

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13141 OF 2017
(Kusum Chandrakant Kachare Vs. The State of Maharashtra and
others)

Mr.G.J.Kore, Advocate for the petitioner.
Mr.S.K.Tambe, AGP for respondent Nos. 1 and 2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 19/11/2018

PER COURT :

1. The petitioner is aggrieved by the impugned order dated 23/10/2017 passed by the District Collector, Osmanabad thereby disqualifying the petitioner from continuing as a Sarpanch, in view of Section 36 and 38 of the Maharashtra Village Panchayat Act, for having failed in convening a monthly meeting for February 2017 and for keeping the May 2017 Gram Sabha meeting, truncated.

2. The learned Advocate for the petitioner/Sarpanch has strenuously criticized the impugned order on the following grounds :-

[a] The petitioner, the Up-Sarpanch and 4 other elected members were at logger-heads with the Gram Sevak of the Village Panchayat Bhandari, Tal. and Dist.Osmanabad.

[b] These persons therefore lodged a complaint dated 21/02/2017 with the Block Development Officer stating

therein that until the Gramsevak is transferred from the said village panchayat, these elected representatives would boycott the functioning of the Gram Panchayat and would not participate in the day to day activities.

[c] The entire record of the Gram Panchayat is preserved by the Gram Sevak.

[d] The petitioner/Sarpanch tried to convene the monthly meeting for February 2017, but due to the non co-operation of the Gram Sevak, such a meeting could not be conducted.

[e] The petitioner orally requested the Gram Sevak to convene the monthly February meeting.

[f] Due to the non co-operation of the Gram Sevak, such a meeting could not be convened.

[g] The District Collector has not applied his mind to these facts of the case and has mechanically disqualified the petitioner.

[h] Reliance is placed on the observations of this Court in paragraph Nos.6, 7, and 9 of the judgment in the matter of Shubhangi Anil Gawande and another Vs. Additional Collector and others [2010(2) Mh.L.J. 368].

3. Despite service of court notice, none has caused an appearance on behalf of respondent Nos. 3 to 7.

4. The learned AGP appearing on behalf of the State points out from the affidavit in reply filed that, the petitioner has faced the disqualification in view of her failure in conducting one monthly

meeting for February 2017 and for keeping the Gramsabha Meeting, which is mandatorily required to be conducted on 01/05/2016, incomplete. The petitioner and her supporters had opened a front against the Gram Sevak and had declined to participate in the day to day activities of the Gram Panchayat until the Gram Sevak was transferred. The reply filed by the Gram Sevak before the Collector indicates that she had prepared the notice dated 24/02/2017 for convening the monthly meeting in February 2017 and the petitioner and her supporters refused to sign the notice and consequentially the meeting could not be convened.

5. The petitioner has relied upon the conclusions of this Court in the case of Shubhangi (supra). The observations set out in paragraph Nos.6, 7, 8 and 9 read as under :-

“6. The provisions of Section 36 of the Act show that the obligation to convene meeting of Panchayat is contemplated upon Sarpanch & in his absence on Upsarpanch. Disqualification accrues for not convening such meeting without sufficient cause. The finding of the Collector on question of availability of such sufficient cause has been made final. This, therefore, clearly shows that mere not holding of meeting is not disqualification and something more is required to be brought on record. The absence of meeting has to be shown as deliberate failure to hold meeting and for that purpose, it is

required to be established that though meeting could have been held as required, it was not held. Thus, absence of sufficient cause for not holding the meeting is the material ingredient in the entire scheme.

