

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6548 OF 2017

- 1 Digambar Virbhadra Yesge,
Age : Major,
Occupation : Agriculture & Sarpanch,
R/o Kawalgaon, Taluka Degloor,
District Nanded.
- 2 Sushma Vijay Biradar,
Age : Major,
Occupation : Household and Up-Sarpanch,
R/o Kawalgaon, Taluka Degloor,
District Nanded.

...PETITIONERS

-VERSUS-

- 1 The Additional Collector,
Nanded, District Nanded.
- 2 The Tahasildar, Degloor,
District Nanded.
- 3 Talathi, Sajja Kawalgaon,
Taluka Degloor,
District Nanded.
- 4 Gramsevak,
Gram Panchayat, Kawalgaon,
Taluka Degloor,
District Nanded.
- 5 Shakuntala Madhav Wadekar.
- 6 Padminbai Piraji Sonkamble.
- 7 Bhujangrao Hulla Wadekar.

- 8 Tipanna Suryakant Yesge.
- 9 Janabai Shesherao Chinchole.
- 10 Madhavrao Narsing Yelbugade.
- 11 Laxmibai Shankar Jangewad.

Res.5 to 11, all Aged : Major,
Occupation : Agriculture and
Members of Village Panchayat,
R/o Kawalgaon, Taluka Degloor,
District Nanded.

...RESPONDENTS

...
Advocate for the Petitioners : Shri Deshmukh Umakant B.
AGP for Respondents 1 to 3 : Shri B.A.Shinde.
Advocate for Respondent 4 : Smt.Y.M.Kshirsagar.
Advocate for Respondents 5 to 10 : Shri A.R.Nikam.
Advocate for Respondent 11 : Shri R.B.Dhaware.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 02nd July, 2018

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 Petitioner No.1/ Sarpanch and Petitioner No.2/ Up-Sarpanch
are aggrieved by the judgment of the Additional Collector, Nanded dated
17.04.2017 by which, Dispute bearing No.2017/GB/Desk-1/GPN/appeal-
13 filed by the Petitioners, challenging the passing of the no-confidence

motion against these Petitioners, has been rejected.

3 The learned Vacation Judge of this Court, by order dated 09.05.2017, has directed status-quo to be maintained.

4 I have heard the strenuous submissions of the learned Advocates for the respective sides.

5 Taking into account the conspectus of the matter, I find that the following issues need adjudication :-

- (I) When the law prescribes that a special meeting with regard to the no-confidence motion is to be held within seven days, whether, a meeting held within two days can be said to be just and proper?
- (II) Though the no-confidence motion has been passed by vote count of 6:0, whether, the notices served on the real brother of Petitioner No.1 and the brother-in-law of Petitioner No.2, can be said to be proper service on these Petitioners?

6 There is no dispute that both these Petitioners, who are residents of Kawalgaon, Taluka Degloor, District Nanded were elected as members of the Village Panchayat, Kawalgaon for a period of five years on 13.11.2015 and subsequently, as the Sarpanch and Up-Sarpanch. On 20.02.2017, Respondent Nos.5 to 10 (six members) moved the requisition notice seeking to introduce a no-confidence motion against the Petitioners.

The Tahasildar received the motion on 20.02.2017 and by issuing notices to the Petitioners on the same day, the Tahasildar convened a special meeting on 22.02.2017. Both the Petitioners and one of their supporter, Respondent No.11, did not remain present in the said meeting held on 22.02.2017 and the no-confidence motion is said to have been passed by a vote count of 6:0. Only six members were present and voted.

7 The Petitioners filed their Dispute on 23.02.2017 and by the impugned judgment, the District Collector rejected it.

8 The contention of the Petitioners is that as per Rule 4 of the Bombay Village Panchayats (Meetings) Rules, 1959 (herein after referred to as "the Meeting Rules, 1959"), at least three days clear notice is to be given to a person, who is supposed to face the no-confidence motion. It is, therefore, sought to be canvassed that unless there are three clear days in between the date of service of notice and the date of the special meeting, such special meeting cannot be said to be convened in accordance with law.

