

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1114 OF 2023

Mrs. Kamini Kailas Dhule, ...Petitioner
Sarpanch Group Grampanchayat Dahivali

V/s.

Additional District Collector, ...Respondents
District – Thane & Ors.

Mr. Rahul Hakani a/w Niyati Mankad, Shreya Gosavi, Advait Dalvi i/b Kirit Hakani, for the Petitioner.

Mr. S. D. Rayrikar, AGP, for Respondent Nos.1 to 3-State.

Mr. Saurabh Oka, for Respondent No.4.

CORAM : MADHAV J. JAMDAR, J.
DATED : DECEMBER 06, 2023

JUDGMENT:

1. Heard Mr. Hakani, learned Counsel appearing for the Petitioner, Mr. Rayrikar, learned AGP, for the Respondent Nos.1 to 3-State and Mr. Oka, learned Counsel appearing for Respondent No.4.

2. Learned Counsel appearing for the Petitioner states that Respondent No.2 has been served. He further states that, in any case, Respondent No.2 is not a contesting party to the present Writ Petition.

3. The Petitioner is challenging the legality and validity of the Order dated 28th December 2022 passed by the Additional District Collector, Thane in Gram Panchayat Case No.34 of 2022 (“**impugned Order**”). The said Gram Panchayat Case No.34 of 2022 has been filed under Section 36 read with Section 7(1) of the *Maharashtra Village Panchayats Act (Act No.III of 1959)* (“**said Act**”) by the Respondent No.4-Pramod Suresh Deshmukh, who is the *Upa-Sarpanch* of the Group Gram Panchayat, Dahivali, Taluka-Ambarnath, District-Thane. By the said impugned Order, the Additional District Collector, Thane allowed the said Gram Panchayat Case and disqualified the Petitioner from both, the post of *Sarpanch* and also as a member of the Group Gram Panchayat Dahivali, Taluka-Ambarnath, District-Thane on the ground that the Petitioner, in her capacity as the *Sarpanch*, did not hold the first *Gram Sabha* for the financial year 2022-23 before 30th May 2022.

4. It is the contention of learned Counsel appearing for the Petitioner that the Petitioner has held the requisite number of monthly meetings as well as the requisite number of *Gram Sabhas* during the said period of 2022-23. He submitted that the first *Gram Sabha* for the financial year 2022-23 which was required to be held before 30th May 2022, could not be held because the Petitioner was suffering from serious medical

ailments and she was undergoing medical treatment. He submitted that relevant material has been produced to substantiate the same. However, he further submitted that the Additional District Collector has referred the said medical papers, including the medical certificate of the Petitioner to the Civil Surgeon, Civil Hospital, Thane, who then constituted a committee of expert doctors to examine the same, and the said committee submitted a report dated 15th November 2022 certifying the Petitioner's medical condition. He submitted that the impugned Order is completely perverse as the said medical papers and certificate have not been taken into consideration by the learned Additional District Collector while giving reasons for passing the impugned Order. He submitted that, in this case, Section 7 of the said Act, which requires that the first *Gram Sabha* be held on or before the 31st of May, contemplates that a delay in holding the said *Gram Sabha* is permitted for reasonable and sufficient reasons. Mr. Hakani, learned Counsel appearing for the Petitioner has relied on the decision of a learned Single Judge of this Court [Aurangabad Bench] in the case of ***Manohar V. Collector***¹.

