

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 7228 OF 2014

Navnath Gangadhar Dhockcaule,
Age 49 years, Occu. Agri.,
R/o. Khandala, Tal. Shrirampur,
Dist. Ahmednagar.

....Petitioner.

Versus

1. The State of Maharashtra,
Through Cooptation Department.
2. The Collector,
Ahemednagar.
3. The Tahsildar,
Shrirampur, Tal. Shrirampur,
Dist. Ahemednagar.
4. Grampanchayat Khandala.
5. Dinker Jagganath Sadafhal,
Age 35 years, Occu. Agri.,
6. Bhika Chimaji Kharat,
Age 45 years, Occu. Agri.,
7. Ramdas Tatyaba Mhase,
Age 55 years, Occu. Agri.,
8. Sangita Vijay Dhockcaule,
Age 30 years, Occu. Agri.,
9. Prabhakar Dhanraj Sabde,
Age 40 years, Occu. Agri.,
10. Vandana Bhimraj Vighave,
Age 45 years, Occu. Agri.,
11. Suman Gopinath Pawar,
Age 40 years, Occu. Agri.,

12. Sambhaji Shivaji Pawar,
Age 60 years, Occu. Agri.,
13. Sunita Sukhdeo Sodnar,
Age 45 years, Occu. Agri.,
14. Vanita Babasaheb Dhockcaule,
Age 35 years, Occu. Agri.,
15. Shalini Shahaji Pawar,
Age 55 years, Occu. Agri.,
16. Padmavati Ramkisan Dhockcaule,
Age 55 years, Occu. Agri.,

R.Nos. 5 to 16 all R/o. Khandala,
Tal. Shrirampur, Dist. Ahmednagar.**Respondents.**

Mr. A.B. Kale, Advocate for petitioners.

Mr. S.K. Tambe, AGP for respondent Nos. 1 to 3.

Mr. S.T. Shelke, Advocate for respondent No. 4.

Mr. M.P. Kale, Advocate for respondent Nos. 5 to 16.

WITH
WRIT PETITION NO. 7229 OF 2014

Padmavati Ramkrushna Dhockcaule,
Age Major, Occu. Agri.,
R/o. Khandala, Tal. Shrirampur,
Dist. Ahmednagar.

....**Petitioner.**

Versus

1. The State of Maharashtra,
Through Cooptation Department.
2. The Collector,
Ahmednagar.
3. The Tahsildar,
Shrirampur, Tal. Shrirampur,

Dist. Ahemednagar.

4. Grampanchayat Khandala.
5. Dinker Jagganath Sadafhal,
Age 35 years, Occu. Agri.,
6. Bhika Chimaji Kharat,
Age 45 years, Occu. Agri.,
7. Ramdas Tatyaba Mhase,
Age 55 years, Occu. Agri.,
8. Sangita Vijay Dhockcaule,
Age 30 years, Occu. Agri.,
9. Prabhakar Dhanraj Sabde,
Age 40 years, Occu. Agri.,
10. Vandana Bhimraj Vighave,
Age 45 years, Occu. Agri.,
11. Suman Gopinath Pawar,
Age 40 years, Occu. Agri.,
12. Sambhaji Shivaji Pawar,
Age 60 years, Occu. Agri.,
13. Sunita Sukhdeo Sodnar,
Age 45 years, Occu. Agri.,
14. Vanita Babasaheb Dhockcaule,
Age 35 years, Occu. Agri.,
15. Shalini Shahaji Pawar,
Age 55 years, Occu. Agri.,
16. Navnath Sahaji Dhockcaule,
Age 55 years, Occu. Agri.,

R.Nos. 3 to 14 all R/o. Khandala,
Tal. Shrirampur, Dist. Ahemednagar.**Respondents.**

Mr. A.B. Kale, Advocate for petitioners.

Mr. S.K. Tambe, AGP for respondent Nos. 1 to 3.

Mr. S.T. Shelke, Advocate for respondent No. 4.

Mr. M.P. Kale, Advocate for respondent Nos. 5 to 16.

CORAM : T.V. NALAWADE, J.

DATED : 23rd September, 2016.