9 The learned AGP appearing for the State Authorities and the learned Advocates appearing for the contesting Respondents submit that the said position, as emerging from the Meeting Rules, 1959, would not be applicable to a meeting convened under the Bombay Village Panchayats Sarpanch and Up-Sarpanch (No Confidence Motion) Rules, 1975 (herein after referred to as "the Rules, 1975").

10 I find that the learned Full Bench of this Court, in the matter of Shri Viswas Pandurang Mokal and others vs. Group Gram Panchayat Shihu and others, 2011 (3) All MR 778, has concluded in paragraph 18 that the provisions of the Meeting Rules, 1959 and Rule 17 in particular, would apply to a meeting called under Section 35 of the Maharashtra Village Panchayats Act as regards the manner and the right of a Sarpanch or Up-Sarpanch, as the case may be, to exercise his right to speak and participate in the meeting. Whether, Rule 17 can be said to be mandatory or directory was not the question addressed to the learned Full Bench and hence, the same has not been dealt with. As such, it was concluded that unless there is a specific provision in the Rules, 1975, the provision under the Meeting Rules, 1959 would apply. Only when there is a provision in the 1975 Rules, the corresponding provision under the Meetings Rules, 1959 would not be applicable.

11 Under Rule 2(2-B) of the Rules, 1975, a notice issued by the Tahasildar is to be served upon the Sarpanch or Up-Sarpanch, as the case may be. The Rules, 1975 do not prescribe as to how many clear days notice should be given to such a Sarpanch or Up-Sarpanch, though Section 35 of the Maharashtra Village Panchayats Act requires that a notice for convening such special meeting has to be issued and the Tahasildar has to ensure that the meeting is convened within seven days from the date of the requisition motion.

12 In Hindurao Dnyanu Shirtode and another vs. The State of Maharashtra and others, 1998 (3) Mh.L.J. 622, it has been concluded by the learned Division Bench of this Court that the Meeting Rules, 1959 and the Rules, 1975 are found to have different objects. All the Meeting Rules of 1959 would not apply to a no-confidence motion, to the extent of the corresponding provisions found in the Rules, 1975.

13 There is no dispute that there is no time prescribed under the Rules, 1975 as regards the notice period to be accorded to a person facing the no-confidence motion. In Hindurao Shirtode (supra), this Court has concluded that if a particular provision is not found under the Rules, 1975 the provision available in the Meeting Rules, 1959 to deal with a similar/ identical situation can be pressed into service. If there is a provision available under the Rules, 1975, then, the corresponding provision under the Meeting Rules, 1959 will not be applicable. The learned Division Bench dealt with the issue of three clear days notice prescribed under Rule 4 of the Meeting Rules, 1959, which mandated at least three days notice for convening a regular meeting.

14 In the matter of Mandabai Balnath Rohom and others vs. Ashok Fakira Chandar and others, 2002 (1) Mh.L.J. 916, this Court has held that as Rule 2 of the Rules, 1975 does not mandate particular number of days as notice period for convening a special meeting for the

no-confidence motion, a meeting convened even within a period of one day, cannot be said to be illegal. Paragraphs 10, 11 and 12 of Mandabai judgment (supra) read as under :-

"10. Plain reading of Section 35(2) of the said Act discloses that the action on the part of the Tahsildar which is contemplated under Sub-section (2) of Section 35 is expected within a period of seven days. The question which arises for consideration is whether this action is restricted to the issuance of notice convening meeting to deal with the no-confidence motion or would also include holding of such meeting itself. As already observed above, the Government has framed No-confidence Motion Rules, which deals with the procedural aspect of the proceedings relating to no-confidence motion as and when moved by the members of the panchayat. Sub-rule (3) of Rule 2 of the said No-Confidence Motion Rules cast duty upon the Tahsildar to act swiftly on receipt of the notice under Section 35(1) of the said Act. It provides, as observed above, that the Tahsildar shall immediately, on receipt of notice under Sub-rule (1), satisfy himself that the notice has been given by not less than one-third of the total number of members who are for the time being entitled to sit and vote at any meeting of the panchayat. The said Sub-rule further provides that on such immediate satisfaction of the Tahsildar regarding the notice having been given by not less than one-third of the total number of members who are for the time being entitled to sit and vote at any meeting of the panchayat, shall convene a special meeting for the purpose within seven days from the date of receipt of such notice. If one reads Section 35(2) of the said Act along with the Sub-rule (3) of Rule 2 of the said No-confidence Motion Rules, it is apparent that the action on the part of the Tahsildar, which is contemplated under Sub-section (2) of Section 35 of the said Act is not only restricted to the issuance of notice but, also relates to the holding of meeting of the Panchayat pursuant to the receipt of

