GANESH SUKHDEO GURULE

v.

TAHSILDAR SINNAR & ORS.

(Civil Appeal No. 11916 of 2018)

DECEMBER 10, 2018

[A. K. SIKRI, ASHOK BHUSHAN AND S. ABDUL NAZEER, JJ.]

Maharashtra Village Panchayats Act, 1959 – s.35(3) – Majority for holding no- confidence motion – Computation of – Respondents moved a no-confidence motion against the appellant – Special meeting of Gram Panchayat for consideration of no-confidence motion was held and out of 9 members of the Gram Panchayat only 8 members were present in the meeting – 6 members voted in favour of the motion and 2 members opposed to it – 1 member who voted in favour of no-confidence motion was not qualified to vote, so only 5 valid votes were voted in favour of no-confidence motion – No confidence motion was passed – A dispute application under 35(3-B) of the Maharashtra Gram Panchayat Rules, 1958 challenging the no-confidence motion passed was filed – Addl. Collector held that no-confidence motion was validly passed – Writ petition filed by the appellant was dismissed – On appeal, held: s.35(3) of the Act refers to majority as "a majority of not less than two-third of the total number of the members who are for the time being entitled to sit and vote" – In instant case, total number of members being 9 and 1 member being disqualified to sit and vote, the computation of majority has to be on the basis of number 8, two-third of the number 8 will be 5.33 – Furthermore, the words 'not less than' used in s.35(3) of the Act has to be given meaning and purpose – When majority comes to 5.33 votes "not less than 5.33" have to be given meaning, hence, 5.33 can never be rounded off to 5, fraction has to be treated as one because votes cannot be treated as fraction – Hence, 5.33 votes to be read as 6 votes for passing of the motion as mandated by s.35(3) – Thus, no-confidence motion was not validly passed and the order of the Addl. Collector as well as the High Court were erroneous – Maharashtra Gram Panchayat Rules, 1958 – r.35(3-B).

Allowing the appeal, the Court

HELD: 1. In the present case, Section 35(3) of the Maharashtra Village Panchayats Act, 1959 refers to majority as "a majority of not less than two-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". The above expression clearly indicates the majority of not less than two-third of the "total number of the members who are for the time being entitled to sit and vote". The key words in the expression are members who are for the time being entitled to sit and vote at a meeting in the Panchayat. The computation of majority thus refers to "entitlement to sit and vote at any meeting". Thus, the number of members who are entitled to sit and vote in a meeting have to be taken into consideration for computing the majority. Total number of members being nine and one member being disqualified to sit and vote, the computation of majority has to be on the basis of number eight, two-third of the number eight will be 5.33. [Para 9][918-G-H; 919-A]

2. In so far as vote of one disqualified member, the same can neither be computed for the no-confidence motion nor is relevant for computing two-third majority as per the statutory scheme. The words 'not less than' used in Section 35(3) of the Act has to be given meaning and purpose. When majority comes to 5.33 votes "not less than 5.33 votes" have to be given meaning, hence, 5.33 can never be rounded off to 5, fraction has to be treated as one because votes cannot be treated as fraction. Hence, 5.33 votes to be read as 6 votes for passing of the motion as mandated by Section 35(3). [Para 17][923-E-F]

3. Thus, no-confidence motion was not validly passed and the order of the Addl. Collector as well as of the High Court are erroneous. It is held that motion of no-confidence was not passed against the appellant since it was not passed by two-third of the total number of the members who were for the time being entitled to sit and vote. [Para 18][923-F-G]

State of U.P. and another v. Pawan Kumar Tiwari and others, **(2005) 2 SCC 10 : [2005] 1 SCR 21 – referred to.**

Jayram v. Secretary, U.D.D. Mumbai, **2010 (3) MH. LJ 465 ;** *Anant v. Chief Election Commissioner* **2017 (1) Mh.L.J. 431 - referred to.**

Case Law Reference

[2005] 1 SCR 21 referred to Para 11

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11916 of 2018.

From the Judgment and Order dated 22.11.2018 of the High Court of Judicature at Bombay in WP No. 12185 of 2018.

Ms. Deeplaxmi S. Matwankar and Ravindra Sadanand Chingale, Advs. for the Appellant.

Sachin Patil and Kailas Bajirao Autade, Advs. for the Respondents.

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J.

1. This appeal has been filed against the judgment dated 22.11.2018 of the High Court of Bombay dismissing the writ petition filed by the appellant.

2. We have heard learned counsel for the appellant as well as the counsel for the respondent No.4 who has appeared on caveat. The interest of respondent No.4 and other private respondents being common we have not issued notice to other respondents.

