
(2010) 04 BOM CK 0025
In the Bombay High Court
Case No : Writ Petition No. 534 of 2010

Shivkant Bangar	Vs	APPELLANT
The Gramsevak, Grampanchayat Office and Others		RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Bombay Village Panchayats (Meetings) Rules, 1959 — Rule 7
Bombay Village Panchayats Act, 1958 — Section 35, 35(1), 35(2), 35(3), 35(3B)

Citation : (2010) 4 BomCR 191

Hon'ble Judges : R.M. Borde, J

Bench : Single Bench

Advocate : V.D. Salunke, for S.J. Salunke, for the Appellant; S.G. Chapalgaonkar, for Respondents Nos. 2, 3, 5, 6, 8 and 9 and Y.M. Kshirsagar, A.G.P. for Respondents Nos. 10, 11 and 12, for the Respondent

Final Decision : Allowed

Judgement

R.M. Borde, J.—Heard learned Counsel for respective parties. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2. In both the petitions challenge is raised to the order in respect of dismissal of the appeal presented by respective petitioners to the Divisional Commissioner, Aurangabad, on 19.12.2009, thereby confirming the order passed by Additional Collector, Osmanabad, dated 20.10.2009.

3. The dispute pertains to no confidence motion moved against petitioners, who are holding the post of Sarpanch and Upa-Sarpanch, respectively of Village Panchayat Ratnapur, Taluka Kalamb, District Osmanabad. The election to the members of village panchayat was held in the year 2007 and petitioners in both the petitions are elected as members of village panchayat. On 10th August 2009, six members of village panchayat moved a common requisition to the Tahsildar requesting for convening a special meeting to discuss the motion of no confidence moved against Sarpanch and Upa-Sarpanch. On 12th August, 2009,

Tahsildar, Kallam, issued notices to the members prescribing date and venue of the special meeting as 17.08.2009. A common notice came to be issued by Tahsildar to the members calling upon them to attend the meeting for consideration of no confidence motion moved against petitioners in both the petitions on 17.08.2009.

4. According to petitioners, notice was not served on them or any adult male member in the family and merely evidence has been created in respect of affixing of notices on the door of residences of petitioners. It is further contended that even as per record, notices are not in fact affixed on the door of residential premises of petitioners, but same are affixed on the residences of some other villagers. In the absence of petitioners, motion of no confidence is moved against them and same is carried with a majority of six members voting in favour of the motion.

5. Petitioners in both the petitions challenge validity of motion of no confidence carried against them in the special meeting convened on 17.08.2009 mainly on two grounds. Firstly, it is contended that common requisition for convening a meeting for consideration of no confidence motion against Sarpanch and Upa-Sarpanch both, is not permissible and convening of such meeting and moving the requisition itself, is in violation of mandatory provisions of Rule 2(1) of the Bombay Village Panchayats Sarpanch and Upa-Sarpanch (No Confidence Motion) Rules, 1975 (for short, "Rules of 1975").

6. Another objection raised is in respect of failure to issue notice in respect of motion of no confidence to the petitioners, which has resulted in taking away the valuable right vested in them in attending the meeting and addressing the members with a view to answer the charges levelled against them. The net result of failure of serving notice of the meeting is deprivation of right of office bearers i.e. petitioners to address the meeting with a view to answer charges, which right, according to petitioners, is fundamental in character and essence of democratic functioning of local self bodies.

7. That, so far as objection raised by petitioners in respect of moving of common requisition by six members of village panchayat requesting the Tahsildar to convene special meeting for consideration of no confidence motion is concerned, a copy of requisition is placed on record at Exhibit-A. On perusal of Exhibit-A, it appears that six members have signed the requisition, which notes three grounds in support of the motion. The requisition is common in respect of Sarpanch and Upa-Sarpanch and grounds in support of motion of no confidence moved against office bearers are also common in respect of both the petitioners. Surprisingly, it appears that, the Tahsildar has endorsed on the requisition noting therein that six members have presented a notice in person and all the members have signed in presence of Tahsildar. The reference in the noting is only for calling a meeting for consideration of no confidence against Sarpanch alone. The Tahsildar has ordered to convene the meeting on 17.08.2009 at 2.00 p.m. in the office of Village Panchayat, Ratnapur. It was further directed by the Tahsildar to

issue notices to the members accordingly. Thus, it transpires that although the requisition is common in respect of calling meeting for consideration of no confidence against Sarpanch and Upa-Sarpanch both, the endorsement made by the Tahsildar is in respect of calling meeting for consideration of no confidence only against Sarpanch. However, it transpires that notices are issued for consideration of no confidence against Sarpanch and Upa-Sarpanch both and the notices are common in respect of consideration of motion against both the office bearers.

