

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5602 OF 2017

Kalusing s/o Sunya Padvi,
Age-50 years, Occu-Agriculture,
R/o Dhadgaon, Tal.Dhadgaon,
Dist.Nandurbar

– PETITIONER

VERSUS

1. State of Maharashtra,
Through its Principal Secretary,
Rural Department Development,
Mantralaya, Mumbai – 32,
2. The Divisional Commissioner,
Nashik Division, Nashik,
3. Ravindra Parshi Paradke,
Age-45 years, Occu-Politician,
R/o Dhadgaon, Tal.Dhadgaon,
Dist.Nandurbar,
4. Zilla Parishad, Nandurbar,
Dist.Nandurbar
Through its Chief Executive Officer
5. Block Development Officer,
Panchayat Samiti, Dhadgaon,
Tq.Dhadgaon, Dist.Nandurbar

– RESPONDENTS

WITH
WRIT PETITION NO.5641 OF 2017

Gautam S/o Dashrath Vasave,
Age-30 years, Occu-Agriculture,
R/o Talai, Tal.Dhadgaon,
Dist.Nandurbar

– PETITIONER

VERSUS

1. State of Maharashtra,
Through its Principal Secretary,
Rural Department Development,
Mantralaya, Mumbai – 32,
 2. The Divisional Commissioner,
Nashik Division, Nashik,
 3. Ravindra Parshi Paradke,
Age-45 years, Occu-Politician,
R/o Dhadgaon, Tal.Dhadgaon,
Dist.Nandurbar,
 4. Zilla Parishad, Nandurbar,
Dist.Nandurbar
Through its Chief Executive Officer
 5. Block Development Officer,
Panchayat Samiti, Dhadgaon,
Tq.Dhadgaon, Dist.Nandurbar
- RESPONDENTS

WITH
WRIT PETITION NO.5639 OF 2017

Devji S/o Parashi Valvi,
Age-50 years, Occu-Agriculture,
R/o Katri, Tal.Dhadgaon,
Dist.Nandurbar

– PETITIONER

VERSUS

1. State of Maharashtra,
Through its Principal Secretary,
Rural Department Development,
Mantralaya, Mumbai – 32,
2. The Divisional Commissioner,
Nashik Division, Nashik,
3. Ravindra Parshi Paradke,
Age-45 years, Occu-Politician,
R/o Dhadgaon, Tal.Dhadgaon,
Dist.Nandurbar,

4. Zilla Parishad, Nandurbar,
Dist.Nandurbar
Through its Chief Executive Officer
5. Block Development Officer,
Panchayat Samiti, Dhadgaon,
Tq.Dhadgaon, Dist.Nandurbar – RESPONDENTS

WITH
WRIT PETITION NO.5640 OF 2017

Kavita d/o Tanaji Pawara,
Age-30 years, Occu-Housewife,
R/o Tinasma, Tal.Dhadgaon,
Dist.Nandurbar – PETITIONER

VERSUS

1. State of Maharashtra,
Through its Principal Secretary,
Rural Department Development,
Mantralaya, Mumbai – 32,
2. The Divisional Commissioner,
Nashik Division, Nashik,
3. Ravindra Parshi Paradke,
Age-45 years, Occu-Politician,
R/o Dhadgaon, Tal.Dhadgaon,
Dist.Nandurbar,
4. Zilla Parishad, Nandurbar,
Dist.Nandurbar
Through its Chief Executive Officer
5. Block Development Officer,
Panchayat Samiti, Dhadgaon,
Tq.Dhadgaon, Dist.Nandurbar – RESPONDENTS

WITH
WRIT PETITION NO.5642 OF 2017

Mishribai w/o Govind Padvi,
Age-55 years, Occu-Housewife,
R/o Kundal, Tal.Dhadgaon,
Dist.Nandurbar

– PETITIONER

VERSUS

1. State of Maharashtra,
Through its Principal Secretary,
Rural Department Development,
Mantralaya, Mumbai – 32,
2. The Divisional Commissioner,
Nashik Division, Nashik,
3. Ravindra Parshi Paradke,
Age-45 years, Occu-Politician,
R/o Dhadgaon, Tal.Dhadgaon,
Dist.Nandurbar,
4. Zilla Parishad, Nandurbar,
Dist.Nandurbar
Through its Chief Executive Officer
5. Block Development Officer,
Panchayat Samiti, Dhadgaon,
Tq.Dhadgaon, Dist.Nandurbar

