

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12009 OF 2015

- | | | |
|-----|---------------------------------|---|
| 1] | Shri Chagan Sadashiv Jadhav |] |
| | Age : Major |] |
| | |] |
| 2] | Shri Shyam Murlidhar Jadhav |] |
| | Age : Major |] |
| | |] |
| 3] | Smt. Anupama Balasaheb Jadhav |] |
| | Age : Major |] |
| | |] |
| 4] | Smt. Asha Dattatraya Kale |] |
| | Age : Major |] |
| | |] |
| 5] | Shri Eklah Ladachi Kureshi |] |
| | Age : Major |] |
| | |] |
| 6] | Shri Paresh Shashikant Bhargve |] |
| | Age : Major |] |
| | |] |
| 7] | Smt.Meenabai Madhukar Kathe |] |
| | Age : Major |] |
| | |] |
| 8] | Shri Pralhad Soma Ghule |] |
| | Age : Major |] |
| | |] |
| 9] | Shri Balasaheb Baburao Bhandare |] |
| | Age : Major |] |
| | |] |
| 10] | Smt.Suman Kashinath Patil |] |
| | Age : Major |] |
| | |] |
| 11] | Shri Shiv Narayan Sahale |] |
| | Age : Major |] |
| | |] |
| 12] | Smt. Rekha Dilip Jadhav |] |
| | Age : Major |] |
| | |] |
| 13] | Smt. Anjali Laman Pavde |] |

Age : Major]
]
14] Smt. Jijabai Narayan Bhandare]
Age : Major]
]
All Residing at Kasbe Sukene]
Taluka Niphad, District Nashik]..... Petitioners.

Versus

1] Smt. Manisha Ramnath Bhandare]
Sarpancha, Gram Panchayat]
Kasbe Sukene, Taluka Niphad]
District Nashik.]
]
2] Shri Kishor Balasaheb Kardak]
Age : Major]
]
3] Shri Somnath Pandurang Bhagwat]
Age : Major]
]
All Members of the Village Panchayat,]
Kasbe Sukene, Taluka Niphad]
District Nashik.]
]
4] The Tahsildar, Niphad]
]
5] Gram Sevak, Grampanchayat]
Kasbe Sukene Taluka Niphad]
District Nashik]
]
6] The Additional Collector, Nashik].....Respondents.

ALONG WITH
WRIT PETITION NO.12010 OF 2015

1] Shri Chagan Sadashiv Jadhav]
Age : Major]
]
2] Shri Shyam Murlidhar Jadhav]
Age : Major]
]

- 3] Smt. Anupama Balasaheb Jadhav]
Age : Major]
4] Smt. Asha Dattatraya Kale]
Age : Major]
5] Shri Eklah Ladachi Kureshi]
Age : Major]
6] Shri Paresh Shashikant Bhargve]
Age : Major]
7] Smt.Meenabai Madhukar Kathe]
Age : Major]
8] Shri Pralhad Soma Ghule]
Age : Major]
9] Shri Balasaheb Baburao Bhandare]
Age : Major]
10] Smt.Suman Kashinath Patil]
Age : Major]
11] Shri Shiv Narayan Sahale]
Age : Major]
12] Smt. Rekha Dilip Jadhav]
Age : Major]
13] Smt. Anjali Laman Pavde]
Age : Major]
14] Smt. Jijabai Narayan Bhandare]
Age : Major]
All Residing at Kasbe Sukene]
Taluka Niphad, District Nashik]..... Petitioners.

Versus

- 1] Shri Somnath Pandurang Bhagwat]

- | | | |
|----|---------------------------------------|--------------------|
| | Member, Gram Panchayat |] |
| | Kasbe Sukene, Taluka Niphad |] |
| | District Nashik. |] |
| 2] | Smt. Manisha Ramnath Bhandare |] |
| | Age : Major |] |
| | |] |
| 3] | Shri Kishor Balasaheb Kardak |] |
| | Age : Major |] |
| | |] |
| | All Members of the Village Panchayat, |] |
| | Kasbe Sukene, Taluka Niphad |] |
| | District Nashik. |] |
| | |] |
| 4] | The Tahsildar, Niphad |] |
| | |] |
| 5] | Gram Sevak, Grampanchayat |] |
| | Kasbe Sukene Taluka Niphad |] |
| | District Nashik |] |
| | |] |
| 6] | The Additional Collector, Nashik |].....Respondents. |

