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

WRIT PETITION NO.13137 OF 2023

Karuna w/o Shamsundar Patil,
Age: 34 years, Occu: Household,
R/o Rohilagad, Tq. Ambad, Dist. Jalna

....PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Secretary for
Rural Development,
Mantralaya, Mumbai-32
2. The Divisional Commissioner, Aurangabad,
The Divisional Commissioners Office,
Aurangabad
3. The District Collector, Jalna,
The Collector Office, Jalna
4. The Tahsildar, Ambad,
Tahsil Office, Ambad,
Dist. Jalna
5. The Block Development Officer,
Panchayat Samiti, Ambad,
Dist. Jalna

....RESPONDENTS

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Mr B. R. Kedar, Advocate for petitioner
Mr V. M. Kagne, A.G.P. for respondent Nos.1 to 4/State
Mr U. B. Bondar, Advocate for respondent No.5

**CORAM : MANGESH S. PATIL
AND
PRAFULLA S. KHUBALKAR, JJ.**

DATE : 26th February, 2025

JUDGMENT (PER : PRAFULLA S. KHUBALKAR, J.)

1. Heard. Rule. Rule is made returnable forthwith. Heard finally by consent of the parties.

2. This petition under Article 226 of the Constitution of India takes exception to the Notification dated 13/10/2023, issued by the Joint Secretary of the Rural Development Department of the Government of Maharashtra, by which, the Rohilagad Village Panchayat, Taluka Ambad, Dist. Jalna is dissolved and the Extension Officer of the Panchayat Samiti is appointed as an Administrator. The impugned Notification issued by the Government in exercise of powers under Section 145 (1A) of the Maharashtra Village Panchayats Act, 1959 (for short 'the Act') is on account of resignation of eight members of the grampanchayat, out of the body of thirteen members.

3. Advocate B. R. Kedar, learned counsel for the petitioner vehemently submits that the impugned Notification is grossly illegal and demonstrates arbitrary exercise of powers by the respondents. He submits that the respondents have wrongly invoked the provisions of Section 145(1A) of the Act, and in gross violation of the principles of natural justice, the impugned Notification was issued. He submits that

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the elections of the grampanchayat Rohilagad were held in January 2021 and the body was elected for a period of five years. The petitioner, who was elected as a 'woman member' is holding the post of Sarpanch and her term will expire in January 2026. He submits that, although eight members had resigned from the body of thirteen members, the proper course would have been to hold bye-elections for eight posts. He submits that the State Election Commission had even issued the election notice dated 06/10/2023 for holding bye-election which was due on 05/11/2023. He vehemently submits that, despite declaration of election for the eight seats, the respondents arbitrarily invoked the provisions of Section 145(1A) of the Act and without extending opportunity of hearing to the petitioner and other members, straightway dissolved the grampanchayat. He submits that the decision of dissolving democratically elected body is unwarranted and grossly illegal. In support of his submissions, he relies upon the judgment in the matter of **Kavita Sakharam Chavan and others Vs. Commissioner, Konkan Division, 2002(4) All M.R. 741 : 2003 (2) Bom.C.R. 821.**

4. On the contrary, Advocate V. M. Kagne, learned A.G.P. for respondent Nos.1 to 4 and Advocate U. B. Bondar, learned counsel for respondent No.5 strongly oppose the petition. By referring to the

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affidavit-in-reply dated 14/01/2025, filed by respondent Nos.1 and 2, the learned A.G.P. vehemently submits that the impugned Notification came to be issued in accordance with the provisions of Section 145(1A) of the Act. He submits that, out of thirteen members of the grampanchayat, when 50% of the members i.e. eight members had resigned from the posts, it was necessary to dissolve the grampanchayat and appoint an administrator for its proper and effective functioning. He refers to Rule 9(1) of the Bombay Village Panchayats (Meeting) Rules, 1959 to contend that the quorum necessary for transaction of business at a meeting is one half of the total number of members, and in view of the resignation of eight members, the meeting could not have been conducted by five remaining members. He vehemently submits that the proper course in such situation was to dissolve the grampanchayat, as has been rightly done by the Government.

5. Advocate U. B. Bondar for respondent No.5, while referring to the affidavit-in-reply dated 07/02/2024, filed by Block Development Officer, Panchayat Samiti, Ambad, respondent No.5, also supports the impugned Notification and states that in view of the prevailing situation, appointment of the Village Extension Officer as an administrator was the proper course.

