

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

6 WRIT PETITION NO. 12249 OF 2016

RAHENABEE AHAMAD SHAIKH  
VERSUS  
TAHASILDAR ASHTI BEED AND OTHERS

-----

Shri. V.D. Salunke, Advocate, for petitioner.

Shri. A.P. Basarkar, Assistant Government Pleader, for  
respondent Nos.1 and 10.

Shri. Ram B. Deshpande, Advocate, for respondent No.2.

-----

**CORAM: T.V. NALAWADE, J.**

**DATE : 19 DECEMBER 2016**

**ORDER:**

1) The petition is filed to challenge the order made by the learned Additional Collector Beed in proceeding No.2016/GB/Desk-2/VPE/Kavi-201/CR-19. The learned Additional Collector has dismissed the appeal filed by the present petitioner Sarpanch of village Ashti, Tahsil Ashti, District Beed. It was under section 35 (3-B) of the Maharashtra Village Panchayats Act 1959. Both the sides are heard.

2) The village Panchayat consists of 9 members. 7 members gave requisition to the Tahsildar on 7th May 2016 for calling special meeting of the village Panchayat as they wanted to move no confidence motion against the present petitioner. On the same day the Tahsildar issued notice and he called the meeting on 16<sup>th</sup> May 2016. The meeting was held on 16-5-2016. It was attended by 8 members. The petitioner remained absent. Resolution was moved, there was discussion and then the resolution was passed by majority of 7 versus 1.

3) In the proceeding filed to challenge the resolution of no confidence present petitioner, Sarpanch contended following things :

(1) That notice of the meeting was not served on her; and  
(2) The meeting was not called within statutory period of 7 days.

4) Only on the above two points the matter was argued. The record produced and the reasoning given by the Additional Collector show that the husband of the petitioner accepted the notice. Though original record is

not available, the Additional Collector has considered this record and has held that there was due service of notice as required by rule 7 of the Meeting Rules. Learned counsel for the petitioner has placed reliance on some reported cases and submitted that notice ought to have been served on Sarpanch herself and as it was not served the entire proceeding is illegal and the resolution needs to be set aside. He placed reliance on some observations made by this Court in **2010 (4) Bom.C.R. 191 (Shivkant Haribhau Bangar v. Gramsevak & Others)**. The facts of the reported case were totally different. There was service by pasting copy of notice on outer door of the house of the Sarpanch. This Court held that this record was not convincing and so it was held that there was no proper service. In the present matter it is the husband of the petitioner who had accepted the notice but he did not come forward to explain as to why he accepted the notice on behalf of the wife, Sarpanch. On this point, learned counsel for the respondent placed reliance on following reported cases :

- (1) **2012(6) Mh.L.J. 463 (Punjaji vs. Divisional Commissioner);**

- (2) **2009(6) Mh.L.J. 596 (Mandatai vs. Addl. Commissioner, Amravati);**
- (3) **2008(2) Mh.L.J. 274 (Prabhavati vs. State of Maharashtra).**

In the first case, there was service on mother of the Sarpanch. In the second case there was service on the husband of the Sarpanch and in the third case there was service on the son of the Sarpanch. This Court held that requirement of service only on male member of the family cannot be considered as mandatory requirement and service even on female member was accepted when the wording of Rule 7 is other wise. In any case in view of the circumstances of the present case it is not possible to infer that the notice was not tendered at the residential place of the Sarpanch. It is also not possible to infer that when the petitioner was available at the residential place service was effected on the husband of the Sarpanch. Thus, there is no force in the first ground of challenge.

5) To ascertain as to whether the meeting was called and held within the statutory period of 7 days this Court has gone through the calender of the year 2016. Admittedly the notice was issued by the Tahsildar on 7-5-

2016 and on 7-5-2016 it was first Saturday which was working Saturday for the Government offices. As per the policy of the Government, every second and forth Saturdays and all Sundays of a month are non working days for the Government offices. The first day, the date of calling meeting needs to be excluded and so 7-5-2016 needs to be excluded when we count 7 days period. This way, the 7th day was on 14th May 2016. On 14th May 2016 it was second Saturday and the office was closed. On 15th May 2016 it was Sunday and office was closed. So the meeting was called on 16th May 2016 which was the next day after 14th and 15th May 2016 and the meeting was held on that date. Thus, it cannot be said that the statutory period was not observed for calling and holding the special meeting.

6) Learned counsel for the petitioner placed reliance on the case reported as **2002 (4) ALL M.R. 213 (Ganesh Raghunath Samel v. State of Maharashtra)**. The Division Bench of this Court has laid down that period of 7 days given in section 35 of the Act needs to be observed and if this statutory period is not followed, the entire

process gets vitiated and it needs to be set aside. There cannot be dispute over this proposition. The facts of the reported case do not show that on the last day of the statutory period the office was closed or it was holiday. In the case reported as **2002 (2) ALL M.R. 316 (Mandabai Balnath Rohom v. Ashok Fakira Chandar)** this Court held that while counting the period, first day needs to be excluded. This Court has already observed that the first day needs to be excluded and that exercise is done. In the case reported as **2008(3) Mh.L.J. 781 (Seema Ashok Kamble v. Collector, Pune)** this Court had an occasion to consider the situation where the last day of the statutory period was a holiday and due to that office of the Village Panchayat was required to be closed. In that case this Court held that the proceeding can be conducted on the following day. There cannot be any dispute over this proposition. Similar observations are made by this Court in the case reported as **2002 (5) Mh.L.J. 171 (Pandhari Shripad Patil v. State of Maharashtra)**.

7) Learned counsel for the petitioner placed reliance on some observations made by this Court in **Writ**

**Petition No.3641/2016 (Nagabai Fajge v. The Tahsildar, Loha).** The facts of this case cited were totally different. On the 7th day Government office was not closed. This Court held that if there was holiday prior to that date, that holiday can be ignored.

8) Learned counsel for the petitioner has produced some literature with regard to definition of holiday. As per the Government policy, every 2nd and 4th Saturday and all Sundays are non working days. Considering the seriousness of the requisition it can be said that the requisition needs to be presented before the Tahsildar on the working day and the Tahsildar needs to call the meeting on the working day. Thus the reliance placed by the learned counsel on the literature is of no use to the petitioner in the present matter. The Additional Collector has not committed any error in holding that necessary procedure was followed for calling the meeting and for passing the resolution. In the result, the petition stands dismissed.

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

rs1