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Court : Mumbai Nagpur

Decided On : Dec-03-2015

Judge : A.S. Chandurkar

Appeal No. : Writ Petition No. 5813 of 2015

Appellant : Suresh Devidas Choudhari and Others

Respondent : Additional Collector Washim Tah. and Dist. Washim and Others

Advocate for Def. : Shri. A. R. Deshpande

Advocate for Pet/Ap. : Shri. U. J. Deshpande

Judgement :

Oral Judgment :

1. In view of notice for final disposal, learned counsel for the parties have been heard at length.

The petitioners are aggrieved by the order dated 04/09/2015 passed by the respondent No.1 allowing the appeal preferred by respondent No.4 and setting aside the motion of no-confidence dated 12/03/2015. The respondent No.4 was elected as Sarpanch of respondent No.2 Grampanchayat. On the basis of a

requisition for moving a motion of no-confidence against the respondent No.4, a notice dated 05/03/2015 convening special meeting on 12/03/2015 came to be issued. The notice dated 05/03/2015 was sought to be served on the respondent No.4 and the same was received by one Bhaurao @ Bharat Gulab Rathod. Thereafter the meeting to consider the motion of no-confidence was held on 12/03/2015 in which the motion was carried. Being aggrieved the petitioner filed an appeal under Section 35(3B) of the said Act. Initially by order dated 04/06/2015, the respondent No.1 had dismissed the appeal preferred by said Sarpanch and had maintained the motion of no-confidence. Being aggrieved, the Sarpanch had preferred W.P.No.3231 of 2015 and by judgment dated 31/07/2015, the appellate order was set aside and the proceedings were remitted to respondent No.1 for fresh consideration. After remand, the appeal as now been decided and same has been allowed.

2. Shri U. J. Deshpande, learned counsel for the petitioners submitted that notice of special meeting dated 05/03/2015 was duly served on the respondent No.4, in as much as he had been informed on his mobile phone that such notice was to be served on him. On instructions of respondent No.4, one Bharat Rathod who was related to respondent No.4 was directed to accept said notice and therefore service of said notice was legal and proper. It was submitted that though under Rule2B of the Bombay Village Panchayats Sarpanch and Upsarpanch (No-confidence Motion) Rules, 1975 (for short, the said Rules) the words used are wherever it may be practicable?. It was therefore submitted that as respondent Nos.4 was not available at the relevant point of time, he was informed by making a call on his mobile and on his instructions, copy of notice was given to said Bharat Rathod. It was submitted that in any event, the respondent No.4 had adequate knowledge about such meeting being held and therefore he could not be permitted to raise technical plea. It was then submitted that the stand as taken by respondent No.4 that said Bharat Rathod was not related to him was an afterthought after the motion came to be passed. In support of his submissions, learned counsel placed reliance on the judgment in **Ramkrishna Tukaram Patil ors. vs. State of Maharashtra ors. 2012(6) Mh.L.J. 948** and urged that service in such manner would not vitiate the motion as passed. Learned counsel also placed reliance on the judgment in **Hanuman Rangnath Giram and ors. vs. Divisional**

Commissioner and ors. 2013(3) Mh.L.J. 712 and submitted that the respondent No.4 having lost confidence, he was not entitled to hold the post of Sarpanch.

3. Shri A. R. Deshpande, learned counsel for respondent No.4 supported the impugned judgment. He submitted that there was no service of notice dated 05/03/2015 in the manner prescribed by Rule 2B of the said Rules. There was no such finding recorded by the Additional Collector in the impugned order. Moreover, service was effected on a person who was not a member of his family. He placed reliance on the decision in **Vishal Shrikirishan Hole v. State of Maharashtra and ors 2014(1) Bom. C.R. 466** and **Surekha Eshwar Jadhav v. Nirmala w/o Madhavrao Jadhav and ors 2014(7) Bom. C.R. 280**.

4. I have given due consideration to the respective submissions and I have gone through the documents filed on record. The earlier proceedings that were decided on 04/06/2015 were challenged in W.P.No.3231 of 2015 and after holding that the case as made out by respondent No.4 had not been considered, the proceedings were remanded for fresh decision. The material on record includes two affidavits, one filed by Bharat Rathod who is said have received notice dated 05/03/2015 and one filed by Namdeo Rathod who had signed as witness on aforesaid notice. Said Bharat Rathod has denied any relationship with respondent No.4. This was the material available before the respondent No.1.

5. The provisions of Rule 2B 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 2B 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. **In Ramkrishna Patil** (supra) the Tahsildar had not sent copy of requisition to the Sarpanch and in that context it was held that such requirement could not be read into the provisions of Section 35(2) of the said Act. The observations in **Hanuman Giram** (supra) that on losing confidence the Sarpanch has to vacate the post in question, cannot be disputed. In said case, the notice was served on the brother of the Sarpanch and a stand regarding non-service was taken at a belated state. Hence aforesaid decisions do not support the case of the petitioners.

8. The finding therefore as recorded by respondent No.1 of absence of proper service on respondent No.4 is a finding on the basis of material available on record. As observed by the Division Bench in **Ashok Krishnakant Mehta vs. State of Maharashtra 2000(4) Mh.L.J. 197**, the weight of numbers cannot be an answer to such a fundamental defect of absence of service of the notice of meeting. The decisions in **Vishal Shrikrishna Hole** (supra) and **Nirmala Madhavrao Jadhav** (supra) support the stand of respondent No.4. In view of aforesaid, there is no jurisdictional error warranting interference in writ jurisdiction. Writ petition is therefore dismissed with no order as to costs. Rule is discharged.

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