5. It is the contention of Mr. Oka, learned Counsel appearing for Respondent No.4 that there are no sufficient reasons to justify the delay in holding the first *Gram Sabha*. He submitted that

1 2023 SCC OnLine Bom 491 : (2023) 3 AIR Bom R 109

during the said period, the Petitioner attended the office on two or three occasions and signed the salary bills of the employees of the *Gram Panchayat*. He submitted that in view of the Petitioner personally visiting the office, the reasons given for not holding the said *Gram Sabha* within the prescribed time limit are not genuine reasons. He relied on the decision of a learned Single Judge of this Court in the case of *Gunwantrao Yeshwantrao Deshmukh V. State of Maharashtra & Anr.*²

6. Before considering the rival submissions, it is necessary to set out certain factual aspects :-

- (i) The general election of the Group Gram Panchayat, Dahivali was held and in the said election, the Petitioner, Respondent No.4 and other members were declared elected on 15th January 2021. The Petitioner was elected from the seat reserved for women belonging to the Other Backward Class (OBC) category. After the constitution of the committee of Respondent No.2, i.e., Group Gram Panchayat Dahivali, the elections of the *Sarpanch* and the *Upa-Sarpanch* were held on 8th February 2021 in which the Petitioner was elected as *Sarpanch* and Respondent No.4 was elected as *Upa-Sarpanch*.
- (ii) It is undisputed that the Petitioner has convened and

2 1981 Mh.L.J. 815 : 1981 SCC OnLine Bom 110

conducted the requisite number of *Gram Sabha* meetings for the financial year 2021-22 and the same is also reflected in the report of the Block Development Officer, Ambarnath. For the financial year 2022-23, the first meeting of *Gram Sabha* was required to be held on or before 31st May 2022 but it was eventually held on 27th June 2022.

7. It is the contention of learned Counsel appearing for the Petitioner that, due to her serious illness during the period from 2nd May 2022 to 25th May 2022, the Petitioner was unable to convene the *Gram Sabha* meeting on or before 30th May 2022. It is the case of the Petitioner that despite her illness she visited the office of the *Gram Panchayat* twice or thrice during the said period to sign the pay cheques of the employees of the *Panchayat* and some urgent papers. It is the case of the Petitioner that after recovering from her illness, she convened the monthly meeting of the Village *Sabha* for the month of May 2022 on 30th May 2022. The Respondent No.4, who is the *Upa-Sarpanch* attended and participated in the said monthly meeting of the *Gram Panchayat* held on 30th May 2022.

8. It is the case of the Petitioner that, in consultation with Respondent No.4, the Petitioner issued notice of the *Gram Sabha* along with an agenda on 31st May 2022. However, in view of the

transfer of *Gram Sevak*, Mr. Vaibhav Padwal, on 31st May 2022 a fresh notice of *Gram Sabha* with an agenda was issued on 10th June 2022 under the signature of the Petitioner and the newly appointed Gram Sevak scheduling the *Gram Sabha* on 20th June 2022. On 20th June 2022, for want of quorum, the meeting of the *Gram Sabha* could not be held and, therefore, on 20th June 2022 the notice of the adjourned meeting fixing the date of meeting as 27th June 2022 was issued and, accordingly, the *Gram Sabha* was held on 27th June 2022, wherein Respondent No.4, i.e., *Upa-Sarpanch* actively participated without raising any objection of delay in holding the meeting.

9. It appears that, on 14th June 2022, the complaint dated 6th June 2022 (presented on 14th June 2022) was filed by Respondent No.4, i.e., *Upa-Sarpanch* before the Additional District Collector, Thane under Section 36 read with Section 7(1) of the said Act seeking the disqualification of the Petitioner-*Sarpanch*. It is the contention of the Petitioner that in the said complaint, Respondent No.4 has suppressed knowledge about the Petitioner's serious illness.

10. The Respondent No.1, i.e., the Additional District Collector called for the report from the Block Development Officer, Ambarnath on the said complaint. On 29th June 2022, the Block Development Officer submitted his report to the office of the

Collector, Thane along with the reply of the Petitioner. In the said report, the Block Development Officer, Ambarnath has, *inter alia*, stated as follows :-

“१) महाराष्ट्र ग्रामपंचायत अधिनियम १९५९ कलम ३६ नुसार सरपंच सौ. कामिनी कैलास धूळे यांनी त्या सरपंच पदी निवडून आल्यापासून दरमहा मासिक सभा घेतलेल्या आहेत त्यामुळे त्या संबंधीत कलम ३६ नुसार कारवाईस पात्र नाहीत.