ALONG WITH
WRIT PETITION NO.12011 OF 2015

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|----|--------------------------------|---|
| 1] | Shri Chagan Sadashiv Jadhav |] |
| | Age : Major |] |
| | |] |
| 2] | Shri Shyam Murlidhar Jadhav |] |
| | Age : Major |] |
| | |] |
| 3] | Smt. Anupama Balasaheb Jadhav |] |
| | Age : Major |] |
| | |] |
| 4] | Smt. Asha Dattatraya Kale |] |
| | Age : Major |] |
| | |] |
| 5] | Shri Eklah Ladachi Kureshi |] |
| | Age : Major |] |
| | |] |
| 6] | Shri Paresh Shashikant Bhargve |] |
| | Age : Major |] |

- 7] Smt.Meenabai Madhukar Kathe
Age : Major
- 8] Shri Pralhad Soma Ghule
Age : Major
- 9] Shri Balasaheb Baburao Bhandare
Age : Major
- 10] Smt.Suman Kashinath Patil
Age : Major
- 11] Shri Shiv Narayan Sahale
Age : Major
- 12] Smt. Rekha Dilip Jadhav
Age : Major
- 13] Smt. Anjali Laman Pavde
Age : Major
- 14] Smt. Jijabai Narayan Bhandare
Age : Major
- All Residing at Kasbe Sukene
Taluka Niphad, District Nashik
-]..... Petitioners.

Versus

- 1] Shri Kishor Balasaheb Kardak
Up-Sarpancha, Gram Panchayat
Kasbe Sukene, Taluka Niphad
District Nashik.
- 2] Smt. Manisha Ramnath Bhandare
Age : Major
- 3] Shri Somnath Pandurang Bhagwat
Age : Major
- All Members of the Village Panchayat,

- | | | |
|----|----------------------------------|--------------------|
| | Kasbe Sukene, Taluka Niphad |] |
| | District Nashik. |] |
| | |] |
| 4] | The Tahsildar, Niphad |] |
| | |] |
| 5] | Gram Sevak, Grampanchayat |] |
| | Kasbe Sukene Taluka Niphad |] |
| | District Nashik |] |
| | |] |
| 6] | The Additional Collector, Nashik |].....Respondents. |

Mr. P N Joshi a/w Mr. P B Rahade for the Petitioners in all the Petitions.

Mr. S K Shinde, i/by Ms. Sneha G Sanap for the Respondent Nos.1 to 3 in all the Petitions.

Mrs. V S Nimbalkar, AGP for the Respondent Nos.4 and 6 in all the Petitions.

**CORAM : R. M. SAVANT, J.
Reserved on : 25th April 2016
Pronounced on :- 4th May 2016**

ORAL JUDGMENT

1. Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2. The above Writ Petitions take exception to the identical orders dated 02/11/2015 passed by the Additional Collector, Nashik by which orders the Motion of No Confidence passed against the Respondent No.1 in the above Petitions (W.P. No.12009 of 2015 and W.P. No.12010 of 2015) in the meeting dated 05/09/2015 of the Gram Panchayat, Kasbe Sukene, Taluka Niphad, District Nashik was set aside.

3. Since the above Petitions involve common questions of law and fact, they are heard together. The facts giving rise to the above Petitions can in brief be stated thus :-

The Respondent No.1 to each of the above Petitions were elected as the members of the Gram Panchayat Kasbe Sukene, Tal. Niphad, Dist. Nashik. The elections were for the term 2012-2017. After the said elections, the Respondent No.1 in Writ Petition No.12009 of 2015 Smt. Manisha Ramnath Bhandare was elected as a Sarpanch; the Respondent No.1 in Writ Petition No.12011 Shri Kishor Kardak was elected as Upa-Sarpanch. The said Respondents would be hereinafter referred to as the Sarpanch and Upa-Sarpanch. The Respondent No.1 in Writ Petition No.12010 of 2015 Shri Somnath Pandurang Bhagwat continued to remain as a member of the said Gram Panchayat.

The Petitioners herein who are also the members of the said Gram Panchayat made a request to the Tahsildar, Niphad on 01/09/2015 for requisitioning a meeting of the Gram Panchayat for passing a Motion of No Confidence against the Sarpanch and Upa-Sarpanch. After receipt of the said requisition, the Tahsildar, Niphad convened a special meeting of the Panchayat to be held on 05/09/2015 which meeting was called by the Tahsildar vide his notice dated 2/09/2015. The notice of the said meeting

