



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6645 OF 2012

Sou.Arati Ashok Patil

..Petitioner

Vs

1.State of Maharashtra and ors

.. Respondents

Shri N.V.Walawalkar, Senior Advocate, i/b Mr Sudhir Prabhu,
Advocate for the Petitioner.

Ms Aparna Vhatkar, AGP, for Respondent no.1.

Shri S.V.Gavand, Advocate for respondent nos 3 to 12 and 14.

CORAM : R.G.KETKAR,J.

DATE : 20/07/2012

PC:

1. Heard Mr N.V.Walawalkar, learned senior counsel for the petitioner, Ms. Aparna Vhatkar, learned AGP for respondent no.1 and Mr.S.V. Gavand, learned counsel for respondent nos 3 to 12 and 14 at length.

2. Leave to add prayers so as to challenge the order dated 21.5.2012 passed by the District Collector, Raigad and the order dated 11.7.2012 passed by the Addl. Commissioner, Konkan Division, Konkan, as also for stay of these orders, is granted. Amendment shall be carried out within one week from today.

3. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the Judgment



and order dated 21.5.2012 passed by the Collector, Raigad, in Dispute No.2 of 2012 as also the Judgment and order dated 11.7.2012 passed by the Addl. Commissioner, Konkan Division, Kokan in Appeal No.273 of 2012. The petitioner has further sought a declaration that the no confidence motion carried out against the petitioner in a Special meeting dated 18.2.2012 is illegal and invalid as also for setting aside the said no confidence motion. The facts and circumstances, giving rise to the filing of the present petition, briefly stated, are as under.

4. On 24.10.2010, election of Gram Panchayat, Kegaon, Taluka-Owada, was held, wherein the petitioner and respondent nos 3 to 14 were elected as members of the said Gram Panchayat. The Gram Panchayat consists of 13 members. On 4.11.2010, election for the posts of Sarpanch and Up-Sarpanch was held wherein the petitioner was elected as Sarpanch. On 13.2.2012, respondent nos 2 to 12 and 14 gave notice under section 35(1) of the Bombay Village Panchayats Act, 1958 (for short, 'Act') to the Tahasildar, Uran, Dist-Raigad, for convening a special meeting for moving no confidence motion against the petitioner. In the said notice, reasons were also set out. Pursuant to that notice, the Tahasildar, Uran, fixed special meeting at 11 am on 18.2.2012. On 18.2.2012, the special meeting, as scheduled, was held and the Tahasildar, Uran



presided over the said meeting. The said meeting was attended by all the 13 members. No confidence motion was put to vote and was declared to have been passed by 12 votes in favour of the motion and one vote in opposition. Aggrieved by passing of the no confidence motion, the petitioner filed Dispute Application No.2 of 2012 before the District Collector, Raigad, under section 35(3-B) of the Act. By the Judgment and order dated 21.5.2012, the Collector Raigad, dismissed the dispute application. Aggrieved by this decision, the petitioner preferred an Appeal under section 35(3-C) of the Act before the Additional Commissioner, Konkan Division. By the Judgment and order dated 11.7.2012, the Addl. Commissioner dismissed the Appeal. It is against these decisions, the petitioner has instituted this petition.

5. In support of this petition, Mr Walawalkar strenuously contended that the meeting so held on 18.2.2012, is wholly illegal and is contrary to the provisions of the Bombay Village Panchayats Sarpanch and Upa-Sarpanch (Motion of No Confidence) Rules, 1975 (for short, '1975 Rules) read with the Bombay Village Panchayats (Meeting) Rules, 1959 (for short, '1959 Rules'). He invited my attention to Full Bench decision of this Court in the case of Shri Viswas Pandurang Mokal Vs. Group Gram Panchayat Shihu and Ors, 2011 (3) ALL MR 778, and in particular paragraph 17 thereof. The Full Bench has held that the



provisions of Rule 17 of the 1959 Rules apply to special meeting convened under section 35 of the Act. He submitted that Rule 17 of the 1959 Rules lays down that a Member who has given notice of a motion shall, when called on, either (a) state that he does not wish to move the motion, or (b) move the motion in which case he shall commence his speech by a formal motion in terms appearing on the list of business, after the motion is duly seconded. He further submitted that in terms of Rule 18 after a motion has been moved and seconded the person presiding shall propose the question by reading the motion for the consideration of the Panchayat. He invited my attention to the Minutes of the meeting dated 18.2.2012 and submitted that the perusal of the minutes of the meeting would indicate that the motion was neither moved nor seconded. He submitted that the provisions of Rules 17 and 18 of the 1959 Rules are mandatory and failure to observe these provisions vitiates the entire proceedings. In support of this proposition, he relied upon the decision of learned Single Judge (R.C.Chavan, J) in the case of Vijay Ramchandra katkar Vs. Group Gram panchayat Pali 2010 (4) ALL MR 707.

