

Subhash & Ors. Vs. Surekha Hanumant Bankar & Ors.

Civil Appeal No. _____ of 2021 arising out of SLP(C) No. 1727 of 2021
2021-02-26 |
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Full judgment text

Subhash & Ors. Vs. Surekha Hanumant Bankar & Ors.

[Civil Appeal No. _____ of 2021 arising out of SLP(C) No. 1727 of 2021]

Leave granted.

This appeal takes exception to the judgment and order dated 20.01.2021 passed by the High Court of Judicature of Bombay Bench at Aurangabad in Writ Petition No. 238 of 2021 allowing the writ petition filed by the respondent No.1. The respondent No. 1 was directly elected as a Sarpanch of the village Karajkheda, Taluk and District Osmanabad by the public in general election of the Gram Panchayat held on 17.10.2017.

Because of his acts of commission and omission, the members of the Gram Panchayat moved resolution expressing no-confidence against respondent No.1. That resolution was passed by requisite majority on 19.10.2020. Against that resolution, the respondent No.1 carried the matter before the Collector, who, in turn, vide order dated 31.12.2020 issued the following directions:

- "1. A Special Gram Sabha of the Gram Panchayat should be held by secret ballot decision be taken on the no-confidence motion passed against the Sarpanch of Karajkheda, Taluka Osmanabad on 19.10.2020. in this Gram Sabha, the only issue will be to approve the noconfidence motion passed against the Sarpanch."
2. Group development officer, Class-1, Panchayat Samiti, Osmanabad is appointed as the Presiding Officer of this special Gram Sabha.
3. As per the relevant Acts, Rules and provisions in the letter of the Government, the Group Development Officer, Class-1, Panchayat Samiti, Osmanabad, should complete the procedure for holding the special Gram Sabha and submit the compliance report to this office.
4. The decision should be communicated to all concerned and the file should be submitted in the record/archive room."

Against the said decision, the matter was taken before the High Court by respondent No. 1 by way of Writ Petition (C) No. 238 of 2021. The learned Single Judge of the High Court allowed that writ petition in terms of prayer clause (b). The effect of the order passed by the High Court was to not only set aside the order passed by the Collector dated 31.12.2020 but also resolution dated 19.10.2020. Being aggrieved by this decision, the appellants have approached this court by way of present appeal.

According to the appellants, the High Court ought not to have set aside the resolution passed by the Gram Panchayat. At best, it ought to have directed to take follow up steps as required in terms of the decision of the Collector. In that, as held by the Collector, noconfidence motion was required to be ratified by the Special Gram Sabha conducted in the village in the presence of an Independent Officer appointed by the Collector.

Learned counsel for the respondent No. 1 would, however, submit that the resolution was moved on 19.10.2020 and as per the guidelines issued by the Rural Development Department, Government of Maharashtra dated 20.10.2020, the resolution was required to be placed for consideration before the Special Gram Sabha at least within 10 days from the date of Collector's order and since that period has expired long back, the process cannot be continued further and for which reason no interference is warranted with the conclusion reached by the High Court.

Heard learned counsel for the parties. From the indisputable facts, it is obvious that the direction issued by the Collector in terms of order dated 31.12.2020, is in conformity with the relevant provisions of the Village Panchayat Act including amended Section 35-1A, which reads thus:

"35-1A. In respect of the panchayat to which the Sarpanch is directly elected under Section 30A- 1A, the provisions of this section shall apply with the following modifications:-

(a) in sub-section(1) for the words "one-third" the words "two-third" shall be substituted;

(b) in sub-section(3) for the portion beginning with the words "if the motion" and ending with the words "against the Sarpanch" the following portion shall be substituted, namely:-

"if the motion of no-confidence is carried by a majority of not less than 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, the Sarpanch or the Upa-Sarpanch, as the case may be, and ratified before the special Gram Sabha by the secret ballot in the present and under the Chairmanship of the Officer appointed for the purpose by the Collector, shall forthwith stop, exercising all the powers and, performing all the functions and duties of the office and thereupon such powers, functions and duties shall vest in the Upa-Sarpanch."

(c) for the fourth proviso, the following provisos shall be substituted, namely:-

"Provided also that, no such motion of noconfidence shall be brought within a period of two years from the date of election of Sarpanch or Upa-Sarpanch and before the six months preceding the date on which the term of panchayat expires: Provided also that, if the no-confidence motion fails, then no motion shall be brought before the passage of time of next two years."

Learned counsel for the respondent No. 1 is unable to point out any provision in the Act which postulates that if the proposed resolution is not placed before the Gram Sabha within specified time, the same would lapse in law. Thus, in absence of such a provision, it cannot be assumed that the resolution had lapsed in law, merely because of some direction issued by the concerned department of Government of Maharashtra.

In the present case, the no-confidence resolution was challenged by the respondent No. 1 before the Collector, before the process of ratification could be taken forward by the Collector. After the decision of the Collector, the matter travelled to the High Court once again at the instance of the respondent No. 1 and finally before this Court. The respondent No. 1 cannot be allowed to take advantage of that situation by placing reliance on administrative instructions dated 31.12.2020.

It necessarily follows that no confidence motion passed on 19.10.2020 and confirmed by the Collector vide order dated 31.12.2020 needs to be taken forward in accordance with law. For that, the Special Gram Sabha will have to be convened forthwith for considering ratification of the noconfidence motion passed on 19.10.2020.

Accordingly, the impugned judgment and order passed by the High Court is set aside and the parties are relegated to the position stated in the order passed by the Collector for complying with the necessary formalities regarding ratification of the resolution passed on 19.10.2020. The Collector shall do the needful expeditiously, as per the statutory scheme and the period specified therein.

Until such time, the post of Sarpanch be held by the Upasarpnach or such other order to be passed by the Collector as per law. The Appeal is disposed of in the above terms. Pending applications, if any, stand disposed of.

Item No. 8

Subhash & Ors. Vs. Surekha Hanumant Bankar & Ors.

[Petition(s) for Special Leave to Appeal (C) No(s). 1727/2021 arising out of impugned final judgment and order dated 20-01-2021 in WP No. 238/2021 passed by the High Court Of Judicature At Bombay At Aurangabad]

[FOR ADMISSION and I.R. and IA No.12413/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.12411/2021-EXEMPTION FROM FILING O.T. and IA No.12412/2021-EXEMPTION FROM FILING AFFIDAVIT]

This petition was called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE A.M. KHANWILKAR HON'BLE MR. JUSTICE DINESH MAHESHWARI

For Petitioner(s)

Mr. Pravin V. Mandlik, Sr. Adv. Mr. Shirish K. Deshpande, AOR Ms. Rucha Pravin Mandlik, Adv.

For Respondent(s)

Mr. Shashibhushan P. Adgaonkar, AOR Mr. Rana Sandeep Bussa, Adv. Mr. Gagandeep Sharma, Adv.

UPON hearing the counsel the Court made the following

Leave granted.

The appeal is disposed of in terms of the signed order.

Pending applications, if any, stand disposed of.

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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