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**(2012) 08 BOM CK 0101**

**In the Bombay High Court**

**Case No :** Writ Petition No's. 617 and 661 of 2012

Shamsundar Barsale and Others

APPELLANT

Vs

The Divisional Commissioner, Aurangabad Division,  
Aurangabad and Others

RESPONDENT

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**Date of Decision :** 27-08-2012

**Acts Referred:**

**Citation :** (2013) 1 ABR 644 : (2012) 6 MhLj 655

**Hon'ble Judges :** A.V. Nirgude, J

**Bench :** Single Bench

**Advocate :** B.A. Shinde, for the Appellant; K.J. Ghate Patil, AGP for the Respondent Nos. 1 to 3/State and Shri M.P. Tripathi, Advocate for Respondent Nos. 4 and 5, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

A.V. Nirgude, J.—Both these writ petitions are filed challenging the judgment and order passed by the Divisional Commissioner, Aurangabad, dated 23rd December, 2011, in Appeal/CR/115/2011, in which respondent Nos. 4 and 5 were the appellants. Respondent Nos. 4 and 5 are Sarpanch and Up-Sarpanch of Gram Panchayat of village Digras (Kh), Taluka Sailu, District Parbhani. The petitioners moved a common requisition notice for passing "No-Confidence-Motion" against respondent Nos. 4 and 5. Learned Divisional Commissioner held that such common notice was illegal, and so, while allowing the appeal, he set aside the resolution passed by the petitioners in the meeting. The only point that the learned counsel for the petitioners raised is that Rule 2 (1) of the Bombay Village Panchayats Sarpanch and Up-Sarpanch (No Confidence Motion) Rules, 1975, is directory and not mandatory.

2. Rule 2 of said Rules reads as under:-

2. (1) The members of a panchayat who desire to move a motion of no-confidence against the Sarpanch or the Upa-Sarpanch shall give notice thereof in

the form appended hereto to the tahsildar of the taluka in which such panchayat is functioning. Where the members desire to move the motion of no-confidence against the Sarpanch as well as the Upa-Sarpanch, they shall give two separate notices.

(2) The notice under sub-rule (1) shall be accompanied by nine additional copies thereof, and the Tahsildar shall send one copy to the Sarpanch, one to the Upa-Sarpanch and one each to the Zilla Parishad, the Panchayat Samiti, the Collector and the Commissioner. One copy shall also be given to the Secretary.

(2-A) The Tahsildar shall also publish the said notice by placing the same on the notice board at the office of the Panchayat and Tahsildar Office.

(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.

(3) The Tahsildar shall, immediately on receipt of notice under sub-rule (1), satisfy himself that the notice has been given by not less than one-third of the total number of members (other than associate members) who are for the time being entitled to sit and vote at any meeting of the panchayat and then convene a special meeting for the purpose within seven days from the date of receipt of such notice.

3. The learned counsel for the petitioners asserted that though the Rule clearly mentioned that when the members desired to move the motion against Sarpanch as well as Up-Sarpanch, they should give two separate notices, but the Rule is not mandatory, and so, his clients' action of sending the joint notice was also permissible. He placed reliance on unreported order of Division Bench of this Court in the case of Shivaji Digambar Kapse v. The State of Maharashtra and others (Writ Petition No. 7790 of 2011), dated 21st October, 2011, in which certain observations are made. Learned counsel for the petitioners also placed reliance on the judgment of Supreme Court in the case of K. Narasimhiah Vs. H.C. Singri Gowda, . He tried to argue that in view of these judgments, this Court should take a view that the Rule quoted above is not mandatory.

4. I am, however, not inclined to undertake such examination of the Rule, because this Court in the case of Budhiya Dayaram Jamunkar Vs. Additional Commissioner and Others, very clearly held that the Rule is mandatory, and giving of two separate notices is necessary. This judgment is directly delivered on the relevant Rule and the submissions were also similarly made, but the learned

Single Judge of this Court very clearly held that the respondents were prejudicially affected for violation of the Rule.

5. Even in this case, on facts, it can certainly be said that the respondents are prejudicially affected because of the common notice. The Rule very clearly mentioned that the notice under this Rule is required to be given in a prescribed form. The form is also annexed to the Rules. On perusal of this form, it is found that in the notice the requisitionist should give grounds as to why they were intending to move "no-confidence-motion". In this case, the grounds mentioned in the notice are very generalised allegation commonly made against both respondent Nos. 4 and 5. In my view, the nature of allegations and the joinder of them is not only incorrect, but it militates against the purpose of the notice and need to mention the grounds. Grounds

should be mentioned in such a fashion that the affected party should be able to know what has angered his co-members. If the grounds are not specifically and particularly mentioned, he/she would not be able to deal with such grounds and would be unable to make submissions against no-confidence-motion. So, it is necessary that the grounds mentioned in the notice should be specific, particular, and as far as possible should be against one individual. Thus, the impugned notice in this case was bad, because it caused prejudice to the respondents.

6. This point was agitated before the Division Bench of this Court in the case of Chandrakala Ghatul Vs. Kathalu Hatagale and Others, and the Division Bench clearly held that the Rule is mandatory. The Division Bench in paragraph No. 10 of judgment observed as under:-

In the instant case we are concerned with, what may be read as a defective notices if that expression can be borrowed, as in each of the notices of motion, reference was made to no confidence against both Sarpanch and Upa-Sarpanch. In our opinion, this will not result in holding that the meeting called for holding the motion of no-confidence and subsequent procedure of calling the meeting would be null and void. On the facts here as admitted and findings recorded there were two motions. On the certified copy produced before us, the Tahasildar, has noted as one being for Sarpanch and other for Upa-Sarpanch. In such cases the test would be whether any prejudice was occurred to the appellants. In our opinion Appellants have been unable to show that prejudice was occasioned, either to Sarpanch or Upa-Sarpanch as the essential requirement of moving the motion has been complied with. As the motions were taken out in the form prescribed, in our opinion, the failure to refer to only Sarpanch or Upa-Sarpanch in the notice of motion of no-confidence cannot be said to be a serious illegality. At the highest it was an irregularity. Once the Tahsildar accepted two different notices relating to Sarpanch and Upa-Sarpanch, the irregularity if any, was cured. In our opinion, this aspect of the procedure is purely directory. Once it is held that it is a directory, a person aggrieved must show prejudice. Appellants herein have not shown any prejudice.

Before I conclude this judgment I have to express my dissatisfaction with the manner in which the petitioners advocate made his submissions. He was and ought to be aware of the settled law on this point and yet he placed reliance on rather irrelevant precedents and thereby wasted the court time unnecessarily.

Both petitions should therefore fail. Both the writ petitions are dismissed with cost.