8. In order to verify the contentions raised by petitioners, I have called upon the Tahsildar to produce original file. On perusal of original file maintained by Tahsildar, it transpires that a common requisition is moved against Sarpanch and Upa-Sarpanch both and the endorsement made by Tahsildar on receipt of requisition is only for consideration of motion against Sarpanch alone. Exhibit-A annexed with the petitions is a true copy of original which finds place in the record of Tahsildar. Thus, although the requisition was in respect of calling for meeting for consideration of motion of no confidence against Sarpanch and Upa-Sarpanch, order issued by Tahsildar is in respect of consideration of motion only against Sarpanch. However, notices of meeting dated 17.08.2009 gives an impression that meeting is convened for consideration of motion against both and in fact the motion of no confidence is considered against both the office bearers and same has been carried by majority. Thus, there is a defect of fundamental character appearing in tendering common requisition as well as the order passed by Tahsildar also is in respect of consideration of motion only against Sarpanch, however, the meeting was convened for consideration of motion against both the office bearers and same is carried through.

9. An endorsement made by Tahsildar for convening meeting for consideration of no confidence only against Sarpanch and consideration of motion against both the office bearers in the meeting cannot be said to be a defect of technical character. The whole procedure in respect of conduct of meeting and consideration of motion against both the office bearers is vitiated. The defect pointed out cannot be said to be of a technical character and same is of fundamental nature which vitiates the entire procedure.

10 The appellate authorities i.e. Additional Collector and Divisional Commissioner have not considered the matter in its correct perspective and proceeded to dismiss the appeals. From the reply tendered by Tahsildar before Collector, Osmanabad, he has admitted that there was a common notice disclosing similar allegations and the Tahsildar has further stated in his reply that there was no need to issue dual notices to the members in respect of motion against Sarpanch and Upa-Sarpanch as all the members reside in one and same village. The Additional Collector, Osmanabad, however, did not consider the objections raised by petitioners, based on interpretation of Rule 2(1) of Rules of 1975, as well as in respect of defect in serving notices on petitioners and proceeded to dismiss the appeals.

11. The Divisional Commissioner, however, while considering the appeals, has noted in the judgment that on perusal of the file maintained by Additional Collector, it appears that there are two separate requisitions tendered by members for convening meeting for consideration of motion of no confidence against Sarpanch and Upa-Sarpanch and as such, the ground of objection raised by petitioners, based on interpretation of Rule 2(1) of the Rules, has been turned down.

12. I have also perused the file maintained by Additional Collector. In the file maintained by Additional Collector, true copies of requisitions tendered by members for convening the meeting for consideration of motion of no confidence against Sarpanch and Upa-Sarpanch do find place and those are two difference requisitions. However, endorsement thereon is by the Clerk from the office of Tahsildar and same does not bear endorsement of Tahsildar. There is also no inward number noted on the so called requisitions. If such requisitions are separately presented to Tahsildar, same shall obviously find place in the file maintained by Tahsildar. However, originals thereof, are not part of the file of Tahsildar. The Tahsildar was called upon to file his affidavit and initially he presented his affidavit on 02.02.2010, wherein it is stated by Tahsildar in para 5 of the reply, thus:

I say and submit that, further contention of the Petitioner is that, for no confidence motion against Sarpanch and Upsarpanch, only letter was issued by the Gram Panchayat Member to the Tahsildar, in this respect. Six members of the Gram Panchayat, Ratnapur had tendered separate application to this deponent, requesting to convey a meeting of no confidence motion against Sarpanch and Upsarpanch.

