

BDP-SPS

Bharat  
D. Pandit

Digitally signed by  
Bharat D. Pandit  
Date: 2019.07.29  
11:49:47 +0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.1904 OF 2019**

Sau Shalini Bhaurao Walke

..... Petitioner.

V/s

The Additional District Collector,  
Nashik and others

..... Respondents.

----

Smt. Preeti Walimbe for the Petitioner.

Mr. S.H. Kankal, AGP for Respondent Nos. 1 and 2.

**CORAM: NITIN W. SAMBRE, J.**

**DATE: 24<sup>th</sup> July, 2019**

**P.C.:-**

1] Heard Ms. Walimbe, learned Counsel appearing on behalf of the Petitioner and the learned Assistant Government Pleader appearing for Respondent Nos.1 and 2.

2] Petitioner, who was directly elected as Sarpanch, suffered no confidence motion in the meeting dated 19/11/2018. It is these proceedings of no confidence motion which are questioned before this Court on the ground that notice as contemplated under Section 35 of the Maharashtra Village Panchayat Act was not served on the

Petitioner and according to her, service of notice is mandatory, as Petitioner is given an opportunity under Section 36 to address the meeting, if so prayed.

3] According to the learned Counsel for the Petitioner, the fact that the notice was not served on the Petitioner personally was very much within the knowledge of Presiding Officer i.e. Tahasildar. To substantiate her contention, she would invite attention of this Court to the minutes of the special meeting recorded and also panchanama drawn on 17/11/2018, thereby certifying service of notice by affixing it on the door of the Petitioner. She submits that the procedure adopted is not prescribed under any of the Rules under the Act. As such, according to her, the order impugned is liable to be quashed and set aside and the Petitioner be directed to be restored to the original position of Sarpanch.

4] The learned AGP, while contesting the aforesaid claim, would submit that perusal of the panchanama would reflect that, not only once but number of times attempts were made by Talathi to serve notice, which the Petitioner has intentionally avoided. According to

him, as the Petitioner was directly elected, motion is passed by more than 3/4th of majority. That being so, the notice is rightly claimed to have been served on the Petitioner of the meeting in question. Apart from above, the submissions are, after no confidence motion was passed against the Petitioner, fresh elections for the post of Sarpanch are held and new Sarpach is manning the Grampanchayat. As such, dismissal of the Petition is sought.

5] Considered the rival submissions.

6] As regards the illegality in regard to service of notice on the Petitioner is concerned, what is required to be noticed is, Thalathi, who was authorized to serve the notice on the Petitioner, has made every effort as is reflected in the panchanama, to serve the notice. It appears that the panchanama also speaks of the telephonic intimation given to the Petitioner about the notice to which Petitioner responded by asking the said Talathi to attend her house for service of notice in the evening. In all on three days i.e. 15/11/2018, 16/11/2018 and 17/11/2018 notice was tried to be served on the Petitioner, as is

reflected from the panchanama. Ultimately, on 17/11/2018, same was affixed on the door of the Petitioner. As far as the aforesaid act of pasting of notice is concerned, same was witnessed by Talathi and one more panch i.e. Kotwal, keeping in mind the fact that neighbours were not ready and willing to certify the said panchanama of affixing copy of notice on the door of the Petitioner. As far as aforesaid issue of service of notice, as reflected in the panchanama is concerned, the Court believes the said document, keeping in mind the fact that efforts have been made by two public officers i.e. Talathi and Kotwal to serve the notice and nothing contrary is brought on record to demonstrate that such notice was never affixed or tried to be served by independent affidavit or otherwise. As such, the Court arrives at a conclusion that the notice was properly served on the Petitioner.

7] Apart from above, the fact remains that the Petitioner has lost the support of majority, as no confidence motion was passed by more than 3/4<sup>th</sup> majority of the Village Panchayat. The new Sarpanch, after the Petitioner vacated the Office, has already taken over the Village Panchayat.

**8]** As such, in the aforesaid background, in my opinion, no case is made out for interference. Petition fails and the same is dismissed.

**( NITIN W. SAMBRE, J. )**