

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

960 WRIT PETITION NO. 11933 OF 2015

**PRALHAD BHIKAJI BARGAJE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Shri. N.P. Bangar, Advocate, for petitioner.

Shri. U.H. Bhogale, Assistant Government Pleader, for
respondent Nos.1 and 2.

Shri. S.N. Rodge, Advocate for respondent Nos.3 and 4.

Shri. S.S. Thombre, Advocate, for respondent Nos.6 and 9.

CORAM: T.V. NALAWADE, J.

DATE : 1st SEPTEMBER 2016

ORDER:

1) The petition is filed to challenge the order dated 23-11-2015 passed by the learned Additional Collector, Beed by which the Collector has declared that the present petitioner, Sarpanch, is disqualified to continue as Sarpanch. Both the sides are heard.

2) The proceeding was started before the Collector by residents of village Loni, Bargajwadi, Sheri, Umbarmuli, Mangewadi etc. under the provision of Section 7(1) of the Maharashtra Village Panchayats Act,

1958 and the Bombay Village Panchayats (Gram Sabha Meetings) Rules 1959 (Rule 3). It was contended by the villagers that present petitioner got elected in Group Gram Panchayat of five villages as member and he became Sarpanch in January 2013 but he is not discharging his duties as Sarpanch. There is allegation that he intentionally avoided to discharge his duties and he did not hold all the requisite meetings of Gram Sabha during the financial year 1st April 2013 to 31st March 2014. They contended that it was informed to them that the present petitioner had held one Gram Sabha on 25-7-2013 and two more Gram Sabhas were called but they were adjourned for want of quorum and those Gram Sabhas were not held even when they were adjourned. They also made allegations that on 25-3-2013 the villagers had given requisition to call Gram Sabha but in spite of that the petitioner did not call Gram Sabha. According to them, other Gram Sabhas which were expected to be held as per the rules and also on the dates like Mahatma Gandhi Jayanti and World Women Day were not held and due to that he has incurred disqualification.

3) It is the case of the villagers that the total population of these villages constituting Group Gram Panchayat is more than 10000 and they were all suffering due to shortage of drinking water, want of facilities in respect of health etc. but the present petitioner did not consider the problems of the villagers and for that such Gram Sabhas were necessary.

4) After receipt of this representation of the villagers notice was issued to the present petitioner and copy of the representation intimating the allegations was supplied to him. During inquiry the report of the Block Development Officer was collected and he informed that requisite number of Gram Sabhas were not called and held and he has incurred disqualification. In the report the charges of which the petitioner is guilty were informed by the Block Development Officer.

5) It appears that in the past, the Collector had passed order against the petitioner and said order was challenged in this Court. In Writ petition No.6743/2015 this Court had directed the Collector to hold inquiry

afresh and give opportunity to the present petitioner to show that there was sufficient cause.

6) The learned counsel for the petitioner submitted that no specific charges were informed to him and due to that he could not explain the things, could not show sufficient cause. He submitted that sufficient opportunity was also not given. This Court has carefully gone through the record and on the basis of this record, this Court has no hesitation to hold that sufficient opportunity was given to the petitioner. When the matter was filed for disqualification in the month of July 2014, so many adjournments were sought by the petitioner and at least 20 adjournments were given to him only for filing say. The Collector placed reliance on the contentions of the villagers which are supported by the report of Block Development Officer of inquiry made into the allegations also the record which is expected to be created in respect of Gram Sabha. There is virtually no record with the Village Panchayat headed by the petitioner to show that notice of any Gram Sabha was issued or published. There is no record to show that on the previous day of the Gram

Sabha, as required under Rule 9 of the rules of Gram Sabha meetings, the meeting of the village panchayat was held to consider the proposals which were to be placed before the Gram Sabha. There was no record to show that any attempt was made to call the adjourned meeting even if the record of holding of one meeting is considered which is shown to be adjourned for want of quorum.

7) Learned counsel for the petitioner submitted that in view of provision of section 7(1) of the Maharashtra Village Panchayats Act, the authority is expected to get satisfied that the Sarpanch failed to hold such meeting without sufficient cause. The learned counsel for the petitioner submitted that when the matter was remanded back to the authority, the authority was expected to consider the material on the basis of which inference with regard to sufficient cause can be drawn. Learned counsel for the petitioner submitted that copy of first information report given against the person who has started the proceeding was produced and some record was also produced to show that there was no Gram Sevak available and correspondence was made by Sarpanch with

the Chief Executive Officer to see that sufficient number of Gram Sevaks are made available. On facts it can be said that this record is considered by the authority. Only one letter was sent during relevant period but no force was found in the said correspondence as already sufficient number of Gram Sevaks were made available for this group Gram Panchayat. It is not the case of the petitioner that he had given direction to any Gram Sevak to take some steps and such steps were not taken by saying that he was not available. Grievance that the complainant was creating problems cannot be accepted as the Village Panchayat could have taken appropriate action against any persons who was creating obstruction in the working of the village panchayat.