Reserved Judgment in WP-12009-15 & group matters.doc

was served on the Respondent No.1 to each of the above Petitions as also the other members of the Gram Panchayat and a panchanama was drawn to the said effect that the Respondent No.1 to each of the above Petitions was served. The special meeting accordingly took place on 05/09/2015 and a Motion of No Confidence was passed against the Sarpanch and Upa-Sarpanch with majority of 14:0. The minutes were accordingly prepared by the Tahsildar and in terms of the rules applicable, it seems that the motion passed in the meeting was communicated to the authorities, as required to be communicated with the copies thereof. After passing of the said resolution the Respondent No.1 in each of the above Petitions filed a Dispute before the Additional Collector, Nashik. In so far as the Respondent No.1 Smt. Manisha Bhandare (Sarpanch) is concerned, her Dispute Application was numbered as 42 of 2015, in so far as the Respondent No.1 Shri Somnath Bhagwat is concerned, his Dispute Application was numbered as 45 of 2015 and in so far as the Respondent No.1 Shri Kishor Kardak (Upa-Sarpanch) is concerned, his Dispute Application was numbered as 43 of 2015. The said Dispute Application No.43 of 2015 was filed by Shri. Somnath Bhagwat challenging the Motion of No Confidence passed against the Sarpanch and Upa-Sarpanch. In the said Dispute Applications the principal contention raised was that the notice dated 02/09/2015 of the meeting was not served upon the

Respondent No.1 and therefore the Respondent No.1 to each of the above Petitions could not attend the meeting and in view thereof they could not address the house prior to the Motion of No Confidence being taken up for consideration.

4. The said Dispute Applications were opposed to on behalf of the Petitioners to the above Petitions. The opposition was on the ground that the Petitioners were required to move the said resolution on account of the manner in which the Sarpanch and Upa-Sarpanch were functioning. That the said resolution was passed by a majority of 14:0. In so far as the service of notice is concerned, the Petitioners averred in their replies that the notices were served on the adult member available in the house as the Sarpanch and Upa-Sarpanch were not found at their residence at the time of service. In so far as Respondent No.1 Shri. Somnath Bhagwat is concerned, the said notice was personally served upon him and therefore there was compliance of the rules in the matter of service. It was also contended that in view of the fact that almost 90% of the members being against the Sarpanch and Upa-Sarpanch, the functioning of the said Gram Panchayat is affected and therefore Motion of No Confidence passed against the Respondent No.1 to each of the above Petitions should not be interfered with.

5. The Additional Collector, Niphad, District Nashik adjudicated upon the said Dispute Applications and by the impugned order dated 02.11.2015 allowed the Dispute Applications and set aside the Resolution of the Motion of No Confidence passed against the Sarpanch and Upa-Sarpanch. The gist of the reasoning of the Additional Collector was that the meeting dated 05.09.2015 wherein the said Motion of No Confidence was passed was not legal and valid for the reason that the notice of the meeting was not served on the Sarpanch, the Upa-Sarpanch and the member Shri. Somnath Bhagwat i.e. the Applicants before him. That though the acknowledgement of the members having received the notice has been filed, the said acknowledgment does not bear the date, as to when the members have received the notice, nor the Panchanama gives the time when it started and ended. That the said notice has not been sent to the Zilla Parishad, Panchayat Samiti, Collector and Divisional Commissioner and that the said notice is not published on the notice board of the Gram Panchayat and the Tahsil office, that there is a violation of Rule 17 of the meeting rules in as much as the motion was not proposed and seconded and in terms of the judgment of the Full Bench in ***Vishwas Pandurang Mokal V/s Group Gram Panchayat, Shihu and others***¹ prior to the motion being moved there has to be a compliance of Rule 17. The Additional Collector, Nashik accordingly allowed the Dispute

1 2011(3) Mh.L.J. 500.

Applications No.42, 43 and 45 of 2015 and set aside the Motion of No Confidence passed against the Sarpanch and Upa-Sarpanch. As indicated above, it is the said orders all dated 02.11.2015 which are taken exception to by way of the above Petitions.

**SUBMISSIONS ON BEHALF OF THE PETITIONERS OF THE
LEARNED COUNSEL MR. P. N. JOSHI**

I) That the Additional Collector had erred in allowing the dispute application filed by the Respondent No.1 in each of the above Petitions on the grounds mentioned in the impugned order.

II) That the Additional Collector had erred in holding that service was not effected on the Respondent when the material on record indicates the compliance of the relevant rule.

III) That assuming that there was some irregularity in the service of notice, however the Additional Collector ought to have seen that there was substantial compliance with the Rule governing the service of notice.

IV) That the dispute application could not have been allowed on the ground that there was non-compliance of Rule 2(2) in the matter of the notice for requisition not being served on the Zilla Parishad, Panchayat Samiti, Collector and the Commissioner, as the said Rule is held to be

directory by this Court. Reliance is sought to be placed on the judgment of a Learned Single Judge of this Court in the matter of ***Yamunabai Laxman Chavan & others Vs. Sarubai Tukaram Jadhav & others***².

V) Even Rule 7 of the meeting Rules has been held to be directory by a Learned Single Judge of this Court. Reliance is placed on the judgment in the matter of ***Punjaji Shamrao Kadam and others Vs. Divisional Commissioner, Aurangabad and others***³.