3. The brief facts of the case necessary for deciding the appeal are:

On 07.09.2018, respondents moved a no-confidence motion against the appellant. Tahsildar issued notice dated 07.09.2018 convening special meeting of Gram Panchayat for consideration of no-confidence motion on 14.09.2018. On 14.09.2018 out of nine members of the Gram Panchayat only eight members were present in the meeting. Six members voted in favour of the motion and two members were opposed to it. One of the members who voted in favour of no-confidence motion was not qualified to vote, namely, Smt. Sushila Prakash Darade who had not filed her caste certificate after election, hence, she was disqualified to continue to be a member or to vote in any meeting. A Dispute Application under 35(3-B) of the Maharashtra Gram Panchayat Rules, 1958 challenging the no-confidence motion passed was filed. The Addl. Collector, Nasik passed an order dated 16.10.2018 approving the special meeting dated 14.09.2018 holding that no-confidence motion was validly passed. Against the order passed by the Addl. Collector, a writ petition was filed by the appellant which has been dismissed by the High Court by the impugned judgment. Aggrieved by the judgment of the High Court this appeal has been filed.

4. Learned counsel for the appellant submits that total members of Gram Panchayat being nine and one member being disqualified to vote the two-third majority has to be computed on the basis of eight members which comes to 5.33 and there being only five valid votes in favour of no-confidence motion, motion cannot be held to be passed. One of the members who voted in favour of no-confidence motion i.e. Smt. Sushila Prakash Darade being disqualified to sit and vote cannot be counted in favour of no-confidence motion, two-third majority being 5.33, at least six votes were required for passing the no-confidence motion. It is submitted that caste certificate being not submitted by Smt. Sushila Prakash Darade within six months as required by law she automatically became disqualified to sit or vote in the meeting of Gram Panchayat.

5. The submissions made by the counsel of the appellant were refuted by the counsel for the respondent. It is submitted that there being only eight members present and one being disqualified, two-third majority shall be computed from seven and five votes caste in favour of the no-confidence motion, the motion shall be treated to be validly passed. It is contended that provision of Section 35(3) of the Maharashtra Village Panchayats Act, 1959 has to be read to mean that majority of not less than two-third of total number of members present and voting, thus, there being only 8 members present, majority is to be computed from 7 excluding one disqualified member. He submits that motion of no-confidence was validly passed against the appellant and rightly upheld by the High Court.

6. Learned counsel for the parties relied on few judgments which shall be referred to while considering the submissions.

7. Section 35 of the Maharashtra Village Panchayats Act deals with motion of no-confidence. Section 35(1) and Section 35(3) which are relevant for the present case are as follows:

> "**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.
>
> Xxx xxx xxx
>
> (3) If the motion is carried by a majority of not less than two-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* or the *Upa-Sarpanch*, as the case may be, [shall forthwith stop exercising all the powers and perform all the functions and duties of the office and thereupon such powers, functions and duties shall vest in the *Upa-Sarpanch* in case the motion is carried out against the *Sarpanch*; and in case the motion is carried out against both the *Sarpanch* and *Upa-Sarpanch*, in such officer, not below the rank of Extension Officer, as may be authorised by the Block Development Officer, till the dispute, if any, referred to under sub-section (3B) is decided:"

8. The main issue which arises for consideration is that what shall be two-third majority for holding the no-confidence motion to be passed in the Panchayat in the facts of the present case. Admittedly there are nine members in the Village Panchayat. Out of nine members in the meeting held on 14.09.2018, eight members were present. Out of eight members present, one member was disqualified to sit and vote by virtue of she having not submitted her caste certificate after the election. She was one out of six members who have voted in favour of no-confidence motion. There are five valid votes in favour of no-confidence motion as two against it. The statute provides for special majority for passing a motion. The **Shackleton** on the "**Law and Practice of Meetings**" in paragraph 7.32 while dealing with special majority states:

> "In cases where special majorities are prescribed, the provisions of the relevant statute or rules or rules must be carefully observed. Thus, where under an old Act a motion was to be "determined by a majority consisting of two-thirds of the votes of the ratepayers present" at a meeting, and 37 were present, the votes of 20 ratepayers in favour of the motion (the remainder abstaining) were deemed to be insufficient to comply with the statute."

9. In the present case statute, Section 35(3) refers to majority as "a majority of not not less than two-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". The above expression clearly indicates the majority of not less than two-third of the "total number of the members who are for the time being entitled to sit and vote". The key words in the expression are members who are for the time being **entitled to sit and vote** at a meeting in the Panchayat. The computation of majority thus refers to "entitlement to sit and vote at any meeting". Thus, the number of members who are entitled to sit and vote in a meeting have to be taken into

consideration for computing the majority. Total number of members being nine and one member being disqualified to sit and vote, the computation of majority has to be on the basis of number eight, two-third of the number eight will be 5.33. The Submission of the respondent is that the two-third majority has to be computed out of the members present and voting i.e. seven excluding one member who was unqualified to vote and five is more than two-third of seven, the majority has been rightly passed. The interpretation put by the learned counsel for the respondent cannot be accepted in view of the clear language of statute. The crucial words in the statute are members "who are for the time being entitled to sit and vote". This, expression cannot be treated to be expression members present and voting. The submission of the respondent that for computation of majority number of seven members should be treated, cannot be accepted.