13. After perusal of original files maintained by Tahsildar as well as file in respect of appeal presented to the Additional Collector, I find that there is some discrepancy, which goes to the root of the matter and as such, explanation was required to be called from the Tahsildar. As such, by an order dated 29th March, 2010, I called upon the Tahsildar to remain present before the Court and tender his affidavit explaining:

- i. If there were two separate requisitions presented, why those two separate requisitions do not find place in the file maintained by him?
- ii. Why the requisition which finds place in the record of Tahsil does not bear inward/outward register number?
- iii. Why the separate requisitions placed on record in the file of Deputy Collector bear the inward / outward number? And whether those are copies of original?

14. The Tahsildar remained present in person and tendered his affidavit on 30th March, 2010. The Tahsildar has tendered his unconditional apology for making statement in his earlier reply, which is not true and correct as per the record. He further explained the mistake appearing in para 5 of his earlier reply. The

explanation tendered by Tahsildar reads thus:

It is submitted that, intention of the deponent was never to mislead this Hon'ble High Court or make false statement before this Hon'ble High Court. It is submitted that in para No. 5 of page 75 of the Writ Petition in the affidavit sworn by this deponent it is stated that, "Six members of the Gram Panchayat, Ratnapur had tendered separate application to this deponent requesting to convey meeting of no confidence motion against Sarpanch and Upsarpanch." It is submitted that this deponent actually meant, "six members of Grampanchayat, Ratnapur had tendered application (Composite application) to the deponent requesting to convey separate meeting of no confidence motion against Sarpanch and Upsarpanch." It is therefore, submitted that the deponent had received one composite application / requisition to convey meeting of no confidence motion against both Sarpanch and Upsarpanch.

15. The Tahsildar has further stated that there is only one composite requisition received by him in respect of motion of no confidence against Sarpanch and Upa-Sarpanch. He further stated that as the requisition was tendered directly to him, same does not bear inward number. He further stated that separate requisitions, copies of which, find place in the record of Deputy Collector, were in fact not tendered to him. He further stated that there is no inward number on the said copies and receipts of those requisitions appear to have been given by the Clerk, against whom an inquiry is initiated. The Tahsildar has stated that there are no originals of the requisitions in the office of Tahsildar, copies of which find place in the record maintained by Deputy Collector. The Tahsildar has again tendered unconditional apology.

16. Thus, from the facts stated above, it is clear that there is only one common requisition received by the Tahsildar in respect of motion of no confidence against Sarpanch and Upa-Sarpanch.

17. It is necessary to consider the provisions of Bombay Village Panchayats Sarpanch and Upa-Sarpanch (No Confidence Motion) Rules, 1975. Rule 2 of the said Rules reads thus:

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 seven 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.

(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.

18. Rule 2(1) of the said Rules in clear terms prescribes for tendering two separate requisitions when the members desire to move motion of no confidence against Sarpanch as well as Upa-Sarpanch. It is contended by learned Counsel appearing for petitioners that provisions of Rule 2(1) are mandatory in character and non compliance of the Rules vitiates the motion of no confidence in essence directly.

19. Section 35 of Bombay Village Panchayats Act, 1958 deals with motion of no confidence. The provision is quoted below:

35. Motion of no confidence - (1) A motion of no confidence may be moved by not less than one-third of the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat against the Sarpanch or the Upa-Sarpanch after giving such notice thereof to the Tahsildar as may be prescribed. Such notice once given shall not be withdrawn.

(2) Within seven days from the date of receipt by him of the notice under Sub-section (1), the Tahsildar shall convene a special meeting of the panchayat for considering the motion of no confidence at the office of the panchayat at a time to be appointed by him and he shall preside over such meeting. At such special meeting, the Sarpanch or the Upa-Sarpanch against whom the motion of no confidence is moved shall have a right to speak or otherwise to take part in the proceedings at the meeting including the right to vote.

(3) If the motion is carried by a majority of not less than two-third of the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat, the Sarpanch or the Upa-Sarpanch, as the case may be, shall cease to hold office after seven days from the date on which the motion was carried unless he has resigned earlier or has disputed the validity of the motion so carried as provided in Sub-section (3-B); and thereupon the office held by such Sarpanch or Upa-Sarpanch shall be deemed to be vacant.

Provided that no such motion of no-confidence shall be brought within a period of six months from the date of election of Sarpanch or Upa-Sarpanch.

(3-A) If a motion is not moved or is not carried by a majority of not less than two-third of the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat, no such fresh motion shall be moved against the Sarpanch or, as the case may be, the Upa-Sarpanch within a period of one year from the date of such special meeting.