notice by him under Section 35(1) of the said Act. At this stage, it is also to be noted that the Meetings Rules, provide for a period of three days for convening an ordinary meeting and one day for convening special meeting. It cannot be disputed that the meeting to deal with the No-confidence Motion has to be a special meeting and in fact, it is so described in Sub-rule (3) of rule 2 of the said No-confidence Motion Rules. The expression "Special meeting" found in the Rules framed under various provisions of the Section 176 of the said Act, is to be given same meaning in all such rules framed by the government under the said Act, unless the context requires otherwise. The expression used in subsection (2) of Section 35 of the said Act regarding such meeting dealing with the No-confidence Motion, is also "special meeting". The said expression has not been defined either in the Act or the Rules made thereunder. However, the very expression itself signifies that it is the meeting convened for a very purpose which is not usual or common but exceptional in nature or being for specific purpose. Besides, while interpreting the provisions broadly relating to the No-confidence Motion and procedure in relation thereto in Panchayat, one cannot forget the following observations of the Full Bench in Chaitram's case ;

"We must not so interpret the provisions of the Act as to defeat the intention of the Legislature that a person who had lost the confidence of the members should not continue in office."

11. From the fact that the Section 35(2) of the said Act specifically provides an action on the part of the Tahsildar within time frame programme and further the legislative intention being made clear by the rules made under the said Act to the effect that the Tahsildar has to act immediately upon receipt of such notice under Sub-section (1) of Section 35 and has to get himself satisfied that the notice has been given by not less than one-third of the total number of members who are for the time being entitled to sit

and vote at any meeting of the panchayat and thereupon, shall convene special meeting for the purpose for which the notice was served within seven days from the date of receipt of the notice, disclose that not only the issuance of notice for convening special meeting has to be issued within seven days but, the such meeting also should be held within seven days of the receipt of the notice by the Tahsildar. Considering the provisions relating to the period prescribed for holding ordinary and special meeting in the Meetings Rules, which provide for three days for ordinary meeting and one day for convening special meeting and Sub-rule (3) of Rule 2 of the No-confidence Motion Rules provides for convening the meeting within seven days from the date of receipt of notice, it is to be held that such meeting is necessarily to be held within seven days. That apart, Section 35(2) of the said Act, on the face by itself provides that action of the Tahsildar of issuing notice as well as holding meeting is to be within the period of seven days. That's why Sub-section (2) of Section 35 of the said Act opens with the expression "within seven days from the date of receipt". It is to be noted that the expression "convene" in Section 72(2) of the Samitis Act, has been interpreted by the Full Bench bearing in mind the provisions contained in Section 49 as well as 111 along with the said Section 72 of the Samitis Act. It has been observed therein thus:-

"Sub-section (2) of Section 49 almost in the same terms as Subsection (2) of Section 72. This required the President to convene a special meeting of the Zilla Parishad to consider the motion of no-confidence within ten days of its receipt. Under Sub-section (4) of Section 111, ten days notice of a special meeting has to be given. If, therefore, the word "convene" implied that the meeting must be held within ten days, then it would have not been possible to hold any meeting for considering a motion of no-confidence, for if the meeting was to be held within ten days, then clear days' notice of it could not have been given and if notice of a shorter period was given, the meeting would have been illegal, see *Haribhau v.*

State. The above meaning did not, therefore, fit in in the context, for it would have made Section 49(2) ineffective and nugatory. On the other hand, if "convene" in this provision meant call or summon, then it was possible to hold the special meeting after giving the requisite notice. The Legislature could not have used this word in a sense in which it would have made the section inworkable. It follows that in Section 49(2) "convene" meant call or summon; and it must bear the same meaning in Sub-sections (2) and (4) of Section 72, because the same word cannot have two different meanings in two provisions of the same Act almost identical in terms and enacted for the same purpose."

