

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9183 OF 2013

Dilipreddy s/o Pandhareddy Bhusgire,
Age: 45 years, Occ: Sarpanch & Agri.,
R/o. Kini, Tal. Degloor,
Dist. Nanded.

...Petitioner

versus

1. The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
2. The Collector,
Collector Office, Nanded.
3. The Tahsildar,
Degloor, Dist. Nanded.
4. The Grampanchayat,
Through Gramsevak, Kini,
Tal. Degloor, Dist. Nanded.
5. Raghunath s/o Maroti Jadhav,
Age: 46 years, Occ: Agri.,
R/o. Kini, Tq. Degloor,
Dist. Nanded.
6. Babu s/o Dhumma Rathod,
Age: 46 years, Occ: Up-Sarpanch & Agri.,
R/o. Kini, Tq. Degloor,
Dist. Nanded.
7. Namdeo s/o Mariba Dhanve,
Age: 56 years, Occ: Agri.,
R/o. Kini, Tq. Degloor,
Dist. Nanded.
8. Kashinath s/o Gnyanoba Sandve,
Age: 43 years, Occ: Agri.,
R/o. Kini, Tq. Degloor,
Dist. Nanded.

9. Ismail s/o Babu Sahab,
Age: 41 years, Occ: Agri.,
R/o. Kini, Tq. Degloor,
Dist. Nanded.

10. Rukhminibai w/o Jairam Rathod,
Age: 58 years, Occ: Household,
R/o. Kini, Tq. Degloor,
Dist. Nanded.

...Respondents

.....
Mr. Ajinkya Kale, Advocate h/f Mr. S.B. Talekar, Advocate for
petitioner.

Mr. S.K. Tambe, A.G.P. for respondent Nos. 1 to 3.

Mr. Ajit B. Gaikwad, Advocate for respondent No.4.

Mr. B.N. Magar, Advocate for respondent Nos. 5 to 10.

.....

CORAM : N.W. SAMBRE, J.

DATED : 19TH JANUARY, 2015

PER COURT :

. The petitioner claims that he was elected as Sarpanch of Grampanchayat Kini, Taluka Degloor, District Nanded and suffered 'No Confidence Motion'. The said 'no confidence motion' in earlier round of litigation came to be quashed by judgment dated 05/02/2013 delivered in Writ Petition No. 7847 of 2012, as this Court has held that though notice of 'no confidence motion' was served on the wife of petitioner, said cannot be termed as proper service, as notice was not served on adult member of his family.

2. The same has prompted present respondent Nos. 5 to

10 to take out another notice requisitioning special meeting for 'no confidence motion' dated 13/05/2013 signed by in all six members. The said notice was accepted and meeting for consideration of 'no confidence motion' against the petitioner, was convened on 20/05/2013.

3. Accordingly, notices of the said meeting were issued on 13/05/2013 to present petitioner and respondent Nos. 5 to 10 herein, and same was sought to be served on present petitioner.

4. The petitioner claims that he has not received the said notice of 'no confidence motion' and motion was carried out against the petitioner by majority. There are 9 elected members to the said Grampanchayat. Out of which, one post is vacant. As such, out of 8 members, 6 have voted against the petitioner. As petitioner suffered motion by more than 2/3rd majority, said motion came to be passed in the meeting held on 20/05/2013.

5. The petitioner preferred proceedings under Section 35-B of the Bombay Village Panchayat Act, 1958 (hereinafter shall be referred to as "said Act" for brevity) before the Additional Collector-respondent No.2. The Additional Collector, by an order dated 23/10/2013, dismissed the said dispute preferred under sub section

3(b) of Section 35 of the said Act by recording findings that notice of 'no confidence motion' was properly served on the petitioner.

6. While questioning the said order in the present petition, learned Counsel for the petitioner urged that provisions of Rule 7 of the Meeting Rules are held to be mandatory. According to him, perusal of Rule 7, contemplates that notice is required to be served on Sarpanch himself, and in his absence, same should be served on the adult male member of his family. It is further urged by him that if adult male member refuses to accept the notice, then same has to be affixed on the conspicuous part of the house, in which Sarpanch reside. According to learned Counsel for the petitioner, perusal of panchnama demonstrating the service of notice on the petitioner reflects that the notice was offered to the petitioner at his house, however, as he was not available at the relevant time, same was sought to be tendered to his son and daughters. His son and daughters have not accepted the same and mentioned that same has to be served on the petitioner himself. Learned Counsel further invited my attention to the language of the panchnama dated 14/05/2013 drawn by Talathi so as to submit that the notice was not offered to any male member of his house. According to him, this Court, in Writ Petition No.9311 of 2012, has already held that notice of 'no confidence motion' has to be served in accordance with Rule 7

i.e., firstly on Sarpanch, if not available, on male adult member and if he refuses to accept then to affix the same on the door of the house. He has also placed reliance upon the judgment of this Court in the matter of ***Surekha Eshwar Jadhav vs. Nirmala Madhavrao Jadhav and others*** reported in ***2013(5) Mh.L.J. 710*** so as to canvass that provisions of Rule 7 are mandatory. According to him, as there was no service of notice on the petitioner or adult male member, no confidence motion proceedings against him are liable to be quashed and set aside, as he was denied opportunity to attend the meeting and address the members.

