

(Reportable)

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

WRIT PETITION NO.1556 OF 2019

Smt.Nandabai w/o Balaji Thombre. ...Petitioner

-VERSUS-

The Hon'ble Minister,
Rural Development, Mantralaya,
Mumbai-32 and others. ...Respondents

...
Shri Sudhir K. Chavan, Advocate for the petitioner.
Shri N.T.Bhagat, AGP for respondent nos.1 to 3.
Shri Suhas B. Ghute, Advocate for respondent nos.4 and 5.
Shri Nitin V. Gaware h/f Shri Nilkanth R. Pawade, Advocate for
respondent no.7.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 06th June, 2019

Oral Order :

1 The petitioner is aggrieved by the order dated 25.09.2018 passed by respondent No.2/ Additional Commissioner and the order of respondent no.1/ Honourable Minister dated 30.01.2019. The disqualification of the petitioner as a directly elected Sarpanch, ordered by the Additional Commissioner is sustained by the Honourable Minister under Section 39 of the Maharashtra Village Panchayats Act (for short,

hereinafter referred to as “the said Act”).

2 I have heard the learned advocate for the petitioner, the learned AGP on behalf of respondent nos.1 to 3 and the learned advocates appearing on behalf of respondent nos.4, 5 and 7. Despite service of court notice, no appearance has been entered by respondent no.6/ Gram Sevak.

3 The undisputed factors in this case are as under :-

- (a) The term of the elected members of the Village Panchayat, Shirad Shahpur, Taluka Aundha Nagnath, District Hingoli, which commenced on 07.12.2012, expired on 06.12.2017.
- (b) On 09.10.2017, the elections for a new term were held and the petitioner was declared as a directly elected Sarpanch.
- (c) On 04.12.2017, the Gram Sevak issued a notice for convening a special meeting on 06.12.2017 for electing the Up Sarpanch.
- (d) As per Rule 4 of the Bombay Village Panchayats (Sarpanch and Up Sarpanch) Election Rules, 1964 (for short, hereinafter referred to as "the said Rules") requires the Presiding Officer to issue a notice of such meeting to be given to every member of the Panchayat with at least 3 clear days prior to the date of the meeting. Such notice can also be issued by the Secretary.
- (e) The Gram Sevak issued a notice on 05.12.2017 declaring that the meeting for holding the election of the Up Sarpanch

stands cancelled.

- (f) A general meeting was held on 06.12.2017 pursuant to the earlier notice dated 04.12.2017.
- (g) When the issue of electing an Up Sarpanch was raised in the said meeting, the petitioner Sarpanch declared that such election will be held subsequently.
- (h) On 08.12.2017, the Deputy Secretary, State of Maharashtra issued a circular addressed to all the District Collectors and all the Chief Executive Officers of the Zilla Parishads in the State of Maharashtra that, wherever a Sarpanch is directly elected, the elections to the position of Up Sarpanch as per Rule 4 of the said Rules shall be conducted by an Election Inspector and such Election Inspector would be an officer not below the rank of a Group-B officer.
- (i) The petitioner addressed a letter to the District Collector, Hingoli dated 28.12.2017, requesting for appointment of an Election Inspector so that she could convene a meeting and get the Up Sarpanch elected.
- (j) Under the amended Section 43 of the said Act, the vacant post of an Up Sarpanch has to be filled in within 30 days from the date of such vacancy.
- (k) As per Section 28 of the said Act, the term of office of the

member of the Village Panchayat is deemed to commence on the date of the first meeting of the panchayat.