२) महाराष्ट्र ग्रामपंचायत अधिनियम १९५९ मधील कलम ७(१) नुसार ग्रामपंचायतीने माहे मे अखेर पहीली ग्रामसभा घेणे आवश्यक होते. तथापी तत्कालीन ग्रामविकास अधिकारी यांची बदली झाल्याने व सरपंच या महीलांच्या गंभीर आजारांमुळे आजारी असल्याने सदरची सभा माहे मे मध्ये ग्रामसभा घेतलेली नाही मात्र सदर सभा २७/०६/२०२२ रोजी घेण्यात आलेली आहे.”

(Emphasis added)

English translation of the same is as follows :-

“1) As per Section 36 of the Maharashtra Village Panchayats Act, 1959, the Sarpanch **Sau. Kamini Kailash Dhule** has held monthly meetings every month since the date of her election to the post of Sarpanch. Therefore, she is not liable for the action under the above-referred Section 36.

2) As per Section 7(1) of the Maharashtra Village Panchayats Act, 1959, the Gram Panchayat was required to hold first Gram Sabha by the end of the month of May. However, the then Village Development Officer had been transferred and the Sarpanch was suffering from serious Gynecologic illness and therefore, the said meeting - Gram Sabha was not held in the month of May. However, the said meeting has been held on 27.06.2022.”

11. The Respondent No.1-Additional District Collector forwarded the medical papers and medical certificate of the Petitioner to the Civil Surgeon, Civil Hospital, Thane, who in turn constituted a committee of expert doctors, which included an expert Gynecologist, to examine the medical papers and medical certificate of the Petitioner.

12. The said committee submitted its opinion by the letter dated 15th November 2022, which reads as under:-

“उपरोक्त संदर्भित पत्रानुसार या कार्यालयास पाठविण्यात आलेल्या श्रीमती कामिनी धुळे सरपंच ग्रुप ग्रामपंचायत दहिवली यांनी दिनांक २६/०५/२०२२ रोजी सादर केलेल्या वैद्यकीय प्रमाणपत्राचे या कार्यालयाने गठीत केलेल्या कमिटीने अवलोकन केले असता सदर वैद्यकीय प्रमाणपत्रात दर्शविलेला आजार किंवा त्रासाबद्दल केलेला उपचार योग्य आहे. तसेच उपचार करणाऱ्या डॉ. जितेंद्र वडडीकर—B.A.M.S. यांनी रूग्णास दिलेले वैद्यकीय प्रमाणपत्र वैध आहे.”

English translation of the said letter is as follows :-

"When the Committee members of the Committee set up by this Office perused the Medical Certificate submitted by Smt. Kamini Dhule, Sarpanch, Group Grampanchayat, Dahivali submitted on the date 26.05.2022 and forwarded to this Office vide the above-referred letter, it is found that the treatment given for the disease or for the medical issue mentioned in the said Medical Certificate is proper and that the Medical Certificate issued to the patient by Dr. Jitendra Vadadikar, B.A.M.S. who gave treatment, is valid."

13. Thereafter, the Additional District Collector passed the

impugned Order dated 28th December 2022. The relevant portion of the reasoning part of the said impugned Order, is as follows :

“सामनेवाले श्रीम. कामिनी कैलास धुळे या दिनांक ०२/०५/२०२२ ते २५/०५/२०२२ या कालावधीत वैद्यकीय कारणासाठी उपस्थित नव्हता याबाबत त्यांनी ग्रामपंचायतीला तसे लेखी कळविलेले नाही. तसेच या कालावधीत सरपंच यांनी ग्रामपंचायतीच्या काही चेक्स वर सह्यासुध्दा कलेल्या आहेत. ग्रामसभेची बैठक बोलावण्याची जबाबदारी सरपंच व त्याचे गैरहजेरीत उपसरपंचावर आहे. परंतु सरपंच यांनी त्यांच्या गैरहजेरीबाबत ग्रामपंचायतीला सुचित केलेले नसल्यामुळे ग्रामसभा बोलावण्यात कसुर केल्याबद्दल प्रथमदर्शनी सरपंच जबाबदार असल्याचे दिसून येते.