12. *It was sought to be contended that the rules relating to convening of the meeting do not apply to the meetings held to deal with the No-confidence Motion and rules which are to be applied to such cases are No-confidence Motion Rules, 1975. There cannot be a dispute that the procedure to be followed while dealing with the No-confidence Motion is prescribed under the No-confidence Motion Rules. However, those rules themselves and in particular, Sub-rule (3) of Rule 2 provide that the special meeting for the purpose shall be convened within seven days from the date of the receipt of such notice. The expression "special meeting" under these rules, cannot have a different meaning than the same would have in other rules framed under the provisions of Section 176 of the said Act, unless the context otherwise requires. The Meetings Rules, deal with ordinary meeting as well as special meeting and in case of special meeting, there is specific provision that such a meeting can be convened within a period of one day. No doubt, those rules prescribe notice in that regard to be issued by the Secretary, but it cannot be ignored that in terms of those rules, special meeting can be held within a period of one day. Issuance of notice is meant to convey the fact of scheduled meeting to the members. It is immaterial whether it is issued by the secretary or Tahsildar as those notices will have to be issued by*

different authorities in accordance with the authority in that regard given by various provisions in the statute and rules made thereunder. However, the fact remains that the special meeting can be convened within a period of one day. The intention of Legislature under Section 35 of the said Act is clear that when the notice regarding No-confidence Motion is served upon the Tahsildar, the Tahsildar has to act swiftly and immediately and has to get himself satisfied that such notice has been served by one-third of the total number of members of the panchayat, and thereafter, to hold necessary meeting to deal with such motion."

(Emphasis supplied)

15 Considering the above, when a specific rule under the Rules, 1975 with regard to the notice period having not been provided, one can safely rely upon the provisions of the Meeting Rules, 1959 in view of the law laid down in Hindurao Shirtode (supra) and Mandabai Rohom (supra). Rule 5(2) of the Meeting Rules, 1959 provides that the Secretary shall, at least one clear day before the date fixed for a special meeting, send or cause to be sent to all the members an intimation of the date, time and place of such special meeting and of the business to be transacted thereat. Hence, in the absence of any notice period being prescribed under the Rules, 1975, Rule 5(2) of the Meeting Rules, 1959 would be applicable.

16 As such, while deciding the first issue raised by the Petitioners, that the special meeting was illegally convened on 22.02.2017 in view of the requisition notice dated 20.02.2017, I hold that the same cannot be faulted, though it may appear that the time period for the

Sarpanch or the Up-Sarpanch to prepare himself for facing such no-confidence motion would be quite less. Considering the view taken in Hindurao Dnyanu Shirtode judgment (supra) and the view taken in Mandabai Balnath Rohom judgment (supra), no fault can be found with convening of a special meeting within two days from the requisition notice.

17 Insofar as the second issue that the Petitioners were not served with notices of the special meeting is concerned, it is necessary to peruse the record and proceedings to assess as to whether, these Petitioners had raised a specific ground before the Collector that they were never served with the notices of the special meeting.

18 From the record and proceedings, it appears that the brother of Petitioner No.1/Sarpanch was served with the notice on 21.02.2017 whereas, the brother-in-law of Petitioner No.2 was served with the notice on 21.02.2017. The Dispute preferred by the Petitioners before the Collector would indicate from paragraph 4 that both these Petitioners had taken a specific stand that they were never served with the notice of the special meeting and as they had no knowledge of the special meeting having been convened by the Tahasildar, they did not remain present for the meeting.

19 The learned Advocates appearing for the Respondents/ Village Panchayat members, who have voted in favour of the no-

confidence motion, submit that the brother and brother-in-law of these Petitioners could have very well declined to accept the notices by contending that they would not be in a position to submit or transmit the said notices to the Petitioners.