- (l) On 12.03.2018, the petitioner again addressed the letter to the District Collector requesting to appoint an Election Inspector so as to elect the Up Sarpanch. A similar request was made on 05.04.2018.
- (m) Respondent no.7/ complainant filed an application under Section 39 before the Divisional Commissioner bearing Dispute Application No.51/2018, for seeking disqualification of the petitioner Sarpanch for having failed in conducting a meeting for electing the Up Sarpanch.
- (n) The petitioner filed a detailed written statement on 19.09.2018 and contended that the proceedings were politically motivated, no election could be held to fill in the vacancy of an Up Sarpanch within two days from the date of the notice convening such meeting and that the petitioner had become helpless from 08.12.2017, which is within three days from taking over as the Sarpanch, owing to the decision of the State Government to conduct such elections by appointing an Election Inspector.
- (o) No Election Inspector has been appointed till today.

4 The petitioner has raised two issues. Firstly, that her disqualification is at the hands of the Additional Divisional Commissioner, who has no jurisdiction and secondly, that she could not have been a party to a meeting convened for electing an Up Sarpanch when such a meeting convened by the Gram Sevak with 48 hours notice, was in violation of Rule 4 of the said Rules.

5 Respondent no.7/ original complainant has strenuously canvassed that the Gram Sevak has contended that the petitioner Sarpanch made him cancel the special meeting to the extent of electing the Up Sarpanch. While doing so, she could have directed the Gram Sevak to convene the meeting on 07.12.2017. As the petitioner/ Sarpanch became the Presiding Officer of the meetings pursuant to her election as Sarpanch and commencement of her tenure on 06.12.2017, the petitioner herself could have convened the meeting with three days clear notice.

6 In view of the above, I would deal with the issue of whether, the Additional Divisional Commissioner could have exercised his powers while entertaining the Dispute Application No.51/2018 filed by respondent no.7 seeking disqualification of the petitioner.

7 The Rural Development Department of the State of Maharashtra issued the Government Resolution dated 20.04.1977, which indicates that the powers of the State Government under Sections 33(5), 39(3), 154, 16(2) and 40(2) delegated to the Commissioners by the

Government notification dated 08.12.1970, would now stand delegated to the Additional Commissioner. In view of the said Government Resolution dated 20.04.1977 and in view of the provisions of the Maharashtra Land Revenue Code, 1966, the Divisional Commissioner, Aurangabad issued the circular dated 08.02.2017 thereby, delegating his powers under Section 39(1) and (2) and Section 53(3-C) of the said Act, to the Additional Divisional Commissioner.

8 The contention of the petitioner is that the power of the Commissioner under Section 39(1), vested in such officer by the Maharashtra Act No.38 of 2006 dated 21.12.2006, would mandate the Commissioner alone to deal with the issue of the removal of the Sarpanch. This power could not have been delegated to the Additional Commissioner. However, I find that Section 182 of the said Act would indicate that the Commissioner or any other officer, who would exercise powers of the State Government, can delegate the said powers to a rank below him.

9 The learned Single Judge of this Court, in the matter of ***Nimba Yadav Bhoi vs. President, Standing Committee, Zilla Parishad and others, 2002 (3) Mh.L.J. 446***, has held in paragraph 15 as under :-

"15. *There is no doubt, that the Chief Executive Officer under the Samitis Act is duly empowered to delegate his powers under certain circumstances. However, the said provision clearly disclose that a delegation of powers can be in*

relation to the powers or duties or functions which are imposed upon or vested in the Chief Executive Officer by or under the Samitis Act and not under any other Act. The function which has been entrusted to the Chief Executive Officer under Section 39(1) of the said Act is not power or duty or function imposed upon the Chief Executive Officer under the Samitis Act. The enquiry which is contemplated by the Chief Executive Officer under proviso to Section 39(1) is in relation to the conduct of the Sarpanch and the said enquiry has nothing to do with any of the functions or duties of the Chief Executive Officer under the Samitis Act. Besides, it is well established principle of law that any authority bestowed with judicial or quasi judicial powers under a statute cannot delegate his powers except when specifically permitted under the statute. In other words, when the statute prescribes that a particular officer has to exercise the power thereunder, then such powers must be exercised by that officer, and that officer alone, and none else except and unless the statute by express words or by necessary implication permits delegation of such powers, and in which event such powers may also be exercised by the delegatee if the delegation is in accordance with the terms of the statute and not otherwise."