सबब, उपरोक्त वस्तुस्थिती पाहता माझी अशी खात्री झाली आहे की, ग्रामपंचायत दहिवली ता. अंबरनाथ येथील सामनेवाले क्र.१ सरपंच श्रीम. कामिनी कैलास धुळे व सामनेवाले क्र.२ ग्रामविकास अधिकारी श्री. पडवळ यांनी ग्रामपंचायत दहिवली येथे वित्तीय वर्ष सन २०२२-२३ या कालावधीत माहे मे २०२२ ची ग्रामसभा आयोजित करणेकामी हलगर्जीपणा/निष्काळजीपणा केल्याचे स्पष्ट दिसून येत आहे. ग्रामसभा विहित मुदतीत आयोजित न करणेबाबत दिलेले कारणे ही समर्पक, वास्तविक व योग्य नाही. शासन निर्णयाप्रमाणे महाराष्ट्र ग्रामपंचायत अधिनियम १९५८ चे कलम ७ प्रमाणे ग्रामसभा आयोजित करणे व इ. कामे सरपंच यांनी कार्यकारी प्रमुख म्हणून करून घेणे आवश्यक होते. सरपंच किंवा उपसरपंच यांनी सभा बोलाविली नाही तर सदरहु सभा बोलाविणे हे सचिवाचे सुध्दा कर्तव्य आहे. त्यामुळे सामनेवाले क्र. २ ग्रामविकास अधिकारी, यांनी देखील त्यांचे कामकाजाचे कर्तव्यात कसुर केल्याचे दिसून येते. सबब अर्जदार यांचा विवाद अर्ज मान्य करण्यात यावे असे मत झाले आहे. तरी महाराष्ट्र ग्रामपंचायत अधिनियम १९५९ वे कलम ७(१) अन्वये मला प्रदान केलेल्या अधिकाराचा वापर करून मी, मनिषा जायभाये-धुळे, अपर जिल्हाधिकारी ठाणे खालीलप्रमाणे आदेश पारित करित आहे.

आदेश :-

१. अर्जदार यांचा दिनांक २४/०४/२०२२ रोजीचा विवाद अर्ज मान्य करण्यात येत आहे.
२. महाराष्ट्र ग्रामपंचायत अधिनियम १९५९ वे कलम ७ अन्वये, ग्रामपंचायत दहिवली, ता. अंबरनाथ चे वित्तीय वर्ष सन २०२२-२३ या कालावधीतील पहिली ग्रामसभा ३० मे किंवा त्यापुर्वी घेण्यास कसुर

केल्यामुळे श्रीम. कामिनी कैलास धुळे, सरपंच तथा पदसिद्ध सदस्य, ग्रामपंचायत दहिवली ता. अंबरनाथ यांना सरपंच तथा सदस्यपदी निरह (अनह) ठरविण्यात येत आहे.

३. सदरचा निर्णय सर्व संबंधितांना रजिस्टर पोष्टाद्वारे कळविण्यात यावा.
४. खर्चाबाबत आदेश नाहीत.”

(Emphasis added)

English translation of the same is as follows :-

“The Respondent Smt. Kamini Kailas Dhule was not present on account of medical ground during the period from the date 02.05.2022 to 25.05.2022 but she has not informed the office of the Grampanchayat to that effect. Moreover, during the said period, she even has affixed her signatures to some cheques issued by the Grampanchayat. The responsibility to convene the Gramsabha is of the Sarpanch and in the event of his/her absence, then the same is of the Upa-Sarpanch. However, as the Sarpanch has not informed the Grampanchayat about her absence, it is found that prima facie, the Sarpanch is responsible for committing dereliction in convening Gramsabha.

