

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.672 OF 2015
WITH
WRIT PETITION NO.714 of 2015
(SOW.ABIRABAI BHANUDAS WARKAD VS. THE ADDITIONAL
COLLECTOR, JALNA AND OTHERS)

Mr.P.M.Nagargoje, Advocate for the petitioner.
Mr.G.B.Kulkarni, Advocate for the respondent Nos.2,3 and 4.
Mr.K.M.Suryawanshi, AGP for respondent/State.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 30/01/2015

PER COURT :

1. The petitioner is aggrieved by the impugned order dated 07/01/2015 passed by the Additional Collector, Jalna in Dispute No.2014/Sasha/GPE/CR-24, by which the petitioner has been disqualified as a Sarpanch u/s 36 of The Maharashtra village Panchayat Act, (For short, the Act), for having not held the monthly meetings as is prescribed by Law.

2. In the second petition, the petitioner is aggrieved by the impugned order dated 07/01/2015 passed by the Additional Collector, Jalna in Dispute No.2014/Sasha/GPE/CR-23, by which the petitioner has been disqualified as the Sarpanch on account of having not conducted 4 gram sabha, as is required in law.

3. I have heard the learned Advocate for the petitioner, the learned AGP on behalf of the State and Mr.Kulkarni, learned Advocate appearing on behalf of respondent Nos. 2,3 and 4. Respondent No.5 is the Gram Sevak, who has not participated in the proceedings and has not submitted any explanation. The grievance of the petitioner is more on non-adherence to the principles of natural justice and failure on the part of the Additional Collector in hearing the petitioner in both the proceedings.

4. After considering the submissions of the rival sides, the issue is as regards whether the Additional Collector has heard the petitioner before closing the matter for judgment. The other connected issue is that the Additional Collector had called for the report of the Block Development Officer, which is evident from the Roznama dated 25/08/2014.

5. The petitioner has canvassed that inspite of the Additional Collector calling for a report of the Block Development Officer in order to verify the actual position as regards holding of monthly meetings as well as as the Gram Sabha, it was never filed. Despite the same, the additional Collector has proceeded to deliver the impugned judgment.

6. It is also canvassed that the Additional Collector was not available for the hearing in the proceedings on two dates prior to closing the matter for judgment and on the last date 29/12/2014, the petitioner was absent for the second time (earlier on 28/11/2014), when the Additional Collector has closed the matter for judgment.

7. Though the learned Advocate Mr.Kulkarni has opposed the contentions of the petitioner on the ground that the petitioner was duty bound to remain present on the last date since the Additional Collector was to hear the submissions of the parties, he concedes that no arguments were advanced by the parties and the petitioner was not heard on 29/12/2014 when the matter was closed for judgment.

8. Though it is contended by the petitioner that her explanation as regards non-availability of the Gram Sevak and the proceedings of a few meetings having not been produced before the Additional Collector for its consideration, the Additional Collector, while delivering the impugned judgment, has neither considered the record available before him, nor heard the petitioner before closing the matter for judgment. The explanation put forth in her reply to the complaint has not even been adverted to, much less considered by him while allowing the complaint.

9. It therefore appears from the Roznama placed on record that the Additional Collector desired to obtain a report from the Block Development Officer in relation to the proceedings recorded in connection with the monthly meetings and the Gram Sabha. It is unexplained in the impugned order as to why has the Additional Collector proceeded to decide the issue without waiting for the Block Development Officer to submit his report. Even if it is presumed that the Block Development Officer was delaying the matter, the Additional Collector could have dealt with the situation since the Block Development Officer was required to tender an explanation for the delay, if any.

10. Similarly, when the matter was posted on 29/12/2014, for enabling the parties to address the Additional Collector, the absence of the petitioner on that date cannot be said to be an act of causing intentional or deliberate delay in the proceedings. Roznama indicates that barring two dates in the said proceedings, which commenced from 08/05/2013, the petitioner and her Advocate were absent on two occasions. In my view, the impugned order suffers on account of the petitioner having not been given an opportunity of making final submissions in the matter, in as much as the report of the Block Development Officer was not placed on record.

