

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10619 OF 2016

1. Jijabai Bahiru Tatale
Age Major, Occ Agriculture

2. Bhimabai Balu More
Age Major, Occ. Agriculture

3. Pandrinath Shankar Varungase
Age Major, Occ. Agriculture

4. Ratana Kailash Varungase
Age Major, Occ. Agriculture

5. Tarabai Harishchandra Varungase
Age Major, Occ. Agriculture

6. Valu shravan Tatale
Age Major, Occ. Agriculture

(1 to 6 members of Gram Panchayat
All R/o Belgaon Tarhale
Tal. Igatpuri Dist. Nashik)

... Petitioners

Versus

1. Raghunath Ramchandra Avhad
Age Major, Occ. Agriculture
R/o. Belgaon Tarhale
Tal. Igatpuri Dist. Nashik

2. Lalita Laxman Bendkoli
Age Major, Occ. Household
r/o. Belgaon Tarhale
Tal. Igatpuri Dist. Nashik

3. Ramu Arjun Tatale
Age Major, Occ. Household

R/o. Belgaon Tarhale
Tal. Igatpuri Dist. Nashik

4. The Collector Nashik
5. The Tahsildar, Igatpuri, Dist Nashik
6. The Gram Sevak, Gram Panchayat
Belgaon Tarhale, Tal. Igatpuri Dist. Nashik

7. The State of Maharashtra
(to be served through AGP Bombay High Court
Mumbai-400 032

...Respondents

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Mr.Rameshwar N. Gite, Advocate for the Petitioner.

Mr.Pratik B. Rathod i/b Mr. Pramod Narayan Joshi, Advocate for
Respondent No.1.

Mr. Sachin Kankar, AGP for the State.

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CORAM : R.M. BORDE, J.
RESERVED ON : 22ND SEPTEMBER, 2016
PRONOUNCED ON: 23RD SEPTEMBER, 2016

Oral Judgment :

. Heard.

2 **Rule.**

3 With consent of the parties, the Petition is taken up for final
disposal at the admission stage.

4 The Petitioners, who are the members of the Village Panchayat
Belgaon Tarale, Taluka: Igatpuri, District: Nashik are objecting to the order

passed by the Additional Collector, Nashik in Dispute No.41 of 2016 decided on 26.8.2016. The Respondent No.1 was elected as Upa-Sarpanch of Village Panchayat in the year 2014. A motion for expressing 'No Confidence' on the Respondent No.1 was moved on 22.6.2016 by 6 members of Village Panchayat out of total strength of 9 members. A special meeting for consideration of the motion was convened by the Tehsildar, which was scheduled to take place on 28.6.2016. In the meeting held on 28.6.2016, the motion of 'No Confidence' was passed against the Respondent No.1 by majority 6 members voting in favour of the motion of 'No Confidence' out of 7 members present at the meeting. The decision taken in the meeting dated 28.6.2016 expressing 'No Confidence' against the Respondent No.1 was a matter of challenge in a dispute presented by the Respondent No.1 before the Additional Collector under Section 35(3B) of the Maharashtra Village Panchayat Act, 1958. The principal objection raised by the Respondent No.1 is as regards the failure to serve the notice of meeting to Shrimati Lalita Laxman Bendkoli. According to the Respondents, the concerned member was not served with notice and as such, proceedings of the meeting are vitiated. The learned Deputy Collector accepted the contention raised by the Respondent No.1 and directed the quashing of the proceedings of the meeting dated 28.6.2016. It is the contention of the Petitioner that infact the concerned member Shrimati Lalita was served with notice of meeting. Since Smt. Lalita was not present at the time when notice was sought to be served and her mother-in-law Smt. Kalubai Bendkoli, who was present at the residence directed nephew of Lalita by name Madan Baburao Bendkoli to accept the notice, the same was accepted by him. It is contended that since the notice has been accepted by the adult member of the family of Smt. Lalita, there is

no illegality or infirmity in the service of notice. It is the contention of the Petitioner that majority members have expressed 'No Confidence' in Respondent No.1 and as such, he has no entitlement in continuing to occupy the office. It is pointed out by the learned counsel appearing for the Respondent No.1 that since the proceedings in respect of service of notice records name of the concerned member as Lalita Laxman Tatale and the notice is said to have been accepted by Madan Baburao Bendkoli, it is contended that in fact, notice has not been served on Smt. Lalita. The letter of Talathi issued to Tehsildar dated 30.8.2016 placed on record at Page 42 of this Petition compilation was infact not brought on record before the Additional Collector, who dealt with the dispute. The dispute was decided by the Additional Collector on 26.8.2016 and the letter has been procured from Talathi on 30.8.2016, which is after thought. It is the contention of the Respondent that there is no record to demonstrate service of notice on Smt. Lalita. It is also contented that there is no record also to indicate that notice of service was affixed on the door of the residential premises of the concerned member to draw an inference in respect of proper service of notice.

5 Talathi of village has reported that the notice was infact served on adult member in the family of Smt. Lalita. There appears to be some error in recording surname of Lalita Laxman Bendkoli. In the Report annexed at Page 45, surname is written as Tatale, which appears to be typographical mistake. In this Court, an affidavit has been presented on behalf of Lalita Laxman Bendkoli recording therein that she is not in receipt of notice of meeting and that she is not related to any person by name Madan Baburao Bendkoli, who is erroneously claimed to be a member of

the family. It has not been disclosed in the Petition as to whether alternate mode of service I.e. affixing the notice on the entrance of the house premises is adopted. The Additional Collector in his order has also not referred as to whether such mode of service of notice as prescribed under the relevant Rules has been adopted or not. Looking to the report of Talathi dated 30.8.2016, it does appear that there is a service of notice on the adult member of the family. The stand taken by the concerned member by presenting an affidavit in this Court also does not appear to be convincing. Since the disputed question is raised in respect of service of notice on one of the members i.e. Lalita Bendkoli, it is desirable that the matter be enquired into by the Additional Collector afresh. If the Additional Collector concludes in respect of proper service of notice either on the adult member of the family or service of notice by adopting an alternate mode of service as prescribed in rules i.e. affixing notice on the entrance door of the residential premises of the concerned member, service of notice shall be construed to be proper. It would be for the Additional Collector to look into the matter.

