

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 697 OF 2017

Kalpana Kailas Kale

.. **Petitioner**

Versus

The State of Maharashtra and others .. **Respondents**

Mr. V. M. Mane, Advocate for the Petitioner.

Mr. P. K. Lakhotiya, A.G.P. for Respondent Nos. 1 and 2.

Mr. S. S. Shete, Advocate for Respondent Nos. 3 to 7.

Respondent No. 8 served.

CORAM: S. V. GANGAPURWALA, J.

DATE: 16th August, 2018

PER COURT :

1. Mr. Mane, learned counsel for the petitioner submits that the petitioner at the relevant time was functioning as a Deputy Sarpanch. The motion of no confidence was passed against the petitioner. The petitioner assailed the same before the Collector. The Collector dismissed the dispute filed by the petitioner. According to the learned counsel, the respondents have contended that the notice of no confidence motion was served upon the the brother-in-law of the petitioner. The petitioner was never served with any notice of no confidence motion. In absence of service of notice of no confidence, the no confidence motion

deserves to be set aside.

2. Mr. Shete, learned counsel for respondent nos. 3 to 7 submits that the petitioner was at the relevant time working as a Sarpanch. The petitioner was aware of the motion of no confidence moved against her. The notice of motion of no confidence was served upon brother-in-law of the petitioner. The notice of no confidence motion was also affixed on the notice board of the office of the Village Panchayat. Out of seven members five have voted in favour of the motion. The Collector has relied on the fact that majority of the members are against the petitioner and the majority has to be respected.

3. I have considered the submissions canvassed by the learned counsel for respective parties and also gone through the judgment.

4. The Collector in the impugned judgment has specifically observed that who is one Digambar Vitthal is not brought on record. It is a matter of record that the notice of motion of no confidence was not personally served upon the petitioner. It also does not appear from the record that the notice of motion of no confidence was affixed at the conspicuous place at the residence of the petitioner. The petitioner was

never served with the notice of no confidence motion nor any record exists to show that notice was served upon any adult member of the family of the petitioner residing with the petitioner. In absence of the service of notice of motion of no confidence upon the petitioner, the proceedings of no confidence would stand vitiated. This aspect has not been considered by the Collector though he came to the conclusion that notice of motion of no confidence was not served upon the petitioner. On technical grounds the no confidence motion has to be set aside. This does not prohibit the members from resorting to a fresh motion of no confidence.

5. Considering the aforesaid aspect of the matter the impugned judgment and order, so also, the no confidence motion against the petitioner is quashed and set aside.

6. Writ Petition accordingly allowed. No costs.

[S. V. GANGAPURWALA, J.]

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