(3-B) If the Sarpanch or, as the case may be, the Upa-Sarpanch desires to dispute the validity of the motion carried under Sub-section (3), he shall, within

seven days from the date on which such motion was carried, after the dispute to the Collector who shall decide it, as far as possible, within fifteen days from the date on which it was received by him; and any such decision shall, subject to an appeal under Sub-section (3-C), be final.

(3-C) Any person aggrieved by the decision of the Collector may, within seven days from the date of receipt of such decision, appeal to the Commissioner who shall decide the appeal, as far as possible, within fifteen days from the date on which the appeal is received by him, and any such decision shall be final.

(3-D) Where on a reference made to him under Sub-section (3B), the Collector upholds the validity of the motion carried under Sub-section (3) and no appeal is made by the Sarpanch or the Upa-Sarpanch under Sub-section (3C) within the limitation period specified in that sub-section, or where an appeal is made under Sub-section (3C), but it is rejected by the Commissioner, the Sarpanch or as the case may be, the Upa-Sarpanch shall cease to hold office, in the former case, immediately after the expiry of the said limitation period and, in the latter case, immediately after the rejection of the appeal, and thereupon the office held by such Sarpanch or Upa-Sarpanch shall be deemed to be vacant.

(4) In cases where the offices of both the Sarpanch and Upa Sarpanch become vacant simultaneously, the District Village Panchayat Officer or such other office as he may authorise in this behalf shall, pending the election of the Sarpanch exercise all the powers and perform all the functions and duties of the Sarpanch but shall not have the right to vote in any meetings of the panchayat.

20. It is contended that Rule 2(1) of the Rules lay down a procedure for convening meeting for consideration of no confidence against Sarpanch and Upa-Sarpanch and there is some purpose in prescribing presentation of two separate motions against Sarpanch and Upa-Sarpanch. The motion moved by members is required to contain charges and the person against whom the motion is moved as well as the members of village panchayat are entitled to know as to what are the charges against office bearers. There might be separate charges against the office bearers and those are required to be considered separately. Relying on a judgment delivered by learned Single Judge of this Court (Nagpur Bench) in Writ Petition No. 2212 of 2007 in the matter of Ashabai w/o Ashok Shinde v. Additional Commissioner, Amravati Division, Amravati, it is contended that provisions of Rule 2(1) of the Rules are mandatory in nature and on observance thereof vitiated the whole procedure. Reliance is placed on paragraphs 8 and 9 of the judgment, which are quoted as below:

8. Perusal of Rule 2(1) of the Rules lays down a procedure to be adopted by the members of Gram Panchayat who desire to move a motion of no confidence against Sarpanch and Upa-Sarpanch. Election to the post of Sarpanch and Upa-Sarpanch is governed by the provisions of the Act and the Rules, so also the motion of no confidence to be brought against elected Sarpanch or Upa-Sarpanch. The same is not a common law right. Rule 2(1) of the Rules provides

that where the members desire to move a motion of no confidence against both Sarpanch as well as Upa-Sarpanch they shall give two separate notices. It cannot be said that the aforesaid words used in the Rule are superfluous or have been unnecessarily used. It is well settled that the legislature does not utilize the words without purpose. The fact that Rule 2(1) of the Rules which provides for two separate notices for Sarpanch and Upa-Sarpanch becomes significant particularly because a particular procedure has been provided therein. In the case of Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, , the Supreme Court has clearly held that if a particular thing is required to be done by law in a particular manner, the same has to be done in the same manner and not in any other manner. I quote the paragraph No. 40 from the Supreme Court judgment cited supra.

40. The statutory interdict of use and enjoyment of the property must be strictly construed. It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the said Act are only creature of statute. They must act within the four corners thereof.

9 The judgments cited by Advocate Shri Narwade undoubtedly held those particular Rules and sub-rules directory but they have been held so looking to the object sought to be achieved under those Rules. In the instant case, I find that there is a specific object of providing for two separate notices for Sarpanch and Upa-Sarpanch right from the inception. By two separate notices those members who do not desire to move motion of no confidence against Sarpanch may have desire to move such motion against Upa-Sarpanch or vice versa. Similarly, on the date of meeting of no confidence, some of those, who have signed the requisition against both may not like to vote in favour of or against the motion of no confidence against Sarpanch or Upa-Sarpanch. In order to avoid any such type of confusion and to have proper regulatory process for adhering to the democratic process this was essential. In this background therefore, it is difficult to hold the provision of Rule 2(1) of the Rules as directory, as contended by Advocate Shri Narwade.