JUDGMENT :

1) The first proceeding is filed by Up-Sarpanch and second proceeding is filed by Sarpanch of village Khandala, Tahsil Shrirampur, District Ahmednagar. The proceedings are filed to challenge the decision given in dispute application Nos. 33/2014 and 34/2014, which were pending before the learned Additional Collector, Ahmednagar. The dispute applications were filed under section 35 (3)(b) of Bombay Village Panchayat Act, 1958 to challenge the resolutions of no confidence motion passed against the Sarpanch and Up-Sarpanch. The dispute applications are rejected by the authority. Both the sides are heard.

2) The Village Panchayat has 13 members. On 17.7.2014, 11 members approached Tahsildar and gave requisition for calling meeting of Village Panchayat as they wanted to move motion of no confidence against Sarpanch and Up-Sarpanch. Common grounds were mentioned against both of

them by 11 members and it was informed that both Sarpanch and Up-Sarpanch had lost confidence of these members. On 17.7.2014 Tahsildar issued separate notices against Sarpanch and Up-Sarpanch to inform them about the requisition given against them and he called meeting on 23.7.2014 at 11.00 a.m. in Village Panchayat Office. Notices were served on 11 members, out of 13 members, personally. On 18.7.2014 Talathi pasted the notices issued against Sarpanch and Up-Sarpanch on the outer doors of their houses as they were not available. Panchanama of this incident was prepared by Talathi in the presence of Village Officers like Gramsevak, Police Patil and President of Tanta Mukti Committee. Two other witnesses were also used. Talathi gave report of service to Tahsildar on 19.7.2014.

3) The requisition meeting was held in the office of Village Panchayat on 23.7.2014. Out of 13 members, 11 members attended the meeting. Both Sarpanch and Up-Sarpanch did not turn up for the meeting. First the motion of no confidence was moved against Sarpanch and there was discussion on the motion and then it was passed by majority like 10 Vs. 00. In similar way, motion was moved against Up-Sarpanch of no confidence and it was also passed by similar majority. Tahsildar declared that the resolutions of no confidence

were passed against Sarpanch and Up-Sarpanch.

4) In dispute filed before the learned Additional Collector, resolutions were challenged on following grounds :-

(i) The notices issued by Tahsildar were not served on them and false record of service was prepared.

(ii) Both Sarpanch and Up-Sarpanch were available and members of their family were also available in the houses and to avoid service on them, false record was prepared and false panchanama was created of service by pasting the notices on outer doors of their houses.

(iii) The distance between the houses of Sarpanch and Up-Sarpanch is around three kilo meters, but single panchanama was shown to be prepared of the service by pasting.

5) The learned Additional Collector has considered the contentions made with regard to service of notice. The record of service of such notice is considered by the learned Additional Collector and it is held that it is proper service under Rule 7 of the Maharashtra Gram Panchayat (Meetings) Rules, 1959. In the present proceedings, copy of application dated 23.7.2014 given by both the petitioners to Tahsildar came to be produced. This

document shows that immediately after the aforesaid meeting in which no confidence motion was passed, the Sarpanch and Up-Sarpanch had applied to Gramsevak for getting copy of resolution, the copy of minutes of the aforesaid meeting.

6) In the present proceedings also, the learned counsel for petitioners submitted that record of service by pasting the notice on outer doors of the houses is doubtful in nature. He submitted that as per the procedure, two separate panchanamas ought to have been prepared. It is true that only one panchanama was prepared by serving officer. But due to this circumstance, the record cannot be held to be suspicious in nature. There are other circumstances indicating that both Sarpanch and Up-Sarpanch had information about the aforesaid meeting, but they avoided to turn up. The record is signed by all the Village Officers and also by independent panch witnesses. The only contention made against the independent witness is that they are political opponents of Sarpanch and Up-Sarpanch. However, nothing is contended as against aforesaid three Village Officers, who have also signed on service record.