10. The next submission pressed by the respondent is that for applying the principle of rounding off 5.33 votes have to be rounded as to five. Thus, five votes are sufficient to accept majority for the purpose of passing no-confidence motion. Whether 5.33 votes can be rounded up into 5 votes or requirement is at lest six votes is the real issue. When there are clear words in the statute i.e. "not less two-third of the total number of members" applying the principle of rounding off, 5.33 vote cannot be treated as 5. Vote of a person cannot be expressed in fraction. When computation of a majority comes with fraction of a vote that fraction has to be treated as one vote, because votes cannot be expressed in fraction. The principle that figure less than .5 is to be ignored and figure more than .5 shall be treated as one, is not applicable in the statutory scheme as delineated by Section 35. Provision of Section 35(1) which provides for requirement for moving 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, is the same expression as used in sub-section (3). Obviously, requirement of not less than one-third number for moving motion has to be computed from total number of the members who are entitled to sit and vote. Thus, the same expression having been used in sub-section (3) of Section 35 both the expressions have to be given the same meaning. Thus, one-third of total number of members who are entitled to sit and vote have to be determined on the strength of members entitled to vote at a particular time. The same meaning has also to be applied while computing two-third majority.

11. Learned counsel for the appellant has placed reliance on two judgments, one, of this Court in **State of U.P. and another vs. Pawan Kumar Tiwari and others, (2005) 2 SCC 10**. In the above case, this Court was considering applicability of percentage of reservation in the context of U.P. Public Services (Reservation for Scheduled Casts, Scheduled Tribes and Other Backward Classes) Act, 1994. The percentage prescribed for the reservation category in the State of U.P. noticed in paragraph 2 of the judgment. Respondent belonging to general category was at the top of the waiting list. He filed a writ petition directing the State to issue a letter of appointment to the respondent. The High Court held that 50 % of general category which was 46.50 ought to have been treated as 47. The High Court had allowed the writ petition and held the respondent entitled for appointment as 47th general category candidate. The appeal filed by the State was dismissed by this Court. Paragraph 2,6 and 7 of the judgment are as follows:

"2. The percentages of reservation, as applicable and as was actually applied, are set out in the following table:

Category	*Percentage (prescribed)*	*Percentage worked out to*	*Number of posts reserved*
General	*50%*	*46.50*	*46*
Scheduled Castes	*21%*	*19.53*	*20*
Other Backward Classes	*27%*	*25.11*	*26*
Scheduled Tribes	*2%*	*1.86*	*1*

6. The High Court has found mainly two faults with the process adopted by the State Government. First, the figure of 46.50 should have been rounded off to 47 and not to 46; and secondly, in the category of freedom fighters and ex-servicemen, total 3 posts have been earmarked as horizontally reserved by inserting such reservation into general quota of 46 posts which had the effect of pushing out of selection zone three candidates from merit list of general category.

7. We do not find fault with any of the two reasonings adopted by the High Court. The rule of rounding off based on logic and common sense is: if part is one-half or more, its value shall be increased to one and if part is less than half then its value shall be

> ignored. 46.50 should have been rounded off to 47 and not to 46 as has been done. If 47 candidates would have been considered for selection in general category, the respondent was sure to find a place in the list of selected meritorious candidates and hence entitled to appointment. "

12. The judgment of this Court in the above case was on rounding off the vacancies. The reserved post being 50% of the total number of posts reservation in no manner can exceed 50%. In the facts of aforesaid case, there were total 93 posts, 47 was treated more than 50%. Hence, the post for general category which was 46.50 was rounded off to 47 by the High Court which was approved by this Court. The said case related to computation of vacancies for particular category as per 1994 Act which principle cannot be applied in computation of a special majority as required by the statute in question.