10 The learned Single Judge, therefore, held in ***Nimba Bhoi (supra)*** that an authority bestowed with judicial or quasi judicial powers under the statute cannot delegate his powers except when specifically permitted under the statute. Section 182 when read in the backdrop of the law laid down in ***Nimba Bhoi (supra)*** would indicate that unless the statute would permit the Commissioner to delegate his powers to the Additional Commissioner, he could only do so in the presence of an express provision. Section 182, therefore, would be a provision under the

statute which would empower the Divisional Commissioner to delegate his authority/ powers to an officer who would be one rank below his position. It is well settled that the delegation of authority can only be in favour of an officer who would be a rank below the authority which is vested with such powers.

11 The learned Division Bench of this Court had an occasion to deal with the scope of Section 182 of the said Act in Writ Petition No.2616/2008 and Writ Petition No.2627/2008 in the matter of ***Sau.Vimal Bhimrao Rathod and another vs. The State of Maharashtra and others***, decided vide judgment dated 07.01.2009. The issue to be decided by the learned Division Bench has been recorded in paragraph 8 of the judgment, which reads as under :-

"8. *The question which falls for our consideration is "whether, the Additional Commissioner is legally competent to exercise appellate power u/s 16(2) of the BVP Act"?"*

12 While dealing with the above issue, the learned Division Bench dealt with the same Government Resolution dated 20.04.1977 and concluded in paragraphs 9 to 15 as under :-

"9. *Before we consider the controversy in issue, it will be appropriate to re-produce the relevant provisions of the Acts for ready reference.*

Provisions of Section 14 (h) reads thus :

"Section 14 (1) : No person shall be a member of a panchayat or continue as such, who -

(a).....

Provided that, no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years.):

(b) to (g)

(h) fails to pay any tax or fee due to the Panchayat (or the Zilla Parishad within three months from the date on which the amount of such tax or fee is demanded, an a bill for the purpose is duly served on him; or)

(h-1) fails to pay the amount of surcharge or charge under section 140 or the amount ordered to be paid under section 178 together with interest, if any, within the period provided in that behalf, and where an appeal has been made, then within one month from the date of receipt of the decision rejecting such appeal).”

Provisions of Section 16 (2) of the Act reads thus :

“(2) (If any question whether a vacancy has occurred under this section is raised by the Collector suo motu or on an application made to him by any person in that behalf, the Collector shall decide the question as far as possible within sixty days from the date of receipt of such application. Until the Collector decides the question, the member shall not be disabled under sub-section (1) from continuing to be a member.) Any person aggrieved by the decision of the Collector may, within a period of fifteen days from the date of such decision, appeal to the State Government, and the orders passed by the State Government in such appeal shall be final :

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

Provisions of Section 182 (1) of the Act are as follows:

“The State Government may, by notification in the Official Gazette, authorise the Commissioner or any other Officer to exercise any of the powers which may be exercised by the State Government under this Act. “

10. *The above referred provisions of the BVP Act makes it explicitly clear that the appeal against the order of disqualification passed on any of the grounds mentioned*

in sub-clauses of Section 14 lies before the State Government as per the provisions of Section 16 (2) of the BVP Act. Section 182 (1) empowers the State Government to delegate any of its powers which are exercised by the State Government under the BVP Act to the Commissioner or any other Officer by issuing notification in the Official Gazette. It is not in dispute that, vide notification dt. 11.11.1995 issued by the State Government, appellate powers u/s. 16 (2) of the BVP Act were already delegated to the Commissioner and therefore, it is not in dispute that the Commissioner is empowered to exercise appellate powers vested in the State Government u/s. 16 (2) of the BVP Act. Similarly, the State Government, in fact, has issued notification dt.20.4.1977 whereby the Additional Commissioner has been specifically empowered to exercise appellate powers u/s. 16 (2) of the BVP Act conferred on the Commissioner by the earlier notification.