VI) That the dispute application could not have been allowed for violation of Rule 17 as the said Rule is also held to be directory. Reliance is placed on the Full Bench judgment of this Court in the matter of ***Tatyasaheb Ramchandra Kale Vs. Navnath Tukaram Kakde & ors***⁴.

VII) In the instant case since the Motion of No Confidence is passed by a majority of 14:0 the said aspect assumes importance and therefore on a technical ground the Motion ought not to have been nullified.

VIII) That in view of the fact that a majority i.e. 14 members were against the Respondent No.1 who are the Sarpanch and Upa-Sarpanch, the functioning of the Gram Panchayat is seriously affected and therefore the

² 2004(Supp.2) Bom.C.R. 1031

³ 2012(6) Mh.L.J. 463.

⁴ 2014(6) Bom.C.R. 737.

said fact was also a relevant consideration whilst adjudicating upon the Dispute Applications.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO.1 IN EACH OF THE ABOVE PETITIONS BY THE LEARNED COUNSEL MR. S. K. SHINDE.

A) That the service of notice assumes importance in view of the fact that on the notice being served the Sarpanch and Upa-Sarpanch can remain present in the meeting called for considering the Motion of No Confidence and address the house and therefore in the absence of the notice being served the said right is affected.

B) The notice would have to be served in the manner/modes contemplated and there can be no deviation. Reliance is sought to be placed on the judgment of a Learned Single Judge of this Court in the matter of Suresh Devidas Choudhari & Ors. Vs. Additional Collector Washim & Ors.⁵.

C) That the notice could be served on the adult member of the family only after the attempt to serve the same on the Respondent No.1 had failed. In the instant case, no such material is placed on record in respect of the attempt made to serve the notice on the Respondent No.1 in each of

5 2016(2) ALL MR 797

the above Petitions.

D) That assuming the notice was served on 02.09.2015 on the Respondent No.1 to each of the above Petitions since the meeting was to be held on 05.09.2015, the said notice was not of three clear day's and therefore was in violation of the statutory mandate.

E) That there are inherent contradictions in the case of the Respondents i.e. the authorities in so far as the service of notice is concerned, in as much as the Talathi in his affidavit has stated that the notice on all the members of the Gram Panchayat were served on 02.09.2015, whereas the Tahsildar in his affidavit states that the notice was served on 03.09.2015, therefore no credence could be given to the case of the Respondents i.e. the authorities.

CONSIDERATION

6. Having heard the Learned Counsel for the parties, I have considered the rival contentions. The controversy in the instant Petitions has arisen in view of the Motion of No Confidence passed against the Respondent No.1 in Writ Petition No.12009 of 2015 being the Sarpanch and the Respondent No.1 in Writ Petition No.12010 of 2015 being the Upa-Sarpanch. Since the said Motion of No Confidence is set aside by the

Additional Collector on the ground of the notice being not served on the Respondent No.1 the aspect of service of the notice of the meeting of the Gram Panchayat to consider the passing of the Motion of No Confidence has therefore once again engaged the attention of this Court in its writ jurisdiction.

7. Since the Motion of No Confidence is passed against the Sarpanch and Upa-Sarpanch, the relevant statutory provisions in the context of the challenge raised in the instant Petitions would have to be noted. It would therefore be useful to make a reference to Section 35, Rule 7 and 17 of the Bombay Village Panchayat Meeting Rules 1958 and Rule (2-B) of the No Confidence Meeting Rules 1975. The same are reproduced hereinunder for the sake of ready reference :-

“35. Motion of no confidence.- [(1) A motion of no confidence may be moved by not less than [one-third] of the total number of the members who are for the time being entitled to sit and vote at any meeting of the Panchayat against the Sarpanch or the Upa-Sarpanch after giving such notice thereof to the Tahsildar as may be prescribed. [Such notice once given shall not be withdrawn].

(2) Within seven days from the date of receipt by him of the notice under sub-section (1), the Tahsildar shall convene a special meeting of the Panchayat for considering the motion of no confidence at the office of the Panchayat at a time to be appointed by him and he shall preside over such meeting. At such special meeting, the Sarpanch, or the Upa-Sarpanch against whom the motion of no confidence is moved shall have a right to speak or otherwise to take part

in the proceedings at the meeting (including the right to vote).

