

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

WRIT PETITION NO.5928 OF 2016

Gayabai w/o Ramesh Karale ... PETITIONER

VERSUS

The Additional Collector,
Ahmednagar and others RESPONDENTS

.....
Shri N.V. Gaware, Advocate holding for
Shri R.S. Kasar, Advocate for petitioners
Shri S.N. Kendre, A.G.P. for respondent Nos.1 and 2
Shri A.P. Avhad, Advocate for respondent Nos.4 to 13
.....

CORAM: T.V. NALAWADE, J.

DATED: 26th August, 2016.

ORDER :

1. This petition is filed to challenge the order made by learned Additional Collector, Ahmednagar in Grampanchayat Dispute No.32/2016. The learned Additional Collector has dismissed the proceedings filed by present petitioner for setting aside the resolution made on No Confidence Motion against her. Both the sides are heard.

2. The petitioner was elected as Sarpanch of Village Panchayat Maka, Taluka Newasa, District Ahmednagar in the

year 2012. On 11.4.2016, requisition was given by members of Village Panchayat for calling meeting as they wanted to move No Confidence Motion against the petitioner, Sarpanch. On same day, Tahsildar issued notice and the meeting was scheduled on 18.4.2016. On 18.4.2016, the meeting was convened and in the meeting the motion of no confidence was passed by majority.

3. It is the case the case of petitioner that she had applied for seeking leave on medical grounds from 6.4.2016 to 21.4.2016. It is her case that, there was no service of the notice of special meeting and so there was no opportunity to her to have her say in the meeting and so, the resolution made in the meeting needs to be set aside.

4. This Court has carefully gone through the reasoning given by the Collector and also the record which was before the Collector. Copies of the said record are produced in the present proceeding.

5. There are 13 members in the Village Panchayat. 10 members had given the requisition and in the meeting, when voting was taken, both openly and by secret ballot, no confidence motion was passed by majority of 3:4 as 10 members voted in support of motion and two members voted against it. The petitioner remained absent.

6. Before the Collector, petitioner placed reliance on the record like application given to the Chairman of Panchayat Samiti, Newasa on 6.4.2014. It appears that, the application filed for grant of leave for the period of 6.4.2016 to 21.4.2016 was allowed. She had taken leave on the ground that she wanted to take treatment at Ahmednagar or Pune as she was suffering from spondylitis and as she was not in a position to discharge the duties, she was seeking leave. In support of the contention, she produced a certificate issued by one Dr. Bakul Palve of Ahmednagar, which is to the effect that the petitioner was suffering from spondylitis and she was indoor patient in his hospital from 7.4.2016 to 21.4.2016 and after 21.4.2016, she was receiving treatment on O.P.D. basis. Though there is such record produced by the petitioner, there is no provision for not taking meeting due to the leave granted to Sarpanch or when she is not available for any reason. On one hand, the petitioner admits that there was severe drought condition and the village panchayat was not in a position to supply drinking water and persons of the village were facing all kinds of harassment and on the other hand, it is the case of petitioner that she wanted to take leave on medical ground.

7. Record was produced of the service of notice of requisition meeting. Record shows that, panchanama was prepared in the presence of many persons by Talathi when he

pasted the notice on the doors of residential place of the petitioner. She was not available and she had not informed her exact place where she could have been contacted. Even in the leave application she had mentioned that she wanted to take the treatment at Ahmednagar or at Pune. In view of these circumstances, there was virtually no scope to the petitioner to say that there was other alternative to serving officer than to paste the notice on the door of her house.

8. The petitioner made a weak attempt by producing affidavit of some persons who had signed on the panchanama to show that their signatures were obtained on blank papers by serving officer. Though there are affidavits of few such persons, these affidavits cannot lead to any inference that the Talathi, the serving officer, had not discharged his duties. As per the requirement, he had pasted the notice in presence of witnesses and the record produced is sufficient to prove such service. If some witnesses are turning their back, that cannot be circumstance to hold that there was no due service. In view of provision of Section 114 of Evidence Act, it needs to be presumed that he duly discharged the duty and used panchas as witnesses. The learned counsel for the petitioner placed reliance on some reported cases like :-

- (1) 2002(1) Bom.C.R. 186
Bhika Narayan Gangurde & ors. Vs.
State of Maharashtra & ors.

- (2) 2003(2) Bom.C.R. 239
Indubai Vedu Khairnar Vs. State of Maharashtra & ors.
- (3) 2000(4) Bom.C.R. 724
Shri Ashok Krishnakant Mehta Vs.
State of Maharashtra & ors.
- (4) Writ petition No.2808/2015, decided by learned
Single Judge of this Court
(Sau. Surekha w/o Vasant Jadhavar Vs. Shri Kisan s/o
Pandurang Jadhavar & ors.), decided on 11/9/2015

9. The facts and circumstances of each and every case are always different. Relevant facts are already quoted. It is true that person like the petitioner has right to speak in the meeting as observed by the Division Bench in the case of Ashok Mehta (cited supra). When such member prefers to remain away from the meeting, it cannot be said that she wanted to exercise her valuable right. The aforesaid circumstances are considered by the Collector. This Court holds that, it is not possible to interfere in the decision given by the Collector.

10. In the result, the petition is dismissed. Interim relief is vacated. The request made by learned counsel for the petitioner to continue stay for some time is rejected.

(T.V. NALAWADE, J.)