

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

WRIT PETITION NO. 13001 of 2017

Lalita Sangram Haygale,
age 49 years occupation Sarpanch,
Gram Panchayat, Kasrali Taluka Biloli District Nanded.

...Petitioner

VERSUS

1. Tahsildar/Election Officer,
Tahsil Office, Biloli Taluka Biloli District Nanded.
2. Sheshrao S/o Babarao Lanke, age major
3. Kishan S/o Gangaram Mehetre, age major
4. Yakhub S/o Babumiyan Shaikh, age major
5. Subhash S/o Babarao Yamulwad, age major
6. Sangram S/o Balaji Ijulkanthe, age major
7. Rejabai Haibati Ingle, age major
8. Kalpala Madhav Dattapalle, age major
9. Nagamani Shivanand Somase, age major
10. Surekha Maklod, age major
11. Dipak S/o Gangadhar Sandlod, age major
12. Sarubai Dattatraya Gandamwad, age major

Nos. 2 to 12 agriculturists by occupation and
R/o Kasrali Taluka Biloli District Nanded.

13. Gram Sevak,
Gram Panchayat, Kasrali Taluka Biloli District Nanded
14. The Collector,
Nanded Taluka and District Nanded.

...Respondents

Mr Shamsundar B. Patil and Mr Subhash Chillarge, Advocates for petitioner.

Mr S.P. Tiwari, Asstt. Govt. Pleader for respondents No.1 & 14

Mr U.B. Bilolikar, Advocate for respondents No. 2 to 10

Mrs Y.M. Kshirsagar, Advocate for respondent No.13

CORAM : SUNIL P. DESHMUKH, J.

DATE : 30th August, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally with consent.

2. Petitioner aggrieved by order dated 24th October, 2017 rejecting the dispute raised by him against no confidence motion passed against her on 15th May, 2017.

3. Contention of the petitioner is that the meeting for no confidence motion held has been bad since the same is without service of notice on the petitioner. He submits that observation of the Collector in respect of the same about notice had been served in accordance with the procedure, is absolutely away from factual position.

4. He submits that no notice had ever been served upon petitioner and/or in the manner prescribed in Rule 2-B of the Maharashtra Village Panchayats Sarpanch and Upa Sarpanch (No

Confidence Motion) Rules, 1975 (hereinafter referred to as "The Rules" for short). He submits that Rule 2-B of the Rules requires wherever it is practicable, notice should be served on the *Sarpanch* or *Upa Sarpanch*, to whom it is addressed or, where such person cannot be found, it be tendered to any adult member of his family residing with him and if no such adult member can be found or, he refuses to accept the notice, it shall be served by affixing it, in the presence of two witnesses on outer door or some other conspicuous part of the house in which such *Sarpanch* or *Upa Sarpanch* is residing. The Rule further provides that notice served in this manner shall be deemed to be served on the concerned *Sarpanch* or *Upa Sarpanch*.

5. He further submits that no such procedure appears to have been followed while serving notice of no confidence motion against petitioner and that is amply borne out from the report dated 12th May, 2017 made to Tahsildar by the Serving Officer, Tahsil Office, Biloli, which refers to that the *Sarpanch* had not been found at Kasrali and it transpired that she was at her residence at Biloli and, therefore, he had been to Biloli. However, she was not there. Thereupon, he got information that her husband is in his Typewriting Institute situated near Shivaji statue. Therefore, he went there and handed-over the notice to her husband, who read the notice and had directed his subordinate to sign the notice and

accordingly the person bearing name, Avinash Laxmanrao Mahajan R/o Pokharni had acknowledged the receipt of the notice. Learned counsel for petitioner submits that from such a report, it is clear that the notice had not been served on petitioner or any adult member of her family and report had been made about the same having been served on the person who is not a family member. He submits that such service is not contemplated. Referring to that since none of the modes prescribed in Rule 2-B is followed for service of notice on petitioner, there is no question that petitioner being deemed to have been served. He submits, rule does not prescribe that by such a deemed mode petitioner can be considered to have been served. While this is the position, the Collector yet went on to observe that all the procedure regarding service of notice had been followed.

