

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4785 OF 2017
(Puja Dayanand Gangavane Vs. The State of Maharashtra and
others)

Mr.A.B.Kadethankar, learned counsel for the petitioner.
Mr.S.R.Yadav, learned AGP for the respondent/State.

(CORAM : M.S.Sanklecha, J.)

DATE : 19/04/2017

PER COURT :

1. This petition under Article 227 of the Constitution of India challenges the order dated 20/09/2016 passed by the Additional Commissioner, Aurangabad. The impugned order dated 20/09/2016 allowed an appeal filed by respondent Nos. 4 and 5 being the Sarpanch and Up-Sarpanch of Savangi (Benak), Tal.Mukhed, Dist. Nanded.

2. The impugned order arose out of the petitioner challenging before the Collector the election of Sarpanch and Upsarpanch (respondent Nos. 4 and 5) by raising a dispute u/s 35 of the Maharashtra Village Panchayat Act, 1958 (Act). By an order dated 09/03/2016, the Collector allowed the petitioner's dispute on the ground that in terms of Rule 4 of the Bombay Village Panchayats

(Sarpanch and Upsarpanch) Election Rules, 1964 (Rules), which provides a meeting called for electing the Sarpanch and Upsarpanch, would require a notice of 3 clear days to be given to every member of the Panchayat before holding the elections.

3. In the present facts, the meeting to challenge the Sarpanch and Upsarpanch took place on 21/04/2015. The petitioner had accepted the notice of the above meeting to elect the Sarpanch and Upsarpanch only on 20/04/2015. Thus the Collector held that the meeting held to elect the Sarpanch and Upsarpanch is in breach of the Election Rules. Consequently the election was set aside.

4. Being aggrieved, respondent Nos. 4 and 5, preferred an appeal u/s 33(5) to the Additional Commissioner, Aurangabad. This appeal has allowed by the impugned order dated 20/09/2016. The impugned order records the fact that on 17/04/2015, the Talathi attempted to serve the notice of the meeting to be held on 21/04/2015 upon the petitioner. However, the petitioner was not at home and her father in law refused to accept the same and also prevented the Talathi from pasting the notice on the residential house of the petitioner. In the above view, the Talathi prepared a panchanama and the impugned order brings on record the aforesaid

facts as under :-

“From perusal of the panchanama, minutes of the Special Meeting, affidavits of the panchas (Shankar Virbhadra Maskale and Shri Sambha Narba Sonawane), mobile call to the husband of respondent No.1. Etc., it appears that the respondent No.1, her husband and her father-in-law didn't accept service of notice intentionally. As there is refusal to accept the notice, there is no force in the contention that the notice was not served timely as per the law.”

5. In the above facts, the impugned order concludes that there was a deemed service of notice on 17/04/2015 and therefore the petitioner had clear 3 days notice of the meeting scheduled on 21/04/2015 to elect the Sarpanch and Upsarpanch of the Panchayat.

6. Mr.Kadethankar, learned counsel for the petitioner in support of the petition submits that it is an undisputed fact that the notice of the meeting dated 20/04/2015 was received by the petitioner only on 20/04/2015. Consequently, 3 days clear notice was not given to her of the meeting as required in view of Rule 5 of the Election Rules. Thus the meeting held on 21/04/2015 is bad in law and the consequent elections at that meeting of the Sarpanch and Upsarpanch is also not sustainable in law.

7. From the impugned order, it is clear that the Talathi had make an attempt to serve the notice upon the petitioner on 17/04/2015, however she deliberately made herself un-available and did not accept the notice. Further her family members who were at home on 17/04/2015 when notice was attempted to be served also refused to accept the same and also prevented the Talathi from pasting the notice on the residential home of the petitioner. Rule 5 of the Election Rules itself provides that if it is not possible to serve the member personally, then, service could be completed by giving notice to any adult male member of the family residing with the member of the Panchayat. The Rule further provides that in case, there is no such person to whom notice can be given or tendered, it shall be fixed on some conspicuous part of the house in which the member resides.

8. From the above, it is clear that the petitioner and her family members deliberately refused to accept the notice of the meeting or let the Talathi complete the service. Such non-acceptance of notice cannot give the petitioner a right to make a grievance that no notice was served upon her. She cannot take advantage of her own wrong. In view of the conduct of the petitioner in not accepting the notice on 17/04/2015 either by herself or through her family members and

further preventing the Talathi even pasting the same on a conspicuous part of the house, would dis-entitle the petitioner to any relief under the extra ordinary jurisdiction of this Court.

9. In view of the conduct of the petitioner and her family members on 17/04/2015, the notice would deemed to have been served on the petitioner on 17/04/2015 and the consequent meeting on 21/04/2015 was valid in law.

10. In the above view, the petition is dismissed. No order as to costs.

(M.S.Sanklecha, J.)