7. He has further invited my attention to the guidelines framed by the Divisional Commissioner so as to demonstrate that the notice of meeting has to be first offered to the concerned Sarpanch or Up-Sarpanch, if he is absent then tender the same on adult male member and in case, if he refuses to accept, then affix the same on the door of the house. He submits that the said procedure is not followed.

8. While countering the above referred submissions, learned Counsel for the respondents has strenuously urged that the petitioner is trying to find out technical lacuna so as to illegally continue in the office as Sarpanch which is required to be occupied

by a democratic elected person by majority. According to him, in earlier round of litigation, notice was accepted by his wife and he has raised objection and was successful in continuing the office. He submits that in the present case also, he intentionally sent his children so as to refuse/avoid service of notice. According to him, though panchnama drawn by Talathi is not very happily worded, however, there is other material available on record to demonstrate appropriate service of notice on the petitioner. Learned Counsel has invited my attention to the certain documents, such as photographs drawn after affixing notice on the door, so also affidavit filed by one Vimalbai Vyankatrao Waghmare, claiming to be neighbour of the petitioner, who has stated in her affidavit that she was present in the house of petitioner on 14/05/2013, and on that day, wife of petitioner namely Sunitabai and her daughters were present in the house. It is further claimed by said lady/neighbour that neither Talathi nor any other officer/employee visited the house of petitioner and had not made any inquiry. It is further mentioned by said neighbour that without conducting any inquiry and without intimating the members of the house, notice was affixed on the door of the house of the petitioner. The said affidavit, according to learned Counsel for respondents, is sought to be pressed into service by the petitioner so as to canvass that notice was never served on the petitioner.

9. According to him, plain reading of said affidavit takes to the only inference that notice was duly served on the petitioner and the petitioner himself remained absent in the proceedings of 'no confidence motion'.

10. In addition to above, he submits that there is no question that the petitioner should be continued in the office for even single minute after having loss the confidence of majority of members. According to him, there is no substance in the present petition and is liable to be rejected.

11. Learned A.G.P. has sought to support the order passed by the Additional Collector and also Minutes recorded. According to him, the very conduct of the petitioner on service of notice, takes the authority to only conclusion that the notice was duly served in accordance with the requirements of Section 35 read with Rule 7 of the Meeting Rules. He further urged that the Additional Collector has rightly taken into account the panchnama drawn for the purpose of showing effecting of service on the petitioner. He submits that the petitioner was well within knowledge of notice, as same was affixed on the door of his house and as such, submits that the petition is liable to be rejected.

12. He has further invited my attention to the proceedings of no confidence meeting convened against the present petitioner so as to demonstrate that already after passing of 'no confidence motion', election for the post of Sarpanch was held and but for the order of restraint passed by this Court, result of the same is not declared. According to him, the petition is liable to be rejected.

13. Having considered the rival contentions of the parties, it is noticed that plain reading of Rule 7 and the judgment on which the petitioner has placed reliance, takes this Court to only conclusion that provisions of Rule 7 are mandatory. The dilution that was brought to the notice of this Court by learned Counsel for respondents is in the matter of ***Punjaji s/o Shamrao Kadam and others vs. Divisional Commissioner, Aurangabad and others*** reported in **2012(6) Mh.L.J. 463**, wherein the Court while reading provisions of Rule 7 has interpreted the word service to be effected on the male adult member, which include even female adult member of the family of Sarpanch.

14. After considering the above referred proposition of law, if the same is applied in the facts of the present case, it is noted that panchnama dated 14/05/2013 is not happily worded so as to demonstrate the effecting of service on the petitioner. However, same

demonstrate the attempt by the Talathi to effect service of notice on the petitioner, his adult family member and affixing the same on the door of the house of petitioner. However the very pleadings of the petitioner in the petition takes this Court to only conclusion that there was appropriate notice/service of notice to the petitioner of meeting of 'no confidence'. The petitioner has placed reliance upon the affidavit of his neighbour namely Vimalbai, who has stated that she was present in the house of petitioner on 14/05/2013 and she has stated that Talathi or any other member of Government office never visited the place of the petitioner for effecting service. However, in the latter part of the said affidavit, she has in specific terms stated that without making any inquiry, Talathi has affixed the notice on the door of the house of petitioner and has drawn photographs from his Mobile. The said affidavit is sought to be relied upon by the petitioner so as to demonstrate that there was no proper service on the petitioner. The plain reading of entire affidavit reflects that the said neighbour, who was present at that time when the notice was affixed on the door of the petitioner, was well aware of the fact that the Talathi visited the place and has affixed the notice. The only conclusion that can be drawn from the said affidavit is that the petitioner's wife namely Sunitabai was also stated to be present in the house and was well aware about the visit of Talathi for service of notice on 14/05/2013 on the petitioner. In fact, this conduct of the

petitioner of placing reliance on the affidavit of said Vimalbai needs to draw inference that at the time of service of notice, wife of the petitioner was very much present in the house and was aware about visit of Talathi and has intentionally avoided the service of notice. As such, the petitioner and his wife were aware about affixing of notice on the door of their house as is disclosed from the observations made hereinafter.

