

Jaya and Another Vs. Tahsildar, Parner and Others

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Court : Mumbai Aurangabad

Decided On : Jun-05-2016

Judge : Sangitrao S. Patil

Appeal No. : Writ Petition No. 5812 of 2016

Appellant : Jaya and Another

Respondent : Tahsildar, Parner and Others

Judgement :

P.C.

1. Not on board. Taken up for hearing at the request of the learned Counsel for the petitioners, on account of urgency.
2. Heard the learned Counsel appearing for the petitioners and the learned Asst. Government Pleader appearing for respondent nos.1 and 2.
3. The learned Counsel for the petitioners has sought stay to the meeting scheduled to be held on 6th June 2016, at 11.00 a.m. at village Kinhi, Taluka Parner, District Ahmednagar, to discuss the motion of no confidence brought against the petitioners, who are working as the Sarpanch and Upa-Sarpanch respectively.

4. It is not in dispute that as per the application (undated) which was received by respondent no.1 -Tahsildar, on 30th March 2016, motions of no confidence were brought by one Sudhakar Bhanudas Khodade and others against the petitioners. However, respondent no.1 did not convene meeting to consider the said motions of no confidence. Respondent no.1 issued a notice dated 13th April 2016 to convene a special meeting for considering the motions of no confidence dated 11th April 2016 brought by one Pandurang Bapu Vyavhare (present respondent no.9) and others, scheduled to be held on 20th April 2016 at 4.00 p.m. at Kinhi. In that meeting, as seen from the resolutions passed therein, the motions of no confidence dated 30.03.2016 were allowed. The said resolutions were challenged by both the petitioners before the Additional Collector, Ahmednagar, by filing Village Panchayat Dispute Application Nos.36/2016 and 37/2016, which came to be allowed vide judgments dated 23rd May 2016, on the ground that respondent no.1 did not carry out the motions according to the provisions of the Maharashtra Village Panchayats Act, 1958 ["the Act, for short] and the Rules made thereunder. Thus, the resolutions allowing the motions of no confidence against the petitioners were held to be invalid.

5. The learned Counsel for the petitioners submits that now respondent no.1 has issued two separate notices dated 2nd June 2016, calling for the meeting to consider the motions of no confidence dated 01.06.2016 brought on the same grounds against petitioner nos.1 and 2, on 6th June 2016 at 11.00 a.m. and 12.00 noon, respectively.

6. Relying on the provisions contained in sub-section (3-A) of Section 35 of the Act, he submits that fresh motions of no confidence on the same grounds cannot be moved or carried against the petitioners within a period of one year from the date of special meeting held on 20th April 2016, wherein the motions of no confidence were passed against the petitioners. He, therefore, seeks stay to the meeting scheduled to be held on 6th June 2016.

7. As against this, the learned Asst. Government Pleader appearing for respondent nos.1 and 2, relying on the judgment in the case of Khandu s/o. Bhivaji Jogdand Vs. State of Maharashtra and others, 2010 (4) Mh.L.J. 402, submits that

only one meeting was held on 20th April 2016, to discuss the motions of no confidence brought against the petitioners. The resolutions allowing the motions of no confidence against the petitioners have been set aside by the Additional Collector, Ahmednagar, in the above referred Grampanchayat Dispute Applications, on 23rd May 2016, on the ground that the said motions were not carried out according to law. Therefore, the provisions of sub-section (3-A) of Section 35 of the Act would not be applicable to the present case and there would be no bar for holding a special meeting on 6th June 2016, to consider the motions of no confidence brought against the petitioners.

8. The learned Counsel for the petitioners submits that as per the provisions of sub-section (2) of Section 35 of the Act, after receiving the notice of no confidence motion, the Tahsildar was bound to convene a special meeting within a period of 7 days. In support of this contention, he relied on the judgment in the case of Nagnath Subhash Netake Vs. The State of Maharashtra and others, 2014(5) ALL MR 249. He submits that since no meeting was convened by the Tahsildar after receiving the motion of no confidence on 30th March 2016, that would be the first attempt to bring the motions of no confidence. The meeting held on 20th April 2016 would be the second occasion to consider the motions of no confidence and thus, the meeting proposed to be held on 6th June 2016 would be the third attempt to consider the motions of no confidence. Therefore, according to him, the judgment in the case of Khandu s/o. Bhivaji Jogdand (supra), which speaks of tenability of the second motion within one year would not be applicable to the present case. He, therefore, submits that holding of the third special meeting to consider the motions of no confidence brought against the petitioners on the same grounds within a period of one year from the date of the first special meeting cannot be said to be legal. It would violate the fundamental rights of the petitioners.