8) The learned counsel for the petitioner submitted that the complainant himself had admitted that one Gram Sabha was held i.e on 25-7-2013 though the other two Gram Sabhas were adjourned and they were not held subsequently. The dates given by the complainant did not tally with the dates given by the present petitioner in his reply. The report of the Block Development Officer

shows that there was record of only one Gram Sabha dated 25-7-2013 but in respect of that Gram Sabha also there was no record of notice given to the villagers as per the procedure and there was no record of meeting of the village panchayat which was expected to be taken in view of the rules framed for calling Gram Sabha. The relevant rules are Rules 2 to 9 and Rule 10. Specific periods are given when the Gram Sabhas should be held and the procedure for giving notice is also given. This procedure needs to be followed as it creates record which checks as to whether there was intention to call Gram Sabha and really such attempt was made. Similarly, when a meeting is adjourned, after adjournment again procedure is required to be followed of giving notice to villagers and then the adjourned meeting of the Gram Sabha needs to be held. There is no record to show that meeting was called or attempt was made to hold adjourned meeting. On one occasion, on the same date, record was created to show that the meeting which was called in the morning, was adjourned and it was taken in the noon time. Thus, every attempt was made to create only record by mentioning something in the register but the other record

which could have been used to check and counter check is not there and due to these circumstances the Block Development Officer reported that no such meetings were really held.

9) The relevant portion of Section 7 viz section 7(1) of the Maharashtra Village Panchayats Act 1958 runs as under :-

"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, 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 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 that, the Sarpanch may, at any time of his own motion, and, shall, on requisition of the Standing Committee, Panchayat Samiti, or Chief Executive Officer, call a meeting of the Gram Sabha within the period specified in the requisition; and, on failure to do so, the Chief Executive Officer shall require the Block Development Officer to call the meeting within fifteen days from the date he is so required to do. The meeting shall, notwithstanding the provisions of sub-

section (3), be presided over by him or any officer authorized by the Block Development Officer, in that behalf.

Provided further that, a period of not more than four months shall be allowed to elapse between the two meetings of th Gram Sabha;

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."

10) The learned counsel for the petitioner placed reliance on some reported cases like :

- (i) **2013(3) LJSOFT 51 (Pradipkumar v. State of Maharashtra);**
- (ii) **2011 (3) Bom.C.R. 453 (Mangala Dhanraj Kalbande v. State of Maharashtra);**
- (iii) **Writ Petition No.137/2010 (Vilas Kundalik Adhav v. The Additional Commissioner Amaravati)**
- (iv) **2010(5) Mh.L.J. 47 (Pratibha vs. Additional Collector)**
- (v) **2015(3) Mh.L.J. 652 (Tukaram v. State of Maharashtra).**

11) On the basis of the observations made in the case of Pradipkumar (cited supra) learned counsel for the petitioner submitted that if some explanation is given

regarding sufficient cause as mentioned above the said explanation needs to be considered and finding on that explanation needs to be given by the Collector. It is already observed that the record by which attempt was made to give explanation is considered by the Collector. It is a matter of subjective satisfaction of the Collector and this Court is not expected to hold that there was sufficient material for subjective satisfaction when there is material of aforesaid nature against the Sarpanch.

12) In the case of Mangala (supra) observations are made with regard to necessity of presence of Sarpanch in the meeting which is called as per the aforesaid provision. There is no dispute over the proposition made in the said case. In the case of Pratibha (supra) it is observed that specific charges are to be informed to the person like present petitioner as the proceeding involves penal consequences like disqualification. There is no dispute over this proposition. This Court has already quoted the material involving specific allegation against the present petitioner and it cannot be said that he did not know that there is allegation against him that he did not hold the

specified number of Gram Sabhas. The reply given by him itself shows that he knew as to what was the charge against him. The burden to show that there was "sufficient cause" for not holding Gram Sabha was on the Sarpanch and he failed to discharge that burden of proof.

13) On the other hand, learned counsel for the respondent placed reliance on some observations made by this Court in the case of Nanasaheb v. Additional Collector, Parbhani, (Writ Petition No.4660/2009) decided by this Bench on 15-2-2010. This Court has discussed provision of section 7 of the Act and it is held that it is mandatory to hold such meetings and if meetings are not held, disqualification occurs. There is no dispute over this proposition. The record of the present matter shows that present petitioner did not show competency to work as Sarpanch. One resolution of the village panchayat shows that the village panchayat passed resolution that it could not do any work under the Mahatma Gandhi Rural Employment Guarantee scheme. Thus weak attempt was made to create some record but in that also the petitioner could not succeed. Local bodies like village panchayats

are created for decentralisation of power and Gram Sabhas give opportunity to residents of the village to know whether the elected representatives are paying attention to local problems and whether they are discharging their duties. If elected representatives and the persons heading the panchayats are allowed to ignore the scheme of the Local Act, allowing people's participation, the object of the decentralisation of power will be defeated. So, subject to the provisions, the strict compliance of the scheme needs to be ensured. This Court holds that it is not possible to interfere in the order of the Collector. In the result, the petition stands dismissed. Learned counsel for the petitioner prays for continuation of interim relief. The prayer is rejected.

Sd/-
(T.V. NALAWADE, J.)

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