IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3404 OF 2016

Dattatray Eknath Janjal
Age: 28 years, Occu.: Agri. & Sarpanch,
R/o Gurudhanora, Tq. Gangapur,
Dist. Aurangabad. ..PETITIONER

VERSUS

1. State of Maharashtra
   Through its Secretary,
   Rural Development Department,
   Mantralaya, Mumbai-2.

2. The Collector,
   Aurangabad.

3. The Tahsildar
   Tahsil Office, Ganagpur, Dist. Aurangabad.

4. The Group Gram-Panchayat, Gurudhanora
   Through its Village Development Officer,
   Gurudhanora, Tq. Gangapur,
   Dist. Aurangabad.

5. Shaminabee Shaikh Qudar
   Age: 40 years, Occu.: Household and
   Up-Sarpanch of Group of Gram-Panchayat,
   Gurudhanora, Tq. Gangapur, Dist. Aurangabad.

6. Kakasaheb Shamrao Salve
   Age: 42 years, Occu.: Agri. and Member of
   Group Gram-Panchayat, Gurudhanora,
   Tq. Gangapur, Dist. Aurangabad.

7. Sow. Parwatabai Devidan Bhawle
   Age: 40 years, Occu.: Household and Member of
   Group Gram-Panchayat, Gurudhanora,
   Tq. Gangapur, Dist. Aurangabad.

8. Sow. Ushabai Datta Pawar
   Age: 38 years, Occu.: Household and Member of
   Group Gram-Panchayat, Gurudhanora,
   Tq. Gangapur, Dist. Aurangabad.

9. Sow. Kavita Vijay Nikam
   Age: 30 years, Occu.: Household and Member of
   Group Gram-Panchayat, Gurudhanora,
   Tq. Gangapur, Dist. Aurangabad.

10. Appasaheb Eknath Nikam
    Age: 30 years, Occu.: Agri. and Member of
    Group Gram-Panchayat, Gurudhanora,
    Tq. Gangapur, Dist. Aurangabad.

11. Bandu Kisan Puri
    Age: Major, Occu.: Agri. and Member of
    Group Gram-Panchayat, Gurudhanora,
    Tq. Gangapur, Dist. Aurangabad.

12. Sow. Rukhminibai Babasaheb Sarode
    Age: 50 years, Occu.: Household and Member of
    Group Gram-Panchayat, Gurudhanora,
    Tq. Gangapur, Dist. Aurangabad. ..RESPONDENTS

....

Mr. V.D. Sonawane, Advocate for petitioner.
Mr. A.P. Basarkar, A.G.P. for Respondent Nos.1 to 3.
Mr. K.D. Jadhav, Advocate for Respondent Nos. 5 and 6.
Mr. S.V. Adwant, Advocate for Respondent Nos.11 and 12.

....

CORAM : T.V. NALAWADE, J.
DATED : 26th OCTOBER, 2016

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard both sides by consent for final disposal.

2. The petition is filed to challenge the order made by Additional Collector, Aurangabad in Dispute Application No. 83 of 2016. The proceeding was filed to challenge the resolution of no confidence passed by members of Village Panchayat, Gurudhanora, Tahsil Gangapur, District Aurangabad against present petitioner who was Sarpanch of the village. After hearing both sides, the proceeding is dismissed by the Additional Collector.

3. The submissions made shows that there are nine members in aforesaid village panchayat. Six members had given requisition to Tahsildar for calling meeting as they wanted to move no confidence motion against the Sarpanch – present petitioner. The requisition was given on 09th October, 2015. The order of calling meeting was also made on 09th October, 2015. The notices were sent on 12th October, 2015 and meeting was held on 17th October, 2015. It is the contention of the present petitioner that statutory period fixed for calling such meeting is seven days and as meeting was not called within seven days from the date of requisition, the meeting itself was illegal and so the resolution of no confidence passed against the petitioner needs to be set aside.

4. It is not disputed that present petitioner – Sarpanch attended the meeting and the resolution was passed by requisite majority like six versus three. However, it is also admitted fact that the meeting was held on 17th

October, 2015 when requisition was given on 09th October, 2015. Both 09th October, 2015 and 17th October, 2015 were working days. Learned Counsel for respondent submitted that the first date i.e. 09th October, 2016 needs to be excluded and as on 10th October, 2016 the office was closed due to holiday, it cannot be said that the meeting was not called within seven days. He placed reliance on some observations made by this Court in Writ Petition No. 6060 of 2016 (Nasrin Salim Shaikh and Others Vs. State of Maharashtra and Others) decided on 23rd September, 2016. The facts of that case are different. The relevant portion giving reasoning can be found at paragraph nos. 6 and 7 and it reads as under:-

> *"6. The learned Additional Collector has referred the case reported in* ***2002(4) Bom.C.R. 425 (Ganesh Raghunath Samel Vs. State of Maharashtra)****. The Additional Collector has held that the meeting was not called within seven days as per the provisions of Section 35(3) of the Act. The facts of this reported case show that the notice of requisition meeting was given on 20th September, 2001 and the meeting was called on 29th September, 2001. It does not show that there was holiday on seventh day if the days are counted from 20th September, 2001. In view of this circumstance, it was held that the said meeting was illegal and contrary to law. In the present matter, admittedly on the seventh day there was official holiday and office was closed and the meeting was held on eighth day.*

*7. On the aforesaid point, the learned Counsel for petitioner placed reliance on reported case of **2008(3) Mh.L.J. 781 (Seema Ashok Kamble Vs. The Collector)**. In this case this Court has laid down that if the day on which meeting is required to be held happens to be holiday or office of village panchayat is required to be kept closed, proceeding can be taken on the following day. While making such observation, this Court has referred the case reported as **(2000) 8 SCC 649 (Prasad Vs. Dinanath)**. In the said case the Apex Court has laid down that in view of principle given in Section 9 of General Clauses Act, 1897 when period is delimited by statute or by rule which is both beginning and end, the word 'from' is used indicating the beginning and so the opening day needs to be excluded. While making such observations this Court referred case of Ganesh Raghunath Samel (supra) and also the case of Division Bench of this Court reported in **2004(4) B.C.R. 592 (Nandkishor Vs. Presiding Officer)**. In the case of Nandkishor, the Division Bench has also taken view that while computing the period given in Section 35(2) of the Act, the day of notice should be excluded. In the case of **Pandhari Patil Vs. State of Maharashtra** reported in **2002(5) Mh.L.J. 171** also this Court has laid down that if on the seventh day it is holiday, meeting can be taken on the day following such day. Thus, in the present matter the learned Additional Collector has committee error in holding that the meeting was not held within prescribed period of seven days."*

5. In the present matter, the requisition was given on 09th October, 2015 and on the same day the order of calling meeting was made by

Tahsildar. In view of these circumstances, even if first day i.e. 09th October, 2015 is excluded, the subsequent days like Saturday and Sunday when the office was closed cannot be excluded as time started to run on 09th October, 2015 itself, though first day could have been excluded. On 16th October, 2015, it was working day and so it cannot be said that the meeting could not be called on 16th October, 2016. In view of these circumstances, this Court holds that the meeting was not held within the prescribed period of seven days.

6. In view of these circumstances and observations which are already quoted, this Court holds that the meeting itself was illegal and the resolution passed in such meeting cannot be recognised in law. In the result, writ petition is allowed. Order made by Additional Collector, Aurangabad is hereby set aside. The dispute application is allowed. It is hereby declared that the meeting itself was illegal and so the resolution of no confidence passed against the petitioner in the said meeting is hereby quashed and set aside. Rule is made absolute in those terms.

(T.V. NALAWADE, J.)

SSD