

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

911 WRIT PETITION NO. 7682 OF 2017

MANGAL SUBHASH CHATSE
VERSUS
THE ADDITIONAL COLLECTOR HINGOLI AND OTHERS

...
Advocate for Petitioner : Mr. S.S. Gangakhedkar
AGP for Respondents 1 and 2: Mr. S.N. Morampalle
Advocate for Respondents 4 to 9: Mr. S.G. Dodya
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CORAM : V. K. JADHAV, J.
DATED : 15th MARCH, 2018

PER COURT:-

1. By consent of the parties, heard finally at admission stage.
2. By the instant writ petition, the petitioner seeks to challenge the no confidence motion allegedly carried out on 21.03.2017 and which was subsequently held to be valid by respondent No.1, by dismissing the dispute filed by the present petitioner, vide order dated 08.05.2017.
3. Brief facts giving rise to the present writ petition are as follows:-
 - a) The petitioner got elected as a member of Gram Panchayat of village Pimpri Ling, Tq. Sengaon, District Hingoli alongwith respondent Nos. 4 to 9. The said Gram Panchayat is having total

strength of 7 members. Thereafter, the petitioner also got elected as the Sarpanch of the said Gram Panchayat for a period of five years. The term of the Gram Panchayat is to expire in the year 2020.

b) On 17.3.2017 respondent Nos. 4 to 9 have moved a requisition before respondent No.2 for calling upon no confidence motion against the petitioner. Accordingly a notice of motion of no confidence in respect of the special meeting issued by respondent No.2 was served on the petitioner. The said notice was served on the petitioner on 18.3.2017 by affixing the same on the conspicuous part of the house of petitioner. The said motion was successfully carried out. The petitioner has challenged the same by filing dispute before respondent No.1 Additional Collector. By the impugned order dated 8.5.2017, respondent No.1 Additional Collector has rejected the said dispute. Hence, this writ petition.

4. Learned counsel for the petitioner submits that the petitioner was initially operated for heart disease and during the period from 16.3.2017 to 22.3.2017 she was suffering from viral fever and she had taken the treatment in the hospital at Aurangabad. Learned counsel submits that in view of the same, there is no valid service of notice of meeting scheduled for carrying out no confidence motion and there is no compliance of the provisions of Sub-Rule (2-B) of

Rule 2 of The Bombay Village Panchayats Sarpanch and Up-Sarpanch (No Confidence Motion) Rules 1975. However, respondent No.1 Additional Collector has not considered the same and rejected the dispute.

5. Learned counsel appearing for respondent Nos. 4 to 9 submits that there is compliance of provisions of Sub-Rule (2-B) of Rule 2 of the Rules of 1975. There is panchnama drawn by the concerned Talathi mentioning specifically therein that the house of the petitioner was in locked condition and even on inquiring with the neighbours, it was informed that the whereabouts of the petitioner are not known. Consequently, the notice was affixed on the conspicuous part of the residential house of the petitioner in compliance with provisions of Sub-Rule (2-B) of Rule 2 of the Rules of 1975. Learned Additional Collector, has considered the same and rejected the dispute raised by the petitioner. There is no substance in the writ petition.

6. I have also heard learned A.G.P. for respondent Nos. 1 and 2.

7. It appears that though the petitioner has produced medical certificate dated 22.3.2017 pointing out thereby that she was taking treatment during the period from 16.3.2017 to 22.3.2017 due to some viral fever in the hospital at Aurangabad, however, on perusal of said

medical certificate, it appears that she was taking treatment as an Out Door Patient (O.P.D.). It has been specifically mentioned in the said certificate that the petitioner was not hospitalized during that period. After going through the contents of the panchnama drawn by the Talathi, it appears that the house of the petitioner was in locked condition and her whereabouts also could not be traced out. Consequently, the concerned Talathi has affixed the notice of meeting on the conspicuous part of the residential house of the petitioner and also drawn panchnama to that effect.

8. In terms of provisions of Sub-Rule (2-B) of Rule 2 of the Rules of 1975, every notice wherever it may be practicable, be served by delivering or tendering it to the Sarpanch or Up-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, Up-Sarpanch or such adult member, as the case may be, refused 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 Up-Sarpanch ordinarily dwells.

9. It appears that the notice served in this matter shall be deemed to be served on the petitioner by affixing it on the conspicuous part of

her house. The petitioner has not disputed that she is not residing in the said house. It has been specifically stated in the panchnama that the house of the petitioner was in locked condition. Consequently, the notice could not be served on the adult member in compliance with the provisions of Sub-Rule (2-B) of Rule 2 of the Rules of 1975. Thus, there was no other option left to the Talathi than to affix the notice on conspicuous part of the residential house of the petitioner and the same has been done by the Talathi in presence of panch witnesses by drawing panchnama to that effect. In view of above, I find that no case is made out by the petitioner to interfere in the impugned order passed by respondent No.1 Additional Collector. There is no substance in the writ petition. The writ petition is hereby dismissed. No costs.

(V. K. JADHAV, J.)

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