– RESPONDENTS

WITH
WRIT PETITION NO.5655 OF 2017

Ravindra Parshi Paradke,
Age-41 years, Occu-Member of P.S.,
R/o Dhadgaon, Tal.Dhadgaon,
Dist.Nandurbar

– PETITIONER

VERSUS

1. The State of Maharashtra,
Through Divisional Commissioner,
Nasik,
Dist.Nasik,

2. Panchayat Samiti, Dhadgaon,
Through its Group Development Officer,
Panchayat Samiti, Dhadgaon,
Tq. Dhadgaon, Dist.Nandurbar,
3. Vimal Satya Valvi,
Age-65 years, Occu-Member of P.S.,
R/o Kharda, Taluka Dhadgaon,
Dist.Nandurbar – RESPONDENTS

WITH
WRIT PETITION NO.5656 OF 2017

Ravindra Parshi Paradke,
Age-41 years, Occu-Member of P.S.,
R/o Dhadgaon, Tal.Dhadgaon,
Dist.Nandurbar – PETITIONER

VERSUS

1. The State of Maharashtra,
Through Divisional Commissioner,
Nasik,
Dist.Nasik,
2. Panchayat Samiti, Dhadgaon,
Through its Group Development Officer,
Panchayat Samiti, Dhadgaon,
Tq. Dhadgaon, Dist.Nandurbar,
3. Moycha Satya Pawara,
Age-65 years, Occu-Member of P.S.,
R/o Umarani, Taluka Dhadgaon,
Dist.Nandurbar – RESPONDENTS

Mr.P.R.Patil, Advocate for the petitioners.
Mr.A.S.Savale, Advocate for respondent No.3.
Mrs.V.S.Chaudhari, Advocate for respondent Nos.4 and 5.
Mr.N.T.Bhagat, AGP for State.

(CORAM : Ravindra V.Ghuge, J.)
DATE : 26/09/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. In all these matters, this Court (Vacation Judge), by order dated 11/05/2017, had noted as under :-

“1. Issue notice to the respondents returnable on 20th of June, 2017. Learned A.G.P. waives service for respondent nos. 1 and 2. Mr. A.S.Savale, learned Counsel, waives service for respondent no.3.

2. The petitioners in all these petitions are the members of Panchayat Samiti, Dhadgaon. They have been disqualified vide the impugned order on the ground that they had remained absent for the meetings for consecutive three meetings. The disqualification is for contravention of provisions of Section 62(1)(b) of the Zilla Parishads and Panchayat Samitis Act, 1961.

3. Shri Patil, learned Counsel appearing for the petitioner submitted that all these petitioners were present in the meeting held on 22nd of March, 2016. According to Mr. Patil, the petitioners could not attend the meetings scheduled on 21st April, 2016, 13th of May, 2016, 9th of June, 2016, and 24th of June, 2016. Learned Counsel, placing his reliance on the

judgment of the Division Bench of the Allahabad High Court in the case of Abdul Latif Nomani vs. Commissioner, Gorakhpur and other (AIR 1968 Allahabad 44), submitted that the absence shall be not for three consecutive meetings but for a period of three consecutive months. Learned Counsel further submits that, as has been held by the Division Bench of the Allahabad High Court in the cited judgment, the period of three months is to be computed from the date on which the members are stated to have first remained absent. Considering this, according to Shri Patil, the absence of all these petitioners from the meetings of Panchayat Samiti was not for a period of three months and, in such circumstances, they could not have been disqualified.

4. Shri Amit Savale, learned Counsel appearing for respondent no.3 in all these petitions, on whose complaint the petitioners are disqualified, submits that the judgment relied upon by Shri Patil may not be applicable in the facts of the present case. According to Shri Savale, learned Counsel, the petitioners had remained absent for continuous period of three months and in the meetings which were held during the period of said three months and the Commissioner has rightly disqualified the petitioners from holding the post of Member Panchayat Samiti.

5. I have carefully perused the documents on record. I have also mentioned the dates on which the meetings of Panchayat Samiti were held, to which the petitioners are stated to have remained absent. The first such absence was for the

meeting held on 21st of April, 2016, and the last meeting to which the petitioners were stated to have remained absent was held on 24th of June, 2016. Though in the period between 21st April to 24th of June total four meetings were held, if the period is computed, it is less than three months. Section 62 (1) (b) of the Act provides for disqualification of the members of the Panchayat Samiti who would remain absent from the Panchayat Samiti meetings for a period of three consecutive months, and not three consecutive meetings. In view of the judgment of the Division Bench of the Allahabad High Court cited supra, the period of three months has to be computed from the date of the first meeting from which member absented. The said period is less than three months. Prima facie case is, thus, made out in favour of the petitioners.

