

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

WRIT PETITION NO.4982 OF 2018

Kaveri Machhindra Khade

Age : 32 years, Occu : Social Work,

R/o. Mohoj (bk), Tq. Pathardi,

Dist. Ahmednagar

.... Petitioner

Versus

1. The Collector of District,
Collector Office, Ahmednagar
2. Grampanchayat Mohoj (bk)
Tq. Pathardi, Dist. Ahmednagar
Through its Village Officer
3. The Tahasildar,
Pathardi, Tq. Pathardi,
Dist. Ahmednagar
4. Shital Rameshwar Fasle
Age : Major, Occu : Agri,
5. Mangal Zumbar Gaikwad,
Age : Major, Occu : Agri,
6. Manisha Vikram Mache
Age : Major, Occu : Agri,
7. Shakuntala Rajendra Mache,
Age : Major, Occu : Agri,
8. Vikram Dnyandeo Jadhav
Age : Major, Occu : Agri,
9. Chandrashekhar Raghunath Mache
Age : Major, Occu : Agri,

10. Dnyandeo Vikram Khade
Age : Major, Occu : Agri,

11. Harun Salim Tamboli,
Age : Major, Occu : Agri,

Respondent Nos.4 to 11
R/o. Mohoj (bk), Tq. Pathardi,
Dist. Ahmednagar

12. The State Election Commission,
Office at 1st Floor, New Administrative
Building, Hutatma Rajguru Chowk,
Madam Cama Road, Mumbai.

.. Respondents

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Advocate for Petitioner : Shri P.B. Shirsath h/f. Shri A.P. Avhad

AGP for Respondent Nos.1 & 3 : Ms P.V. Diggikar

Advocate for Respondent Nos.4 to 9 : Shri N.V. Gaware

Advocate for Respondent Nos.10 & 11 : Shri S.V. Suryawanshi

Advocate for Respondent Nos.2 & 12 : Shri S.T. Shelke

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CORAM : PR. BORA, J.

Dated: June 13, 2019

ORAL JUDGMENT :-

1. With consent of the learned counsel appearing for the parties, heard finally.

2. The petitioner was elected as the Sarpanch of village Mohoj (bk), Tal. Pathardi, Dist. Ahmednagar. At the relevant time, the post of Sarpanch of the said village was reserved for a woman candidate. Grampanchayat Mohoj (bk) consists of total nine members. Seven out of the said nine members moved an application

to Tahsildar, Pathardi on 17.04.2018 bringing no confidence motion against the petitioner. Accordingly, a meeting was called by Tahsildar, Pathardi on 21.04.2018 to consider the said no confidence motion. In the meeting held on 21.04.2018, all said seven members were present and the no confidence motion was unanimously passed against the petitioner. The petitioner accordingly seized to be the Sarpanch of village Mohoj (bk). No confidence motion so passed against her was challenged by the petitioner before the Collector, Ahmednagar under Section 35 (3-B) of The Maharashtra Village Panchayats Act, 1958. The learned Collector, Ahmednagar vide order dated 17.05.2018 has dismissed the dispute so raised by the petitioner. Aggrieved by, the petitioner has preferred the present writ petition.

3. The resolution passed in the meeting held on 21.04.2018 and the order dated 17.05.2018 passed by the learned Collector, Ahmednagar in Grampanchayat Dispute No.10 of 2018 are challenged by the petitioner on the following grounds:

- (i) That, there was no clear notice of one day to the petitioner of the meeting to be held on 21.04.2018 to consider the no confidence motion against her.

(ii) That, the notice issued for the aforesaid meeting was not in the proper form and more particularly, was neither containing any agenda, nor the agenda was separately provided.

(iii) That, the Tahsildar did not follow the appropriate procedure in conducting the meeting held on 21.04.2018; more particularly he did not ask or call upon the members who were intending to cast their votes against the no confidence motion to raise their hands.

(iv) That, there was neither proposer nor seconder to the resolution allegedly passed in the meeting held on 21.04.2018 whereby the no confidence motion is held to have been passed against the petitioner and hence it is not the resolution in the eyes of law.

(v) That, the notice of no confidence motion was not accompanied by nine additional copies thereof and the Tahsildar did not send the copies to all concerned.

4. I would like to deal with the objections so raised in their chronology. It is the contention of Shri P.B. Shirsath the learned Counsel appearing for the petitioner that, since there was no clear one day notice to the petitioner of the meeting to be held on

21.04.2018 to discuss the no confidence motion against her, the said meeting cannot be held to be a meeting in the eyes of law and the entire business transacted in the said meeting gets vitiated on that sole ground. The learned counsel submitted that, the notice was served on the petitioner on 20.04.2018 at about 03:00 p.m. The learned counsel submitted that, intentionally the short notice was given to the petitioner. Referring to Rule 5 (2) of The Bombay Village Panchayats (Meetings) Rules, 1959, the learned counsel submitted that, in absence of one clear day notice to the petitioner the meeting held on 21.04.2018 has to be held illegal and no confidence motion passed in the said meeting needs to be set aside.

