



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7164 OF 2025

Sau. Chhaya Sanjay Gerange ..Petitioner

VERSUS

The State of Maharashtra & othersRespondents

Mr. T. S. Kotkar, Advocate for the Petitioner.

Ms. R. R. Tandale, AGP for the State.

Mr. V. P. Latange, Advocate for Respondent Nos. 5 to 11.

WITH
WRIT PETITION NO. 7189 OF 2025

Sau. Shobha Chandu Khamkar .. Petitioner

VERSUS

The State of Maharashtra & othersRespondents

Mr. T. S. Kotkar, Advocate for the Petitioner.

Mr. P. D. Patil, AGP for the State.

Mr. V. P. Latange, Advocate for Respondent Nos. 5 to 11.

CORAM : R. M. JOSHI, J.

DATE : 19th AUGUST, 2025.

PER COURT :

1. These Petitions involve common question of facts and law and hence by consent heard finally at the stage of admission and decided by this common judgment.

2. Facts in the case as indicated from the record show that Petitioners are Sarpanch and Deputy Sarpanch of Gram Panchayat Islak, Dist. Ahilyanagar. They are elected members of Gram Panchayat and further elected as the Sarpanch and Deputy Sarpanch. Their tenure was for period from the year 2020-2021 to 2025-2026. Seven members of the Gram Panchayat moved a requisition to Respondent No. 4 for no confidence motion against the Petitioners. On 01.04.2025, notices were issued to the Petitioners and other members of the Gram Panchayat conveying a special meeting for no confidence motion on 04.04.2025. Accordingly, such meeting was convened on 04.04.2025 and no confidence motion was passed against the Petitioners. Petitioners, being aggrieved by the said no confidence motion, challenged the same by filing dispute before the Collector. Challenge to the said resolution of no confidence against the Petitioners was done amongst other contentions, specifically on the ground that the notice was not served on the Petitioners in accordance with the rules. The Collector refused to accept the contentions of the Petitioners and rejected the Applications. Hence, these Petitions.

3. Learned counsel for Petitioners has drawn attention of the Court to Bombay Village Panchayats Sarpanch and Upa-Sarpanch (No Confidence Motion) Rules, 1975. He has made specific reference to Rule 2(2B) in order to contend that unless the notice is served upon the Sarpanch or Upa-Sarpanch as contemplated by the sub-rule, any subsequent action on the basis of such requisition cannot sustain. He drew attention of the Court to the panchanama drawn in respect of service of notice by pasting it on the conspicuous part of the house to argue that said panchanama indicates that in presence of one witness the alleged act of pasting has been done. This, according to him, is not permissible in view of the specific provision which requires affixing of such notice in presence of two witnesses. He drew attention of the Court to the affidavit-in-reply filed on behalf of the State which, according to him, indicates that there is photograph showing the door of the house of the Petitioner being closed. It is his submission that in such circumstances, the submission with regard to refusal of notice by the concerned is false. In any case, according to him, unless said pasting of notice was done in presence of two witnesses, the notice cannot be said to be served upon the Petitioner. It is his submission that in absence of service of notice of meeting held on 04.04.2025, the meeting cannot be held to

be legal and consequently, resolution passed therein cannot sustain. To support his submission, he has placed reliance on judgment in case of *Digambar Virbhadra Yesge and Another vs. Additional Collector and Others*, **(2018) 5 Bom CR 570**.

4. Learned counsel for contesting Respondents as well as learned AGP supported the impugned order. It is their contention that the record indicates that the Petitioners have refused to accept the notice and hence it was open for the authority to affix said notice on the conspicuous part of the house and this has been done accordingly. Learned counsel for contesting Respondents has sought to convince this Court that the authority who had issued the notice was also present at the relevant time and therefore, it must be held that affixing of the notice has been done in presence of two witnesses. To support his submissions, he has placed reliance on following judgments :-

- (i) Chagan Sadashiv Jadhav vs. Manisha Ramnath Bhandare
(2016) 05 BOM CK 0016
- (ii) Priyanka Abhijeet Deodhare vs. State of Maharashtra & others
2025 DGLS(Bom.) 601.

5. Passing of no confidence motion has a drastic consequence of dislodging the duly elected Sarpanch and Upa-Sarpanch from their respective posts. Needless to say that while doing so whatever has been contemplated by the act and the rules framed thereunder must be followed in strict sense and, if not followed in the true spirit, it should not have been done at all. It would be relevant to take note of Rule 2 (2B) of the Rules in this regard which reads thus :-

2. (2B) 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 delivering or tendering it to any adult member of his family residing with him; and if no such 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.

6. This rule clearly indicates that in case of service cannot be effected on the Sarpanch or Upa-Sarpanch, where such person cannot be found and that if the adult member of the family also cannot be found, in that case the notice shall be served by affixing it

in the presence of two witnesses on the outer door or some conspicuous part of the house. This rule clearly mandates that in case of non-availability of the Sarpanch or Upa-Sarpanch or any adult family member or even on account of refusal of notice by them, appropriate mode of service is to affix the same on the outer door or the conspicuous part of the house in the presence of two witnesses. Perusal of panchanama in both Petitions indicate that said affixing of the notice has not been done in presence of two witnesses. Thus, there is non-compliance of the mandatory requirement of the said rule in so far as service of notice of meeting is concerned. The contention of Respondents is that along with witness the officer himself was present and hence it must be treated as pasting in presence of two witnesses. First of all the requirement of rule is the pasting in presence of two witnesses, which can not include the officer himself who attempts service of notice. Similarly, the one witness to the panchanama is also not independent witness. Thus, it can not be said that there is compliance of rule and hence this Courts finds no hesitation to reject the said contention.

7. It is sought to be argued on behalf of the Respondents that service of notice was effected via WhatsApp and it was sufficient

intimation to the Petitioners of the meeting concerned. First of all, service of notice through WhatsApp cannot be recognized unless it is so provided in the rules or in any other law applicable to the proceeding in question. Thus, even if it is accepted for the sake of argument that service of notice was effected through WhatsApp, it cannot be held to be appropriate service in compliance of rules.

8. As a result of above discussion, since the notice was not served in accordance with the rules, the Petitioners are denied opportunity of hearing and participation in the meeting. As a consequence thereof, resolution passed of accepting no confidence motion against the Petitioners cannot sustain so also the order of the Collector.

9. Hence, both the Petitions are allowed.

(R. M. JOSHI)
Judge

dwb