In view of the above, place these petitions for admission on 20th of June, 2017. Till then, ad interim relief in terms of prayer clause (B) in all these petitions.”

3. Prayer clause 'B' that was granted on 11/05/2017 reads as under :-

“Pending hearing and final disposal of this petition, execution, implementation and operation of the impugned judgment and order dated 18/04/2017 passed by respondent No.2 Divisional Commissioner, Nashik, Division Nashik (**Exhibit “A”**, page 15) in Panchayat Samiti Disqualification Petition No.7 of 2016, thereby disqualifying the petitioner from the post of member of

the Panchayat Samiti, Dhadgaon may kindly be stayed.”

4. I have considered the strenuous submissions of the learned Advocates for the respective sides. The petitioners who are identically placed have placed reliance upon the following judgments :-

[a] Abdul Latif Nomani Vs. Commissioner Gorakhpur and others [AIR 1968 Allahabad 44],

[b] Inder Kumar Vs. State of Rajasthan, writ petition decided on 25/07/1972,

[c] Thampanoor Ravi Vs. Charupara Ravi and others [(1999) 8 SCC 74],

[d] Chirak Chandu Khatik Vs.G.V.Kshirsagar [1965 BLR 657].

5. Learned Advocate for the respondents have relied upon the judgment of the Kerala High Court in the matter of Radhakrishnan Vs. Joint Registrar of Co-operative Societies [ILR 2008(2) Kerala 489 = 2008(2) KLJ 65].

6. The submissions of the petitioners can be summarized as under :-

[a] The first 5 petitioners have been elected as Members of the Dhadgaon Panchayat Samiti, Tal.Dhadgaon, Dist.Nandurbar on 28/12/2013.

[b] The first 5 petitioners attended the Panchayat Samiti meeting on 22/03/2016 and meetings held there before.

[c] It is admitted that all these petitioners could not attend the meetings on 13/05/2016 and 09/06/2016, though they had filed an application before the Samiti requesting for leave to remain absent.

[d] The petitioner Gautam Dashrath Vasave was appearing for his 2nd year B.A. examination and hence he could not remain present on 13/05/2016.

[e] The first 5 petitioners again remained absent on 09/06/2016, though they have filed their applications expressing their difficulties due to which they could not remain present in the said meeting.

[f] The Commissioner, Nasik Division has allowed the leave applications of Vimal Satya Walvi and Tukaram Fendrya Pawara for the reasons set out in their applications submitted to the Panchayat Samiti.

[g] Respondent No.3 in the first five petitions is the petitioner in the 6th and the 7th petition wherein he has challenged the order of the Commissioner, Nasik Division Nasik allowing the claim for exemption of Vimal Satya Valvi and Tukaram Fendrya Pawara.

7. Besides the above points, the petitioners have also canvassed several other grounds which are set out in the 6 grounds for challenge formulated by these petitioners in the memo of their petitions.

8. Learned Advocates and the learned AGP for the respondents

have strenuously opposed these first 5 petitions on the ground that these petitioners were absent in 3 consecutive monthly meetings of the Panchayat Samiti and hence they could not be continued as members and deserved to be disqualified in the light of Section 62(1) (b) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (For short, Act of 1961). The petitioner in the remaining two matters, who is the original objector and who has initiated the litigation, seeking the disqualification of the first 5 petitioners, has severely criticized the impugned judgment of the Commissioner granting exemption to the two members of the Gram Panchayat namely Vimal and Tukaram. Contention is that such an exemption cannot be granted as no exemption is permissible under the Law thereby exempting or permitting any member of the Panchayat Samiti to remain absent in 3 consecutive meetings.

9. While considering the strenuous submissions of the learned Advocates for the litigating sides and keeping in view the law that is applicable, I am not required to advert to their entire submissions. Suffice it to say, the first issue of calculating the period of absence and the second issue of tendering of leave applications seeking permission to abstain from a monthly meeting, deserve consideration in this case. The first issue rests on the judicial pronouncements

and the second issue is being taken up at the request of the litigating sides as there are no rules under the Act of 1961 prescribing the manner of filing an application for remaining absent, the authority who is supposed to consider such applications and the manner of communicating the decision on the leave application to any applicant, before the meeting commences.

