

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

WRIT PETITION NO.8321/2011

Hari s/o Vinayakrao Chandanshiv

Petitioner

V E R S U S

The Divisional Commissioner, Aurangabad
and others.

Respondents

Mr. S.J.Salunke Advocate for petitioner.
Mrs. S.D.Shelke A.G.P. for Respondent/State Authorities 1 to 3
Adv A A Khande For R No 5 To 10
Mr Shinde Shrikishan S. Adv for R 4
Mr. Aniruddha Nimbalkar Adv For R/11 & 12

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CORAM : R.M.BORDE,J.

DATE : 29th FEBRUARY, 2012.

PER COURT :

1. A motion of no confidence has been carried against the petitioner who was functioning as Up-sarpanch by 2/3rd majority and decision taken in the meeting was subjected to challenge in an appeal presented by the petitioner before the Collector.

2. It is to be noted that total strength of the village Grampanchayat is of 9 members and out of the total number of members, 6 members have voted in favour of the motion, whereas three remained

absent. It was the contention of the petitioner before the Collector that notice of meeting has not been served on three members. The panchnama that has been carried out in respect of service of notice is not in accordance with No Confidence Motion Rules. The whole proceedings of the meeting thus are vitiated. The Collector considered the submissions made by the petitioner and proceeded to dismiss the appeal. An appeal preferred by the petitioner to the Divisional Commissioner, Aurangabad has also been dismissed by order dated 5.10.2011.

3. Learned counsel appearing for the petitioner has vehemently contended that since notices of meeting were not served in accordance with the provisions of the Rules, the proceeding of the meeting are vitiated. Reliance is placed on the judgment of this Court in the matter of Shivkant Haribhau Bangar Vs. Gramsevak and ors. reported in **2010 (4) Bom.C.R. 191**. In the reported case, it was found that, there was a fundamental defect in respect of service of notice of meeting. Notices of meeting were affixed on the outer door of the residence of some other villagers instead of serving notices on members of village panchayat. It was established in the reported matter that notices were not served on the members of village panchayat, however, there was an attempt to affix notices on residence of other villagers. It was, therefore, concluded in the reported matter that proceedings of the meeting are vitiated. In the instant matter, according to

the petitioner, there was no attempt made by the Gramsevak before proceeding to conduct panchnama in respect of affixing of notice on the outer door of the residence of the members to serve the notice on the adult member of the family. It is contended that procedure prescribed under rule 2 (2B) of the Bombay Village Panchayat Sarpanch and Upsarpanch (No Confidence Motion) Rules, 1975 has not been followed in respect of service of notice on elected member of panchayat.

4. It is not the contention of petitioner that notices were not at all affixed on the outer door of residence of members, however, it is contended that procedure as contemplated by rules has not been scrupulously followed. There appears to be some technical error in drawing the panchnama, which by itself shall not be sufficient to draw conclusion that motion which has been validly carried by 2/3rd majority stand vitiated. It is difficult to appreciate the contention of the petitioner that petitioner and other members have not received the notice of no confidence motion ; when the notices were received by the majority of members of village Panchayat. The petitioner and other members are residence of same village. In this context, reference can also be made to Rule 2 (2) of the Bombay Village Panchayat Sarpanch and Upsarpanch (No Confidence Motion) Rules, 1975. Sub-rule 2 (2) provides that notice as contemplated under Sub-Rule (1) shall be accompanied by nine copies thereof and the Tahsildar shall

send one copy to Sarpanch, one copy to Up-sarpanch and one each to the Zilla Parishad, the Panchayat Samiti, the Collector and Commissioner. One copy shall also be given to the Secretary. It is not contended anywhere that notice as contemplated by sub-rule (2) of Rule 2 has not been received by the petitioner, who was functioning as Up-Sarpanch of the village.

5. In this context, reliance can be placed on the judgment delivered by this court in the matter of Appa Munjaji Pawar vs. Divisional Commissioner & others reported in 2009(5) Bom.C.R. 691. Learned Single Judge while dealing with similar contentions has referred to observations in the judgment of the Division Bench of this Court in the matter of Smt. Annapurnabai Ajabrao Vs. Annapurnabai Anandrao reported in 1967 Mh.L.J. NOC 36 which read thus :

. “Even if it were to be assumed that there was some technical flaw in the proceedings of the meeting or in transmission of the results of the meeting to the Panchayat Samiti, we do not see how that could entitle the petitioner to claim to continue as Sarpanch of the Gram Panchayat. A Gram Panchayat is essentially a democratic institution which must be run on democratic principles. When the majority of the members have clearly expressed that they do not desire the petitioner to be their leader and Sarpanch, appropriate attitude of the petitioner as a person working for democracy whatever have been to tender her registration straightway. At any rate, it does not behave of democratic spirit to challenge the decision of the majority who unmistakably declared their want of confidence in their erstwhile leader. Democratic principles as has also a sense of self respect should have been impleaded the petitioner and persons situated in similar circumstances to

graciously submit to the decision of the majority and to walk out of the Gram Panchayat.”

. It is also observed by the learned Single Judge in paragraph no. 9 of the judgment thus :

9 As already discussed above, the said judgment has not been noticed by the Division Bench and Single Judges on the judgments of whom Shri Ghatge relies. The Division Bench in the case of (Nimba Rajaram koli Vs. Collector, Jalgaon) 7, 1999(1) Bom.C.R. 546 (A.B.) : 1998(3) Mh.L.J., relying on the case of Annapurnabai Ajabrao has also held

“that once resolution of the No Confidence Motion is passed, by a clear majority and in keeping with the requirements of the concerned statutory provisions, the person against whom such a resolution is passed must honour the will of the majority and make way for the new election of his successor.”

. It is difficult to appreciate that when all other members have received notice of no confidence motion, it is only the petitioner who has not received the notice of no confidence motion. The petitioner and all other members are residents of a same village. In any case, notice has been served by the Tahasildar. No allegations of mala fide or bias have been made against the Tahasildar that the notice of meeting was not properly served on the petitioner by the Tahasildar with an ulterior motive.

6. Thus, on consideration of the mandate of the Division Bench in the matter of Annapurnabai Ajabrao vs. Annapurnabai Anandrao (cited supra) which has been followed by Division Bench in the matter of Nimba Rajaram Koli Vs. Collector, Jalgaon reported in 7, 1999(1) Bom.C.R. 546, once resolution of No Confidence Motion is passed, the person against

whom such a resolution is passed must honour the will of the majority and make way for the election of his successor.

7. In this view of the matter, no case is made out for causing interference in the matter in exercise of extra ordinary jurisdiction under Article 227 of Constitution of India. Writ Petition, therefore, stands rejected.

(R. M. BORDE)
JUDGE

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