7) The learned counsel for petitioners placed reliance on the cases reported as **2003 (2) Bom.C.R. 239**

(AURANGABAD BENCH) [Indubai Vedu Khairnar Vs. State of Maharashtra & Ors.], 2013 (6) ALL MR 795 (AURANGABAD BENCH) [Surekha s/o. Eshwar Jadhav Vs. Nirmala w/o. Madhavrao Jadhav & Ors.] and 2014 (1) Bom.C.R. 466 (AURANGABAD BENCH) [Vishal Shrikirishna Hole Vs. State of Maharashtra & Ors.]. In these cases, in view of the facts of those cases, this Court held that notice was not properly served, the service was not in accordance with Rule 7 of the Bombay Village Panchayat (Meetings) Rules, 1959. The facts and circumstances of each and every case are always different. In the present matters, there is the record which is discussed above and there are other circumstances which are sufficient to infer that notices were served as per the procedure laid down in Rule 7. Further, other circumstances mentioned show that they were aware of the meeting which was called by Tahsildar.

8) The learned counsel for petitioners placed reliance on other case reported as **2013 (3) Mh.L.J. 133 (BOMBAY HIGH COURT) [Vishnu Ramchandra Patil Vs. Group Grampanchayat, Kharivli and Ors.]**. In this case, it is laid down that in view of Rule 17 of Bombay Village Panchayat (Meetings) Rules, 1959 and section 35 of Bombay Village

Panchayat Act, moving of no confidence motion is necessary in such a meeting. There is no dispute over the proposition. Relevant portion of minutes of meeting is already quoted and it shows that the motion read, there was discussion and then the motion was passed by the requisite majority. Thus, there is no force in the contentions which were made first time in the present proceedings.

9) The learned counsel for respondents placed reliance on the case reported as **1998 (4) ALL MR 479 [Nimba Rajaram Mali Vs. Collector, Jalgaon & Ors.]**. The relevant observations are at para Nos. 12 and 13 and they are as under :-

"12. In the case of **Smt. Annapurnabai Ajabrao Vs. Annapurnabai Anandrao** reported in **1967 Mh.L.J. NOC 36**, validity of the No Confidence Motion passed against the Sarpanch was challenged on the ground that :

- (a) allegations with regard to the alleged mismanagement were too vague and did not furnish any particulars.
- (b) no evidence was placed before the meeting to support the resolution;
- (c) resolution was passed without sufficient discussion and in spite of explanation given by the petitioner and

(d) names of the persons voting in favour of the resolution and their signatures were not appended to the proceedings.

The Division Bench of this Court, while rejecting the petitioner's claim, observed as under :-

"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 resignation 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. Democratic principles as has also sense of self respect should have been impleaded the petitioner and persons situated in similar circumstances to graciously submit to the decision of the majority and to walk out

of the Gram Panchayat. Notice raising frivolous contention and forcing herself on the democratic institution it does not want her to hold that position."

13. In a democratic society what is important is the will of the majority and the elected representatives must honour the will of the majority. It is immaterial to analyse and debate on the reasons behind the will of the majority or the specific reasons for such will being expressed. The will of the majority is of paramount importance and it must be respected by all elected representatives responsible for the governance of such democratic institutions. As observed by the Apex Court in the case of Babubhai (supra), resolution of No Confidence Motion is different from Censure Motion and such a resolution cannot be faulted on the ground that there were no reasons or reasons were vague and lacked detailed specifications. Once the resolution of No Confidence Motion is passed by a clear majority and in keeping with the requirements of the concerned statutory provisions, the person against whom such a resolution is passed, must honour the will of the majority and make way for the new election of his successor. Unless it is shown that while passing such a resolution of No Confidence Motion, there was flagrant violation of any of mandatory procedure laid down, such a resolution

cannot be interfered with by the Court or statutory authorities adjudicating such dispute. In the case at hand, both the authorities below, on perusal of record before them, have recorded clear findings that the resolution was passed in keeping with the requirements of the No Confidence Motion Rules and there was no breach of any statutory provisions. These findings do not suffer from any error, leave alone error apparent, on the face of the record."

10) In view of the discussion of the facts and circumstances mentioned above and the position of law mentioned, this Court holds that it is not possible to interfere in the decision given by the learned Additional Collector against both Sarpanch and Up-sarpanch. In the result, both the petitions stand dismissed. Rule is discharged in both the proceedings.

[T.V. NALAWADE, J.]

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