10. In the matter of Abdul Latif (supra), the Allahabad High Court considered Section 40(1)(a) of the Uttar Pradesh Municipalities Act with regard to a member remaining absent for 3 consecutive meetings and has concluded in paragraph Nos.7 and 8 as under :-

"7. The relevant provisions of Section 40 read as follows:

"40 Removal of members -- (1) The State Government in the case of a city, or the Prescribed Authority in any other case, may remove a member of the board on any of the following grounds:--

(a) that he has absented himself from the meetings of the Board for more than three consecutive months or three consecutive meetings whichever is the longer period, without obtaining sanction from the Board Provided that the period during which the member was in jail as an undertrial, detenu. or as a political prisoner shall not be taken into account :

x x x x x

(4) Provided that when either the State Government or the Prescribed Authority, as the case may be proposes to take action

under the foregoing provisions of this section, an opportunity of explanation shall be given to the member concerned, and when such action is taken, the reasons therefor shall be placed on record

x x x x x

(6) Without prejudice to any of the foregoing powers the State Government or the Prescribed Authority, as the case may be may on any of the grounds referred to in Sub-section (1), instead of removing the member give him a warning or place him under suspension for a specified term not exceeding three months at a time and any member who has been so suspended shall not, as long as the order of suspension continues to remain in force be entitled to take part in any proceedings of the board or otherwise perform the duties of a member

Explanation -- The power of administering warning or placing a member under suspension under Sub-section (6) may be exercised either by the State Government or the Prescribed Authority as the case may be, while dealing with the matter originally under Sub-section (1) or Sub-section (3) or by the State Government on appeal under Sub-section (2) "

8. In the case of Sanaulloh Sardar, the last meeting attended by him was held on September 30, 1965. Then followed the meetings of October 30, 1965, November 1, 1965, November 30 1965 and December 23, 1965 which he did not attend. He attended the next meeting held on January 28, 1966. It is clear that he was absent for more than three consecutive meetings. But Section 40(1) (a) requires that a member should absent

*himself from the meetings of the Board for more than 3 consecutive months or three consecutive meetings, whichever is the longer period It is necessary, therefore, to examine also whether the meetings of the Board from which he absented himself covered more than three consecutive months Mr. Shukla urges that the period should run from September 30, 1966 and should be considered as extending up to January 28, 1966. the termini being the last meeting attended before and the first meeting attended after the meetings from which the member was absent. If Mr. Shukla's contention is accepted, it must be held that the members has been absent from the meetings for more than three consecutive months. Upon careful consideration however we find no force in the contention The period of three consecutive months commences from the first meeting from which the member absented himself and, if that be taken as the starting point for computing the period, it seems to us that three consecutive months did not elapse during which Sanaullah Sardar was absent from the meetings of the Board. In taking this view, we are fortified by the decision of Warrington, J. in *Kershaw v. Shoreditch Corporation*. (1907) 95 LT 55 where upon comparable language he held that the absence must begin to be reckoned on the first meeting at which the alder man was absent."*

11. In the matter of Inder Kumar (supra), the Rajasthan High Court considered a similar issue with regard to Section 63 of the Rajasthan Municipalities Act, 1959 and concluded in paragraph No.2

as under :-

“2. No reply has been filed by any of the respondents. The Municipal Board, Nohar, has also been made a party to this petition but the Board has not cared to file a reply though the Board is duly represented by a counsel Mr. R.C. Maheshwari.

Since the averments made in the writ petition have not been controverted by the respondents, this Court is left with no alternative but to accept the facts as mentioned in the petition.

It may be mentioned that out of the five meetings as specified in the notice (Annexure 1) issued by the Director, in which the petitioner did not take part, two meetings held on 13th of January, 1971 and 16th of February, 1971, were special meetings and the rest three were ordinary general meetings. The meeting, which is said to have been summoned on 6th of March, 1971, was a general meeting. According to the provisions of Section 70(5) of the Act, four clear days' notice is necessary to be given to the member asking him to attend the general meeting of the Board. In this case, as is apparent from the reply given by the petitioner in response to the notice received from the Director along with the envelope which contained the notice and also in view of the averments made in the petition, the petitioner received the notice of the meeting, on the very day on which it was summoned. Therefore, according to the petitioner the meeting was not called in accordance with the provisions of law and it cannot, therefore, be counted as a valid meeting for the purpose of applying the provisions of Section 63(1)(a) of the Act. The contention of the petitioner has some force and I feel that for

the reasons given by the petitioner he cannot be taken to be an absentee member in the meeting of 6th March, 1971 for incurring disqualification Under Section 63(1)(a) of the Act.