21 Reliance is also placed on the judgment in the matter of Sau. Budhiya Dayaram Jamunkar v. Additional Commissioner, Amravati and Ors. reported in 2009 (5) ALL MR 197, wherein motion of no confidence has been set aside on the ground of non compliance of provisions of Rule 2(1) of the Rules.

22. Learned Counsel appearing for Respondents have contended that petitioners have not raised a specific ground before the appellate authority in respect of non compliance of Rule 2(1) of the Rules and the ground raised before the appellate forum is in respect of issuance of common notice to the members intimating the date and time of the meeting along with grounds for consideration of no confidence, which was stated to be common. It is contended that the ground raised by petitioners in the appeals before the appellate forum is in fact covered by Rule 2(2) of the Rules and non observance of Rule 2(2) will not lead to

consequence of invalidating whole procedure of meeting and rendering no confidence motion as invalid. It is contended that provisions of Rule 2(2) are directory in nature. It is further contended that in fact the members have tendered two separate requisitions, however, it is for the Tahsildar to explain as to why those two separate requisitions do not find place in the record.

23. I have considered submissions advanced by learned Counsel for Respondents. I find that the ground in respect of non observance of procedure contained in the Rules is urged before the appellate forum. The judgment of Additional Collector as well as Divisional Commissioner makes a reference in respect of raising of such an issue by the petitioners. However, the issue has been dealt with specifically by the Divisional Commissioner. But, according to me, Divisional Commissioner has erred in observing that there is compliance of Rule 2(1) of the Rules. The explanation tendered by Tahsildar in his affidavit-in-reply is acceptable and statement made by Tahsildar is on the basis of record maintained by his office. Thus, there can not be little doubt that there was a common requisition tendered by members for convening a meeting for consideration of motion of no confidence against Sarpanch and Upa-Sarpanch.

24. Respondents have placed reliance on the judgment in the matter of Kathalu Hatagale Vs. The State of Maharashtra and Others, . This Court, while dealing with an issue in respect of common notice for consideration of motion of no confidence, issued to the members, has observed that:

Merely having reference to Sarpanch and Upa-Sarpanch in one and same notice should not provide ground to get no confidence motion set aside passed with sufficient majority.

This Court has further observed that:

The will of majority in the democratic set-up is required to be given its due weightage.

In the reported matter, admittedly, there were two separate requisitions tendered for consideration of motion of no confidence against the office bearers. The ratio laid down in the judgment, therefore, is of no help to the Respondents.

25. Reliance is also placed on the judgment in the matter of Nimba Rajaram Mali Vs. Collector, Jalgaon and others, . In para 13 of the judgment, it is observed thus:

In a democratic society what is important is the Will of the majority and the elected representatives must honour the will of the majority. It is immaterial to analyse and debate on the reasons behind the will of the majority or the specific reasons for such will being expressed. The will of the majority is of paramount importance and it must be respected by all elected representatives responsible for the governance of such democratic institutions. As observed by the Apex Court in the case of Babubhai (supra), resolution of No Confidence Motion is different from Censure Motion and such a resolution cannot be faulted on the

ground that there were no reasons or reasons were vague and lacked detailed specifications. Once the resolution of 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. Unless it is shown that while passing such a resolution of No Confidence Motion, there was flagrant violation of any of mandatory procedure laid down, such a resolution cannot be interfered with by the Court or statutory authorities adjudicating such disputes. In the case at hand, both the authorities below, on perusal of record before them, have recorded clear findings that the resolution was passed in keeping with the requirements of the No Confidence Motion Rules and there was no breach of any statutory provisions. These findings do not suffer from any error, leave alone error apparent, on the face of the record.

26. Although the Court has observed about importance of Will of the majority, however, at the same time, this Court has also cautioned against causing interference unless there was a flagrant violation of any mandatory procedure laid down. In the instant matter, there is violation of mandatory procedure and as such, merely because motion is carried with majority, will not, in itself, nullify the fundamental defects, which go to the root of the matter.