11. Section 36 of The Maharashtra Village Panchayats Act reads as under :-

“Time and place of sitting of Panchayat and procedure at meeting :- The time and place of sitting, and the procedure at a meeting of the Panchayat shall be such as may be prescribed :
[Provided that, if the Sarpanch or in his absence the Upa-Sarpanch, fails without sufficient cause, to convene the meetings of the Panchayat in any financial year according to the rules prescribed in that behalf, 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. The decision of the Collector on the question whether or not there was sufficient cause shall be final.]”

12. The phraseology of the said provision and especially under the proviso clearly indicates that the Sarpanch should not only be responsible for not holding the monthly meetings, such failure should be without sufficient cause to convene the meetings in any given financial year.

13. From both the impugned judgments, it appears that the petitioner has tendered an explanation to the extent of not holding the monthly meetings as well as the Gram Sabha. It is stated that the monthly meetings were not held in the months of October and

November 2013 since there was no Gram Sevak available. When such a Gram Sevak was appointed in December 2013, the meetings were regularly held.

14. It is also explained that the Gram Sevak did not produce the register to indicate that the meetings were held in August and September 2013. Roznama indicates that the Additional Collector had issued a direction on 07/10/2014 that the Gram Sevak should remain present for the hearing on the next date. The said Gram Sevak appeared on 14/11/2014 when the matter was adjourned. He thereafter did not appear in the proceedings.

15. In the above backdrop, I find that the conclusions drawn by the Additional Collector *prima facie* are unsustainable. Nevertheless, I do not intend to deal with these aspects of the case since the matter is being relegated back to the Additional Collector for re-hearing after ensuring that the Block Development Officer submits his report, as directed by the Additional Collector on 25/08/2014, in as much as after seeking an explanation from the Gram Sevak as regards the rival contentions of the parties.

16. I am causing interference in the impugned order on the ground

of non-adherence to the principles of natural justice, which is a fundamental principle for enabling the parties to address the mind of the Authority dealing with a dispute. It is admitted by the respondents that the absence of the petitioner on 29/12/2014 has resulted in the parties not addressing the Additional Collector which was expected prior to closing the matter for judgment.

17. In the light of the above, the impugned judgments dated 07/01/2015 passed by the Additional Collector, Jalna in proceeding Nos. 2014/Sasha/GPE/CR-24 and 2014/Sasha/GPE/CR-23 are quashed and set aside. These petitions are partly allowed.

18. The said proceedings Nos. 2014/Sasha/GPE/CR-24 and 2014/Sasha/ GPE/ CR-23 are relegated to the competent authority, which is the Additional Collector, Jalna, for re-hearing. The Gram Sevak shall produce the necessary record. The said Authority shall ensure that the Block Development Officer tenders his report as regards the monthly meetings and the Gram Sabha at issue and copy of the said report be supplied to the litigating parties. Thereafter the competent authority shall permit the parties to advance final submissions before closing the matter for judgment.

19. The litigating parties shall appear before the Additional Collector, Jalna on 17/02/2015 at 3.00 p.m. Notice of hearing need not be issued to them. The competent authority shall decide the disputes afresh and as expeditiously as possible, preferably on or before 30/04/2015.

20. Since the impugned orders are set aside, the petitioner shall be reinstated as the Sarpanch of Village Gram Panchayat Taltondi-Murumkheda, Tal.Mantha, Dist. Jalna. However, till the decision of the Additional Collector, the petitioner Sarpanch shall not draw any allowances and shall not introduce any subject involving financial decisions. In the event of any necessity, which may require such a decision, she shall seek the permission of the Additional Collector before introducing such a subject. The litigating parties shall refrain from seeking adjournments on unreasonable grounds and shall co-operate with the Additional Collector for the expeditious hearing of the matter.

(RAVINDRA V. GHUGE, J.)