Section 63(1)(a) of the Act is as follows :

*Section 63. Removal of members-1) The **State** Government may, subject to the provisions of Sub-sections (2) and (3), remove a member of a Board on any of the following grounds, namely - (a) that he has absented himself from the meetings of the Board for more than three consecutive months or three consecutive ordinary general meetings, whichever is the longer period, without leave of the Board.*

This provision of the law can be construed that before a member incurs a disqualification to continue as a member Under this provision he must remain absent from the meetings of the Board for more than three consecutive months which cannot be interpreted to mean that if the member remains absent for three months only then he will incur disqualification. If he remains absent in a meeting held in the fourth month, it is then and then only that he incurs the disqualification. The period of three consecutive months should be computed forward from the date of the first failure. In the present case, the petitioner's first failure to attend the meeting falls on 13th of January, 19(sic)1. It is averred that the petitioner had attended the meeting of the Board on 3rd of April, 1971, which meeting falls within a period of consecutive three months and, therefore, the petitioner cannot be said to have incurred disqualification to warrant his removal under the provisions of Section 63(1)(a) of the Act.

For the reasons mentioned above, the writ petition is allowed. The order passed by the Director of Local Bodies dated 3rd December, 1971 (Annexure 2) is quashed. Petitioner shall get his costs from the respondents.”

12. In the matter of Thampanoor Ravi (supra), the 3 Judges Bench of the Hon'ble Apex Court has observed in paragraph No.19 as under :-

“20. The learned Judge noticed that if a person is not to be held an insolvent as in ordinary parlance it would result in non-application of disqualification even if the court is satisfied that the returned candidate is not in a position to repay debts and could be adjudged to be insolvent. Article 191(1)(c) does not contemplate mere impecuniosity or incapacity of a person to repay one's debts but he should not only be adjudged insolvent but also remain undercharged. Such a contingency could only arise under insolvency law. Article 191(1)(c) refers to disqualifications of a person from getting elected to State Legislature. The conditions for disqualification cannot be enlarged by importing to it any meaning other than permissible on strict interpretation of expressions used therein for what we are dealing with is a case of disqualification. Whenever any disqualification is imposed naturally the right of a citizen is cut down and in that event a narrow interpretation is required. Therefore, the liberal view taken by the learned Judge to the contrary does not appear to be correct.”

13. In Chirak Chandu Khatik judgment (supra), the Full Bench of this Court has observed as under :-

“The main question which arises for determination in these applications is whether petitioner No. 2 Bajubai was disqualified from continuing to be a member of the Village Panchayat under Clause (b) in Sub-section (I) of Section 40 of the Act. This sub-section provides:

“(1) Any member of a panchayat who, during his term of office...

(b) absents himself for six consecutive months from the meetings of the panchayat, without the leave of the said Panchayat,

shall cease to be a member and his office shall be vacant.”

Sub-section (2) of this section states that any dispute as to whether a vacancy has or has not occurred under this section shall be referred for decision of the President of the Zilla Parishad, whose decision shall be final. Petitioner No. 2. attended the meeting of the Village Panchayat on October 27, 1963. She remained (absent at the next meeting held on November 19, 1963. She also did not attend the subsequent five meetings held on November 28, 1963, December 29, 1963, January 31, 1964, February 29 1964; and March 31, 1964. She, however, was present at the next meeting held on April 30, 1964, It has been contended by Mr. Patil that the period of six months must be counted from November 19, 1963, the date on

which she absented herself for the first time after attending the previous meeting held on October 27, 1963. Mr. Adik has, on the other hand, urged that petitioner No. 2 should be held to have been disqualified, as she did not attend any meeting of the Panchayat held during the period of six months from October 28, 1963. The disqualification, under the above provisions would be incurred if member absents himself from meetings of the Village Panchayat for six consecutive months. The absence must, therefore, be from a meeting. Until a meeting is held, no question of absence can arise. Six months of absence cannot, therefore, begin to run unless a member is absent and he cannot be absent until a meeting is held. It follows that the period of six months must be reckoned from the date of the meeting at which the member remained absent and not from the date of the meeting at which he was last present.

This view is in accordance with that taken in Kershaw v. Shoredith Corporation. Sub-section (6) of Section 46 of the Local Government Act, 1894, provided that if a member of a council was absent from the meetings of the council for more than six months consecutively, his office shall on the expiration of those months become vacant. It was held that the period of six months began to run from the first meeting when he was absent and not from the last meeting at which he was present.

