

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

WRIT PETITION NO.4863 OF 2018

1. Nagorao Sambhaji Dange,
age 72 years, Occu. Sarpanch,
Grampanchayat, Osmanagar,
Tq. Kandhar, District Nanded.
2. Godavaribai w/o Balaji Kalam,
Age 40 years, Occu. Up-Sarpanch,
Grampanchayat, Osmanagar,
Tq. Kandhar, District Nanded. ... **PETITIONERS**

VERSUS

1. Rudra Ramkisan Warkad,
Age 42 years, Occu. Agri.
2. Gayabai Gangadhar Kamble,
age 45 years, Occu. Agri.
3. Nafisabi Abdul Karim,
age 52 years, Occu. Agri.
4. Rashidkhan Ibrahimkhan Pathan,
Age 55 years, Occu. Agri.
5. Amin Ismail Admankar,
Age 45 years, Occu. Agri.
6. Anandrao Raosaheb Ghorband,
Age 48 years, Occu. Agri.
7. Deubai Nagorao Ghorband,
Age 61 years, Occu. Agri.
8. Gangabai Sambhaji Ghorband,
Age 70 years, Occu. Agri.
9. Rahul Devrao Sonsale,
Age 39 years, Occu. Agri.
10. Rihanabi Shadul Shaikh,
Age 53 years, Occu. Agri.

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11. Kamalbai Tukaram Bhise,
Age 52 years, Occu. Agri.
12. Manohar Hari Panchal,
age 48 years, Occu. Agri.
13. Premalabai Vishwanath Mathpati,
Age 62 years, Occu. Agri.

Nos.1 to 13 R/o Osmannagar,
Tq. Kandhar, District Nanded.

14. The Tahsildar,
Tahsil Office, Kandhar,
District Nanded
15. The Collector,
Collector Office, Nanded
16. The Village Development Officer,
District Nanded.
17. The Talathi,
Talathi Sajja, Osmannagar
Tq. Kandhar, District Nanded
18. The State Election Commission,
Nirvachan Bhavan, Mumbai

...**RESPONDENTS**

**(No.18 deleted as per leave
granted on 5.6.2018 and 27.2.2019)**

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Shri Ameya N. Sabnis, Advocate for petitioners
Shri H.I. Pathan, Advocate for respondents No.1 to 10
Shri A.B. Chate, A.G.P. for State
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CORAM: R.G. AVACHAT, J.

Date of reserving judgment : 16th October, 2019
Date of pronouncing judgment : 5th February, 2020

J U D G M E N T :

Rule. Rule made returnable forthwith and heard
finally with the consent of learned counsel appearing for the

parties.

2. The challenge in this Writ Petition is to the judgment and order dated 9.5.2018, passed by the Collector, Aurangabad in File No.2018/GB/Desk/GPN/Appeal/227. By the impugned judgment and order, the appeal preferred by the petitioners, taking exception to the validity of No Confidence Motion carried against them in the meeting dated 22.3.2018 came to be dismissed.

3. The facts necessary to decide the present Writ Petition are as follows :

The petitioners and respondents No.1 to 13 are elected members of Village Panchayat, Usmannagar, Taluka Kandhar, District Nanded. The petitioners were elected as Sarpanch and Up-Sarpanch in the meeting dated 17.11.2015. The respondents No.1 to 10, on 19.3.2018, submitted a requisition to the Tahsildar for calling special meeting to discuss the No-Confidence Motion against the petitioners. The requisition of no-confidence was moved on the basis of five charges levelled against the petitioners. The Tahsildar, therefore, scheduled a meeting of the Village Panchayat for 22.3.2018. 14 out of 15 members were present in the

meeting. The Tahsildar (respondent No.14) presided over the meeting. The proceedings of the meeting were held. The no confidence motion was carried against both the petitioners with 10 : 4 votes. The petitioners, therefore, preferred an appeal to the Collector. After having been unsuccessful in the appeal, the petitioners have thus been before this Court.

4. Heard learned counsel for the parties. Perused the minutes of the meeting dated 22.3.2018. Mr. Amey N. Sabnis, learned counsel appearing for the petitioners would submit that the notice of the meeting convened for discussion of no confidence motion had never been served on the petitioner No.1. As such, the petitioner has been denied opportunity to put forth his views and explanation on the charges leveled against him. The petitioner No.2 was also denied an opportunity to address the members of the Village Panchayat before the no confidence motion was put to vote. In spite of there being a request to take a vote as per secret ballot, the voting was held by show of hands. As such, statutory mandatory provisions have not been complied with.

The learned counsel would further submit that, the Collector hurriedly closed the proceedings of appeal. He did not give learned counsel of the petitioner an opportunity of

hearing. An application moved for adjournment was turned down. The learned counsel had, therefore, no option but to submit written notes of arguments. The Collector, without assigning any reasons, endorsed the minutes of the meeting.

5. Learned counsel representing respondents No.1 to 10 would, on the other hand, submit that, in spite of service of notice, the petitioner No.1 remained absent in the meeting. The petitioner No.2 had been given opportunity to put forth her views before the motion of no confidence was taken to vote. In view of learned counsel, no interference with the impugned order is called for.

6. Learned A.G.P. representing respondents No.14 to 17 would submit that, the notice of the meeting had to be pasted on the outer door of the residence of the petitioner No.1. This constitutes a valid service of notice. The petitioner No.1 cannot be allowed to turn around to say to have not been given an opportunity to address the meeting before the motion of no confidence was put to vote. Learned A.G.P. urged for dismissal of the Writ Petition.