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6. In the wake of above mentioned situation, the crucial issue which falls for our consideration is, as to whether the impugned Notification to dissolve the grampanchayat was warranted and further, as to whether necessary procedure for issuance of Notification under Section 145(1A) of the Act was followed.

7. We have considered the rival submissions and perused the documents on record.

8. It is undisputed position that the body of the grampanchayat was elected in January 2021 for a period of five years, which term would expire in January 2026. Eight members out of the body of thirteen members resigned and bye-elections for the vacant posts were declared vide Notice dated 06/10/2023, which was scheduled on 05/11/2023. Before bye-elections could be held, Notification dated 13/10/2023 came to be issued, dissolving the grampanchayat and appointing the Extension Officer as the administrator.

9. In the wake of this factual setup, the crucial issue is, as to whether there existed a situation to take recourse to Section 145(1A) of the Act, to straightway dissolve the democratically elected body. Perusal of Section 145(1A) of the Act shows that, if more than half of

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the total number of seats in a panchayat become vacant, the State Government may, by order in the Official Gazette, dissolve such panchayat. It is relevant to note, the issue as to whether this provision is mandatory or directory fell for consideration of this Court in the matter of **Kavita Sakharam Chavan** (supra), and while interpreting this provision, it has been categorically held that the provision is directory in nature. It may thus be seen that, even when majority of seats of panchayat fall vacant, it is not mandatory that the Government should straightway dissolve the panchayat. Therefore, it has to be seen whether dissolution of the panchayat was the only course that was open.

10. In view of the declaration of bye-elections for the vacant posts, further issue arises as to whether some other compelling circumstance existed which necessitated dissolution of the panchayat instead of going ahead for bye-elections. The respondents failed to point out any situation, on account of which, the respondents were left with no other alternative but to dissolve the panchayat.

For proper appreciation of the controversy, it is necessary to have a look at the provision of Section 145 (1A) of the Act, which is reproduced below :-

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145.(1A) If more than half the total number of seats in a panchayat have become vacant, the State Government may, by order in the Official Gazette, dissolve such panchayat.

11. Although Section 145(1A) of the Act empowers the Government to dissolve the grampanchayat when more than 50% of posts of members fall vacant, the power cannot be exercised arbitrarily to the detriment of the democratically elected members. In the instant case, the Sarpanch and other members are holding the posts and after election of other members by way of bye-elections, the complete body could have completed remainder of the term, and as such, it is clear that dissolution of the grampanchayat was not the only course left open. Pertinent to note, no compelling situation has been stated to have arisen to stall the election process abruptly and appoint the administrator after the bye-election was declared.

12. Apart from this, the ground raised by the petitioner about violation of principles of natural justice also needs due consideration. The petitioner/Sarpanch and other members have not been afforded any kind of notice or opportunity of hearing before the major decision to dissolve the grampanchayat was taken. There is nothing on record to demonstrate that the petitioner and other members were heard before the impugned decision was taken and the Notification was

issued. The decision to dissolve the grampanchayat, therefore, is unilateral and arbitrary.

13. The legal position about the scope and ambit of Section 145(1A) of the Act as to if it is mandatory or directory, has been clarified by the decision in the matter of **Kavita Sakharam Chavan** (supra). Even the other issue about grant of opportunity of hearing to the members was also decided by the division bench holding that the provision of hearing has to be read in Section 145(1A) of the Act. This judgment was also relied upon in **Jahangir Yusuf Qureshi and others Vs. State of Maharashtra and others, 2008 (3) Mh.L.J. 437** and in **Aashabai Vilas Wagh and others Vs. State of Maharashtra and others, 2009 (3) Mh.L.J. 74.**

14. By considering the factual and legal position as stated above, we are of the considered view that the impugned Notification dissolving the grampanchayat is arbitrary and unsustainable in law. It would have been proper and reasonable for the State Government to get the vacant seats filled in by way of bye-election which was already declared.

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15. In the light of the above, we are of the firm view that the impugned Notification is bad and illegal and it deserves to be quashed.

Hence, we pass the following order :-

- (a) The writ petition is allowed.
- (b) Notification bearing No.MIS-2023/P.No.281/Pr.-3, dated 13/10/2023 issued by respondent/Joint Secretary of Rural Development Department, Mantralaya, Mumbai is quashed and set aside.
- (c) The respondents are directed to take necessary steps for holding bye-elections for the vacant posts of the grampanchayat Rohilagad, as early as possible.
- (c) Rule is made absolute in above terms.
- (d) No order as to costs.

(PRAFULLA S. KHUBALKAR, J.) (MANGESH S. PATIL, J.)

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