In the case of petitioner No. 2, the period of six months therefore began on November 19, 1963, when she was absent for the first time from the meetings of the Panchayat. Six months from this date expired on May 19, 1964. Before the expiry of this

period she attended the meeting held on April 30, 1964. Consequently, she had not incurred the disqualification under Clause (b) in Sub-section (1) of Section 40 of the Act. She was consequently entitled to vote at the election for the office of the Sarpanch held on June 15, 1964.

The order made by the President of the Zilla Parishad holding that petitioner No. 2 was disqualified from continuing to be a member under Section 40 of the Act and that a vacancy had consequently occurred, must therefore be set aside. We also set aside the order of the Collector, by which he has held the election of petitioner No. 1 as the Sarpanch to be invalid.

As the election of petitioner No. 1 was valid, special civil application No. 1177 does not survive. The rule in that application will be discharged.

The petitioners in application No. 1102 should get their costs from respondents Nos. 3 and 4. No order as to costs in application No. 1177.”

14. In the judgment cited by the learned Advocate for respondent No.3 in the matter of Radhakrishnan (supra), the Kerala High Court has observed in paragraph No.6 to 10 as under :-

“6. The learned Counsel for the petitioner argued that the last meeting having been held on 7-4-2007, going by the prescription in the bye-laws that the Board of Directors shall meet once in every month, the situation that could lead to any action under Section 33(1) of the Act on the ground that committee failed to

hold its regular meeting consecutively for six months can occur only if no meeting was held in October, 2007 and because, a meeting was held on 31-10-2007, that provision is not violated. He cited the decision of the Delhi High Court in Daryodh Singh v. Union of India : AIR 1973 Delhi 58 and that of the Allahabad High Court in Ram Kali v. Sai Ram : AIR 1978 All 546 dilating on the term 'month', with reference to the provisions of the General Clauses Act. Abdul Latif v. Commissioner Gorakhpur : AIR 1968 All 44 was referred, to emphasize that an opportunity of explanation ought to have been granted on the facts and circumstances of the case in hand and also that the concept of the term 'Month' has to be construed by treating it as the calender month.

7. The learned Government Pleader, on the other hand, argued that the alleged meeting on 1-5-2007 cannot be believed on the face of Ext. R-1(a) and counting from 8-4-2007, no other meeting was, indisputably, held before 7-4-2007 and hence, Ext. P-7 decision is in order.

8. In paragraph 2 of the counter affidavit on behalf of the first respondent, the provision in Clause 15.6 of the bye-laws, as quoted above, is reiterated to state that 'as per bye-law clause 15.6, the Board of Directors shall meet once in every month or as often as necessary to conduct the affairs of the society'.

9. The meeting of 7-4-2007 having been held in the month of April, the statutory prescription contained in Section 33(1) requires to be examined. The said provision enjoins that where, among other things, the committee fails to hold its regular

meeting 'consecutively' for 'six months', the Registrar may act in terms of that provision. The word 'month' is not defined in the Act. Reference has, therefore, to be made to the interpretation and General Clauses Act, 1125 (Act 7/25), Section 2(22) of which reads as follows:

The 'month' shall mean a month reckoned according to the British Calender.

10. With or without the support of the decisions referred to on behalf of the petitioner,. it can be safely concluded that the term 'month' and the words 'six months' in Section 33(1) mean 'month' or 'six months' as per the British Calendar. The word 'consecutively' is different from the term 'continuously'. 'consecution' is a train of consequences; a series of things that follow one another; succession of similar intervals in harmony. 'Consecutive' is the adjective from of consecution and it means, 'following in regular order or one after another; expressing consequence. Therefore, a regular period of a month understood as defined in the General Clauses Act has to consecutively occur for six times to attain the status 'consecutively for six months' enjoined by Section 33(1) of the Act. Hence, if a meeting is held in a month reckoned according to the British Calendar, the meeting for the next consecutive month can be held on any day in the next month reckoned as per the British Calendar and in so calculating, if a meeting has been held in a particular month, the vice of Section 33(1) of the Act would be attracted only on failure to hold a meeting on any of the days of its 6th consecutive month. Hence, a meeting having been, indisputably held on 7-4-

2007, i.e. in April, 2007, Section 33(1) can be invoked on the case in hand only if no meeting was held till the end of October, 2007, i.e. 31-10-2007. Therefore, the issuance of the impugned Ext. P7 order on 24-10-2007, i.e., before the expiry of six months, is without jurisdiction and is, hence, void.”