7. I have considered the submissions made by learned counsel for the parties. Also perused documents

relevant for deciding this Writ Petition. Osmannagar Grampanchayat is comprised of 15 members. Petitioners and respondents no.1 to 13 are the members of the Village Panchayat. The petitioners were elected as Sarpanch and Up-Sarpanch in November 2015. The respondents No.1 to 10, on 19.3.2018, moved a no confidence motion against the petitioners. The Tahsildar (respondent No.14), therefore, convened a special meeting on 22.3.2018 for considering the motion of no confidence. Accordingly, a notice of the meeting is said to have been issued to all the members of the Village Panchayat. The meeting was held on 22.3.2018. 14 out of 15 members were present in the meeting. The same indicates that the notice of the meeting must have in fact been issued and served on one and all the members of the Village Panchayat.

8. The first and foremost contention of the learned counsel for the petitioners is that, a notice of the meeting had not been served on the petitioner No.1. As such, he has not been given an opportunity to put forth his views before the motion of no confidence was taken for consideration in the meeting. In support of his contentions, learned counsel placed reliance on the judgment of Single Judge of this Court in case of **Manoj Ghanshyamdas Banode Vs. Presiding**

officer/ Tahsildar (2019 SCC Online Bom 85 - Writ Petition No.1425 of 2017).

9. Close reading of the facts in Manoj Banode's case (supra) indicates that, minutes of the meeting were silent to state in what manner the petitioner therein was given an opportunity to make his statement to put forth his views/ explanation in respect of the allegations leveled against him. The minutes were also silent to state that the petitioner therein was heard by the members of the Grampanchayat before voting was conducted on the motion of no confidence.

There can be no two views over the proposition that a Sarpanch or Up-Sarpanch, against whom no confidence motion is moved, has a statutory right to speak or otherwise to take part in the proceedings at the meeting (Section 35(2) of the Maharashtra Village Panchayats Act).

10. Facts of the present case are altogether different. The petitioner No.1 could not make it to the meeting since he was stated to have been hospitalised. His absence in the meeting is attributed to a failure to serve him with a notice of the meeting. Rule 2-B of the Bombay Village Panchayats Sarpanch and Up-Sarpanch (No Confidence Motion) Rules,

1975 reads :-

“(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.”

11. Reading of the Rule 2-B would undoubtedly indicate that the notice of the meeting, wherever it may be practicable, be served by delivering or tendering it to the Sarpanch or Up-Sarpanch, to whom it is addressed or if such person is not found, the notice may be served on adult member of his family residing with him. In case such family member is not found or refuses to accept the notice, it has to

be served by affixing it, in the presence of two witnesses, on the outer door of the house in which the Sarpanch or Up-Sarpanch ordinarily resides. The notice served in this manner is deemed to have been served to the concerned Sarpanch or Up-Sarpanch.

12. The minutes of the meeting records that, notice of the meeting was pasted on the outer door of the residence of the petitioner No.1. Since the Collector did not address any of the contentions raised by the petitioner in the appeal, I have perused the relevant documents (produced at the instance of this Court) to find that there is a panchanama dated 20.3.2018 drawn in the presence of two witnesses. The panchanama has been drawn by the Village Talathi and Circle Officer as well. It records that the petitioner No.1 was not present home. His family members refused to receive the notice. The notice was, therefore, affixed on conspicuous part of his residence.

13. There is no reason to doubt the panchanama and the minutes of the meeting. There are no allegations of malafides or bias regarding service of notice. The petitioner No.1 might have been not keeping well at the relevant time. He, therefore, could not make it to the meeting. The law,

however, does not give a concession even in such a factual scenario. It is the mandate of Section 35(2) of the Act to convene a meeting for consideration of motion of no confidence within seven days from the date of receipt of notice by the Tahsildar in that regard. It is, therefore, for the petitioner No.1 to blame himself. He might have consciously remained absent in the meeting, considering the fact that 10 out of 15 members had moved the motion of no confidence and he had an inkling of the same being carried, and he being voted out of the office. The petitioner No.1, therefore, could not be heard to say to have not been given an opportunity to put forth his views in the meeting before the notice of no confidence was put to vote.

14. The voting in the meeting took place by show of hands. The minutes undoubtedly indicate that all the members (respondents No.1 to 10), who had moved the motion, had urged for the voting by show of hands. Rule 28 of the Bombay Village Panchayats (Meeting) Rules, 1959 states that, voting shall ordinarily be taken by word of mouth or by a show of hands, but may, if the majority of members present so decide, be taken by ballot. Admittedly, the procedure for meeting of members of panchayat to consider no confidence motion against Sarpanch prescribed under Rule 28(1) of the

Rules of 1959 is applicable in absence of any demand by majority of members for votes by secret ballot. [**Kishore Ramchandra Phalak Vs. Vilas Damodar Maghajan & ors. [1997 (3) Mh.L.J. 27]**.

15. The minutes of the meeting do further indicate that Shri Manohar Ravi Panchal addressed the the motion of no-confidence. The petitioner No.2 concurred with what Shri Manohar Panchal stated in the defence. As such, it cannot be said that the petitioner No.2 was not given an opportunity of hearing or addressing the meeting before the motion was put to vote.

16. for the reasons stated hereinabove, the Writ Petition fails. The same is dismissed. Rule discharged.

(R.G. AVACHAT, J.)

fmp/-