The notification dt.20.4.1977 reads thus :

RURAL DEVELOPMENT DEPARTMENT

Mantralaya, Bombay 400 032, dated the 20 th April, 1977

MAHARASHTRA LAND REVENUE CODE, 1966.

290.

No. ZPA 1074/4342(468)-XII. - In exercise of the powers conferred by sub-section (2) of section 13 of the Maharashtra Land Revenue Code, 1966 (Mah.XLI of 1966), the Government of Maharashtra hereby directs that the powers and the duties and functions conferred on the Commissioner under the Acts specified in column 1 of the Schedule appended thereto shall also be exercised and discharged by every Additional Commissioner within his jurisdiction to the extent specified in column 2 of the said schedule.

Schedule

The Acts (1)	Powers, duties & functions (2)
1. The Maharashtra Zilla Parishads	Under sections 40 (2), 62 (3),

and Panchayat Samitis Act,
1961 (Mah.V of 1962).

2. The Bombay Village Panchayats
Act, 1958 (Bom.III of 1959).

68A, 81(4), 82(3) and 272.

Under sections 33(5), 39(3),
154 and powers of the State
Government under sections
16(2) and 40(2) delegated to
the Commissioners by
Government Notification,
Rural Development Department
No.VPA 1270/53138-E, dated
the 8 th December, 1970.

By order and in the name of the Governor of
Maharashtra.

K. S. TATA,
Under Secretary to Government.

11. The notification was issued by the State Government in exercise of power conferred on it by sub- section (3) of Section 13 of the Code. The said notification in no uncertain terms demonstrates that the powers and duties and functions conferred upon the Commissioner under the BVP Act specified in Column No.1 of the Schedule appended thereto shall also be exercised and discharged by every Additional Commissioner within his jurisdiction to the extent specified in Column no.2 of the said Schedule. Column No.1 of Schedule of the notification mentions the names of the Acts and Column No.2 stipulates powers, duties and functions to be discharged by the Additional Commissioner within his jurisdiction under such Acts. Serial No.2 in Column no.1 of the Schedule mentions the name of the Act i.e. the Bombay Village Panchayats Act, 1958 and corresponding entry in Column No.2 of the Schedule, mentions Section 16 (2) of the Bombay Village Panchayats Act. It is, therefore, evident that, by virtue of this notification dt. 20.4.1977, the Additional Commissioner is competent to exercise appellate powers u/s. 16 (2) of the BVP Act.

12. *Section 13 of the Code deals with the powers and duties of the Revenue Officers and sub-section (1) contemplates as under :*

“Section 13(1) :

The Revenue Officers of and above the rank of a Tahsildar (not being a Additional Commissioner, Assistant Commissioner, Additional Collector or Additional Tahsildar) shall exercise the powers and discharge the duties and functions conferred and imposed on them respectively under this Code or under any law for the time being in force, and so far as is consistent therewith, all such other powers, duties and functions of appeal, superintendence and control within their respective jurisdiction; and over the Officers subordinate to them as may from time to time be prescribed by the State Government:

Provided that, the Collector may also exercise throughout his district all the powers and discharge all the duties and functions conferred or imposed on an Assistant or Deputy Collector under this Code or under any law for the time being in force and a Tahsildar shall also exercise such powers as may be delegated to him by the Collectors under the general or special orders of the State Government."

Similarly, sub-section (3) of Section 13 of the Land Revenue Code stipulates as under :

“the Additional Commissioner and the Assistant Commissioner, and the Additional Collector and the Additional Tahsildar shall each exercise within his jurisdiction or part thereof such powers and discharge such duties and functions of the Commissioner, the Collector or, as the case may be, the Tahsildar under the provisions of this Code or under any law for the time being in force, as the State Government may, by notification in the Official Gazette, direct in this behalf.