6 The learned counsel appearing for the Petitioner placed reliance upon the judgment in the matter of **Annapurnabai Ajabrao v. Annapurnabai Anandrao reported in 1967 Mh.L.J. NOC Page 36** and contended that since A Gram Panchayat is essentially a democratic institution, which must be run on democratic principles and as the majority members have expressed lack of confidence in the Respondent No.1, he shall vacate the office. The relevant observations of **Annapurnabai (Supra)** are quoted as below:

“9. This being the general provisions of law, the form of notice prescribed by sub-rule (2) of Rule 2 of the Rules should be construed as directory and not mandatory. Omission to specify grounds for moving motion of no confidence or error in typing of the verification clause would not by itself invalidate the notice under sub-section (1) of section 35 of the Act. While interpreting the provisions of section 35 of the Bombay Village Panchayat Act, the Division Bench of this Court in (Smt. Annapurnabai Ajabrao v. Smt. Annapurnabai Anandrao) 3, reported in 1967 Mh. L. J. N.O.C. 36 held;

“The 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, the proper attitude of the petitioner as a person working for democracy would have been to tender her resignation straightway. At any rate, it does not behave of a democratic spirit to challenge the decision of the majority who unmistakably declared their want of confidence in their erstwhile leader. Democratic principles as also the sense of self-respect should have impelled the petitioner and persons situated in similar circumstances to gracefully submit to the decision of the majority and to walk out of the Gram Panchayat instead of raising frivolous contentions and forcing herself on the democratic institution which does not want her to hold that position.”

7 Similarly in the matter of **Nimba Rajaram Mali v. Collector, Jalgaon & Others** reported in **1999 BCR Page 546**, the Division Bench has observed as quoted below:

“10. In the present case resolution against the respondent No.4 was passed by 2/3 majority of 10 out of 15 members. Respondent No.4 should have therefore, gracefully walked out, instead she has chosen to challenge the resolution on technical grounds which is contrary to the observations made by this Court in the case of Annapurnabai Ajabraos referred to supra. The decision of the Division Bench in

Annapurnabai Ajabraos case was followed by another Division Bench of this Court in the case of (N. R. Mali v. Collector, Jalgaon)⁴, reported in 1999(1) Bom. C.R. (A.B.) 546 : 1998(3) Mh. L. J. 204 : A. I. R. 1999 Bombay 335. In the said case, it was observed:

“ Once the resolution of no confidence is passed by clear majority and keeping in mind 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 new election of successor. Unless it is shown that while passing such a resolution of no confidence motion, there was flagrant violation of any mandatory procedure laid down. Such a resolution cannot be interfered with by the Court or Statutory authorities attacking such disputes.”

8 It is, thus, contended that since 6 members out of total strength of 9 members have expressed lack of confidence in the Respondent No.1, he shall vacate the office gracefully. At the same time, mandatory requirements of service of notice on the members of Village Panchayat has to be looked into. If there is no proper service of notice on any of the members, the motion of 'No Confidence' gets vitiated and as such, the proceedings of the meeting cannot be said to be proper and in accordance with the provisions of law. In this regard, the reliance can be placed on the judgment in the case of **Suresh Devidas Choudhari v. Additional Collector Washim** reported in **2016(2) All M.R.797**. It is also contended by the Petitioner that the requirement of service of notice within contemplation of Rule 2B of the Bombay Village Panchayats Sarpanch and Upasarpanch (No Confidence Motion) Rules, 1975 shall not be considered mandatory and every deviation from the procedure prescribed under the Rules shall not vitiate proceedings of the 'No Confidence' motion. By referring to the judgment of the Full Bench in the matter of **Tatyasaheb**

Ramchandra Kale v. Navnath Tukaram Kakde & Others reported in 2014 (6) Mh.L.J. Page 804, it is contended that since Rule 17 of the Bombay Village Panchayats (Meeting) Rules, 1959 is held to be directory, by application of similar analogy, the relevant rule requiring strict compliance of the procedure in respect of service of notice also shall be deemed to be directory. In the instant matter, question that has to be dealt with is as to whether there was infact service of notice of motion of 'No Confidence' on Smt. Lalita Bendkoli, member of Village Panchayat. If at all there is service of notice on the concerned member, the motion shall be deemed to have been carried. However, in the absence of service of notice on the concerned member, conclusion shall have to be drawn that proceedings of the meeting are vitiated as has been recorded above. The factual controversy as to whether there was proper service of notice on Smt. Lalita Bendkoli is required to be gone into afresh by the Additional Collector.

9 In view of discussion above, order impugned in this petition passed by the Additional Collector, Nashik dated 26.8.2016 is quashed and set aside and the matter stands remitted back to the Additional Collector, Nashik for re-consideration. The Additional Collector, Nashik shall decide the appeal as expeditiously as possible and preferably within a period of four weeks from today after extending an opportunity of hearing to all the parties concerned and on scrutiny of the record and on receiving evidence that would be led by the parties, if any. Parties assure to cause appearance before the Additional Collector, Nashik on 29.9.2016 and as such, no separate notice requiring their presence before the Additional Collector, Nashik would be necessary.

- 10 Rule is made absolute to the extent specified above.
- 11 There shall be no order as to costs.

(R.M. BORDE, J.)