27. Reliance placed on the judgment in the matter of Arjun Sambhaji Khade and Others Vs. Mangal Ankush Kharmate and Others, , is in respect of interpretation of Rule 2(2) of the Rules and this Court has held that, "non observance of the procedure laid down in Rule 2(2) will not lead to nullifying the motion, which otherwise, is carried by majority". Similarly, Respondents have also sought leave to place reliance on the judgment in the matter of Durgadas Ukhaji More and Ors. v. Additional Commissioner, Nasik Division and Ors. reported in 2002 (Supp. 2) Bom CR 755, and contended that as the resolution of no confidence is passed by two-third majority, same shall not be nullified on technical grounds and the office bearers, against whom motion is passed and who do not enjoy confidence of majority, should not be allowed to continue in the office and in fact they should leave the office gracefully. However, on account of non observance of mandatory procedure, which is of fundamental character, the whole process is vitiated and as such, it is not open to contend that the motion is carried by majority, therefore, no interference is permissible. There is something far more fundamental which goes to essence of democratic functioning and if there is a defect of fundamental character, the Court ought not to countenance a suppression of right of the elected representative by a supposed justification on the basis of majority view.

28. Now turning to the another ground raised by petitioners, the motion must fail on account of failure of service of notice to both petitioners and according to me, appellate authorities have not considered the matter in its proper perspective. It is a grievance made by both the petitioners that they have not received notice of motion of no confidence and as such, they are deprived of their right to answer

the charges in the meeting held for consideration of the motion. The right to speak, according to petitioners, is of a fundamental character and is essence of functioning of democratic institutions and the petitioners, who are office bearers of local bodies, are deprived of their right to address the meeting, which vitiates the whole process and on that count alone, the motion must fail. Admittedly, petitioners have not been served with notice in person. It is contended that petitioners were absent and none of their family members were present at the residence. As such, notices are pasted on the front door of their respective residences and panchanama to that effect is recorded. Reliance is placed on the panchanamas effected in respect of affixing of notices on the front doors of respective residences of petitioners. That, so far as petitioner in Writ Petition No. 534/2010 (Sarpanch) is concerned, the panchanama records that notice is pasted on the front door of House No. 126. Petitioner has placed on record copy of property tax extract in respect of house No. 126 and said house belongs to one Yashwant Sadhu Tekale. An affidavit of Dashrath Yashwant Tekale, son of owner, is placed on record, who states on oath that he is residing in House No. 126 and same is away at a distance of about ? km from the residence of Shivkant Bangar i.e. petitioner in W.P. No. 534/2010. Petitioner has placed on record property tax extract in respect of his residential premises, which bears House No. 205. Thus, notice appears to have been affixed on House No. 126 and as such, petitioner is justified in contending that he has not received notice and as such he did not attend the meeting. Similar is the case in respect of petitioner in Writ Petition No. 535/2010. The panchanama in respect of service of notice is as regards House No. 129, whereas, House No. 129 belongs to one Atmaram Ranghnath Tekale and Bhagwan Rangnath Tekale, whereas, petitioner resides in House No. 51, which is recorded in the name of her father-in-law Bhagwan Tulsiram Tekale. Thus, it appears, in both the matters, notices in respect of meeting for consideration of no confidence motion appear to have been affixed on different residential premises. The appellate forum has overlooked this aspect by observing that village Ratnapur is a small village and villagers are aware in respect of residences of every persons in the village. It is further recorded that, merely because there is defect in mentioning House number, it cannot be said that notice is not served on them, but it has to be seen, whether procedure, as contemplated in Bombay Village Panchayats (Meetings) Rules, 1959 in respect of service of notice, has been adhered to and non observance of rules has to be viewed in peculiar facts of these cases. Rule 7 of the Meetings Rules prescribe procedure in respect of service of notice. Relevant rule is quoted below:

7. Every notice under these rules shall, if practicable, be served personally by delivering or tendering it to the member to whom it is addressed or if such person is not found, by giving or tendering it to an adult male member of his family who is residing with him. If there is no such person to whom notice can be given or tendered or where the member, or as the case may be, in his absence such adult male member, is present but 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 the member ordinarily resides. If none of the aforesaid modes of serving notice is feasible, the notice shall be affixed, in the presence of two witnesses, on some conspicuous part of the house in which the member is known to have last resided on business or personally worked for gain.

