

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12538 OF 2015

KAILAS RAGHUNATH BHAGAT AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr. N. P. Bangar, advocate for petitioners
Mr. S. N. Kendre, AGP for respondent Nos. 1 and 2
Mr. A. D. Aghav, advocate for respondent Nos. 3 and 4
Mr. S. K. Naikwade, advocate for respondent Nos. 5 and 6

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CORAM : V. K. JADHAV, J.

Reserved for Order on : 18.02.2016
Order pronounced on : 25.02.2016

ORDER :-

1. Petitioners are the elected Sarpanch and Upa-Sarpanch respectively, of Grampanchayat, Desur, Taluka Ashti, District Beed. Respondent No.6 filed an application before Additional Collector, Beed under Sections 7 and 36 of the Maharashtra Village Panchayats Act, 1958 (for short "the Act of 1958"), thereby seeking disqualification of petitioners for not holding the requisite number of Gram Sabha meetings and monthly meetings in the financial year 2013-2014.
2. On receipt of the said application, Additional Collector, Beed issued notices to the petitioners and after hearing the parties

concerned, allowed the application submitted by respondent No.6, and thereby held that petitioners shall be disqualified to continue as Sarpanch and Upa-Sarpanch respectively, for the reminder term of the office of Grampanchayat.

3. Learned counsel for the petitioners submits that on receipt of the application filed by respondent No. 6, Additional Collector, Beed issued notices to the petitioner and other concerned persons. However, said notices only disclose date and time of appearance. Learned counsel submits that Additional Collector has not communicated charges to the petitioners so as to give them opportunity to answer those specific charges. In absence of specific charges, petitioners have made only general submissions by filing their reply in writing. Learned counsel submits that the record which is produced before the authority below, clearly demonstrates that petitioners have called Gram Sabha meetings in the financial year 2013-2014. Learned counsel submits that the contention about failure to convene monthly meetings is incorrect. Learned counsel submits that Additional Collector has discarded the evidence produced by petitioners in the shape of proceedings book on the ground that said documents do not bear attestation of the then gramsevak. Learned counsel submits that in order to substantiate petitioner's claim in respect of holding of Gram Sabha meetings,

petitioners have produced on record the communication issued by petitioner No. 1 to the State Bank of India alongwith copy of the proceedings of Gram Sabha dated 15.08.2013, however, the same is not considered by Additional Collector, Beed. Learned counsel submits that so far as issue of holding monthly meetings is concerned, Additional Collector has not considered the documents placed on record in its proper perspective. Learned counsel submits that Additional Collector has failed to record a finding as to the requisite number of Gram Sabha meetings required to be called in a financial year.

4. Learned counsel for the petitioners, in order to substantiate his contentions, places reliance on the decisions in following cases:

1. ***Pratibha w/o Sanjay Hulle vs. Additional Collector, Latur and others***, reported in **2010 (5) Mh.L.J. 47**,
2. Judgment dated 04.12.2013 delivered by this Court in ***Writ Petition No. 3419 of 2013 (Sunil Daulat Patil vs. The State of Maharashtra and others)***,
3. ***Mangala Dhanraj Kalbande vs. State of Maharashtra and others***, reported in **2011 (3) Bom.C.R. 453**,
4. Judgment dated 13.12.2012 delivered by this Court in ***Writ Petition No. 10143 of 2012 (Pradipkumar s/o Babarao***

Patil vs. State of Maharashtra and others) and

5. Judgment dated 02.03.2010 delivered by this Court (Nagpur Bench) in ***Writ Petition No. 137 of 2010 (Vilas Kundalik Adhav vs. The Additional Commissioner, Amravati Division, Amravati and others.***

5. Learned counsel appearing for respondent Nos. 5 and 6 submits that as per provisions of Section 7 of the Act of 1958, there shall be held at least four meetings of Gram Sabha every financial year and in addition to that, as per Rules, two more Gram Sabha meetings are required to be called on specific dates. Learned counsel submits that at least four out of six Gram Sabha meetings are required to be held in every financial year. Learned counsel further submits that petitioners were served with notices issued by Additional Collector, Beed along with copy of application filed by respondent No.6, and the same is evident from the fact that petitioners have submitted their para-wise reply to the application submitted by respondent No.6. Learned counsel submits that petitioners had sufficient knowledge about the nature of allegations made against them, and accordingly, detailed reply was submitted before the Additional Collector.