15. In the instant case, Section 62 which is relevant, reads as under :-

*“62. Disqualification of members of Panchayat Samiti - (1) If any member of a Panchayat Samiti **** during the term of his office-
(a) becomes disqualified under section 68 ; or
(b) is for a period of three consecutive months (excluding in the case of its Chairman and Deputy Chairman any period of leave duly sanctioned), without the permission of the Panchayat Samiti absent from meetings thereof (or is absent from such meetings for a period of six consecutive months,) the office of such member shall become vacant.*

(3) If any question whether a vacancy has occurred in the office of member under this section is raised either by the Commissioner suo motu or on an application made to him by any person, the Commissioner shall decide the question [as far as possible] within ninety days from the date of receipt of such application, and his decision thereon shall be final. Until the Commissioner decides the question, the member shall not be disabled from continuing to be a member of the Panchayat Samiti :

Provided that, no order shall be passed under this sub-section by the Commissioner against any member without giving him a reasonable opportunity of being heard.]”

16. Section 40 of the earlier Maharashtra Village Panchayats Act provided for the disqualification of a member of the panchayat who was absent for 6 consecutive months from the meetings of the Panchayat without the leave of the said Panchayat. A similar issue has been considered by the Allahabad High Court with regard to the U.P.Municipalities Act, where Section 40(1), reproduced above, was practically identical, except that the absence of a member from the meetings of the Board was to be for more than 3 consecutive months or 3 consecutive meetings “WHICHEVER IS THE LONGER PERIOD”, without obtaining sanction from the Board. This was a ground for disqualification. The words “WHICHEVER IS THE LONGER PERIOD” are not found in Section 40(1)(b) of the earlier Maharashtra Village Panchayats Act and also do not find place in Section 62(1)(b) of the Act of 1961 which is currently in vogue.

17. There can be no dispute that the absence of a member is being considered with reference to the monthly meeting and not his physical absence from the village. Section 62(1)(b) prescribes

absence for a period of 3 consecutive months without the permission of the Panchayat Samiti from the meetings thereof. The bracketed portion in Section 62(1)(b) reproduced above "*or is absent from such meetings for a period of 6 consecutive months*" were introduced by the Maharashtra Act 21 of 1968. The first part of sub clause (b) is with regard to absence for a period of 3 consecutive months without the permission of the Panchayat Samiti. This absence for 3 months means absence from meetings in 3 consecutive months. Mere absence from the village is not an issue raised in this matter. The later part of sub clause "b" regarding absence for 6 consecutive months is therefore presumed to be with the permission of the Panchayat Samiti. This issue is not before me for adjudication and as such I am refraining from making any observations about the bracketed portion in sub clause 'b' introduced in 1968.

18. Learned Advocate for the respondents have strenuously canvassed that as absence for 3 months from the village is not the focal point and what is significant is the absence of a member from the monthly meetings for 3 consecutive months, it would therefore lead to his disqualification. It is strenuously canvassed that once a member is absent for 3 consecutive meetings in 3 consecutive months, he would be liable to be disqualified as a member.

19. Though I find the submissions of Mr.Savle, Ms.Chaudhary and the learned AGP to be attractive, it cannot be ignored that the words used in sub clause 'b' of section 62(1) are, "for a period of 3 consecutive months" Had it been specifically mentioned in sub clause 'b' like *"for a period of 3 consecutive meetings in 3 consecutive months"*, a different meaning could have been drawn. The words "consecutive monthly meetings" are conspicuously absent in sub clause 'b' and it appears that the intent and object of the Legislation was to consider the absence of a member in the monthly meetings over a period of consecutive 3 calender months and not 3 consecutive monthly meetings.

20. In Abdul Latif (supra), the Allahabad High Court has concluded that such absence from meetings will have to be computed from the first failure in attending a meeting. While referring to the judgment in the matter of *Kershaw v. Shoreditch Corporation. (1907) 95 LT 55*, it was held that the period of 3 consecutive months commences from the first meeting on which date the member absented himself.

21. In the case of Inder Kumar (supra), the Rajasthan High Court (Full Bench) considered the effect of Section 63(1) of the Rajasthan Municipalities Act, 1959 and concluded that the longer period in

between 3 consecutive meetings and 3 consecutive months will have to be considered while dealing with a case of disqualification.

