

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

Writ Petition No.3367 of 2015

Pramila W/o. Suklal Pardhi.

.. Petitioner.

Versus

The State of Maharashtra & Others. **.. Respondents.**

Shri. B.R. Waramaa, Advocate, for petitioner.

Shri. S.K. Tambe, Advocate, for respondent Nos.1 to 4.

Shri. Paresh B. Patil, Advocate, for respondent No.7.

Shri. S.S. Shete, Advocate, for respondent No.7.

Shri. R.N. Chavan, Advocate, for respondent No.17.

CORAM: T.V. NALAWADE, J.

DATE : 25 OCTOBER 2016

ORDER:

1) The petition is filed to challenge the order made by the learned Additional Collector in Dispute Application No.13/2015 which was filed by the petitioner to challenge the resolution of no confidence passed against her by Village Panchayat. Both the sides are heard.

2) The Village Panchayat consists of 13 members. On 4-2-2015, 11 members of the Village Panchayat gave requisition to the Tahsildar for calling meeting as they wanted to move no confidence motion against present petitioner, Sarpanch. The grounds due to which the Sarpanch had lost the confidence of the members were mentioned in the requisition. On the same day, the Tahsildar made order to call meeting and the meeting was called on 10-2-2015. Notice of this meeting was served initially on 11 members who had given the requisition. But on the same day the Tahsildar realised the mistake and issued another notice addressed to all 13 members of the Village Panchayat. The report was received by the Tahsildar that notice was served on the same date on all the 13 members of the Village Panchayat. The meeting was held in the office of the Village Panchayat on 10-2-2015. In the meeting resolution of no confidence was moved. The meeting was not attended by the present petitioner, Sarpanch and one more member by name Mali. The resolution was passed unanimously, by all the 11 members who had attended the meeting. Minutes were prepared and the minutes were signed by the concerned.

3) The dispute application filed by the present petitioner is dismissed by the learned Additional Collector by holding that the notice of the requisition meeting was duly served on the Sarpanch. Defence was taken by the present petitioner, Sarpanch that on that date the notice was issued only to 11 members and it was served on 11 members but it was not issued to remaining two members and it was not served on the petitioner. In support of this contention, Talathi, officer, who had served the notice filed affidavit and it is to the effect that the notice was served only on 11 members and false record of his report is created to show that the notice was served to 13 members.

4) Learned counsel for the petitioner submitted that the application was moved before the learned Additional Collector by the petitioner and she had requested to send the aforesaid record to handwriting expert as the Talathi and the present petitioner had disputed that notice to the Sarpanch was issued and it was served on the Sarpanch.

5) The order made by the learned Additional Collector shows that original record was called. The record which was with the Tahsildar showed that on the same date i.e. on 4-2-2015 notices were issued two times. Initially the notice was served to 11 members who had given the requisition but on the same day notice was again issued to all the 13 members. The report of the Talathi bears signatures of all the 13 members and it is in respect of the second notice issued on the same date. It is a matter of record that other member Mali to whom also subsequent notice is shown to be duly served did not raise any grievance before the Collector. Only present petitioner, Sarpanch is raising the grievance about the service of notice. Learned counsel for the petitioner submits that, in view of the defence taken by the petitioner the Collector ought to have sent the record to handwriting expert and the finding given by the learned Additional Collector that in view of nature of inquiry there is no necessity to send the record cannot sustain in law.

6) Learned counsel for the petitioner placed reliance on the observations made by this Court Court in

some reported cases like :

- (1) **2016 (2) ALL MR 797 (Suresh Devidas Choudhari v. Additional Collector);**
- (2) **2000(4) Mh.L.J. 197 (Ashok Krishnakant vs. State of Maharashtra);**
- (3) **2014(7) Bom.C.R. 280 (Surekha Eshwar Jadhav v. Nirmala Madhavrao Jadhav);**
- (4) **2016(1) Bom.C.R. 555 (Jivan Somarya Thakare v. Additional Collector); and,**
- (5) **2010 (4) Bom.C.R. 191 (Shivkant Haribhau Bangar v. Gramsevak).**

In view of facts of those cases it was held that there was either some defect in calling the meeting or there was defect in the meeting itself and opportunity was not given to the Sarpanch to have his say when no confidence motion was moved, carried. The facts and circumstances of each and every case are always different. Present petitioner, a female member, who got elected from S.T. Woman category had lost the confidence of at least 11 members of the village panchayat when the strength of the village panchayat is 13. This Court is expected to consider the relevant provision like section 35 of the Maharashtra Village Panchayats Act, 1958. The inference

under this section in respect of giving of requisition, calling of meeting and moving of the motion needs to be drawn on the basis of the record. The Tahsildar, revenue authority is expected to follow the procedure and the Tahsildar maintains the record in respect of the procedure followed. Copy of notice, record of service and record of resolution is available and the learned Additional Collector found that there was no reason to have doubt about this record which was created by the Tahsildar. It appears that initially stay was granted by the Collector even when resolution was passed unanimously by all the 11 members who had attended the meeting. After that the application of the aforesaid nature was moved by the petitioner. It can be said that the petitioner wanted to only protract the things as stay was granted in her favour and she was enjoying the post. It does not look probable that the Tahsildar has created false record of issuing notice to the Sarpanch and other members and he created false record of service of the notice. If 11 members were there who wanted removal of the Sarpanch then it could have been done in any way, by strictly following the procedure. When the proceeding was decided by the Collector at that time

also not a single member took the side of the present petitioner, Sarpanch. In view of these circumstances and the finding given by the learned Additional Collector this Court holds that it is not possible to interfere in the order made by the learned Additional Collector. In the result, the petition stands dismissed. Request made by the learned counsel for the petitioner to grant stay of four weeks to the decision of the present petition is rejected.

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

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