20 Notwithstanding the above contention, Rule 2(2-B) of the Rules, 1975 prescribes a particular procedure to be followed for serving the notice of a special meeting on the Sarpanch or Up-Sarpanch. Rule 2(2-B) reads as under :-

"2(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 be served or tendered or delivered to the concerned Sarpanch or Upa-Sarpanch."

21 Though the learned AGP and the learned Advocates appearing for the contesting Respondents have canvassed that Rule 2(2-B) may be directory in nature and not mandatory, it cannot be ignored that a person, who is democratically elected, can not be compelled to face a no-confidence motion pursuant to notice issued by the Tahasildar, who may

act highhandedly. When a procedure is prescribed for serving a notice of an important subject as that of a no-confidence motion, it is always in the interest of justice and fair play that the procedure is followed in order to avoid any deficiency in the said proceeding.

22 There is no dispute that the Tahasildar has not made any noting on the notice that these Petitioners were not available or that they were hiding or that any adult member of their family residing with them, has refused to accept the notice. The procedure required to be followed is that a person to whom the notice is addressed, should be served by the Tahasildar. The first option is to serve such a person. If he is not found at his residence, it can be tendered to any adult member of his family residing with him, as a second option. As a third option, in the event the addressee refuses to accept the notice or no adult member is available, it is deemed to be served upon him after it is affixed on the outer door or a conspicuous part of his house in the presence of two witnesses. By exercising any of these three options, the notice is deemed to be served. There is no option prescribed to search for a relative of such a Sarpanch or Up-Sarpanch, who may not be residing with him in the house in which such Sarpanch or Up-Sarpanch ordinarily dwells.

23 The Petitioners have specifically contended that neither the brother of Petitioner No.1 nor the brother-in-law of Petitioner No.2 reside with them in a common dwelling. The Tahasildar cannot demonstrate that

the brother of Petitioner No.1 and the brother-in-law of Petitioner No.2 reside with these Petitioners. When it was specifically contended that these two persons do not reside with the Petitioners in the same houses, the Tahasildar should have pointed out whether, the brother and brother-in-law reside in the same houses of the Sarpanch or Up-Sarpanch, respectively. Even before this Court, none of the learned Advocates for the Respondents can point out from any document that these two persons were the adult members of the families of the Sarpanch and Up-Sarpanch, who were living together in the same houses.

24 It is now contended by the learned Advocate appearing for the contesting Respondents/ Members, who have voted in favour of the no-confidence motion, that the brother and the brother-in-law of these Petitioners reside along with them in their own houses. However, I do not find anything emerging from the record to indicate that the Tahasildar had evidence to establish that the brother of Petitioner No.1 and the brother-in-law of Petitioner No.2 were residing in the same houses. If that be so, the Tahasildar should have brought details about these aspects on record before the Collector to indicate that as they were residing in the same houses, the notice was served on them as they are the adult members of the families residing together.

25 Considering the above, even from the impugned order, it does not appear that the Collector has considered any documentary evidence

that the brother of the Sarpanch and the brother-in-law of the Up-Sarpanch were staying in their houses and therefore, service on them is deemed to be service on these Petitioners.

26 A strong reliance is placed upon the judgment of this Court in the matter of Prabhawati Vijaykumar Khivsara and another vs. State of Maharashtra and others, 2008 (2) Mh.L.J. 274, by the learned AGP and the learned Advocates appearing for the contesting Respondents. It is contended that this Court has concluded that, for minor deficiency, the decision of the majority cannot be ignored in a democratic set up. Specific reliance is placed upon paragraphs 5 to 18 of the said judgment, which read as under :-