13. *Plain reading of provisions of sub-section (3) of Section 13 of the Code shows that it empowers the State Government to confer powers, duties and functions exercised by the Commissioner on the Additional Commissioner not only under the provisions of the Land*

Revenue Code, but also under any law for the time being in force by issuing notification in the Official Gazette in this regard. Notification dt. 20.4.1977 has been issued by the State Government in exercise of powers conferred on it under above referred sub-section (3) of Section 13 of the Code and therefore, even if by virtue of notification dt. 11.11.1995 issued by the State Government in exercise of powers u/s. 182(1) of the BVP Act, powers u/s. 16 (2) of the BVP Act are delegated in favour of Commissioner, that does not take away power and jurisdiction of the State Government to issue notification under sub-section (3) of Section 13 of the Code, empowering the Additional Commissioner to discharge the duties and functions exercised by the Commissioner not only under the Code alone, but also under the BVP Act; since the Commissioner, Additional Commissioner, Assistant Commissioner, Collector, Additional Collector, Tahsildar etc. are all Officers of the Revenue Department of State Government.

14. The State Government in exercise of power u/s.182(1) of the BVP Act delegated appellate powers vested in it u/s. 16 (2) of the BVP Act in favour of the Commissioner. By virtue of provisions of Section 182 (1), the State Government is legally entitled to delegate the said appellate power even in favour of any other Officer of the Revenue department including Additional Commissioner, by issuing appropriate notification in this regard u/s. 182 (1), by withdrawing the notification dt. 11.11.1995. Similarly, the provisions of sub-section (3) of Section 13 of the Code empowers the State Government to confer upon Additional Commissioner duties and functions exercised by the Commissioner not only under the provisions of the Code, but under any law for the time being in force which includes the BVP Act.
15. It is necessary to consider that the power vested in the State Government u/s. 182 (1) of the BVP Act is distinct and different than the one vested in the State Government under sub-section (3) of Section 13 of the Code. U/s. 182 (1) of the BVP Act, power of delegation vested in the State Government is restricted and can be

exercised only in respect of provisions of the BVP Act. Whereas, the power vested under sub-section 3 of Section 13 of the Code is of general nature which empowers the State Government to confer duties and functions exercised by the Commissioner not only under the provisions of the Code, but also under any other law for the time being in force (which includes the BVP Act) on Additional Commissioners, by issuing notification in the Official Gazette in this behalf. Since the power vested in the State Government under Section 182 (1) of the Act and u/s. 13 (3) of the Code operates in different and distinct areas, exercise of power by the State Government under these respective provisions does not result in any kind of inconsistency or conflict with each other or with the provisions of either of the Acts. Hence, we are of the view that the State Government is wholly competent to do so. It is also pertinent to note that petitioners have not questioned validity of the notification dt.20.4.1977 issued by State Government in exercise of powers under sub- section (3) of Section 13 of the Code."

13 The learned Division Bench, therefore, concluded that the learned Single Judge of this Court did not lay down the correct law in ***Atmaram Chapa Sandanshiv and another vs. Shamshadbi Bashir Shah Fakir and others, 2008 (3) Mh.L.J. 906.***

14 The Divisional Commissioner, Aurangabad, in view of the above position and the Government Resolution dated 20.04.1977, delegated his powers under Section 39(1) and (2) of the said Act to the Additional Divisional Commissioner vide circular dated 08.02.2017.

15 In this backdrop, I do not find any illegality in the Additional Divisional Commissioner exercising delegated powers of the

Commissioner, while entertaining the proceeding initiated against the petitioner under Section 39(1) and (2) of the said Act. This petition, therefore, fails to the extent of the challenge to the powers of the Additional Divisional Commissioner.

16 The other issue raised in the petition is as regards whether, the petitioner can be said to be guilty of a misconduct in discharge of her duties under Section 39(1)(i) of the said Act.

17 Section 30A-1A of the said Act pertaining to direct election of the Sarpanch reads as under :-

“ 30A-1A. Direct election of Sarpanch.