Hence, on considering the aforesaid facts, I am satisfied that it is clearly seen that Smt. Kamini Kailas Dhule, the Sarpanch-Respondent No.1 and Shri Padval, Village Development Officer of the Grampanchayat Dahivali, Tal. Ambarnath have committed carelessness/shown negligence in convening the Gramsabha of the month of May, 2022 during the period of the financial year 2022-2023 at Grampanchayat Dahivali. The grounds for not convening the Gramsabha within the prescribed period are not apt, true and

appropriate. As per the directions given in the Government Resolution, it was necessary for the Sarpanch in the capacity of the Executive Head, to get done the works such as to convene the Gramsabha in accordance with Section 7 of the Maharashtra Grampanchayat Act, 1958. **If the Sarpanch or the Upa-Sarpanch did not convene the meeting then, it is the duty of the Secretary as well to convene the said meeting.** Therefore, it is found that the Village Development Officer-Respondent No.2 has committed **dereliction of duty of his work.** Hence, I have arrived at the conclusion that the Dispute-Application of the Applicant should be allowed. Therefore, I, Manisha Jaybhaye-Dhule, the Additional Collector, Thane, in exercise of the powers delegated to me under section 7(1) of the Maharashtra Grampanchayat Act, 1959, hereby pass order as under :

O R D E R

1. Dispute-Application dated 24.04.2022 of the Applicant is allowed.
2. **As Smt. Kamini Kailas Dhule, Sarpanch and the Ex-Officio Member, Grampanchayat Dahivali, Tal. Ambarnath failed to convene first Gramsabha of the Grampanchayat Dahivali, Tal. Ambarnath during the period of the financial year 2022-2023 on or before the date 30th May, as per Section 7 of the Maharashtra Grampanchayat Act, 1959, she is declared as disqualified to hold the post of Sarpanch and Member.**
3. This decision shall be informed to all the parties concerned by registered post.

4. No order as to the costs.”

14. A perusal of the impugned Order clearly shows that the medical papers produced by the Petitioner and the opinion of the said committee experts whom the medical papers have been referred to by the Additional District Collector seeking expert opinion, are not taken into consideration by the Additional District Collector.

15. The impugned Order has been passed under Section 7 (1) of the said Act, the relevant portion of the same is as follows :-

“7. Meetings of Gram Sabha.-(1) There shall be held at least four meetings of the Gram Sabha every financial year on such date, at such time and place, and in such manner, as may be prescribed and if the Sarpanch or in his absence the Upa-Sarpanch fails without sufficient cause to hold any of such four meetings, he shall be disqualified for continuing as Sarpanch, as the case may be, Upa-Sarpanch or for being chosen as such for the remainder of the term of office of the members of the Panchayat; and the Secretary of the Panchayat shall also if, prima facie, found responsible of any lapse in convening such meeting, be liable to be suspended, and for being proceeded against, for such other disciplinary action as provided under the relevant rules. The decision of the Collector on the question whether or not there was such sufficient cause shall be final :

Provided also that, if the Sarpanch or Upa-Sarpanch, as

the case may be, fails to call any such meeting within the specified period, the Secretary shall call the meeting and it shall be presumed that such meeting has been called with the concurrence of the Sarpanch or, as the case may be, Upa-Sarpanch.”

Thus, what is contemplated under Section 7(1) of the said Act is that at least four meetings of the *Gram Sabha* shall be held in every financial year on such date, at such time and place and in such manner, as may be prescribed and if the *Sarpanch*, or in his absence the *Upa-Sarpanch* fails without sufficient cause, to hold any of such four meetings, he shall be disqualified for continuing as *Sarpanch* or, as the case may be, *Upa-Sarpanch* or for being chosen as such for the remainder of the term of office of the members of the Panchayat; and the Secretary of the Panchayat shall also if, *prima facie*, found responsible for any lapse in convening such meeting, be liable to be suspended, and for being proceeded against, for such other disciplinary action as provided under the relevant rules.