29. It cannot be disputed that the provisions of Meetings Rules would apply in respect of service of notice of a meeting convened for consideration of motion of no confidence. It is already held in unreported decision in the matter of Mandabai Balnath Rohom v. Ashok Fakira Chandar in Writ Petition No. 575/2001 decided on 13.06.2001, that the service of notice relating to meeting for consideration of motion of no confidence shall be in accordance with provisions of Meetings Rules. The Meetings Rules provide that resort to affixation of notice on the door can be taken only when other modes of services permitted under the Rules are not feasible. Other modes of service prescribed are, firstly, if the person, on whom notice is to be served, is not found, same shall be tendered to the adult male member of the family residing with him in the house. If the adult male member in the family refuses to accept the notice, then only mode of service by affixation of notice on the door can be adopted. In the instant matter, there is nothing mentioned in the panchanamas to the effect that there was nobody in the residence who could accept the notice. Thus, there does not appear to be any attempt made for serving the notice in the manner prescribed by Rule 7. Apart from this aspect, the notice is also affixed on some different residential premises than those which belong to the petitioners. Thus, the contentions raised by petitioners that they have not been duly served with the notice of meeting shall have to be accepted.

30. Learned Counsel for petitioners has sought leave to place reliance on the judgment in the matter of Bhika Narayan Gangurde and Others Vs. State of Maharashtra and Others, , which deals with the mode of service, as prescribed by Rule 7 of the Meetings Rules. Reliance is also placed on the judgment in the matter of Indubai Vedu Khairnar Vs. State of Maharashtra and Others, . In the reported matter, objection to the motion of no confidence was raised on the ground of failure to serve the notice on the members. While dealing with this issue, this Court has observed that, "Under Sub-section 2 of Section 35, Sarpanch or Upasarpnach against whom Notice of Motion of no confidence is moved has a right to speak and his right to speak cannot be exercised if he is not served with the notice of meeting. Thus, the mandatory requirement of serving notice on the person against whom the motion of no confidence is proposed, has resulted in vitiating the motion of no confidence.

31. Reliance is also placed on the Division Bench judgment in the matter of Shri Ashok Krishnakant Mehta Vs. State of Maharashtra and others, . The issue involved in the reported judgment was as to whether resolution of no confidence passed at a meeting during the course of which, members, constituting the village panchayat, were not permitted to speak, could be invalid. In the instant

matter also, on account of failure to serve notice on the office bearers, there is deprivation of their right to speak in the meeting. While emphasizing the need of observance of democratic principles in extending an opportunity to speak in the meeting, Division Bench of this Court has observed thus:

Section 35 expressly recognises that the Sarpanch against whom a resolution of no confidence is to be passed would be entitled to address the meeting. This requirement is embodied in the law as compliance with a basic principle of natural justice. A resolution of no confidence operates to remove person from his position as Sarpanch or Upa-Sarpanch by expressing a lack of confidence in his ability to govern the affairs of the Village Panchayat. Bearing in mind the consequences of as well as the underlying basis for a resolution of no confidence, the law has incorporated a requirement of giving the Sarpanch or the Upa-Sarpanch, as the case may be, an opportunity of being heard before the members vote upon the resolution of no confidence. The Tahsildar and the authorities below erred in reaching into the requirement of giving an opportunity to the Sarpanch or Upa-Sarpanch as the case may be a rule of exclusion that would debar any other person apart from those against whom the motion of no confidence is being moved, from speaking at the meeting. A rule of exclusion is neither expressly contained in the statute nor does it follow by necessary implication. The object of permitting the members of the Village Panchayat to address the meeting of the Panchayat has a genesis which is distinct from the opportunity of being heard which is given to the Sarpanch or Upa-Sarpanch against whom the resolution of no confidence is being proposed. Every member of the Village Panchayat is entitled to participate in the affairs of the Panchayat. An expression of view point at the meeting of the Village Panchayat is a valuable right available to the members of the Village Panchayat. The elected bodies at the local level fulfill basic principles of democratic functioning which are to be found as well in larger bodies at other levels of the polity. The right of each member of the house to address the house is a valuable safe-guard of democratic functioning. Unquestionably, that right can be regulated by the Presiding Officer so as to ensure the due and orderly course of debate on the floor of the representative body so as to ensure that the functioning of the body is not disputed. But, to regulate the course of debate in the interests of ensuring due order in the course of the proceeding is quite a different thing from prohibiting members from speaking on the ground that the resolution does not pertain to the member who wishes to speak. Every member of representative, popularly elected bodies has a vital interest in the business which is transacted before that body. The right of a particular member who is sought to be proceeded against on account of a specific misconduct or for having incurred a particular disqualification cannot be equated or confused with the general right of all the members to discuss and debate. All members have a vital interest in expressing their view point subject to due regulation in the interest of preserving order in the course of proceedings. The authorities below have summarily rejected the submission made on behalf of the petitioner on the ground that by