5. Shri N.V. Gaware the learned counsel appearing for respondent nos.4 to 9 opposed the submissions so made. The learned counsel relying upon the judgment of the Division Bench of this Court in the case of **Sau. Sangeeta w/o. Ramesh Ranvir Vs. The Presiding Officer / Tahsildar & Others, 1999 (1) Mh.L.J. 958** submitted that, Rule 5 (2) of the Meetings Rules speaks about dispatch or sending of the notice one clear day in advance and it does not require that, it should be served on the member one day in advance.

6. In the case cited supra, 'no confidence' motion was passed on 19.08.1999 against the petitioner therein. The said petitioner challenged the validity of the motion before the Collector and then before the Commissioner on two grounds; one of which was that, notice of the said meeting was not a proper notice within the meaning of Rule 5(2) of The Bombay Village Panchayats (Meetings) Rules, 1959. Since the objection so raised was turned down by both the aforesaid authorities, writ petition was preferred by the petitioner in this Court. Similar argument as is advanced by Shri Shirsath before this Court was advanced before the Division Bench that, the notice was liable to be served at least one clear day in advance on all the members of the panchayat and Sub rule (2) of Rule 5 was referred. The argument so made was turned down by the Division Bench with the following observations :

“4. Sub rule (2) of Rule 5 of the Rules, which reads as under :

"The Secretary shall, at least one clear day, before the date fixed for a Special Meeting, send or caused to be sent to all the members intimation of the date, time and place of such Special Meeting and of the business to be transacted thereat."

What is provided by the rule is time at which the notice is to be sent or caused to be sent by the Secretary.

5. The Sub-rule (2) as quoted above, does not require that a notice should be served on member at least one clear day in advance. It speaks about the despatch or sending of the notice. Admittedly, the notices were sent by the Tahsildar on 18-8-98 and therefore, it was sent at least one clear day before the date fixed for the Special Meeting. In this view of the matter, there was a sufficient compliance of the Rule.”

In the present matter, there is no dispute about the fact that the notice was sent one clear day before the date fixed for the Special Meeting. In the circumstances, in view of the law laid down by the Hon'ble Division Bench of this Court the objection so raised as above has to be rejected.

7. As about the second objection, it was the contention of the learned Counsel Shri Shirsath that, the notice dated 17.04.2018 was not in the proper form and was not containing any agenda or was not accompanied by any separate agenda. The objection so raised also does not carry any substance. The perusal of the notice dated 17.04.2018 reveals that, in the said notice the subject of the said notice was specifically mentioned. I deem it appropriate to reproduce the said subject as it is in the vernacular, which reads thus:

‘विषय : ग्रामपंचायत मोहोज बु, ता. पाथर्डी येथील सरपंच यांच्या अविश्वास ठरावाबाबत.’

It is thus evident that, the subject to be discussed in the said meeting was specifically mentioned in the said notice. Further, the averments in the notice are so clear that, there was no requirement of any separate agenda to be appended to the notice of the said meeting. I find it necessary to reproduce herein below the entire said portion as

it is in vernacular.

“उपरोक्त संदर्भीय विषयान्वये आपणांस कळविण्यात येते की, मौजे मोहोज बु. ता.पाथर्डी येथील ग्रामपंचायत सदस्य यांनी दिनांक 17.04.2018 रोजी ग्रामपंचायत मोहोज बु. ता.पाथर्डी येथील सरपंच यांचे विरुद्ध अविश्वास ठराव दाखल केलेला आहे.

त्यानुसार अविश्वास ठरावावरील बैठक दिनांक 21.04.2018 रोजी सकाळी 09:00 वाजता ग्रामपंचायत कार्यालय मोहोज बु. ता.पाथर्डी येथे विशेष सभा आयोजित करण्यात आलेली आहे. तरी आपण विशेष सभेस वेळेवर उपस्थित राहावे.

सोबत – अविश्वास ठराव दाखल केलेले अर्जाची झेरोक्स प्रत जोडत आहे.”

Considering the aforementioned contents of the notice, the objection raised by the petitioner that, there was no agenda provided of the said meeting appears devoid of any substance.