7. In this background when the impugned order is perused, it reveals that originally both the petitioners were found disqualified for not holding the meeting in the month of February 2006. This order dated 24.10.2007 was later on corrected on 29.10.2007 by substituting the month of February by March. The relevant part of application under Section 36 of the Act moved by Respondents No. 2 & 3 shows that the meeting for March 2006 was not called by Sarpanch or in his absence by Upsarpanch. It is pleaded that as meeting was not called, there is default. The application, therefore, does not show that though the meeting could have been called, it was not held. The absence of any justification for not holding meeting is not pleaded. Even if it is not pleaded and the Collector is called upon to record a finding on the point of disqualification, Section 36 of the Act requires the Collector to find out whether the meeting of March 2006 could not be held for any valid reason. The disqualification for not holding meeting in March 2006 can be either of Sarpanch or than of Upsarpanch. Normally for not holding one such meeting, both cannot be disqualified simultaneously. Respondents No. 2 & 3 have not pointed out that Sarpanch was not available in March 2006 and therefore the obligation had shifted on Upsarpanch. In the absence of such case, it is apparent that no action against Upsarpanch for not holding meeting of March 2006

could have been taken. If Respondents No. 2 & 3 wanted to contend that Upsarpanch was responsible, it is obvious that Sarpanch was absent and, therefore, only they are seeking action against Upsarpanch. In the absence of any clear plea in this respect in application itself, more responsibility was cast upon the Collector to find out the persons responsible for not holding such meeting.

8. The impugned order reveals that after stating the contents of the application and the reply filed by both the petitioners, the Additional Collector has reproduced a chart which shows the months from February 2006 to October 2006, the date on which notice of monthly meeting was issued, date of meeting, attendance in meeting etc. The chart shows that such meeting for the month of March 2006 has not been held. After this chart, the arguments of Respondents No. 2 & 3 are reproduced and then it is observed that counsel for present petitioners was remaining absent and delaying the disposal of the matter. The application of mind in this cryptic order is to be gathered, according to Shri Kadu and the learned AGP from very next para which states that after perusal of documents filed, reply of non applicants and report of monthly meeting filed by Secretary of Gram Panchayat and scrutiny of arguments of advocate for the applicants, it was revealed that monthly meeting for March 2006 was not held by non-applicants No. 1 & 2 i.e. present petitioners No. 1 & 2. Thus, the conclusion reached is that meeting was not held by Sarpanch as also by Upsarpanch. This conclusion reached itself shows that the ingredients of

Section 36 of the Act or Scheme thereof has been lost sight of and mechanically both the petitioners have been found responsible for not holding the meeting. Thereafter the provisions of Section 36 of the Act are reproduced and operative order has been then written, thereby disqualifying both the petitioners. Again, the availability or otherwise of sufficient cause for not holding meeting of March 2006, is not looked into.

9. At this stage, it is necessary to note that both the petitioners have filed their common written statement before the Additional Collector and in para 4, they stated that the record of Gram Panchayat was in the custody of the Secretary Shri A.B.Gondane, who was suspended by order dated 07.03.2006 and whose Headquarter was ordered to be Panchayat Samiti, Anjangaon Surji. It has been stated that, therefore, for the entire month from 07.03.2006 to 07.04.2006, there was no Secretary in Gram Panchayat and accordingly notices could not be issued nor record could be procured. Whether these facts are correct or incorrect and if correct, whether they constitute sufficient cause for not holding the meeting of March 2006 was required to be considered by the Additional Collector and this has not been looked into at all.”

6. Section 7, Section 36 and Section 38 of the Act read 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 the 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 authorised 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 the 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.]

(2) Any Officer authorized in this behalf by the [Standing Committee, Panchayat Samiti or Chief Executive Officer] by general or special

order shall have the right to speak in, and otherwise to take part in, the proceedings of a meeting of the Gram sabha, but shall not be entitled to vote.

[(3) Unless otherwise provided in this Act, the first meeting of the Gram sabha after each general election to a panchayat and thereafter the first meeting of every year, shall be presided over by the Sarpanch and in his absence by the Upa-Sarpanch; and all other subsequent meetings of the year of the Gram sabha, shall be presided over by a person elected by the persons present in that meeting of the Gram sabha.]

