

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 472 OF 2016

Sandip Namdeo Harpale	..	Petitioner
VS.		
The State of Maharashtra & Ors.	..	Respondents

Mr. S. Joshi i/b. Mr. Sharon Patole for Petitioner.
Ms M. S. bane – 'B' Panel Counsel for State – Respondent No. 1
Mr. R. S. Kulkarni for Respondent Nos. 4 and 7.

CORAM : M. S. SONAK, J.
DATE : 23 FEBRUARY 2016

P.C :

- 1] **Not on Board. Upon production, taken on board.**
- 2] The challenge in this petition is to the order dated 2 January 2016 made by the Additional Collector, dismissing the petitioner's appeal under Section 35 (3-B) of the Maharashtra Village Panchayat Act, 1959 (said Act) questioning the passage of no confidence motion against the petitioner on 30 October 2015.
- 3] The learned counsel for the petitioner contended that there was no valid service of notice upon the petitioner and therefore, the passage of motion of no confidence is a nullity being in violation of statutorily prescribed procedure as also principles of natural justice and fair play. The learned counsel for the petitioner submitted that

the panchnama, in terms of which, the notice is alleged to have been pasted upon a jamun tree, is quite vague. The panchnama does not state the distance of the jamun tree from the house of the petitioner. The learned counsel for the petitioner also pointed out that in the affidavit in reply, there is reference only to the dispatch of the notice by registered acknowledgement due, but no acknowledgment has been filed. Assuming that the notice was returned unserved, no records in that regard have also been placed. The learned counsel also submitted that in case the Authorities were prevented by force from pasting the notice on the door of the petitioner's house, then in all probabilities, some criminal proceedings would have been initiated against the petitioner. The circumstance that no such criminal proceedings have been initiated or even a complaint made to the police indicates that there was no obstruction to pasting of notice on the petitioner's house. For all these reasons, the learned counsel for the petitioner has submitted that the impugned order warrants interference.

4] There is no merit whatsoever in the present petition. In fact, the present petition is an abuse of the process of the Court. In this case, 2/3rd members of the Panchayat i.e. 12 out of 17 members of the Panchayat requisitioned a special meeting in order to move the motion of no confidence against the petitioner on 23 October 2015.

In terms of Section 35 of the said Act, upon receipt of such requisition, the Tahsildar, is required to convene a special meeting within a period of seven days. Therefore, said meeting was required to be convened on or before 31 October 2015 or at least 30 October 2015.

5] Although, the petitioner states that he was not aware of any such requisition, there is on record, an application for leave made by the petitioner on 23 October 2015 itself stating that he will be unavailable in the village upto 2 November 2015. This is by no means, some co-incidence. This, along with other circumstances, to which reference shall be made in the course of this judgment and order, makes it clear that the petitioner, was bent upon avoiding the receipt of notice, in order to create some grounds in future for challenging the no confidence motion which was moved against him. Rather than face the no confidence motion, the petitioner, it appears, was busy to create some technical grounds in order to challenge the no confidence motion, which it appears, was bound to be passed against the petitioner.

6] In furtherance of the aforesaid, as is evident from the panchnama, the petitioner avoided service of notice. The panchnama records that attempts were made however the

petitioner was not available at his place of residence. Thereafter, when the notice was sought to be pasted upon the door of the petitioner's residence, the petitioner's family members, including in particular women from the family obstructed the pasting of this notice. The petitioner, should thank himself that no prosecution is launched against his family members rather than make a submission that no such incident at all took place merely because prosecution has not been launched against his family members. The panchnama records the presence of two police officials apart from the Tahsildar, who is also a government official. Ultimately, panchanama records that the notice was pasted on the jamun tree which is right opposite the main door of the petitioner's house so that the notice was very much visible from the main door. The petitioner, has not at all been candid to this Court. The petitioner has not bothered to state that whether there is any jamun tree opposite main door of his house but contends that the panchnama has not stated the distance of the jamun tree from the main door of his house. This is hardly the conduct expected of the petitioner who approaches this Court with a plea to exercise its extra ordinary and equitable jurisdiction.

7] The petitioner, who, by his application dated 23 October 2015 had stated that he along with his family members are

proceeding on leave upto 2 November 2015 can hardly make any complaint of the nature, which he seeks to make in the present petition. From the conduct of the petitioner, it is more than apparent that the petitioner not only knew that a no confidence motion has been moved against him but further the petitioner has taken steps to create, or rather fabricate grounds for challenging the no confidence motion, which he himself was confident would be passed by overwhelming majority against him. This is hardly the conduct expected from democratic elected representative. They can continue in power so long as they enjoy the confidence of the majority. Decisions of the majority cannot be faulted by such subterfuge as have been resorted to by the petitioner.

8] The learned counsel for the petitioner submitted that the impugned order has been made on 2 January 2016, which is Saturday. There is no substance in the contention raised. It is possible that there is some typographical error. In any case, it cannot be said that as a general rule there is any bar to an order being made on Saturday. Before the order was made, the petitioner was given a hearing by the Additional Collector. There is no complaint of denial of natural justice before the Additional Collector. Therefore, the impugned order cannot be faulted only on the ground that it may have been made or rather it is dated on a Saturday.

9] On the basis of material on record, it is quite clear that there is valid service of notice upon the petitioner, notwithstanding, clear attempts on the part of the petitioner to avoid service thereof. The conduct of the petitioner is also such as disentitles him to any equitable reliefs under Article 226 and 227 of the Constitution of India. The Additional Collector, in making the impugned order has appreciated the facts and circumstances as borne out of record in their proper perspective. There is absolutely no jurisdictional error in the making of impugned order.

10] This is a fit case for imposition of exemplary costs upon the petitioner. However, considering that the petitioner is an agriculturist, costs of Rs.15,000/- (Rupees Fifteen Thousand) are imposed upon him. The petitioner to pay such costs to the Village Panchayat of Fursungi, within a period of two weeks from today and thereafter file a necessary compliance report before the Additional Collector. Such costs should be paid by means of demand draft drawn in favour of the said Panchayat. The Additional Collector to ensure that such costs are indeed paid by the petitioner to the Village Panchayat, within the prescribed period.

11] This petition is therefore, dismissed with costs as aforesaid.

12] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

Chandka