an overwhelming majority of 9 in a house of 17 the resolution came to be passed. The issue, in our view, is something far more fundamental and that goes to the root or the essence of democratic functioning. The weight of numbers is not an answer to a fundamental defect such as this and the Court ought not to countenance a suppression of the right to speak by a supposed justification on the basis of the number who cast their lot in support of a resolution. The exclusion of members from addressing the Village Panchayat was a fundamental flaw in the proceedings which would invalidate the resolution of no confidence.

32. In the instant matter also, on account of failure to serve petitioners with notice of meeting of no confidence, they have been deprived of their valuable right to address the members. The right to speak in the meeting is not an empty formality. The result of the motion could have been different if petitioners were to exercise their right to speak and there was every possibility that they could have convinced the members as regards falsity of allegations/charges against them. This valuable right is lost on account of failure to serve them with the notice. The ground that the resolution is passed by majority would not be an answer for the argument in respect of non observance of mandatory procedure.

33. It is also necessary to consider and comment about the role of Tahsildar in the matter. In my opinion, the Tahsildar has conducted himself in most casual manner. The maintenance of record by the Tahsildar and his approach in the proceedings, according to me, is most casual and it cannot be said that the officer has acted in a responsible manner. Firstly, if there is a common requisition requesting for convening meeting for consideration of motion of no confidence against Sarpanch and Upa-Sarpanch both, it was an error on the part of Tahsildar to endorse on the application calling upon meeting for consideration of motion of no confidence against Sarpanch alone. If the motion against Sarpanch alone was directed to be considered, it was not open for the Tahsildar to consider the motion of no confidence against both - Sarpanch and Upa Sarpanch. It was also not understandable as to why the notices for consideration of motion against both Sarpanch and Upa Sarpanch were issued when the Tahsildar has endorsed on the requisition for convening a meeting for consideration of motion of no confidence only against Sarpanch. The Tahsildar has added to the confusion by tendering an affidavit to this Court concurring himself with the findings recorded by Divisional Commissioner that there were two separate requisitions moved against Sarpanch and Upa Sarpanch. When Tahsildar was confronted with the record maintained by him, wherein only one common requisition moved by six members finds place, he has tried to explain his error, which, according to him, is inadvertent. The officer of the rank of Tahsildar has tendered an affidavit concurring with the findings recorded by Commissioner, apparently with a view to support his superior officer. However, when he was directed to explain on the basis of record, he has tendered his unconditional apology and stated the facts, which are in consonance with the record. In this situation, though I restrain myself from issuing notice of contempt against the officer, I am of the opinion that the higher officers have to take note of conduct of Tahsildar and ought to

proceed against him. The role of Tahsildar, in the whole episode, appears to be suspicious and his shifting of stand needs to be inquired. I, therefore, direct the Divisional Commissioner, Aurangabad Division, Aurangabad and Secretary, Revenue Department to initiate inquiry in the matter against the Tahsildar.

34. For the reasons stated above, therefore, both the petitions deserve to be allowed and same are accordingly allowed. The motions of no confidence carried against petitioners in a meeting dated 17.08.2009 are quashed and set aside. The judgments and orders passed by Divisional Commissioner, Aurangabad Division, Aurangabad in both the appeals on 19.12.2009 confirming orders passed by Additional Collector, Osmanabad on 20.10.2009, in both the matters, stand quashed and set aside.

35. Rule is accordingly made absolute in both the petitions. In the facts and circumstances of this case, there shall be no order as to costs. Copy of this judgment be sent to Divisional Commissioner, Aurangabad Division, Aurangabad and Secretary, Revenue Department, Mantralaya, Bombay.