16. It is significant to note that Section 7 of the said Act contemplates that the action as contemplated under Section 7 is required to be taken only if there is a failure to convene the *Gram Sabha* within time limit and if such failure is without sufficient cause. In this particular case, even the investigation report (Sonography of the abdomen and pelvis) dated 29th June 2022 of

the Petitioner, records the following opinion :-

*“OPINION- *Bulky congested uterus noted with uterine fibroid *Mild fatty liver with tiny left calculus noted incidentally *Suggested clinical ; pathological correlation & follow up sos”*

The medical papers and the medical certificate dated 26th May 2022 issued by Ashwini Hospital show the seriousness of the medical ailment of the Petitioner.

17. The Petitioner has described her medical condition in paragraph 7 of the Writ Petition in the following manner :-

“The Petitioner states that due to her serious illness during the period from 2nd May 2022 to 25th May 2022, and thereof, the Petitioner was unable to convene the Gram Sabha Meeting on/before 30th May 2022. It is submitted that the normally the duration of the Gram Sabha is approximately 2 to 3 hours and due to her serious illness, it was not possible by the Petitioner to seat for more than 10 to 15 minutes that too without pain. Since, the distance between the home of the Petitioner and the office of the Group Gram Panchayat Dahivali is hardly 1 km, and as such, on the request with insistence of the Gram Sevak and the Respondent No.4, the Petitioner visited the office of Gram Panchayat twice or thrice during the period of her illness and signed some cheques for the urgent payments and immediately returned home. The Petitioner states and submits that the Respondent No.4 and other members of the

Respondent No.2 (i.e. Group Gram Panchayat Dahivali) were well aware about the serious and severe Health condition of the Petitioner.”

(Emphasis added)

18. It is further significant to note that, in fact, in view of the report of the Block Development Officer dated 29th June 2022 mentioning the health condition of the Petitioner and annexing the medical reports of the Petitioner, the Additional District Collector referred the same to the Civil Surgeon, Civil Hospital, Thane to constitute a committee of expert doctors and they also confirmed about the medical condition of the Petitioner. It is significant to note that although, Respondent No.1-the Additional District Collector herself referred the medical papers of the Petitioner to the Civil Surgeon and the committee of expert doctors appointed by the Civil Surgeon, Civil Hospital gave the report confirming the said medical condition, the Additional District Collector while giving the reasons, has completely ignored the said medical report. Thus, it is clear that the impugned Order is perverse.

19. The Supreme Court in the case of ***Puri Investments V. Young Friends and Co. and Others.***³, in paragraph 14, has held as follows :-

“It proceeded, on such observation being made, to opine

3 2022 SCC OnLine SC 283

that it was the duty of the supervisory Court to interdict if it was found that findings of the appellate forum were perverse. Three situations were spelt out in the judgment under appeal as to when a finding on facts or questions of law would be perverse.

These are: —

- (i) Erroneous on account of non-consideration of material evidence, or*
- (ii) Being conclusions which are contrary to the evidence, or*
- (iii) Based on inferences that are impermissible in law.”*

(Emphasis added)

20. Thus, it is clear that the impugned Order of the Additional District Collector suffers from perversity due to non-consideration of material evidence. It is also clear that conclusions recorded by Respondent No.1-the Additional District Collector are contrary to the evidence.

21. It is an admitted position that the said *Gram Sabha* was scheduled to be held on 20th June 2022 and since there was no quorum, the same was held on 27th June 2022 and it is not the case that the said *Gram Sabha* was never held. Section 7(1) of the said Act provides that such failure has to be without sufficient cause.

22. It is to be noted that the disqualification of the *Sarpanch* is a very drastic action. In this particular case, the factual position on

record clearly shows that sufficient cause is shown by the Petitioner for not conducting the *Gram Sabha* within the stipulated time limit. The explanation given by the Petitioner clearly specifies the sufficient cause for the same.