- (1) After the date of commencement of the Maharashtra Village Panchayats (Amendment) Act, 2017 (Mah.LIV of 2018) in respect of the panchayat to which the general election is to be held, subject to provisions of sub-sections (4), (5) and (6) of section 30, every panchayat shall have a Sarpanch who shall be elected by the persons whose names are included in the list of voters for village under section 12.*
- (2) Election of the Sarpanch shall be held simultaneously with the general elections of the panchayat and the procedure regarding holding of elections to the panchayat shall, mutatis mutandis , apply to such election.*
- (3) If at an election, no Sarpanch is elected, a fresh election shall be held to elect a Sarpanch , and if there is a failure to elect a Sarpanch at the fresh election, such vacancy may, notwithstanding anything contained in this Act, be filled by election by the elected members from amongst themselves and the term of Sarpanch elected under this sub-section shall be co-terminus with the term of members of the panchayat .*

- (4) Any person elected under sub-section (3) shall be deemed to be duly elected at an election under this section.
- (5) If, in the election of the Sarpanch , there is an equality of votes, the result of the election shall be decided by lots to be drawn by the State Election Commissioner or the officer appointed by him for the purpose.
- (6) In case of a dispute regarding election of the Sarpanch , the provisions of section 15 shall, mutatis mutandis , apply. ”

18 Section 39(1)(i) of the said Act reads as under :-

"39. Removal from office.

(1) The Commissioner may ,—

(i) remove from office any member or any Sarpanch or Upa-Sarpanch who has been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct, or of neglect of or incapacity to perform his duty, or is persistently remiss in the discharge thereof. A Sarpanch or an Upa-Sarpanch so removed may at the discretion of the Commissioner also be removed from the panchayat; or

(ii):

Provided that, no such person shall be removed from office unless, in case of clause (i), the Chief Executive Officer or in case of clause (ii), the Deputy Chief Executive Officer as director by the Chief Executive Officer; under the orders of the Commissioner, holds an inquiry after giving due notice to the Panchayat and the person concerned; and the person concerned has been given a reasonable opportunity of being heard and thereafter the Chief Executive Officer or, as the case may be, the Deputy Chief Executive Officer concerned, though the Chief Executive Officer, submit s his report to the Commissioner . The inquiry of ficer shall submit his report within a period of one month;

Provided further that, the Commissioner shall, after

giving the person concerned a reasonable opportunity of being heard, take a decision on the report submitted by the Chief Executive Officer or, as the case may be, the Deputy Chief Executive Officer, within a period of one month from the date of receipt thereof."

It is undisputed that this would be the provision which can be invoked as against the present petitioner.

19 Rule 4 of the said Rules reads as under :-

"4. Notice of meeting :- The presiding officer shall cause a notice of such meeting to be given to every member of the panchayat at least three clear days before the date of such meeting. Such notice may be issued by the Presiding Officer, or by the Secretary."

20 The learned Division Bench of this Court, in the matter of ***Murlidhar Bhaiyaji Kapgate and others vs. Krishna Jairamji Meshram and others, 1991 Mh.L.J. 897***, dealt with the applicability of Rule 4 to a meeting convened for electing the Sarpanch and the Up Sarpanch. The nine petitioners and seven respondents in the said proceeding were elected as members of the Village Panchayat, Sakoli, District Bhandara on 24.04.1984. Respondent No.8 was appointed as the Presiding Officer for conducting the elections of the Sarpanch and Up Sarpanch. He gave a notice on 24.04.1984 scheduling the elections on 27.04.1984. All the members of the Panchayat participated and the elections were held. Same

was challenged on the ground that Rule 4 of the said Rules was violated and therefore, the elections were vitiated. The District Collector concluded that the result of the poll was vitiated as three days notice was not given keeping in view that the day on which the notice was issued i.e. 24.04.1984, will have to be excluded while computing three clear days. The learned Division Bench concluded that three clear days notice is prescribed by the said Rules and rule 4 is mandatory in not only its language, but also the intent. The use of the words “three clear days” is an indication as regards the significance and importance attached by the law makers in order to ensure that each member gets three clear days. It was, therefore, concluded that the rule 4 was rightly interpreted by the Collector and the Additional Commissioner.