[(3A) In respect of the panchayat to which the Sarpanch is elected directly under section 30A-1A, unless otherwise provided in this Act, all meetings of the Gram Sabha after each general election to a panchayat, shall be presided over by the Sarpanch and in his absence by the Upa-Sarpanch; and in absence of both Sarpanch and Upa-Sarpanch, it shall be presided over by senior most member of panchayat by age present in that meeting of the Gram Sabha. In case no member of panchayat is present, the said meeting of the Gram Sabha shall be adjourned for a period of one week, and such adjourned meeting shall be presided over by Sarpanch and in his absence by Upa-Sarpanch and in absence of both the Sarpanch and Upa-Sarpanch by the senior most member of the panchayat by age present in the meeting of Gram Sabha. In case no member of panchayat is present, such meeting shall be presided over by an officer authorized by the Block Development Officer in that behalf.]

(4) If any dispute arises as to whether a person is entitled to attend a meeting of a Gram sabha, such dispute shall be decided by the person

presiding, regard being had to the entry in the list of voters for a whole village or ward thereof, as the case may be, and his decision shall be final.

[(5) The meeting of the women members of the Gram sabha shall be held before every regular meeting to the Gram sabha, convened under sub-section (1) [and the proceedings of such meeting shall invariably be brought or caused to be brought before every regular meeting of the Gram sabha by the Sarpanch, and the Gram sabha shall consider the recommendations made in the meeting of the women members, and the panchayat shall ensure the implementation of such recommendations:]

Provided that, if the Gram sabha is not agreeable to the recommendations made in the meeting of the women members, it shall record the reasons therefor.]

[(5A) Every member of the panchayat representing a ward shall, before every regular meeting of the Gram sabha and meeting of the women members of the Gram sabha, convene a meeting of all the voters in such ward and such ward sabha may discuss issues relating to development of the ward, selection of individual beneficiaries for individual beneficiary schemes of the State, or as the case may be, of the Central Government, development projects and programmes and such other related issues as the ward sabha deems fit and which are likely to be placed before the regular meeting of the Gram sabha for consideration and decision. The proceedings of such meeting shall be maintained by such member under his signature and a copy of the same shall invariably be sent to the panchayat which shall form part of the records of the panchayat.]

(6) The Gram sabha shall have the disciplinary control over the Government, semi-Government and panchayat employees working in the village including the matters relating to their daily attendance in the office. The annual evaluation of such employees shall be brought to the notice of their respective higher authorities by the Gram sabha.

[Provided that, Gram sabha may, by resolution, delegate its authority to the panchayat to exercise general supervision over the Government, semi-Government and panchayat employees including regular and timely attendance at their work place. The mode of recording of attendance and supervision shall be such as the Government may, from time to time, specify by an order in the Official Gazette.]

(7) The Gram sabha [, or as the case may be, the panchayat] shall report to the concerned Block Development Officer, the irregularities, if any, committed by any of such employees. The Block Development Officer shall consider such report within the period of three months from the date of its receipt. Such matters and the actions taken thereon shall be reviewed in the regular meetings of the Panchayat Samiti. If, the Block Development Officer fails to dispose of such reports within the specified period of three months, the same shall on the expiry of the said period, stand transferred to the Chief Executive Officer of the concerned Zilla Parishad for disposal, whose decision shall be final. The Chief Executive Officer of the Zilla Parishad shall take the decision on such reports so transferred to him, within a period of three months from the date of their receipt.

(8) The Gram sabha shall select the beneficiaries for individual beneficiary schemes of the State, or as the case may be, of the Central Government.

(9) The Gram sabha shall generally fix the date, time and place of the next meeting of the Gram sabha, in its previous meeting.

(10) Unless exempted by the Gram sabha, [, or as the case may be, the panchayat] all the Government, semi-Government and panchayat employees working in the village shall attend the meetings of the Gram sabha.

(11) The proceedings of every meeting of the Gram sabha shall be prepared and maintained [in a separate register] by the concerned Secretary of the panchayat and in his absence, the proceedings shall be prepared by any Government, semi-Government or panchayat employee working in the village, such as Teacher, Talathi or Anganwadi Sevika as directed by the Sarpanch and the same shall be handed over to the panchayat for records.