8. To support the third objection raised on behalf of the petitioner that, the Tahsildar did not follow the appropriate procedure in conducting the meeting held on 21.04.2018, the learned counsel Shri Shirsath relied upon the Judgment of the Division Bench of this Court in the case of **Ashok Krishnakant Mehta Vs. State of Maharashtra and others, 2000 (4) Mh.L.J. 197**. The learned counsel submitted that, the main issue which was for consideration for the Hon'ble Division Bench in the aforesaid case was “*whether a resolution of no confidence passed at a meeting during the course of which members constituting the Village Panchayat were not permitted*

to speak, would be invalid.” The learned counsel submitted that, in the said meeting, the Tahsildar had refused to give an opportunity to the members of the Grampanchayat to speak or express their opinion about the no confidence motion and only Sarpanch was permitted to address. The learned counsel submitted that, in the aforesaid circumstances, the Hon'ble Division Bench quashed the resolution of no confidence on the said ground. The learned counsel submitted that, if the minutes of the meeting held on 21.04.2018 are perused, it becomes clear that, the Tahsildar instead calling upon the members to express their views on the no confidence motion, straightway proceeded in calling upon the members to raise their hands, who were in favour of the no confidence motion. The learned counsel submitted that, in the circumstances, as per the law laid down by the Hon'ble Division Bench in the case of **Ashok Krishnakant Mehta** (cited supra), the resolution passed in the meeting dated 21.04.2018 and the impugned orders of the Collector and the Commissioner deserve to be quashed.

9. The contents of the resolution passed in the meeting held on 21.04.2018 do not support the objection raised on behalf of the petitioner. In the resolution, it has been specifically averred that, there was detail discussion on the issue which was for consideration
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in the said meeting and all the seven members, who were present participated in the said meeting. In view of the contents of the resolution as aforesaid and in absence of any specific objection as to which member was not permitted to address the meeting or to participate in the discussion held on the subject, the objection, as has been raised by the petitioner, has to be turned down.

10. It was further argued by Shri Shirsath that, the Tahsildar did not follow the proper procedure while conducting the meeting held on 21.04.2018. It was the further contention of the learned counsel that, the minutes of the meeting clearly reveal that, the Tahsildar called upon only those members to raise their hands, who were to vote in favour of the no confidence motion. The learned counsel submitted that, one Dnyandeo Vikram Khade, who is respondent no.10 in the present petition and who is sitting member of Grampanchayat Mohoj Bk., has filed an affidavit containing therein that, though he was intending to cast his vote against the no confidence motion, since the Tahsildar, Pathardi did not call upon the members to raise their hands who were intending to cast their vote against the no confidence motion, he could not cast his vote against the no confidence motion.

11. The objection raised as aforesaid is liable to be rejected at the threshold for more than one reasons. The record shows that, respondent no.10 - Dnyandeo Vikram Khade was one of the signatory to the requisition dated 17.04.2018, whereby the 'no confidence' motion was moved against the petitioner. Dnyandeo Vikram Khade has not denied or disputed the said fact anywhere. Secondly, if said Dnyandeo Vikram Khade was not intending to cast his vote in favour of the no confidence motion, it was open for him not to raise his hand when the Tahsildar called upon the members to raise their hands who were to cast their votes in favour of the no confidence motion. The record shows that, all the seven members including Dnyandeo Vikram Khade raised their hands and the no confidence motion was, therefore, declared to have been passed unanimously. When all the members present in the meeting had raised their hands in favour of the no confidence motion, there was no reason for the Tahsildar thereafter to call upon the members to again raise their hands, who were to vote against the no confidence motion. There is, therefore, no substance in the objection so raised.

12. The fourth objection raised is that, the resolution passed in the meeting held on 21.04.2018 whereby no confidence motion against the petitioner was held to have been successfully passed, was
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not proposed or seconded by any member of the Grampanchayat. According to the learned counsel Shri Shirsath, the record does not disclose as to who has proposed the aforesaid resolution and who seconded it. The learned counsel further submitted that, every resolution to be passed in the meeting of Grampanchayat has to be proposed by one of the member of the Grampanchayat and seconded by the another member of the Grampanchayat. According to the learned counsel, the resolution passed without following the procedure as aforesaid cannot be said to be the resolution in the eyes of law. This objection also needs to be turned down. As has come on record and noted by me herein above, the no confidence motion was passed against the petitioner unanimously by the members present in the said meeting held on 21.04.2018. The resolution, which was passed unanimously, cannot be set aside or held to be inoperative on the ground that, there was no proposer or seconder to the said resolution.

13. The last objection, which is as about failure on part of the Tahsildar in not submitting the required number of copies to the notice dated 17.04.2018 also needs to be rejected. The similar issue was raised in the case of **Nimba Rajaram Mali Vs. Collector, Jalgaon** , 1998 (3) Mh.L.J. 204 and this Court has ruled that, 'such
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lapse on the part of the Tahsildar would not amount to invalidation of the motion of no confidence.'

14. Thus, no substance is found in any of the objections raised by the petitioner so as to set aside the resolution passed in the meeting dated 21.04.2018 and the order passed by the Collector, Ahmednagar in Grampanchayat Dispute No.10 of 2018. The petition, therefore, fails and is accordingly dismissed, however, without any order as to the costs.

(P.R. BORA, J.)

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