13. Another judgment is a Full Bench judgment in **Jayram vs. Secretary, U.D.D. Mumbai, 2010 (3) MH. LJ 465,** which is relied by learned counsel for the respondent, by referring to the judgment of this Court in **Pawan Kumar Tiwari (supra)** the Full Bench of Bombay High Court held that there is no justification that fraction below 0.5 be ignored in allotting the seats to registered or recognised parties on the basis of groups as per statutory scheme delineated by Bombay Provincial Municipal Corporations Act, 1949. Referring to the judgment of this Court in **Pawan Kumar Tiwari (supra)** in paragraph 31, the Full Bench of Bombay High Court has rightly held that rounding off was not the ratio or principle on which **Pawan Kumar Tiwari case** was decided. Paragraph 31 of the judgment is quoted below:

> "31. Mr. Anturkar, learned Counsel vehementaly contended that rule of rounding off is now well recognised and is based upon the logic and common sense. For this he relied upon State of U.P. vs. Pawan Kumar Tiwari, (2005) 2 SCC 10. In that case, 93 posts of Civil Judges, J.D. were advertised and 50% of the posts were reserved for different categories and 50% were for the general or open category. In view of this percentage 46.50 seats would be available for reserved category and 46.50 for general category. The State Government rounded off the number of posts available for general category at 46 and for the reserved category at 47. The High Court found fault with the process and held that the number of posts available for general category could not be rounded off at 46, but should have been rounded off at 47. The

Supreme Court dismissed the appeal of the State Government and held that if the seats for reserved category are fixed at 47, it would cross the limit of 50% and therefore it could not be upheld and as such number of posts available for reserved category could be fixed at 46 and that for general category should have been fixed at 47. Their Lordships observed as follows in para 9:-

> "9. There is yet another reason why the judgment of the High Court has to be maintained. The total number of vacancies was 93. Consequent upon the allocation of reservation and calculation done by the appellants, the number of reserved seats would be 47, leaving only 46 available for general category candidates. Meaning thereby, the reservation would exceed 50% which would be unconstitutional. The total number of reserved seats could not have been more than 46 out of 93. "

In fact, in this case, both the groups had 46.5 and if the same formula would be applied, then in each case .50 could have been rounded off to 1 and each of the group would be entitled to 47 seats. In that case, the total number would become 94, while the total vacancies available were only 93. Thus, rounding off is not the ratio or principle on which that case was decided. It was decided mainly on the question as to whether reserved categories may get seats more than 50% quota. Therefore the authority in Pawan Kumar Tiwari's case could not be used in support of the view taken in Vasant Gite."

14. Further, in paragraph 34 Full Bench of Bombay High Court itself held that there is no justification to ignore fraction below 0.5 in the context of allocation of registered or recognised parties or groups who are entitled to number of seats. The above judgment of the Bombay High Court in no manner supports the case of respondent rather supports the appellant's contention.

15. Learned counsel for the appellant in so far as disqualification of one of the members who had not filed her caste certificate relied on **Anant vs. Chief Election Commissioner, 2017 (1) Mh.L.J. 431,** before the Full Bench the issue was raised as to whether on non-submission of caste certificate within six months period disqualification is automatic. Answering the reference Full Bench held that the provision for requiring submission of caste certificate within a period of six months for election is mandatory and disqualification would be automatic. In paragraph 100 of the judgment the Full Bench held the following :

> “100. In the result, we hold that the time limit of six months prescribed in the two provisos to Section 9A of the said Act, within which an elected person is required to produce the Validity Certificate from the Scrutiny Committee is mandatory.
>
> Further, in terms of second proviso to Section 9A if a person fails to produce Validity Certificate within a period of six months from the date on which he is elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor.
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> Such retrospective termination of his election and disqualification for being a Councillor would be automatic and validation of his caste claim after the stipulated period would not result in restoration of his election.
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> The questions raised, stand answered accordingly. ”

16. It is further relevant to note that this Court in Special Leave Petition (C)Nos. 29874-29875 of 2016 (Shankar s/o Raghunath Devre (Patil) vs. State of Maharashtra & Ors.) has approved the view taken by the Full Bench vide its judgment dated 23.08.2018 by holding that the requirement of submitting caste certificate is mandatory.

17. Thus, in so far as vote of one member, Smt. Sushila Prakash Darade, the same can neither be computed for the no-confidence motion nor is relevant for computing two-third majority as per the statutory scheme. The words ‘not less than’ used in Section 35(3) of the Act has to be given meaning and purpose. When majority comes to 5.33 votes “not less than 5.33 votes” have to be given meaning, hence, 5.33 can never be rounded off to 5, fraction has to be treated as one because votes cannot be treated as fraction. Hence, 5.33 votes to be read as 6 votes for passing of the motion as mandated by Section 35(3).

18. We are, thus, of the view that no-confidence motion was not validly passed and the order of the Addl. Collector as well as of the High Court are erroneous. It is held that motion of no-confidence was not passed against the appellant since it was not passed by two-third of the total number of the members who were for the time being entitled to sit and vote. The proceedings dated 14.09.2018, order of the Addl. Collector approving the proceedings as well as the judgment of the High Court dismissing the writ petition are set aside. The appeal is allowed accordingly.

Ankit Gyan Appeal allowed.