21 The learned advocate for respondent no.7/ complainant submits that the introduction of Section 30A(1A) by which, the Sarpanch can be directly elected, would render Rule 4 inapplicable to any further elections of the Up Sarpanch. Therefore, the Gram Sevak had rightly convened the special meeting on 06.12.2017 by his notice dated 04.12.2017. The election to the Up Sarpanch will now be beyond the scope and ambit of Rule 4 and therefore, the Gram Sevak cannot be faulted and the entire blame would lie on the petitioner Sarpanch, who has pressurized the Gram Sevak to cancel the meeting convened for electing the Up Sarpanch.

22 The submissions of the learned advocate for respondent no.7 are unsustainable for two reasons. Firstly, that Rule 4 was with regard to electing the Sarpanch and Up Sarpanch with three clear days notice. An amendment to the Act introducing a direct election of the Sarpanch would only bring the Sarpanch out of the purview of Rule 4 as there would be no necessity to convene a meeting for holding such election. Secondly, as the election of an Up Sarpanch has to be conducted within 30 days and keeping in view that the first meeting convened after the elections would be meant for the election of an Up Sarpanch, Rule 4 would continue to apply in the light of the judgment in *Murlidhar Bhaiyaji Kapgate* (supra).

23 In this backdrop, it will now have to be seen as to whether, the petitioner acted pragmatically in not holding the elections to the post of Up Sapanch on 06.12.2017 or whether, her conduct would amount to a misconduct as a Sarpanch in failing to conduct such election thereby, incurring a disqualification under Section 39(1)(i).

24 The learned advocate for respondent no.7 has strenuously contended that the petitioner, upon her election as a Sarpanch, would assume the role of the Presiding Officer of the Village Panchayat. It is further canvassed that the Presiding Officer should have convened the special meeting in view of the language used in Rule 4. He adds that Rule 4 does indicate that such notice may be issued by the Presiding Officer or

by the Secretary.

25 I find from the language used in Rule 4 that a notice for electing the Up Sarpanch can be issued by the Presiding Officer or by the Secretary. The Gram Sevak discharges functions as a Secretary. It does not appear that he had applied his mind to Rule 4 and as such, while issuing the notice on 04.12.2017, he had actually given only one clear day's notice to the members. If the law as laid down by the learned Division Bench in *Murlidhar Bhaiyaji Kapgate (supra)* is to be considered, it would indicate that the Gram Sevak should have convened the meeting on 07.12.2017 since the date of the notice has to be excluded. He cancelled the meeting for conducting the election of the Up Sarpanch, allegedly under the pressure of the petitioner Sarpanch, who is said to have prevailed upon him to do so on 05.12.2017. In fact, there was no reason for the meeting to be proceeded with on 06.12.2017 as there is no provision under the law that a directly elected Sarpanch would take charge of the affairs of the Village Panchayat in a particular meeting. Since the term of the earlier elected members expired on 06.12.2017, the petitioner is deemed to have assumed the role of the Sarpanch on the same day or may be even on 07.12.2017.

26 The peculiar facts of this case are that the election of the Sarpanch and Up Sarpanch as per the pre-amended provisions was to be held in a meeting to be convened within 30 days from the date of the

result of elections. The elections were held on 09.10.2017. Admittedly, the term of the earlier members expired on 06.12.2017. A meeting, therefore, was required to be convened so that the term of the office of the members elected would be deemed to commence on the date of the first meeting of the Panchayat under Section 28 of the said Act.