(3) If the motion is carried by [a majority of not less than two-third of] the total number of the members who are for the time being entitled to sit and vote at any meeting of the Panchayat the Sarpanch or the Upa-Sarpanch, as the case may be, [shall forthwith stop exercising all the powers and perform all the functions and duties of the office and thereupon such powers, functions and duties shall vest in the Upa-Sarpanch in case the motion is carried out against the Sarpanch; and in case the motion is carried out against both the Sarpanch and Upa-Sarpanch, in such officer, not below the rank of Extension Officer, as may be authorised by the Block Development Officer, till the dispute, if any, referred to under sub-section (3B) is decided:

Provided that, if the dispute so referred is decided in favour of the Sarpanch or, as the case may be, Upa-Sarpanch, thereby setting aside such motion, the powers, functions and duties of the Sarpanch or Upa-Sarpanch shall forthwith stand restored, and if the dispute is decided confirming the motion, the office of the Sarpanch or, as the case may be, Upa-Sarpanch shall be deemed to have fallen vacant from the date of the decision of the dispute, unless the incumbent has resigned earlier:

Provided further that, in cases where the offices of both the Sarpanch and Upa-Sarpanch become vacant simultaneously, the officer authorised under this sub-section shall, pending the election of the Sarpanch, exercise all the powers and perform all the functions and duties of the Sarpanch but shall not have the right to vote in any meeting of the panchayat:]

[Provided also that], where the office of the Sarpanch being reserved for a woman, is held by a woman Sarpanch, such motion of no-confidence shall be carried only by a majority of not less than three-fourth of the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat:];

[Provided also that], no such motion of no-confidence shall be brought within a period of six months from the date of election of Sarpanch or Upa-Sarpanch.]

(3-A) If the motion [is not moved or is not carried] by [a majority of not less than two-third of [or, as the case

may be, three fourth, of] the total number of the members who are for the time being entitled to sit and vote at any meeting of the Panchayat, no such fresh motion shall be moved against the Sarpanch or, as the case may be, the Upa-Sarpanch within a period of [one year from the date of such special meeting].

(3-B) If the Sarpanch or, as the case may be, the Upa-Sarpanch desires to dispute the validity of the motion carried under sub-section (3), he shall, within seven days from the date on which such motion was carried, refer the dispute to the Collector who shall decide it as far as possible, [within thirty days from the date on which it was received by him and his decision shall be final].”

(3-C) Any person aggrieved by the decision of the Collector may, within seven days from the date receipt of such decision, appeal to the Commissioner who shall decide the Appeal, as far as possible, within fifteen days from the date on which the appeal is received by him, and any such decision shall be final.

(3-D) Where on a reference made to him under sub-section (3-B), the Collector upholds the validity of the motion carried under sub-section (3) and no appeal is made by the Sarpanch or the Upa-Sarpanch under sub-section (3-C) within the limitation period specified in that sub-section, or where an appeal is made under sub-section (3-C) but it is rejected by the Commissioner, the Sarpanch or, as the case may be, the Upa-Sarpanch shall cease to hold office, in the former case, immediately after the expiry of the said limitation period and, in the latter case, immediately after the rejection of the appeal, and thereupon the office held by such Sarpanch and Upa-Sarpanch shall be deemed to be vacant].

(4) In cases where the offices of both the Sarpanch and Upa-Sarpanch become vacant simultaneously, the District Village Panchayat Officer or such other officer as he may authorise in this behalf shall, pending the election of the Sarpanch exercise all the powers and perform all the functions and duties of the Sarpanch but shall not have the right to vote in any meeting of the panchayat.”

“[7. Every notice under these rules shall, if practicable, be served personally by delivering or tendering it to the

member to whom it is addressed or such person is not found, by giving or tendering it to an adult male member of his family who is residing with him]. [If there is no such person to whom notice can be give or tendered or where the member, or as the case may be, in his absence such adult male member, is present but refuses to accept the notice, it shall be served by affixing it, in the presence of two witnesses, on the outer door or some other conspicuous part of the house in which the member ordinarily resides. If none of the aforesaid modes of serving notice is feasible, the notice shall be affixed, in the presence of two witnesses, on some conspicuous part of the house in which the member is known to have last resided or carried on business or personally worked for gain.]”

“17. (1) A member who has given notice of a motion shall, when called on, either,-

- (a) state that he does not wish to move the motion, or
- (b) move the motion in which case he shall commence his speech by a formal motion in the terms appearing on the list of business, after the motion is duly seconded.

(2) If a member when called is absent, any other member may, with the permission of the person presiding, move the motion standing in the name of the absent member. if permission is not granted to the other member to move the motion, the motion shall lapse.”

“(2-B) Every notice under sub-rule(1), wherever it may be practicable, be served by delivering or tendering it to the Sarpanch or Upa-Sarpanch to whom it is addressed or, where such person cannot be found, by delivery or tendering it to any adult member of his family residing with him; and if no such adult member can be found or, where the Sarpanch, Upa-Sarpanch or such adult member, as the case may be, refuses to accept the notice, it shall be served by affixing it, in the presence of two witnesses, on the outer door or some other conspicuous part of the house in which such Sarpanch or Upa-Sarpanch ordinarily dwells. The notice served in this manner shall be deemed to the served or tendered or delivered to the concerned Sarpanch or Upa-

Sarpanch.]”

