



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 6834/2024

Sachin S/o Santosh Sambare, Aged
About 35 years, Occu: Sarpanch,
R/o Village Belad, Post Malkapur,
Distt. Buldhana.

... PETITIONER

...VERSUS...

- 1) The Additional Collector, Buldhana
having its office at Buldhana, Tah.
& Distt. Buldhana.
- 2) The Tahsildar, Malkapur, having its
office at Malkapur, Tah.
Malkapur, Distt. Buldhana.
- 3) Gram Panchayat, Belad through
its Secretary, Having its office at
Beloda, Tah. Malkapur, Distt.
Buldhana.
- 4) Pratibha W/o Vinod Ingle, Aged
About 35 years, Occu:
Agriculturist,
- 5) Mayawati W/o Dadarao Ingle,
Aged About 50, Occu:
Agriculturist,
- 6) Sagar S/o Ninaji Sambare, Aged
About 40 years, Occu :

Agriculturist,

- 7) Iccharam S/o Digambar Sambare,
Aged About 50 years, Occu:
Agriculturist,
- 8) Durga W/o Sunil Sambare, Aged
About 39 years, Occu: Household,
- 9) Priya W/o Vijay Kate, Aged About
27 years, Occu: Household,
- 10) Deepmala W/o Devanand Ingle,
Aged About 55 years, Occu:
Household,
- 11) Sandip S/o Shatrughan Nimbolkar,
Aged About 49 years, Occu:
Household,

Respondents no.4 to 11 are all
residents of Village Belad, Tah.
Malkapur, Distt. Buldhana.

...**RESPONDENTS**

Shri Tejas Deshpande, Advocate for petitioner
Shri R.D. Karode, Advocate for respondent Nos. 4 to 11
Ms D.I. Charlewar, AGP for respondent/State

CORAM : **SMT. M. S. JAWALKAR, J.**

DATED : **07/03/2025**

ORAL JUDGMENT

. Heard both the parties.

2. By consent of the parties matter is taken up for final hearing at the stage of admission.

3. By this petition, petitioner is challenging the order dated 06/11/2024, passed by respondent No.1, Additional Collector, Buldhana in Gram Panchayat Case No. 35(3-B)/Belad/25/2024-2 and for quashing and setting aside the impugned motion of no confidence dated 05/09/2024, passed against the petitioner. Petitioner came to be elected as a member of respondent No. 3, Gram Panchayat in the year 2022, thereafter, he was elected as Sarpanch by respondent Nos. 4 to 11. On 02/09/2024 the respondent Nos. 4 to 11 submitted a requisition to the respondent No. 2, Tahsildar to convene the meeting to expressing their intention of passing motion of no confidence against the petitioner. Accordingly, Tahsildar decided to convene a special meeting on 05/09/2024. Accordingly, he issued notice and directed the Talaathi, Belad, to serve the notice upon the members of Gram Panchayat, in accordance with law.

4. It is the contention of the petitioner that on 05/09/2024, behind the back of the petitioner a special meeting

came to be convene and no confidence motion came to be passed against the petitioner in clear breach of the Rules, as well as provisions of the Maharashtra Village Panchayat Act. He preferred an appeal before the Additional Collector. The Additional Collector, by its order dated 06/11/2024, rejected the dispute application. It is contended that there is no compliance to the Rule 2-B of Bombay village Panchayat Sarpanch and Up-Sarpanch (No Confidence Motion) Rules, 1975.

5. My attention is drawn to the notice at page No. 22 and panchanama at Page No. 23. The said notice alleged to have served to the mother of the petitioner namely Suman Santosh Sambare. The said notice is dated 02/09/2024, which bears only one thumb impression below the name of the mother of the petitioner. However, there is no attestation by any of the witness that thumb impression is of the mother of the petitioner. On page 23 there is panchanama, however, it is mentioned in the said panchanama that as petitioner was contacted on mobile, he shown his inability to receive the notice and therefore, the notice of special meeting was affixed on the conspicuous part of his house. However, there is no

reference that the notice was served to the mother of the petitioner. In view of these documents, it create doubt weather the notice was duly served as per Rules 2-B of the above referred No confidence Motion Rules, 1975.