6. Learned counsel for respondent Nos. 5 and 6 further submits that petitioners have failed to conduct Gram Sabha meetings on

15.08.2013 and in the months of November 2013, January 2014 and May 2014. Learned counsel submits that petitioners have prepared false and bogus record to show that they have conducted requisite Gram Sabha meetings and monthly meetings. Learned counsel submits that as per record, it appears that petitioners have taken only three monthly meetings on 26.02.2013, 18.03.2013 and 30.04.2013 and for the months of May and June, they have not conducted monthly meetings. So far as monthly meeting dated 31.07.2013 is concerned, the proceedings book is incomplete. Learned counsel submits that Additional Collector, Beed, has therefore, rightly held that petitioners have failed to conduct Gram Sabha meetings as well as monthly meetings in the financial year 2013-2014. Learned counsel submits that petitioners have failed to give reasonable explanation for not conducting monthly meetings as well as Gram Sabha meetings. Learned counsel submits that report of the Block Development Officer as well as the Deputy Chief Executive Officer, Zilla Parishad, Beed clearly indicate that the present petitioners failed to perform their duties.

7. Learned counsel for respondent Nos. 5 and 6, in order to substantiate his contentions, places reliance of the decisions in following cases:

1. ***Smt. Jijabai Bapurao Zingare vs. State of Maharashtra***

and others, reported in **2009 (2) All MR 191** and

2. **Nanasaheb s/o Dhondiram Mundhe vs. Additional Collector, Parbhani and others**, reported in **2010 (2) Mah.L.R. 98**.

8. Learned AGP has supported the order passed by Additional Collector, Beed.

9. I have perused the impugned order passed by Additional Collector, Beed. In light of the allegations made in the application submitted by respondent No. 6/original applicant, Chief Executive Officer, Zilla Parishad, Beed was directed to hold an inquiry into the allegations. It is also specifically mentioned in second paragraph of the impugned order that present petitioners had submitted their reply in writing along with relevant record on 29.09.2015 and further submitted their written arguments on 07.11.2015. It is also specifically recorded in the said paragraph that in all 26 dates were given to the concerned parties to place their reply in writing in the proceedings. In the case of **Pratibha w/o Sanjay Hulle** (supra), relied upon by learned counsel for petitioners, the petitioner therein made a grievance that she had not been served with proper notice of inquiry, nor she received copy of the complaint mentioned in the impugned order. This Court has therefore, held that in absence of

transmission of complaint, on which reliance is placed by the authorities, to the petitioners therein, the final order is not sustainable. In the case in hand, on perusal of reply submitted by petitioners in the proceedings before the Additional Collector, it appears that para-wise reply is submitted with additional reply of true facts supported by copies of the proceedings. The case relied upon by learned counsel for the petitioners is, thus, distinguishable and cannot be made applicable to the facts and circumstances of the present case. In the case in hand, there is no grievance by the petitioners that they have not been served with the copy of application filed by respondent No.6. On the other hand, filing of para-wise detailed reply could not have been possible without transmitting copy of the application submitted by respondent No. 6 to the petitioners.