9. The provisions of sub-section (3A) of Section 35 of the Act read as under :-

"If the motion is not moved or is not carried by a majority of not less than two-third of or, as the case may be, three fourth, of the total number of the members who are for the time being entitled to sit and vote at any meeting of the Panchayat, no

such fresh motion shall be moved against the Sarpanch or, as the case may be, the Upa-Sarpanch within a period of one year from the date of such special meeting."

From the above mentioned provisions, it is clear that if a motion of no confidence is already considered in a special meeting, no such fresh motion shall be moved or carried against the Sarpanch or Upa-Sarpanch, within a period of one year from the date of such meeting. As held in the case of Khandu s/o. Bhivaji Jogdand (supra), if the earlier motion was not moved or carried in the special meeting legally, the bar contained in sub-section (3-A) of Section 35 of the Act would not come in the way of holding subsequent special meeting to consider such motion afresh. Therefore, it will have to be seen as to how many special meetings were convened and legally conducted by respondent no.1 in the present case.

10. Undisputedly, after receiving the motion of no confidence on 30th March 2016, no special meeting was convened by respondent no.1 within 7 days as contemplated under sub-section (2) of Section 35 of the Act. The special meeting held on 20th April 2016, is the first meeting convened by respondent no.1, wherein the motions of no confidence dated 30th March 2016 were considered. Whatever resolutions were passed in that meeting, were challenged by the petitioners by filing Village Panchayat Dispute Applications before the Additional Collector, Ahmednagar, and the said resolutions have been set aside by the Additional Collector, Ahmednagar, on the ground that respondent no.1 did not follow the provisions of law while holding the special meeting and passing the motions of no confidence. If that be so, in view of the judgment in the case of Khandu s/o. Bhivaji Jogdand (supra), there would be no bar to bring motions of no confidence afresh on the same grounds even within a period of one year from 20th April 2016.

11. Here reference may be made to the observations of this Court recorded in the case of Prakash s/o. Barku Patil Vs. The State of Maharashtra and others, 1998 (1) Mh.L.J. 43, reproduced in para 9 of the judgment in the case of Khandu s/o. Bhivaji Jogdand (supra), wherein it is clarified that the harmonious construction of the provisions of Rule 2(3) of the Bombay Village Panchayats Sarpanch and Upa-Sarpanch (No Confidence Motion) Rules, 1975, and sub-section (3-A) of Section

35 of the Act clearly leads to the conclusion that the term "motion is not moved" is synonymous with and amounts to "motion is not carried". It is further observed that to decide whether the motion was moved or not moved, the meeting in pursuance of the notice of no confidence must be held and vote must be recorded either against or in favour of the motion. In the present case, as stated above, only one special meeting has been convened by respondent no.1 on 20th April 2016, to consider the motions of no confidence dated 30th March 2016 against the petitioners. Therefore, though the motions of no confidence dated 11th April 2016 are again stated to have been brought against the petitioners vide the notice dated 13th April 2016, since no special meeting has been held by respondent no.1 to consider those motions, in view of the above mentioned observations, it cannot be said that the motions of no confidence dated 11.04.2016 were carried out.

12. In sub-section (3-A) of Section 35 of the Act, there is no mention of specific number of subsequent motions of no confidence. It simply speaks of the bar to move such fresh motion, which was not moved or carried by the requisite majority as specified therein. If there are more than one motions, which were not moved or not carried according to the provisions of law, in my view, there would be no bar to convene a special meeting to consider such motions of no confidence afresh irrespective of the fact whether it is second or more than second subsequent attempt to bring the motion of confidence within a period of one year from the date of earlier special meeting.

13. In view of the above facts and circumstances, the special meeting convened by respondent no.1 on 6th June 2016, cannot be said to be against the provisions of law. If any resolutions are passed against the petitioners in that meeting, they would have an opportunity to dispute the validity of those motions vide sub-section (3B) of Section 35 of the Act and get redressed their grievance. They can even seek the relief of stay to the execution of the resolutions passed against them by establishing their case before the concerned authority. In that event no prejudice would be caused to them. In the circumstances, I am not inclined to stay the proceedings of the special meeting scheduled to be held by respondent no.1 on 6th June 2016.

14. The Writ Petition is liable to be dismissed and the same is accordingly dismissed. No costs.

15. At this stage, the learned Counsel for the petitioners prays for stay against the meeting scheduled to be held on 6th June 2016, in order to enable the petitioners to approach the Hon'ble the Supreme Court. The prayer is rejected.

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