22. I find that the judgment of the learned Division Bench of this Court in Chirak Chandu Khatik (supra) is practically identical to the matters in hand. Section 40(1)(b) of the Bombay Village Panchayats Act, 1958 is practically identical to Section 62(1)(b) of the Act of 1961. The reproduced portion of the said judgment, hereinabove, would indicate that the disqualification would be incurred if a member absents himself from the meetings for 6 consecutive months. The manner of calculating such 6 months under the earlier Act was further explained by concluding that the period of 6 months would begin from 19/11/1963 when petitioner No.2 remained absent in a monthly meeting for the first time and 6 months from 19/11/1963 would expire on 19/05/1964. The petitioner Chirak Chandu Khatik had attended the meeting held on April 13, 1964 and though she was absent from 6 consecutive meetings, the period of 6 months lapsed only after she attended the meeting on 30/04/1964. Based on the said facts, it was concluded that she would not incur the disqualification as she had attended a meeting before the 6 months expired, notwithstanding that she was absent for 6 consecutive meetings.

23. In the instant first 5 cases, the first 5 petitioners were absent from 21/04/2016 and though they remained absent for 3 consecutive monthly meetings held on 21/04/2016, 31/05/2016 and 09/06/2016, they had attended the meeting on 28/06/2016 which was a special meeting for holding the election of a Chairman (though it was not a monthly meeting). They also attended the monthly meeting on 08/07/2016, before 3 months expired.

24. As such, considering the law laid down, when the date of absence commenced on 21/04/2016, the 3 consecutive calendar months would be concluded on 21/07/2016. Prior thereto, the petitioners attended the meeting on 08/07/2016. As such, they are squarely covered by the view taken by this Court in Chirak Chandu (supra) and by the Full Bench judgment of the Rajasthan High Court in Inder Kumar (supra).

25. In this backdrop, considering the law and the phraseology of Section 62(1)(b), these 5 petitioners cannot be construed to have remained absent for 3 consecutive months in the monthly meetings. It is, therefore, insignificant that they remained absent from 4 consecutive monthly meetings dated 21/04/2016, 13/05/2016, 09/06/2016 and 24/06/2016. Had the words “3 consecutive

monthly meetings” been found in Section 62(1)(b), these petitioners could have incurred the disqualification u/s 62(1)(b).

26. In so far as the second issue noted as above with regard to the manner of filing leave applications is concerned, the learned Advocates for the respective sides submit that neither under the Act of 1961 nor the Rules framed thereunder, there is any provision as to how a leave application should be tendered by a member who desires to remain absent from a monthly meeting or the Gramsabha. As of today, there are no rules prescribed.

27. Learned Advocate for respondent Nos. 4 and 5 submits that the practice followed today is of a member filing an application in person or sending it by post to the Panchayat Samiti and such an application is placed before the Samiti in the same meeting from which the applicant desires to abstain. The application is either allowed or rejected by the Panchayat Samiti in the meeting itself as per the prevailing practice. There is no procedure prescribed for communicating the rejection of such a leave application, in as much as, the decision to accept the leave application, also cannot be communicated to the applicant. What is being done is that a telephonic call is made for convening to the applicant that his leave

application is rejected or allowed. It is conceded that such communication cannot be termed as being an official communication, in as much as, such an applicant is rendered helpless if he is conveyed that his leave application is rejected by the Samiti after the monthly meeting or the Gramsabha has already commenced.

28. In the peculiar facts as above, I am of the view that these matters need to be referred to the Secretary, Rural Development Department for considering whether Rules, for prescribing the manner of making a leave application, defining an authority to receive and decide such application and the procedure to communicate the decision on such application, need to be framed under the Maharashtra Panchayat Samiti (Conduct of Business) Rules 1965.

29. Considering the above, these first 5 petitions filed by the disqualified members, stand allowed in terms of prayer clause "A" which reads as under :-

“By a writ of certiorari, orders or directions in the nature of certiorari, the impugned judgment and order dated 18.04.2017 passed by respondent No.2 Divisional Commissioner, Nashik

Division, Nashik (Exhibit "A", page 15 in Panchayat Samiti Disqualification Petition No.7 of 2016 thereby disqualifying the petitioner from the post of member of the Panchayat Samiti, Dhadgaon may kindly be quashed and set aside."

Identical prayers as above in all the 5 petitions are granted. In the light of the conclusions as above, the two writ petition Nos.5655/2017 and 5656/2017 are dismissed.

30. Needless to state, if the appropriate authorities decide to frame certain rules with regard to the applications seeking permission to remain absent, as recorded above, the issue as to the justifiability of the grounds set out in the application, would become material and would be an incidental issue.

31. Consequentially, Rule in the first 5 petitions is made absolute in terms of prayer clause "A". Rule in the 6th and the 7th petition filed by the original objector, stands discharged.

(Ravindra V.Ghuge, J.)