

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

910 WRIT PETITION NO. 605 OF 2016

DAIVSHALA LALASAHEB DESHMUKH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Shri. V.D. Salunke, Advocate, holding for Shri. Tukaram M. Venjane, Advocate, for petitioner.

Shri. S.R. Yadav, Assistant Government Pleader, for respondent Nos.1 and 2.

Shri. N.P. Patil Jamalpurkar, Advocate, for respondent Nos.3 to 10.

CORAM: T.V. NALAWADE, J.

DATE : 19th AUGUST 2016

ORDER:

1) The petition is filed to challenge the order made by the learned Additional Collector, Latur in file No.2015/GPN/CR/58 by which the village panchayat appeal filed by the present petitioner was dismissed. The said appeal was filed to challenge the resolution of no confidence motion passed against the petitioner, Sarpanch of Village Panchayat Garsuli, Tahsil Renapur, District Latur. Heard both the sides.

2) Village Panchayat, Garsuli has 9 members. On 23-10-2015 a representation was given by 7 members to Tahsildar, Renapur that they wanted to move no confidence motion against the village Sarpanch, present petitioner, on the grounds that she was not taking monthly meeting, she was not placing the record and accounts of the village panchayat and she was not presenting necessary information even before the Gram Sabha. In response to this representation, Tahsildar by order dated 23-10-2015 called special meeting of the village panchayat on 29-10-2015 at 2.00 p.m. in the office of the village panchayat. Copies of notice addressed to all the 9 members were sent to Talathi of the village for service. When Talathi went to the residential place of the petitioner, she refused to accept the aforesaid notice. Due to this conduct of the petitioner, Talathi pasted the notice on the entrance door of the house of the petitioner in the presence of witnesses, panch witnesses. He prepared panchanama on 27-10-2015. The Tahsildar held meeting in the office of the Village Panchayat on 29-10-2015 at 2.00 p.m. on the schedule time mentioned in the notice. The petitioner did not turn up for the meeting. But remaining

8 members attended the meeting. The Tahsildar explained to the 8 members the procedure and accordingly voting was done and no confidence motion was passed unanimously by all the 8 members.

3) In the appeal filed by the present petitioner before the Collector she contended that no such notice was served on her and she had not refused to accept the notice. She contended that false record of service like pasting the notice on the door of the house was prepared. Affidavit of one Abasaheb Deshmukh was filed in support of this contention. And this Abasaheb Deshmukh had signed as a panch when the panchanama was prepared by Talathi on 27-10-2015 of pasting of the notice on the door of the house of the petitioner.

4) The Additional Collector considered the aforesaid record and held that the petitioner avoided to accept the notice and so the notice was pasted as per procedure given in the rules and so there is no force in the ground mentioned in the appeal to challenge the resolution.

5) The learned counsel for the petitioner placed reliance on some observations made by this Court in **Writ Petition No.9311/2012 (Vishal v. State of Maharashtra)** decided on 8-10-2013 at this Bench and the decision of **Writ Petition No.2808/2015** which was between **Surekha and Kisan** decided at this Bench on 11-8-2015. The learned counsel took this Court through the procedure given for service of such notice provided in the Bombay Village Panchayat Meeting Rules and the rules made for no confidence motion. This Court in the aforesaid two cases had discussed the effect of not following the procedure of service of notice on the person concerned like Sarpanch. It is observed that valuable right is given to Sarpanch/Upa Sarpanch under section 35(2) of the Village Panchayat Act to address the meeting held for consideration of no confidence motion. There cannot be dispute over the propositions made in the aforesaid two cases of this Court. The facts of the aforesaid two cases were totally different and it was held that there was no convincing record to infer that notice was served.

6) The facts of the present case are altogether different. There is record prepared by the village Talathi regarding service of notice and there is panchanama prepared when notice was pasted on the door of the residential place of the petitioner. In addition to copy of notice on which the persons present like Abasaheb Deshmukh and Chandrasen Chavan had signed, separate record of panchanama signed by as many as 5 persons was created by Talathi. The State Government has filed reply and it contended that necessary procedure was followed and only after the service of the notice in aforesaid way the special meeting was called and then the 8 members passed the resolution of no confidence. 7 members had called the special meeting and all the 8 members passed the resolution against the petitioner.

7) In view of the aforesaid circumstances it can be said that the petitioner was informed about the meeting and the notice was served on her in aforesaid way but she preferred to stay away from the meeting. Thus, she preferred not to exercise the right given under section 35(2) of the Bombay Village Panchayat Act. In view of

these circumstances this Court holds that the Additional Collector has not committed any error in dismissing the appeal filed by the petitioner. In the result, the petition stands dismissed. The result of the election held to the post of the Sarpanch be declared. The prayer for continuation of the interim relief claimed by the learned counsel for the petitioner is hereby rejected.

Sd/-
(T.V. NALAWADE, J.)

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