A reading of Section 35 of the said Act discloses that considering the importance of the post of Sarpanch and Upa-Sarpanch the legislature has provided inbuilt safeguards in the matter of their removal. In so far as the passing of Motion of No Confidence is concerned, the first safeguard is that the requisition for a meeting has to be moved by not less than 1/3 of the members of the Gram Panchayat who are entitled to sit and vote. The second safeguard is that the resolution has to be passed by 2/3 of the members who are entitled to sit and vote. The underlying principle appears to be to lend stability in so far as the posts of Sarpanch and Upa-Sarpanch are concerned.

8. In so far as Rule 7 of the Meeting Rules 1958 is concerned, it sets out the manner in which a notice is required to be served under the said Rules. It postulates that a notice to be served personally by delivering or tendering it to a member to whom it is addressed or if the person is not found by giving it or tendering to an adult member of his family who is residing with him. Similarly Rule (2-B) of the Motion of No Confidence Rules 1975 sets out how a notice requisitioning a meeting for passing a Motion of No Confidence is required to be served. The said Rule postulates that notice is to be tendered to the Sarpanch or Upa-Sarpanch and if such

person cannot be found by tendering it to any adult member of his family. In so far as Rule 17 of the General Meeting Rules is concerned, it provides for a motion to be proposed and seconded. In so far as the said Rule 17 is concerned, a Full Bench of this Court in *Tatyasaheb Ramchandra Kale's* case (*supra*) has held the said Rule to be directory meaning thereby that a strict compliance of the said rule is not necessary and that a Motion of No Confidence cannot be nullified on the ground that there is no compliance of the said Rule 17.

9. It is in the background of the aforesaid statutory position that the facts of the instant case would have to be seen. In the instant case, the Petitioners made a requisition to the Tahsildar vide their letter dated 02.09.2015 for requisitioning a meeting of the Gram Panchayat to consider passing of a Motion of No Confidence against the Sarpanch and the Upa-Sarpanch. The Tahsildar on receipt of the requisition convened a meeting on 05.09.2015 for the said purpose and issued notices accordingly. In so far as the Sarpanch and Upa-Sarpanch are concerned, the notice on them was sought to be served on 02.09.2015 on which day the notices were served on all members of the Gram Panchayat which include the Petitioners above named. Since the Sarpanch and Upa-Sarpanch were not available the notice was served on the adult member who was available in the house and was also pasted on the door of their

houses. In so far as the Respondent No.1 in Writ Petition No.12011 of 2015 is concerned, the said notice was served on him personally. The meeting for considering the Motion of No Confidence was thereafter held on 05.09.2015 and the motion was passed with a majority of 14:0. There is absolutely no dispute about the fact that a requisition was made by a majority of 1/3 of the members of the Gram Panchayat that the Motion of No Confidence was passed by a majority of 14:0. After the Motion of No Confidence was passed dispute applications were filed by the Respondent No.1 in each of the above Petitions and as indicated above, the said dispute applications were allowed principally on four grounds which are mentioned in the impugned order. The gist of the four grounds is as under :-

- i) The acknowledgment does not bear the date when the members received the notice nor the Panchanama gives the time when it started and ended.
- ii) Notice is not served on the Respondent No.1 in each of the above Petitions.
- iii) Notice not furnished by the Tahsildar to the Zilla Parishad, Panchayat Samiti, Collector and the Divisional Commissioner.
- iv) Rule 17 of the meeting Rules not followed in as much

as the motion was not proposed and seconded.

Taking the last ground first, the Additional Collector found fault with the process in passing of the Motion of No Confidence against the Sarpanch and Upa-Sarpanch on the ground of the same being not proposed and seconded and in support thereof relied upon the Full Bench judgment of this Court in *Viswas Pandurang Mokal's case (supra)*. In so far as the judgment of the Full Bench in *Vishwas Pandurang Mokal's case (supra)* is concerned, the issue before the Full Bench was as regards the applicability of the meeting rules to a meeting held for passing of a Motion of No Confidence and not whether Rule 17 of the Meeting Rules was directory or mandatory. As indicated above, the Full Bench of this Court in *Tatyasaheb Ramchandra Kale's case (supra)* wherein reference was precisely made to consider whether Rule 17 is directory or mandatory held that Rule 17 was directory and strict compliance thereof was not necessary. In view of the authoritative pronouncement of the Full Bench in *Tatyasaheb Ramchandra Kale's case (supra)* the said ground loses its force.