10. In view of the amendment Act 16 of 2012, w.e.f. 02.10.2012, for the words "six meetings" the words "four meetings" shall be substituted. It appears that the Additional Collector has observed that so far as the Gram Sabha meetings dated 13.04.2013 and 21.05.2013 are concerned, there is evidence by way of proceedings about holding of said Gram Sabha meetings. Petitioners submit that there are in all seven meetings of Gram Sabha held in the financial year 2013-2014. However, on careful perusal of the proceedings of

other five Gram Sabha meetings, it appears that the proceedings are incomplete and not attested by the concerned person as true copies. So far as the proceedings of Gram Sabha dated 09.07.2013 are concerned, it appears from the proceedings that directly subject No. 3 was taken for discussion and there is no reference to subject Nos. 1 and 2. Similar is the case in respect of Gram Sabha shown to have been held on 15.08.2013. Directly subject No. 7 is shown in the proceedings and other subjects are nowhere mentioned. So far as the other three Gram Sabha meetings dated 02.10.2013, 10.12.2013 and 26.01.2014 are concerned, Additional Collector has recorded serious observations. Even the report of Block Development Officer and Chief Executive Officer, Zilla Parishad Beed clearly indicates that no Gram Sabha was held in the months of November 2013 and January 2014. The Additional Collector has recorded his observations that the false and fabricated documents are placed before the authorities to show that Gram Sabha meetings were held as required by the provisions of Section 7 of the Act of 1958. This is quite serious. As per provisions of Section 7 of the Act of 1958, there shall be at least four meetings of Gram Sabha in every financial year. So far as the issue, whether meetings of two special Gram Sabha are required to be held in terms of provisions of Section 7 of the Act of 1958, is concerned, the same is not required to be dealt with in the present petition since the petitioners have failed to call four meetings

of Gram Sabha in the financial year 2013-2014.

11. So far as monthly meetings are concerned, the proceedings are incomplete and it appears that the monthly meetings shown to have been called on paper only.

12. In the case of ***Mangala Dhanraj Kalbande*** (supra), relied upon by learned counsel for the petitioners, this Court (Nagpur Bench) has observed that Section 36 of the Act of 1958 is a penal provision and needs to be interpreted strictly. It operates on failure to convene a meeting and that failure to convene or call a meeting and failure to hold it is not one and same thing. This Court has observed that mere absense of person convening such meeting is not relevant at all. Section 36 does not envisage his disqualification only for not attending such meeting.

13. In the case in hand, the proceedings of monthly meetings dated 31.07.2013, 14.08.2013, 28.09.2013 and 30.10.2013 are incomplete and not signed by concerned gramsevak. Furthermore, the proceedings of monthly meeting dated 30.11.2013, though bears signature of gramsevak, the proceedings are incomplete. So far as monthly meetings dated 25.01.2014, 22.02.2014, 29.03.2014, 30.04.2014 and 30.05.2014 are concerned, it is specifically observed

that only notices are issued, however meetings were not held. In the financial year 2013-2014, only three monthly meetings are found called. Thus, the case cited above is distinguishable on the facts and circumstances of the present case.

14. In the case of ***Pradipkumar s/o Babarao Patil*** (supra), relied upon by learned counsel for the petitioners, this Court has observed that a person can only be disqualified to be a member of Gram Panchayat or remain as Sarpanch if he is not in a position to show sufficient cause for not holding the requisite number of Gram Sabha meetings and monthly meetings. It is further observed that since the petitioner therein has come forward with an explanation for not holding monthly meetings, the Collector was required to apply his mind and arrive at subjective satisfaction based on the objective assessment of the reasons given by the petitioner. In the case in hand, petitioners have not come with any explanation for not holding Gram Sabha meetings or monthly meetings. Instead, they have come with a case that the Gram Sabha meetings and monthly meetings were held. However, the record speaks something else. Petitioners have failed to show any cause for not holding requisite number of Gram Sabha meetings and monthly meetings. The record and proceedings, on the other hand, indicates that false and fabricated documents have been prepared to show that Gram Sabha

meetings and monthly meetings were held in terms of relevant provisions of the Act of 1958. Even the Additional Collector has observed to that effect in the impugned order that false documents are placed before the authorities to substantiate false contention raised by the petitioners by way of reply. This is quite serious. The Additional Collector has rightly held that the petitioners shall be disqualified to continue as Sarpanch and Upa-Sarpanch respectively, for remainder of the term of the office of members of the Panchayat. The writ petition is devoid of any merits and the same is hereby dismissed. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

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