[Provided that, it shall be a joint responsibility of the Sarpanch and Secretary of the concerned panchayat to maintain secured custody and proper safety of proceeding register, attendance register and other relevant records of the Gram sabha, and they shall be primarily held responsible for any tampering, alteration, manipulation of entries or contents or loss or mutilation of such record unless proved otherwise and shall be liable to be prosecuted under relevant provisions of the Indian Penal Code.]

36. Time and place of sitting of panchayat and procedure at meetings. - *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 meeting 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.]

38. Executive power of panchayat Functions of Sarpanch and

Upa-Sarpanch. - (1) *The executive power, for the purpose of carrying out the provisions of this Act and the resolutions passed by a panchayat, vests in the Sarpanch who shall be directly responsible for the due fulfillment of the duties imposed upon the panchayat by or under this Act. In the absence of the Sarpanch, the powers and duties of the Sarpanch shall, save as may be otherwise prescribed by rules, be exercised and performed by the Upa-Sarpanch.*

(2) Without prejudice to the generality of the foregoing provisions-

(i) the Sarpanch shall-

(a) [save where otherwise provided in this Act, preside over] and regulate the meetings of the panchayat',

(b) [* * * *]*

(c) exercise supervision and control over the acts done and action taken by all officers and servants of the panchayat [including supervision over the keeping and maintenance of records and registers of the panchayat in the custody of the Secretary];

(d) (e) (f) (g) [* *]*

(h) cause to be prepared all statements and reports required by or under this Act;

(i) exercise such other powers and discharge such other functions as may be conferred or imposed upon him by this Act or rules made thereunder;

[(i-a) in respect of the panchayat to which the Sarpanch is directly elected under section 30A-1A, the Sarpanch shall also exercise the following powers, functions and duties,—

(a) finalise the agenda of panchayat meetings :

Provided that, if three or more members demands regarding inclusion of any item on agenda for immediate next meeting, the Sarpanch shall include the same in next meeting :

Provided further that, no ad-hoc financial business shall be transacted unless it forms a part of the circulated agenda :

Provided also that, if the panchayat resolves on any subject that is detrimental to the well-being of the village at large in the opinion of Sarpanch, the Sarpanch shall cause the resolution to be kept for final decision immediately in the next following Gram- Sabha, and the decision of the said Gram Sabha shall be final ;

(b) prepare the annual budget of panchayat ;

(c) exercise all other powers to implement the schemes in consultation with panchayat ;]

(j) call meetings of Gram Sabha as provided in section 7 and preside over them;

(ii) The Upa-Sarpanch shall, -

(a) in the absence of the Sarpanch preside over and regulate the meetings of the panchayat [except where otherwise provided in this

Act];

(b) exercise such of the powers and perform such of the duties of the Sarpanch as the Sarpanch may, from time to time, delegate to him.

(c) pending the election of a Sarpanch or in case the Sarpanch has been continuously absent from the village for more than fifteen days or is incapacitated, exercise the powers and perform the duties of the Sarpanch.

(3) Every meeting of a panchayat shall, in the absence of both the Sarpanch and the Upa-Sarpanch, be presided over by such one of the members present as may be chosen by the meeting to be Chairman for the occasion.

[(4) Save as otherwise provided by this Act, the powers, duties and functions of the Sarpanch shall, in cases where there is no person competent to exercise or perform them for any reason whatsoever, be exercised and performed by any member of the Gram sabha nominated by the panchayat Samiti who is qualified to be elected. The member so nominated shall when presiding over any meeting of the panchayat have power and follow the procedure prescribed, but shall not have the right to vote.]

[(5) Nothing contained in this section shall make the Sarpanch liable for any action taken by the Secretary for which he is made solely responsible under [sub-section(4)] of section 57.]