6. Learned Counsel for petitioner relied on ***Suresh Devidas Choudhari and others Vs. Additional Collector Washim and others, 2016(2) ALL MR 797***, wherein, in paragraph Nos. 5 and 6 it is held as under :

“5. The provisions of Rule 2-B of the said Rules stipulate that any notice issued under sub-rule (1) of Rule 2 wherever it may be practicable be served by delivering or tendering it to the Sarpanch to whom it is addressed. If such person cannot be found then it is to be delivered or tendered to any adult member of his family residing with him. If no such adult member can be found or where the notice is refused to be accepted, the same shall be served by affixing on the outer door or some other conspicuous part of the noticee's house. The aforesaid provision therefore stipulates the mode of service of such notice. The requirement of personal delivery on the Sarpanch or Upsarpanch to whom it is addressed is desired as far as practicable. On such personal service not being possible, further modes have been prescribed.

6. In the present case, the notice was sought to be served on the basis of a telephonic communication between the Tahsildar and respondent No.4. Notice was then given to said Bharat Rathod. Service of aforesaid notice in such manner is not recognised by Rule 2-B of

the said Rules. If the respondent No.4 was not available for accepting the notice, then the other two modes prescribed in the said Rules could have been adopted. However without adopting either of the two modes prescribed, the service is sought to be justified on the basis of telephonic instructions and tendering of notice to a person not related to the respondent No 4. The affidavit filed on behalf of said Bharat Rathod is not countered as being incorrect. His relationship with respondent No.4 has been denied by him. Thus a notice is handed over to a person who is not a member of the family of respondent No.4.”

7. For the sake of convenience Rule 2-B of Bombay village Panchayat Sarpanch and Up-Sarpanch (No Confidence Motion) Rules, 1975, is reproduced as under :

“(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.”

8. Learned Counsel for respondent relied on ***Jijabai Bahiru Tatale and others Vs. Raghunath Ramchandra Avhad, 2016***

DGLS(Bom.) 372, in support of his contention that service of notice is question of fact which can be decided after adducing evidence.

This Court in **Jijabai Bahiru Tatale** (supra), held as under :

“In the instant matter, question that has to be dealt with is as to whether there was infact service of notice of motion of No Confidence on Smt. Lalita Bendkoli, member of Village Panchayat. If at all there is service of notice on the concerned member, the motion shall be deemed to have been carried. However, in the absence of service of notice on the concerned member, conclusion shall have to be drawn that proceedings of the meeting are vitiated as has been recorded above. The factual controversy as to whether there was proper service of notice on Smt. Lalita Bendkoli is required to be gone into afresh by the Additional Collector.”

9. As such, the learned authority below ought to have considered these aspects that whether there was any notice to the petitioner about special meeting being convene for holding no confidence motion against him. There is no attestation of any witness to the thumb impression of mother of petitioner nor there is reference in punchnama about such service before affixing copy of notice. If the service was effected on adult member of family of petitioner there was no reason to affix the copy of notice on conspicuous part of the house. As such, the impugned order is liable to be quashed and set aside. Accordingly, I proceed to pass the

following order.

ORDER

- (i) The writ petition is partly allowed.
- (ii) The impugned order dated 06/11/2024, passed by respondent No.1, Additional Collector, Buldhana in Gram Panchayat Case No. 35(3-B)/Belad/25/2024-2 is hereby quashed and set aside.
- (iii) Matter is remitted back to the learned Additional Collector, Buldhana, for deciding Case No. Gram Panchayat Case No. 35(3-B)/Belad/25/2024-2, afresh after granting due opportunity to both the parties to lead evidence.
- (iv) Learned Additional Collector, Buldhana, shall decide dispute application within a period of 6 weeks.
- (v) Parties to appear before the Additional Collector, Buldhana, on 17/03/2025.

10. The Writ petition is disposed of in above terms. No order as to the costs.

(Smt. M.S. Jawalkar, J.)

Jayashree....