, which is confirmed in appeal by the Additional Collector in exercise of his appellate jurisdiction under Section 35(3-B) of the Maharashtra Village Panchayats Act, 1959 (the said Act).
3. The facts of the cases are as under:

A motion of no-confidence moved against the Sarpanch by the elected members of the Gram Panchayat was passed in terms of Section 35 of the said Act by absolute majority in a special meeting chaired by the Tahsildar. The appeals were preferred under Section 35(3-B) of the said Act before the Additional Collector, who accepted that the no-confidence motion was moved and passed by the elected members of the Gram Panchayats, as provided under Section 35 of the said Act by absolute majority. However, the appeals have been allowed by setting aside the no-confidence motion solely on the ground that the Gram Panchayats in question are included in the scheduled areas to which the special provisions incorporated under Chapter IIIA under the said Act are applicable. As per the provision of Section 54D(3) under the said Chapter, the notice of no-confidence motion should have been passed in the special meeting of Gram Sabha by a secret ballot. It has been held by the Additional Collector that the proceedings have not been conducted in accordance with the provision of Section 54D(3) under the said Chapter.

4. In view of the aforesaid order passed by the Additional Collector, the finding that the no-confidence motion was moved and passed by the elected members of the Panchayats, as provided under Section 35 of the said Act, no longer remains a matter of dispute before this Court. It is also not in dispute that the Gram Panchayats in question are included in the scheduled areas as per the notification published by the Government of Maharashtra on 9-3-1990. The finding recorded by the Additional Collector that the requisitions in question were neither moved nor passed in accordance with the provision of Section 54D of the said Act, is also not disputed.

5. In the light of such undisputed factual position, the following question of law arises for the determination of this Court:

Whether the power of the elected members of the Panchayats under Section 35(1) and (2) of the Maharashtra Village Panchayats Act, 1959 to move and pass a no-confidence motion in the manner prescribed therein, is taken away by Section 54D(3) and (4), in respect of the Gram Sabhas and Panchayats included in the scheduled areas, as introduced in Chapter IIIA of the said Act with effect from

6. Every village specified in the notification issued under clause (g) of Article 243 of the Constitution of India is known by the name of that village specified in such notification, as provided under sub-section (1) of Section 4 of the said Act. For every such village, there has to be an established Panchayat, as defined under Section 2(14) and specified under Section 5 of the said Act. In terms of Section 9 of the said Act, every Panchayat is a body corporate by the name of the Village Panchayat of..... having perpetual succession and a common seal, with power to acquire and hold property and may in its corporate name sue and be sued. Section 10 of the said Act deals with the constitution of Panchayats, which consists of all the persons elected from different wards and constituencies.

7. Section 35 of the said Act deals with the motion of no-confidence, and sub-sections (1) and (2) therein being relevant, are reproduced below:

35. Motion of no confidence.

(1) A motion of no confidence may be moved by not less than one-third of the total number of the members who are for the time being entitled to sit and vote at any meeting of the Panchayat against the Sarpanch or the Upa-Sarpanch after giving such notice thereof to the Tahsildar as may be prescribed. Such notice once given shall not be withdrawn.

(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).

The aforesaid provision confers a right upon the members elected of the Panchayat under Section 10 of the said Act to move a motion of no-confidence by not less than one-third of the total number of the members who are for the time

being entitled to sit and vote at any meeting of the Panchayat against the Sarpanch or the Upa-Sarpanch. Within a period of seven days of the receipt of such motion, a special meeting of Panchayat is required to be convened by a Tahsildar, who has to preside over it. It is not the requirement under Section 35 of the said Act that a no-confidence motion has to be passed by a secret ballot only.

8. Chapter IIIA dealing with the special provisions for Gram Sabha and Panchayat in scheduled areas, is introduced in the said Act by Maharashtra Act No.27 of 2003 with effect from 8-8-2003. Section 54D therein deals with motion of no confidence, and sub-sections (3) and (4) therein being relevant, are reproduced below along with the proviso:

54D. Motion of No Confidence.

(3) A Sarpanch or, as the case may be, the Upa-Sarpanch shall cease to be Sarpanch or, as the case may be, Upa-Sarpanch, if a motion of no confidence is passed by secret ballot at a special meeting of the Gram Sabha and conceded by the majority of more than fifty per cent. of the members of the Gram Sabha:

Provided that, a motion of the no confidence shall be moved by not less than one third of the total members of the Gram Sabha against Sarpanch or, as the case may be, Upa-Sarpanch after giving notice thereof to the Secretary of the Gram Sabha. The Secretary of the Gram Sabha shall immediately deliver such notice to the Tahsildar.