7. Section 30(6) of the Maharashtra Village Panchayat Act requires the Sarpanch or the Up-Sarpanch to conduct the monthly

meeting. The Sarpanch or in his absence, the Up-Sarpanch is held responsible for any failure to convene the meeting of the Panchayat. This provision applies to the monthly meetings as well as the quarterly meetings and those meetings which are compulsorily required to be convened on National holidays like 26th January, 1st May, 15th August and 2nd October. These meetings are called as the Gram Sabha. As such, failure of the Sarpanch or the Up-Sarpanch in conducting any of such monthly meetings or Gram Sabha would make them liable for incurring disqualification, save and except when a sufficient cause is cited for not convening such a meeting.

8. Section 38 mandates that the executive powers for the purpose of carrying out the provisions of this Act would vest in the Sarpanch who shall be directly held responsible for the due fulfillment of the duties. Clause (i) under Section 39(2)(i) mandates that the Sarpanch shall call meetings of the Gramsabha as provided in Section 7. Section 7 deals with the meetings of the Gram Sabha and akin to the proviso under Section 36 applicable to monthly meetings, the Sarpanch or as the case may be the Up-Sarpanch would be responsible for the failure to conduct the meetings of the Gram Sabha.

9. The learned Advocate for the petitioner contends that the present case is squarely covered by the view taken in the case of Shubhangi (supra). I find from the judgment delivered in Shubhangi (supra) that this Court has concluded that the Collector did not apply his mind to the various factors emerging from the said case and he has mechanically passed an order disqualifying the Sarpanch without making a proper inquiry as to whether the Sarpanch had any justification to offer for having failed in conducting the monthly meeting.

10. I do not find that the said view would be applicable to this case for the reason that the District Collector has passed a detailed order considering the contentions of the litigating sides. He has noted that the petitioner/Sarpanch and her supporters had practically declared a boycott on the functioning of the Gram Panchayat. Copy of the communication dated 21/02/2017 written and signed by the Sarpanch, Up-Sarpanch and 5 supporters addressed to the Block Development Officer (which is not a part of the petition paper book) is tendered across the bar. Same is taken on record and marked as "X"

for identification.

11. It is obvious from the document "X" that these elected representatives had some grudge about the manner of functioning of the Gram Sevak Smt.D.D.Kulkarni. They have specifically declared in the said document that unless Smt.Kulkarni is transferred, they would not participate in the day to day functioning of the Gram Panchayat. The affidavit of Smt.Kulkarni filed before the District Collector indicates that she had prepared a notice for convening the meeting for the month of February 2017. The petitioner, the Up-Sarpanch and their 4 supporters declined to accept the said notice, in as much as, the petitioner refused to sign the said notice. Obviously, the Sarpanch or the Up-Sarpanch is the Chair Person of such a monthly meeting. As such, 6 members out of the 9 had boycotted the day to day functioning of the Village Panchayat and the meeting therefore could not be conducted as the Sarpanch and Up-Sarpanch declined to call for such a meeting.

12. Similarly, the meeting or the Gram Sabha, which was convened on 01/05/2017, had to be adjourned for lack of Quorum. The Sarpanch refused to sign the Gram Sabha register. The District Collector has noted that the adjourned meeting had to be reconvened

by following the procedure set out in Rule 2 and Rule 10(2) of the Bombay Gram Panchayat (Gram Sabha Meeting) Rules, 1959. The petitioner/Sarpanch did not act accordingly and the said meeting of the Gram Sabha was left in suspended animation.

13. Unlike the facts in the case of Shubhangi (supra), in the instant case, the District Collector has delivered a 13 pages order dealing with both the issues as regards the failure to conduct the monthly meeting in February 2017 and rendering the Gram Sabha meeting dated 01/05/2017 practically as 'adjourned sine-die', I, therefore, do not find that the impugned order could be termed as being perverse or erroneous.

14. This petition, being devoid of merit, is therefore, dismissed.

(Ravindra V.Ghuge, J.)