23. It is significant to note that Section 7 of the said Act mandates that if the *Gram Sabha* is not convened by the *Sarpanch*, in his absence, the *Upa-Sarpanch* could have convened the *Gram Sabha*. In this particular case, the factual position clearly shows that *Upa-Sarpanch*, i.e., Respondent No.4-Complainant was clearly aware that the *Sarpanch* was suffering from a serious medical condition and, therefore, he could have convened the *Gram Sabha*. The impugned Order specifies that the *Sarpanch* has acted negligently and that the Secretary of the *Panchayat* has also failed to perform his duty. It is significant to note that Respondent No.4-*Upa-Sarpanch*, i.e., the complainant is also responsible for convening the meeting. The Additional District Collector, Thane has not stated anything about the conduct of the *Upa-Sarpanch* in the impugned Order.

24. This is a case where Respondent No.4, who is the *Upa-Sarpanch* instead of performing his statutory duty of convening the *Gram Sabha* in the absence of the *Sarpanch*, has filed a complaint with the Respondent No.1-the Additional District Collector against the *Sarpanch*. The factual position on record

further clearly shows that the Petitioner was seriously ill and, therefore, could not convene the meeting and the Respondent No.4-*Upa-Sarpanch* has taken undue advantage of the medical condition of the Petitioner and filed the Gram Panchayat Case No.34 of 2022 before the Additional District Collector, Thane seeking disqualification of the Petitioner-*Sarpanch* from the post of *Sarpanch*.

25. It is unfortunate that the Additional District Collector, who is acting as a quasi-judicial authority, has passed the impugned Order without even considering the material evidence. It is further significant to note that she has failed to notice that even the *Upa-Sarpanch* has failed to perform his statutory duties.

26. Learned Counsel appearing for Respondent No.4 has relied on the decision of *Gunwantrao Yeshwantrao Deshmukh* (supra). However, the said decision will not apply to the present case. In the facts and circumstances of that case, it has been held that, there was no sufficient cause for failure to convene the meeting.

27. Learned Counsel appearing for the Petitioner has relied on *Manohar* (supra) and, more particularly, on paragraphs 16 to 19 therein. The same read as under :-

*“16] The law on the subject i.e. disqualification of an elected member for not complying mandatory provisions is dealt with in the cases of **Ravi Yashwant Bhoir Vs.***

District Collector, Raigad and others reported in [2012] 4 SCC 407, *Gangabai Vithal Bade Vs. State of Maharashtra & ors.* Reported 2013 [3] Bom.C.R. 277 and *Sunil Daulat Patil Vs. The State of Maharashtra & others* in Writ Petition No.3419 of 2013, decided on 04.12.2013. The Hon'ble Supreme Court in the case of *Ravi Yashwant Bhoir Vs. District Collector, Raigad and others* reported in [2012] 4 SCC 407 has held at para nos.35, 36 and 37 as under:

35. *The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal* (vide *Jyoti Basu v. Debi Ghosal*, *Mohan Lal Tripathi v. District Magistrate, Rae Bareilly* and *Ram Beti v. District Panchayat Raj Adhikari*).

36. *In view of the above, the law on the issue stands crystallised to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural*

justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency / electoral college is also deprived of representation by the person of their choice.

37. A duly elected person is entitled to hold office for the term for which he has been elected and he can be removed only on a proved misconduct or any other procedure established under law like “no confidence motion”, etc. The elected official is accountable to its electorate as he has been elected by a large number of voters and it would have serious repercussions when he is removed from the office and further declared disqualified to contest the election for a further stipulated period.