(4) The Tahsildar after receipt of the notice, within fifteen days from the date of receipt of such notice shall convene a special meeting of Gram Sabha at the office of the Panchayat for considering the motion of no confidence. The Officer not below the rank of Naib Tahsildar shall preside over such meeting. The Sarpanch or, as the case may be, 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).

Section 54D of the said Act deals with the passing of no-confidence motion by a secret ballot against Sarpanch and Upa-Sarpanch by the members of Gram

Sabha, as defined under Section 2(9) of the said Act, who are not only the members of Panchayat, but are registered in the electoral rolls relating to village within the area of Panchayat. Though Gram Sabha is not a statutory body or a body incorporated like Panchayat under Section 9 of the said Act, it is a body larger than Panchayat consisting of persons registered in the electoral rolls relating to the village. The entire scheme of the Act shows that a Panchayat, a body corporate, is answerable to Gram Sabha and it subserves the needs of the members of Gram Sabha.

9. In terms of the provision of Section 54D(1) of the said Act, the Sarpanch or the Upa-Sarpanch, as the case may be, ceases to hold the office if a motion of no-confidence is passed by secret ballot at a special meeting of the Gram Sabha and conceded by the majority of more than 50 per cent. of the members of the Gram Sabha. In terms of the proviso, a motion of no-confidence is required to be moved by not less than one-third of the total number of the members of the Gram Sabha against the Sarpanch or the Upa-Sarpanch, as the case may be, after giving a notice thereof to the Secretary of the Gram Sabha. Within a period of fifteen days of the receipt of the notice, the Tahsildar has to convene a special meeting of Gram Sabha, to consider such motion and such meeting is required to be chaired by an officer not below the rank of NaibTahsildar.

10. The provision of Section 54D of the said Act was for the first time introduced in the Statute book under Chapter IIIA dealing with the special provisions for Gram Sabha and Panchayat in Scheduled areas brought into force by Maharashtra Act No.27 of 2003 with effect from 8-8-2003. Prior to introduction of such amendment under the Act, Section 35 operated in respect of a motion of no-confidence to be moved in respect of Gram Sabha and Panchayat irrespective of the fact whether those were included in the scheduled areas. In order to take away such power conferred upon the elected members of Panchayat as conferred by Section 35 of the said Act, it was necessary for the Legislature either to suitably amend the provisions of Section 35 to take away such power in respect of Gram Sabha and Panchayat included in the scheduled areas or to provide a non-obstante clause in Chapter IIIA introduced by Maharashtra Act No.27 of 2003 with effect from 8-8-2003 so as to give an overriding effect to the provision of the motion of no-

confidence in respect of Gram Sabha and Panchayat included in the scheduled areas. Neither the provision of Section 35 of the said Act is amended to curtail the rights of elected members of Panchayat to move and pass a no-confidence motion, nor Chapter IIIA or Section 54D therein has been given an overriding effect.

11. The objects and reasons of the Maharashtra Act No.27 of 2003 for introducing Chapter IIIA clearly indicate that the Legislature has intended to make the additional provision conferring power upon the members of Gram Sabha also to move and pass a no-confidence motion by a secret ballot against a Sarpanch or Upa-Sarpanch of the Gram Sabha and Panchayat in the scheduled areas. It was not the intention of the Legislature to take away the power conferred upon the elected members of Panchayat under Section 35 of the said Act to move a motion of no-confidence against the Sarpanch or the Upa-Sarpanch, as the case may be, of the Gram Sabha and Panchayat included in the scheduled areas. The question of law framed is answered accordingly.

12. In view of the aforesaid position of law, the Additional Collector could not have set aside the motion of no-confidence passed against the Sarpanch in accordance with Section 35 of the said Act on the ground that the Gram Sabhas and Panchayats in question are included in the scheduled areas and the procedure under Section 54D of the said Act was not followed. The orders impugned cannot, therefore, be sustained and the same will have to be quashed and set aside by restoring the no-confidence motion passed against the respondents.

13. In the result, all these petitions are allowed. The orders impugned in these petitions are hereby quashed and set aside, and the motions of no-confidence passed against the respondents are restored.

14. Rule is made absolute in above terms. No order as to costs.

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