- "5. *Shri V.M. Chate, learned Counsel relies on the Judgment of the Division Bench of this Court in the case of Ashok Krishnakant Mehta v. State of Maharashtra and Ors. (2000 (4) Mh.L.J. 197) in support of the proposition that the weight of numbers is not an answer to a fundamental defect and the Court ought not to countenance a suppression of the right to speak by a supposed justification on the basis of the number who cast their lot in support of a resolution.*
6. *He also relies on the Judgment of this Court in the case of Indubai Vedu Khairnar v. State of Maharashtra and Ors. (2003 (2) Bom.C.R. 239) in support of the proposition that the service of notice on the person against whom no-confidence motion is being considered, is mandatory and that non-service of such notice would vitiate the proceedings.*
7. *Shri R. N. Dhorde, learned Counsel appearing on behalf of Respondent Nos. 6 to 11 in both the writ petitions, submits that motion of no-confidence has*

been passed by majority of six against one. He submits that the notice was duly served on the son of the Sarpanch-petitioner in Writ Petition No. 6811/2007, as it was reported that the petitioner had gone for pilgrimage to Zarkhand. He further submits that both the learned authorities below, have concurrently held against the petitioners. Therefore, under Article 227 of the Constitution of India, no interference is warranted in the present petitions.

8. In the case of *Indubai Vedu Khairnar v. State of Maharashtra and Ors.* (supra), the learned Single Judge of this Court has held that a notice on the member against whom no confidence motion is moved has to be validly proved.
9. Insofar as the reliance on the Judgment of the Division Bench of this Court in the case of *Ashok Krishnakant Mehta v. State of Maharashtra and Ors.* (supra), is concerned, in the Meeting held for considering no-confidence motion, one of the members of the Grampanchayat had sought permission to address the Meeting. However, the same was rejected by the Tahsildar and being aggrieved thereby, the matter was carried up to this Court. In the said case, upon considering the relevant Rules, the Division Bench of this Court has reached to the conclusion that it was necessary to follow the Rules, which requires that the member should be given an opportunity to address the Meeting. It was held that non following of the said Rules, vitiate the proceedings of the Meeting. It has been held that the weight of numbers is not an answer to a fundamental defect and that right of a member to speak, cannot be suppressed by a authority, on the basis of number who cast their vote in support of a resolution.
10. Insofar as the petitioner in Writ Petition No. 6895/2007 is concerned, the Upsarpanch was present in the Meeting and he had also addressed the Meeting.
11. Insofar as Writ Petition No. 6811/2007, is concerned, upon perusal of the record, the authorities below i.e. the Collector and Commissioner have concurrently held that it was duly proved that the Gramsevak has duly served the notice of the Meeting upon the son of

the petitioner. Normally, this Court, while invoking the jurisdiction under Article 227 of the Constitution of India, would not interfere with the concurrent finding of fact.

12. Now, therefore, the only question that requires to be answered is, as to whether by non-service of the notice of a Meeting on the petitioner personally and the service of the notice on her son, whether the proceedings of no-confidence motion are vitiated or not?
13. The Apex Court in the case of *K. Narasimhiah v. H.C. Singri Gowda and Ors.* (AIR 1966 SC 330), had an occasion to consider as to whether the provisions regarding giving of three days notice of a special meeting to discuss resolution to express no-confidence is mandatory or not. In the said case, a notice of no-confidence motion was moved against the President. For considering the said notice of no confidence motion, a meeting was conveyed. As per the provisions of Section 27(3) of the Mysore Town Municipalities Act, 1951, it was required that the Municipal Councillor should receive three clear days notice of a special general meeting. However, some Municipal Councillor's had not received the three days clear notice. In the said meeting, out of 20 Councillors, 19 attended the meeting. Out of these 19, 15 voted in favour of the resolution of no-confidence motion. In this factual background the Apex Court has considered the question as to whether such a statutory provisions should be considered as to be mandatory.
14. The Apex Court in the paragraph 14 of the said Judgment, has observed thus:

(14) It is necessary also to remember that the main object of giving the notice is to make it possible for the Councillors to so arrange their other business as to be able to attend the meeting. For an ordinary general meeting the notice provided is of seven clear days. That is expected to give enough time for the purpose. But a lesser period - of three clear days - is considered sufficient for "special general meetings" generally. The obvious reason for providing a shorter period of such meetings is that these are considered

more important meetings and Councillors are expected to make it convenient to attend these meetings even at the cost of some inconvenience to themselves. Where the special general meeting is to dispose of some matter of great urgency it is considered that a period of even less than three clear days notice would be sufficient.

