

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

WRIT PETITION NO. 7280 OF 2016

Janabai Laxman Thombre .. Petitioner

versus

The Additional Collector, Jalna and others .. Respondents

WITH
WRIT PETITION NO. 7263 OF 2016

Sumanbai Madhavrao Thombre .. Petitioner

versus

The Additional Collector, Jalna and others .. Respondents

Mr. Chandrakant R. Thorat, Advocate for petitioners

Mr. S. N. Kendre, Asstt.Govt.Pleader for respondents no. 1 & 2

Mr. D. A. Mane, Advocate h/f Mr. V. V. Bodkhe Patil, Advocate
for respondents no. 9

CORAM : SUNIL P. DESHMUKH, J.

DATE : 12th July, 2016

ORDER :

1. Heard the learned counsel for appearing parties.
2. The two writ petitions aforesaid by Sarpanch and Upa-Sarpanch raise a common challenge to the orders passed Respondent No.1- additional collector, Jalna on 02-07-2016

rejecting their contention that no confidence motion against them is not properly passed and as such both the petitions are being heard and disposed of together.

3. The learned counsel Mr. C.R. Thorat appearing on behalf of petitioners in both the writ petitions contends that the whole proceedings are flawed, for, a common notice is being issued to the two petitioners, whereas law, particularly rule 2(1) of the Bombay Village Panchayats Sarpanch and Up-Sarpanch (No Confidence Motion) Rules, 1975 ("said rules") mandates two separate notices. In the present cases, according to learned counsel, it ought to have been realized by the Additional Collector, that it was, in fact, a common notice issued to Sarpanch and Up-Sarpanch, raising the same grounds and as such, the common notice issued is not in keeping with the intent underlying rule 2 of said rules and thus the orders impugned are liable to be set aside along with no confidence motion purportedly passed against both the petitioners.

4. On the other hand, learned counsel Mr. D.A. Mane, holding for Mr. Bodkhe learned counsel appearing on behalf of caveator - respondent no. 9 in respective petitions, contends that the principal ground being taken up in the present petitions is untenable, factually and even otherwise. It is being

contended by him that the fact that two separate notices were given to Sarpanch and Up-Sarpanch cannot be disputed. For said purpose, he relies on page number 14 of respective petitions which, according to him, would indicate that two separate notices were given to Sarpanch and Up-Sarpanch and that there is an endorsement by *tahsildar* showing the same. He further submits, the Sarpanch and Up-sarpanch have exposed themselves to the no confidence motion on common grounds applying to both of them.

5. Learned counsel for respondent no. 9 further relies on reported judgment of this court delivered by division bench in letters patent appeal in the case of *Chandrakala w/o Vaijanathrao Ghatul vs. Kathalu s/o Maroti Hatagale*, reported in 2008 (9) LJSOFT 15 = 2008 Bom. L.R. 2778.

6. Learned Assistant Government Pleader appearing on behalf of respondents no. 1 and 2 supports impugned orders and submits that in a gram panchayat consisting of nine members, no confidence motion against present both the petitioners has been passed by majority of 7:0 votes which complies requisite majority as per sub rule (3) of rule 2 of said rules.

7. Having heard learned counsel and upon perusal of impugned orders, it emerges that there appears to be substantial and due compliance of the requisite rules. The petitioners are not in a position to dispute that Sarpanch and Up-Sarpanch have received notices independently, albeit there is an additional mark on Up-sarpanch in the notice issued to Sarpanch, however, that would not be able to take away efficacy of compliance of rule 2 of said rules. In addition to receipt of the separate notice, there are two separate endorsements by the tahsildar on notices of Sarpanch and Up-sarpanch. One would not be able to ignore that no confidence motion has been passed by majority of 7:0 votes. As such, there is express indication of no confidence reposed in the two petitioners. There is no other infirmity pointed out in the impugned orders and the proceedings.

8. The observations as are appearing in paragraph no. 10 of the judgment in the case of Chandrakala (supra) relied on by respondent no. 9 are reproduced hereinbelow for ready reference.

“ 10. In the instant case we are concerned with, what may be read as a defective notices if that expression can be borrowed, as in each of the notices of motion, reference was made to no confidence against both Sarpanch and Upasarapcnh. In our opinion, this will not result in

holding that the meeting called for holding the motion of no-confidence and subsequent procedure of calling the meeting would be null and void. On the facts here as admitted and findings recorded there were two motions. On the certified copy produced before us, the Tahsildar, has noted as one being for Sarpanch and other for Upasarpnch. In such cases the test would be whether any prejudice was occurred to the appellants. In our opinion Appellants have been unable to show that prejudice was occasioned either to Sarpanch or Upasarpnch as the essential requirement of moving the motion has been complied with. As the motions were taken out in the form prescribed, in our opinion, the failure to refer to only Sarpanch or Upasarpnch in the notice of motion of no-confidence cannot be said to be a serious illegality. At the highest it was an irregularity. Once the Tahsildar accepted two different notices relating to Sarpanch and Upasarpnch, the irregularity if any, was cured. In our opinion, this aspect of the procedure is purely directory. Once it is held that it is a directory, a person aggrieved must show prejudice. Appellants herein have not shown any prejudice. "

9. Aforesaid observations apply on facts to present writ petitions and the petitions do not appear to be good enough to be entertained.

10. Both the writ petitions as such stand rejected.

SUNIL P. DESHMUKH,
JUDGE

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