15. The pleadings of the petitioner in paragraph-12 of the petition are also required to be considered, which are placed on record so as to press into service the said document i.e., affidavit at annexure-E of the neighbour. The said pleadings reads thus:

*"12. The petitioner submits that the respondents on 14.05.2013 went to his place and did not even bother to call upon the petitioner or any member of his family. The respondents played with system and deliberately without informing any member of his family quietly locked/closed the door and affixed the notice of special meeting convened for passing No Confidence Motion over the same. The above fact can be verified from the affidavit filed by Smt. Vimalbai Vyankatrao Waghmare who is the neighbour of the petitioner and an eye witness to the folly of the respondents. The copy of the affidavit filed by Smt. Vimalbai Waghmare is annexed herewith and marked as **EXHIBIT-"E"**."*

16. Plain reading of paragraph-12 of the petition, which is supported by affidavit of the petitioner, can be taken into account for drawing plain inference that the petitioner was aware about the notice of 'no confidence motion' dated 14/05/2013, as the petitioner has admitted that the respondents had been to his place of residence for service of notice. The petitioner has also mentioned that the notice was affixed on the door of his house and then tried to draw support from the affidavit of Smt. Vimalbai i.e. neighbour, which is already discussed in foregoing paragraph.

17. As such, in my opinion, learned Additional Collector has rightly opined as against the petitioner that the petitioner was well aware about the notice of 'no confidence motion', which was affixed on his house, the fact also depicts that his wife was also present in the house when the notice dated 14/05/2013 was sought to be served and has intentionally avoided the service of same.

18. Observations made by this Court in the paragraph-9 of the judgment of **Punjaji** (supra), are worth referring to, which reads thus:

"9. In the instant matter, there is evidence that the

notice of no confidence has been served on the mother of respondent No. 4. There is proper compliance of the requirement of sub-rule (2-B) of Rule 2 of the Rules. As such, it cannot be permitted to be contended by respondent No. 4 that notice has not been properly served upon him. Considering the observations made by the Full Bench in paragraph No. 17 of the judgment, quoted above, once there is observance of provisions of sub-rule (2-B) of Rule 2 the No Confidence Motion Rules, 1975, in respect of service of notice, respondent No. 4 cannot be permitted to insist upon compliance of Rule 7 of the Meeting Rules, 1959 and also cannot be permitted to contend that service of notice on the female member of the family is bad. The insistence made by respondent No. 4 for strict compliance of Rule 7 of the Meeting Rules, 1959, inasmuch as service of notice on male adult member of the family, also cannot be said to be a mandatory requirement. The provisions of sub-rule (2-B) of Rule 2 of the No Confidence Rules, 1975, permit service of notice on the adult member of the family and as such, compliance of said sub-rule is sufficient to draw an inference in respect of validity of service of notice. The requirement of service of notice only on the male member of the family, as contemplated by Rule 7 of the Meeting Rules, 1959, cannot be construed as a mandatory requirement. The question, as to whether a Statute is mandatory or directory depends upon the intent of legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern and those are to be ascertained not only from the phraseology of the provision, but also by

considering its nature, its design and the consequences which would follow from construing it, the one way or the other. The object of the provisions of section 35 is to ensure democratic functioning of the local institutions and removal of office bearers who does not command confidence of majority. The decision taken by the majority cannot be permitted to be defeated for technical reasons."

19. So also, observations of this Court in Paragraph-16 of the judgment in the matter of **Smt. Annapurnabai Ajabao vs. Annapurnabai Anandrao**, reported in **1967, Mh.L.J. NOC 36**, which reads thus:

" Even if it were to be assumed that there was some technical flaw in the proceedings of the meeting or in transmission of the results of the meeting to the Panchayat Samiti, we do not see how that could entitle the petitioner to claim to continue as Sarpanch of the Gram Panchayat. A Gram Panchayat is essentially a democratic institution which must be run on democratic principles. When the majority of the members have clearly expressed that they do not desire the petitioner to be their leader and Sarpanch, appropriate attitude of the petitioner as a person working for democracy whatever have been to tender her registration straightway. At any rate, it does not behave of democratic spirit to challenge the decision of the majority who unmistakably declared their want of confidence in their erstwhile leader."

19. In the light of above, reliance placed by the petitioner on the judgment of ***Surekha*** (supra) will be of hardly any assistance to the petitioner in the facts of the present case. As such, no case for interference is made out. Writ Petition stands dismissed.

[**N.W. SAMBRE, J.**]