15. The Apex Court in paragraph 20 of the said Judgment, has further observed thus:

(20) We are, therefore, of opinion that the fact that some of the Councillors received less than three clear days' notice of the meeting did not by itself make the proceedings of the meeting or the resolution passed there invalid. These would be invalid only if the proceedings were prejudicially affected by such irregularity. As already stated, nineteen of the twenty Councillors attended the meeting. Of these 19, 15 voted in favour of the resolution of no-confidence against the appellant. There is thus absolutely no reason for thinking that the proceedings of the meeting were prejudicially affected by the "irregularity in the service of notice.

16. It could thus be seen that the Apex Court has clearly held that the proceedings would be considered to be invalid by an irregularity only when it is shown that such an irregularity has prejudicially affected the rights of the parties.
17. From the perusal of the Judgments, relied upon by Shri Chate, the learned Counsel, it does not appear that the aforesaid judgment of the Apex Court, has been brought to the notice of this Court. In that view of the matter and in view of a clear pronouncement of law by the Apex Court on the issue involved, I find that the reliance placed on the aforesaid judgments, would be of no use to the petitioners.
18. It could clearly be seen from the records that it has been proved that the son of the present petitioner in Writ Petition No. 6811/2007 was duly served with the notice and the notice could not be served on her as it was informed that she had gone for pilgrimage to Zarkhand. Since the motion has been carried by 2/3rd majority, which is requirement under the

statute, no prejudice could be said to have been caused to the petitioner in Writ Petition No. 6811/2007."

27 There can be no dispute with the view taken by this Court in Prabhawati Khivsara case (supra) that when a person has lost the trust and faith of the Village Panchayat, he/she must respectfully accept the said decision and walk out of the Village Panchayat paving way for the election of a new Sarpanch or Up-Sarpanch, as the case may be. It also cannot be debated that a minor deficiency in serving the notice which would cause no prejudice to the Sarpanch or Up-Sarpanch, cannot be considered as being fatal to the no-confidence motion, which has been passed by 2/3rd majority.

28 In Prabhawati Khivsara case (supra), the son of the Sarpanch was served with the notice and he was residing in the house of the Sarpanch. It was proved that the said Sarpanch had left for a pilgrimage in the State of Jharkhand. The son being an adult member and undisputedly living in the same house was, therefore, served with the notice and this documentary evidence was before the Court in the case of Prabhawati. In the instant case, neither the Tahasildar has prepared any record, nor has the Collector arrived at a finding on facts as to where were these Petitioners and what were the circumstances, in which, they were not available for service of notice.

29 I do not find anything in the record to suggest or establish

that these two Petitioners had left their houses or were not found and the brother and the brother-in-law were residing in their houses and hence, were served with the notices. Without any documentary evidence, a bare word of the mouth cannot take the shape of documentary evidence as humans may lie, but documents would never lie. There was no impediment for the Tahasildar to follow the procedure laid down in Rule 2(2-B) of the Rules, 1975 and cause a proper service over the Sarpanch and Up-Sarpanch. It cannot be ignored that these two Petitioners have taken the stand that they had no idea about the special meeting convened, they had no knowledge of the said meeting and therefore, they never knew that such a special meeting was being convened on 22.02.2017. Consequentially, they were absent on the ground of having no knowledge about the meeting and the meeting was conducted in their absence. Prejudice is, therefore, writ large and these Petitioners have suffered no-confidence motion in the above stated circumstances.

30 In view of the above, this Writ Petition is allowed. The impugned order passed by the District Collector dated 17.04.2017 is quashed and set aside. The business transacted in the meeting dated 22.02.2017 by virtue of the notice dated 20.02.2017 stands set aside for being vitiated.

31 Needless to state that as the no-confidence motion has been set aside on the ground of no service of notice on the Petitioners, this

would not be an impediment in the path of any no-confidence motion, if moved by the members of the Village Panchayat pursuant to this judgment.

32 The record and proceedings be returned to the learned AGP.

33 Rule is made absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)