6. On the other hand, Mr Gavand strenuously submitted that the provisions of Rule 17 and 18 of the 1959 Rules are not mandatory but are directory. He invited my attention to the



minutes of the meeting dated 18.2.2012 and submitted that there is a substantial compliance of the provisions of the Rules. He invited my attention to paragraph 18 of the Full Bench decision where the Full Bench has not decided the question whether provisions of Rule 17 are mandatory or directory as the same was not referred to it. He also invited my attention to the Judgment of the learned Single Judge of this Court (S.C.Dharmadhikar, J.) in Writ Petition no. 167 of 2011, Vishnu R Patil Vs. Group Gram Panchayat, Kharivali along with the companion Writ Petitions decided on 26.7.2011 and in particular paragraph 24, wherein it is held that if the requirement of Rule 17 is not a mandate, but, a matter of procedure, then, unless serious prejudice for want of compliance therewith is demonstrated, the motion cannot be said to be invalid and illegal nor could any deficiency be found in the conduct of the meeting. In other words, he submitted that Rule 17 is directory and not mandatory and if there is substantial compliance of that Rule, the meeting cannot be said to have been vitiated. He also invited my attention to the order dated 28.11.2011 in Writ Petition No.10298 of 2011 between Shri Waman Shankar Doltade and Anr Vs. The State of Maharashtra and Ors, wherein the learned Single Judge of this court disagreed with the decision of the learned Single Judge in the case of Vijay Ramchandra Katkar (supra) and



referred the matter to a Larger bench. He also invited my attention to the other order dated 31.1.2012 passed in Writ Petition No.946 of 2012 between Sachin Yashwant Desai Vs Tahasildar, Gadhinglaj and submitted that immediately after the decision of the Addl. Commissioner, the provisions laid down under section 35 (3-D) of the Act take effect. He also invited my attention to the order dated 13.7.2012 issued by the Block Development Officer, Group Grampanchayat, Kegaon to the petitioner informing her that she has ceased to be Sarpanch and calling upon her to hand over charge of Sarpanch to Up-Sarpanch Ms Neelam Santosh Pedhvi.

7. I have considered the rival submissions made by the learned counsel appearing for the parties. Having regard to the fact that controversy raised in the petition as regards whether Rule 17 of the 1959 Rules is mandatory or directory, is referred to Larger Bench and having further due regard to the fact that on the very issue several petitions are admitted, in my opinion, the petition requires consideration. Hence, Rule. Learned counsel for the respondents waive service.

8. In so far as the interim relief is concerned, perusal of the minutes of the meeting dated 18.2.2012 shows that all the 13 members attended the meeting and the motion of no confidence was carried out by 12:1. In other words, 12 members voted in



favour of the motion and one member opposed the same.

Section 35 (3-D) of the Act reads as under :

“35. Motion of no confidence:-

(1) xx xx

(2) xx xx

(3) xx xx

(3-D) Where on a reference made to him under sub-section (3-B), the Collector upholds the validity of the motion carried under sub-section (3) and no appeal is made by the Sarpanch or the Upa-Sarpanch under sub-section (3-C) within the limitation period specified in that sub-section, or where an appeal is made under sub-section (3-C) but it is rejected by the Commissioner, the Sarpanch or, as the case may be, the Upa-Sarpanch shall cease to hold office, in the former case, immediately after the expiry of the said limitation period and, in the latter case, immediately after the rejection of the appeal, and thereupon the office held by such Sarpanch or Upa-Sarpanch shall be deemed to be vacant.”

Perusal of section 35(3-D) would indicate that after the rejection of the appeal by the Commissioner, the office held by Sarpanch shall be deemed to be vacant. It is not in dispute that the petitioner did not apply for stay of execution and operation of the order passed by the Addl. Commissioner. In view thereof, in terms of Section 35 (3-D) of the Act, the post of Sarpanch has become vacant by deeming fiction. As noted earlier, the motion was carried out by 12 members voting in favour and 1 member voting against the motion. Apart from that, by the communication dated 13.7.2012 the Block Development Officer of the Gram Panchayat has intimated the petitioner that she has



ceased to be Sarpanch and called upon her to hand over charge to Up-Sarpanchat Ms Neelam Santosh Pedhvi. In view of this, the interim relief, as sought for in terms of prayer clauses (c-i) and (d) is refused. All the actions taken after the impugned orders shall be subject to the outcome of this petition. However, notwithstanding refusal of the interim order, the meeting for filling of the post of Sarpanch shall not be held for a period of 2 weeks from today.

(R.G.KETKAR, J.)