6. He submits that meeting of no confidence motion is vitiated and resolution/motion therein deserves to be set aside. He submits that basic object in the circumstances underlying service of the notice and letting opportunity to the person concerned to address the meeting in order to enable him to make statement in the meeting about the allegations against him and explaining his stand on allegations, is taken away. It is quite possible that if opportunity of addressing the meeting had been

made available, the person concerned could prevail upon about the correctness or otherwise of the motion being made against him. He submits that the collector had been impressed by other facts which are not of much relevance, for no confidence motion, particularly by statistics about number of persons voting against the petitioner and said number being complying with the requirement of motion to be passed. He submits that may be ostensibly there is majority against petitioner, however, if an opportunity being let to the petitioner, the motion could have been possibly not passed after address by the petitioner. He submits that ostensible majority in such a case would not be of any significance in absence of opportunity to petitioner.

7. On the other hand, learned counsel Mr Bilolikar submits that the report does suggest the notice has indeed been served on the petitioner as contemplated under Rule 2-B for, the report does make reference to events as have occurred. Serving Officer had gone to two places, Kasrali and Biloli and while petitioner could not be found he had served the notice on husband who is adult member of the family of the petitioner, may be service of notice is not acknowledged under his signature, however, his subordinate has signed the same as his agent. He, therefore, submits that there is substantial compliance of Rule 2-B and it should be

deemed to be a proper service.

8. Alternatively, he submits that if the court comes to conclusion that such a service is not proper, then in such a case, respondents No. 2 to 10 may be given an opportunity to establish the case about proper service on the petitioner by remitting the matter back to the collector.

9. Learned Assistant Government Pleader submits, the report makes it clear that the notice, in fact, has been read by husband of petitioner and he has asked his employee to acknowledge its receipt and in such a case there is due compliance of service of notice and its purpose and order passed by the collector is proper and sustainable.

10. Learned counsel for the petitioner refers to a decision of this court (Nagpur Bench) in the case of *Suresh Devidas Chaudhari and others Vs. Additional Collector, Washim and others*, reported in 2016(3) *Mh.L.J.* 332. In said case, *Sarpanch* concerned against whom, meeting of no confidence motion was convened, had been informed to him on his mobile phone and according to his instructions notice was handed over to a person as instructed by him and that person was not a family member of *Sarpanch*. The court held that if *Sarpanch* is not available, other modes provided in Rule 2-B are

to be followed. Requirements of Rule 2-B had not been complied with in the process and no confidence motion passed against *Sarpanch* had been set aside.

11. While the report of service is as referred to, the order does not make it clear as to how requirement of Rule 2-B can be considered to have been satisfied in the present case. While petitioner had denied service of notice on her, in such a case proper evidence could have been led about service of notice on petitioner. Such an attempt had not been made by the parties concerned. As such, while all along contention on behalf of petitioner had been that she had not received notice of no confidence motion and yet, without discussing modes of service and considering that proper procedure has been followed, order came to be passed by the Collector.

12. In the circumstances, having regard to Rule 2-B of the Rules and decision in the case of *Suresh Devidas Chaudhari and others Vs. Additional Collector, Washim and others* (supra), the decision by the collector does not appear to be sustainable and will have to be set aside. No confidence motion as well would be required to be set aside for want of proper compliance of Rule 2-B.

13. The writ petition, therefore, succeeds and the same is allowed in terms of prayer clause (B) and is disposed of.

14. Rule made absolute accordingly.

15. No order as to costs.

16. Learned counsel Mr Bilolikar for respondents requests for staying effect of this order in order to challenge the same before the Apex Court. As such, effect of this order is stayed for a period of fifteen weeks from today.

**(SUNIL P. DESHMUKH)
JUDGE.**

Madkar