*17] This Court in the case of **Gangabai Vithal Bade Vs. State of Maharashtra & ors.** Reported 2013 [3] Bom.C.R.277, it has been held at paras 4 and 5, as under:-*

4. No doubt, provisos of section 7 provided various other requirements of Gram Sabha meetings. In addition to section 7, there are rules made for providing procedure etc. of Gram Sabha meetings. Section 7 on the whole read with rules indicates that a Sarpanch or in his absence Upsarpanch should at least hold six meetings of Gram Sabha every financial year. Proviso and rules

provided inter alia that maximum period of three months is permitted between two meetings of Gram Sabha. Sub-section (5) of section 7 further provides that meeting of women members of Gram Sabha should be held before the regular meeting of Gram Sabha. In addition to this, prescribed rules, namely, Bombay Village Panchayats Rules, 1959 further enjoins a Sarpanch to hold first meeting of Gram Sabha of every financial year within two months from the commencement of the year and second should be held in November every year. They further provide that Gram Sabha meeting should be held also in August and January of every year. In my view, since the rule in respect of disqualification is mentioned in sub-section (1) and since it is a penal provision, strict construction is required to be given to it. Sub-section (1) clearly lays down a rule that only in case of failure to hold six Gram Sabha meetings, the Sarpanch would incur disqualification. Other requirements of meeting are not included in sub-section (1) and so in case of non observance of other requirements penal consequence of disqualification is not incurred. In other words, if six meetings are held in one financial year, but they were not held as per remaining provisions contained in section 7 or in the rules, a Sarpanch may not incur disqualification.

5. Second point that arose in this case is whether the petitioner / sarpanch incurred disqualification in case he did not give notice of

meetings. Learned Assistant Collector held that because of want of notice, he incurred disqualification. The rules provided that sarpanch is responsible for giving seven days notice of each Gram Sabha meeting. It is observed that seven days notice for meetings was not given by the petitioner. The learned Assistant Collector held that because of this lapse the petitioner would incur disqualification. I am not in agreement with this ruling also. I would place reliance only on sub-section (1) of section 7 when I would examine whether the petitioner incurred disqualification. As said above, other lapses or infringement of other rules and provisos, in my view will not incur drastic result of disqualification. The petition, therefore, should succeed on merit. The impugned order stands set aside.

18] In the case of **Sunil Daulat Patil Vs. The State of Maharashtra & others** in Writ Petition No.3419 of 2013, decided on 04.12.2013 it has been held as follows in para nos.14 and 15 :

14. Upon careful perusal of the contents of the notice, which was issued to the petitioner under Sections 7 and 36 of the said Act, it is abundantly clear that there is no mention of any specific charges-points, which are required to be answered by the petitioner. This Court in the case of **Pratiba Sanjay Hulle Vs. Additional Collector & others** reported in **2010(4)Bom.C.R.700**, more particular, in para No. 36 held that, 'to enable Sarpanch to

raise proper defence and explain sufficient cause for his failure to perform any statutory function, he must be informed essentially as regards his failure meaning thereby he must be communicated the specific charges.'

15. In the facts of that case, the allegation was that the petitioner therein i.e. Sarpanch, did not perform his statutory obligation as envisaged under Sections 7 and 36 of the said Act. This Court taking into consideration the fact that the specific charges were not communicated to the petitioner therein, held that enquiry and the order passed against the petitioner therein is vitiated.

19] Thus, from the judgments quoted above, it is made clear that an elected member is to be removed in exceptional circumstances and that he has to be explained the specific charge against him and also the elected member should be given an opportunity to explain sufficient cause for his failure to perform statutory duty. **Mere non-performance of the statutory duty would not disqualify the elected member unless he is not able to give a good reason for non-performing of the statutory duty. Thus, non-performance of statutory duty does not lead to automatic disqualification."**

(Emphasis added)

28. The observations in the above decisions are squarely applicable to the present case. It is further significant to note that, even though the Petitioner has been disqualified both as a

Sarpanch and as a member, the factual position on record clearly shows that there are sufficient reasons for not convening the meeting within the time limit as prescribed by Section 7 of the said Act and the Additional District Collector has completely ignored the same.

29. Therefore, for the above reasons, the impugned Order dated 28th December 2022 passed by the Additional District Collector, Thane in Gram Panchayat Case No.34 of 2022 is quashed and set aside and the said Gram Panchayat Case No.34 of 2022 is dismissed.

30. The Writ Petition is allowed in above terms with no order as to costs.

[MADHAV J. JAM3DAR, J.]