10. In so far as the third ground is concerned, that the notices are required to be served on the Zilla Parishad, Panchayat Samiti, Collector and the Revenue Commissioner in terms of Rule 2(2) of the Rules. A Learned Single Judge of this Court in *Yamunabai Laxman Chavan's case*

(*supra*) has held that omission to comply with Sub Rule (2) of Rule 2 will not vitiate the resolution passed in pursuance of the notice issued by the requisitionist. The Learned Judge has further held that the role of the Authorities mentioned in the said Rule only comes in after the Motion of No Confidence is passed, hence the said ground also loses its force. Even Rule 7 of the Meeting Rules has been held to be directory by a Learned Single Judge of this Court by the judgment in *Punjaji Shamrao Kadam's* case (*supra*).

11. Now coming to the second ground as mentioned above that the notice was not served on the Respondent No.1 in each of the above Petitions. On behalf of the Respondent Authorities, an affidavit has been filed by one Sandip Balasaheb Aher who is the Tahsildar Niphad. To the said affidavit is annexed the affidavit of the Talathi as also the Panchanamas in respect of the notice being served on the Sarpanch and Upa-Sarpanch. In the said affidavit, it has been stated by the Tahsildar that the Talathi, Kasbe Sukene, Taluka Niphad has served the notice of the Motion of No Confidence meeting on 03.09.2015 on all the 17 members. In so far as the Sarpanch is concerned, it is stated that at the time of service of notice the Sarpanch was not available at her residence, therefore, the Talathi served the copy of the notice on the adult member i.e. her nephew one Ajit Sanjay Thete who was available and also affixed a

copy of the notice on the outer door of her house and accordingly has drawn Panchanama. In so far as the Upa-Sarpanch is concerned, it is stated that the Upa-Sarpanch was not available at the time of the service of the notice and the notice was therefore served on an adult member i.e. his sister Sunita Shivaji Pagare who said that it may be given to her and she has also signed in acknowledgment of the same. The notice was also affixed on the outer door of his house. In so far as the Talathi, Santu Tryambak Gaike is concerned, it is stated by him in his affidavit that the notice of the Motion of No Confidence was served upon all the 17 members on 02.09.2015 and in so far as the Respondent No.1 in Writ Petition No.12011 of 2015 Shri. Kishor Balasaheb Kardak i.e. the Upa-Sarpanch is concerned, it is stated by the Talathi that the said notice was served upon his sister. As indicated above, to the said affidavit of the Talathi is annexed the Panchnama dated 03.09.2015 as also the report sent by the Talathi to the Tahsildar which is also dated 03.09.2015. The Panchnama discloses what has been stated in the affidavit by the Tahsildar namely that since the Sarpanch and Upa-Sarpanch were not available it was served on the adult members and also affixed on the outer door of their houses. The Sarpanch and Upa-Sarpanch have denied that the persons on whom the notices were served on their behalf are either their relations or that they are staying in the said village. However the said

contention of the Sarpanch and Upa-Sarpanch is not convincing. The fact however remains that the said notice was also pasted on the outer door of their houses.

12. In so far as the first ground is concerned, it is required to be noted that except the Applicants i.e. the Respondent No.1 to each of the above Petitions all others have received the notice. The Applicant Shri. Somnath Bhagwat as indicated above has been served with the notice personally, however he has also not remained present in the meeting dated 05.09.2015 along with the Sarpanch and Upa-Sarpanch, hence where his loyalties lie is clear from the said fact. It is too much of a coincidence that the three persons who are on one side have not received the notice and therefore did not remain present in the meeting held on 05.09.2015. In my view, in the light of the affidavit of the Talathi and the Tahsildar, there is no room for doubt that the notice was served on all the members on 02.09.2015. In so far as the Panchanama is concerned, the Additional Collector has taken a hyper-technical view, when the Panchanama records all that was required to be recorded in respect of the service of notice on the Sarpanch and Upa-Sarpanch. In my view, therefore, there is no substance also in the first ground.

13. It is not possible to accept the contention urged by the

Learned Counsel appearing for the Respondent No.1 that it is only after the notice cannot be served on the person personally that the other modes could be resorted meaning thereby that there has to be a time lag between the first stage and the second stage of adopting the other modes. It is required to be noted that the holding of a meeting of Motion of No Confidence in the light of the statutory mandate of holding of the meeting within seven days of the requisition assumes urgency and therefore the procedure as suggested by the Learned Counsel appearing for the Respondent No.1 cannot be followed. In any event, Rules do not contemplate such a procedure and the concerned Rule contemplates that if the person is not found then the same can be served on an adult member of the family. In so far as the discrepancy in the dates in the affidavit of the Tahsildar and the Talathi are concerned, in my view, much importance cannot be attached to the same as the Talathi had submitted his report to the Tahsildar on 03.09.2015 and the Tahsildar has therefore in his affidavit has mentioned the date of service as 03.09.2015 instead of 02.09.2015 and therefore the same is merely a mistake.

14. In so far as the contention of the Learned Counsel for the Respondent No.1 that the notice ought to have been served on an adult male member in terms of Rule 7 and therefore the notice served on the sister of the said Shri. Kishor Balasaheb Kardak cannot be said to be good

service, in my view is misconceived. Though Rule 7 postulates service on a adult male member. However Rule (2-B) of Motion of No Confidence Meeting Rules postulates that if the person is not found the notice can be served on a adult member of the family. Since the No Confidence Meeting Rules are special rules applicable to a meeting held for passing of a Motion of No Confidence, it is the said Rule (2-B) that would have to be applied and not Rule 7 which is part of the general meeting rules. In any event assuming that the notice has been served on a adult member the same can only be a irregularity and cannot vitiate the Motion of No Confidence.

15. In so far as the contention of the Learned Counsel for the Respondent No.1 that the notice was not of three clear days assuming that the notice is served on 02.09.2015 and the meeting being held on 05.09.2015, in my view, since the notice was served on 02.09.2015 and since the meeting was held on 05.09.2015, there was clear three days notice, assuming that the notice period was short the same can be a mere irregularity and would not vitiate the proceedings. A useful reference could be made to the judgment of a Learned Single Judge of this Court in the matter of *Prabhawati Vijaykumar Khivsara V/s State of Maharashtra and others*⁶. In the said case, a Learned Single Judge relied upon the judgment of the Apex Court in 1964 DGLS 116 (soft),

⁶ 2008(3) BCR 755

wherein the Apex Court held that merely because some Councilors had received less than three days notice, the same did not vitiate the proceedings, held that the same is merely an irregularity and would not vitiate the proceedings relating to the passing of the Motion of No Confidence.

16. In the instant case, it is required to be noted that the record discloses that the Sarpanch and Upa-Sarpanch were not found when the notice was sought to be served on them at their residence and therefore it was served on an adult member available at the time of service. Hence, in my view, there is a substantial compliance of Rule (2-B) and therefore it cannot be said that the outcome of the meeting has to be nullified on the said ground.

17. The said aspect has to be looked at another angle. It is required to be noted that the Motion of No Confidence was to be passed against the Sarpanch and Upa-Sarpanch. The importance of the said post to the villagers cannot be in doubt. The Sarpanch and Upa-Sarpanch can be said to be the first citizens in so far as the village is concerned. Hence, when a Motion of No Confidence is moved against a Sarpanch and Upa-Sarpanch, the same would obviously be the talk of the entire village and therefore it is impossible to believe that the Respondent No.1 in each of

the above Petitions was not aware of the meeting to be held on 05.09.2015 and therefore did not remain present. The same is also required to be considered in the background of the fact that the other 14 members out of the total 17 members have been served on 02.09.2015. When such a large number of members have been served with the notice, it is not possible to accept the case of the Sarpanch and Upa-Sarpanch that they were not aware of the meeting dated 05.09.2015. It is possibly seeing the writing on the wall, where an overwhelming majority of the members is against them that the Respondent No.1 in each of the above Petitions did not choose to remain present and therefore their absence cannot be attributed to the non-service of notice on them as is sought to be made out by them.

18. It is also required to be noted that the Sarpanch and Upa-Sarpanch are the pivots around which the village administration runs. In the instant case, as indicated above, as many as 14 members of the Gram Panchayat had requisitioned the meeting and had passed the Motion of No Confidence against the Sarpanch and Upa-Sarpanch. The functioning of the Gram Panchayat is therefore adversely affected and there is sufficient reason to believe that in view of the estrangement between the parties, there is virtually no administration in the village. The Gram Panchayats are the symbols of the local self government at the village level and

therefore a situation where the functioning of the Gram Panchayat has virtually come to a stand still, cannot be allowed to continue. The essence of democracy is that the persons who have lost the confidence of the majority have to go. In my view, since there is a substantial compliance in respect of the service of the notice on the Respondent No.1 in each of the above Petitions and since there is no substance in the other grounds on which the impugned order is based. The Motion of No Confidence in the facts of the present case cannot be nullified on a technicality.

19. For the reasons aforestated the impugned orders dated 02.11.2015 passed by the Additional Collector, Nashik would have to be quashed and set aside and are accordingly quashed and set aside. The Dispute Applications being Nos.42, 42 and 45 of 2015 filed by the Respondent No.1 in each of the above Petitions would stand dismissed. The above Writ Petitions are accordingly allowed. Rule is accordingly made absolute in the aforesaid terms, with parties to bear their respective costs.

[R. M. SAVANT, J]

After Pronouncement of Judgment:-

1. At this stage, the Learned Counsel for the Respondent No.1 in each of the above Petitions seek stay of the instant order. The Learned

Counsel appearing for the Petitioners opposes the same. In the facts and circumstances of the present case, the instant order is stayed for a period of six weeks.

[R. M. SAVANT, J]