27 The learned AGP rightly submits that as the term of the panchayat concluded on 06.12.2017, the commencement of the term of office of the newly elected members would only be from 06.12.2017 or 07.12.2017. He draws my attention to Section 28(1)(i) of the said Act in order to support his contention that the date of the first meeting after the general election, shall not be later than the day immediately following the day of expiry of the term of outgoing members. He, therefore, submits that if this is permissible in law and to avoid any ambiguity, as the term of the outgoing members expired on 06.12.2017, the Sarpanch can be said to have taken the charge after noon of 06.12.2017 or before noon on 07.12.2017.

28 Keeping the above position in view, which is based on the factual matrix of this case, it needs to be considered, assuming that the election of the Up Sarpanch could have been conducted on 06.12.2017, as to whether, such an election of the Up Sarpanch would have been vitiated in view of Rule 4 of the said Rules. As three clear days notice was not given by the Secretary, the election of the Up Sarpanch, if held on

06.12.2017, would have been vitiated.

29 The learned advocate for respondent no.7 strenuously submits that the petitioner Sarpanch was ignorant of the law as regards Rule 4 and she did not want to hold the election for the post of the Up Sarpanch as she was leading a minority group amongst the members.

30 In the present fact situation, it is insignificant as to whether, the petitioner was aware of Rule 4 or not. Assuming for a moment that she was ignorant of Rule 4, coincidentally her stand taken in defence subsequently that there was no three days clear notice, has led to avoiding the vitiation of such election. Moreover, once the Secretary cancelled the election of the Up Sarpanch by his notice dated 05.12.2017, there was no occasion for the members to insist in the meeting on 06.12.2017, which was presided over by the petitioner Sarpanch that the election of the Up Sarpanch be conducted forthwith. The petitioner was, therefore, right in stating that the election of the Up Sarpanch will not be held on 06.12.2017.

31 On these premises, whether, the petitioner has failed to conduct the election of the Up Sarpanch within 30 days from the commencement of the term of the new members, which occurred on 06.12.2017. She was at liberty to hold an election within 30 days or in the very first meeting, provided such a meeting was in conformity with Rule 4. The peculiarity of this case is that the Maharashtra Government

announced its decision on 08.12.2017, in view of the decision taken by the State Council of Ministers on 21.11.2017, that the election of the Up Sarpanch will be conducted only by the Election Inspector.

32 As such, if the petitioner would have held the election of the Up Sarpanch on or after 08.12.2017, it would have stood vitiated. She waited for sometime hoping that the Election Inspector would be appointed. Since this was not done by the District Collector, Hingoli, she addressed her first reminder dated 28.12.2017 to the District Collector, whose office received the letter at Hingoli on 29.12.2017. Admittedly, the District Collector has not taken steps. The petitioner once again addressed the letter to the District Collector dated 12.03.2018 which was received on the same date and which was followed by the reminder on 05.04.2018. Yet, the District Collector, as admitted by the parties, has not appointed the Election Inspector.

33 I, therefore, find, in the peculiar facts of this case, that the lapse has occurred on the part of the District Collector, Hingoli, which lapse has commenced after 08.12.2017. The learned advocate for the petitioner points out that by communication issued by the Tahasildar, Phulambri under the directions of the District Collector, Aurangabad, the Election Inspectors were appointed for 12 other Village Panchayats for holding elections to the positions of the Up Sarpanchs whenever the Sarpanch is directly elected.

34 In view of the above, this Writ Petition is allowed and the impugned orders dated 25.09.2018 and 30.01.2019 disqualifying the petitioner as a directly elected Sarpanch for failing to hold the election to the post of the Up Sarpanch, stand quashed and set aside.

35 It is made clear that the District Collector, Hingoli will be at liberty to appoint an Election Inspector for conducting the election of the Up Sarpanch of Village Panchayat, Shirad Shahpur, Taluka Aundha Nagnath, District Hingoli within 15 days from today and the said Election Inspector shall hold the election to the post of Up Sarpanch within 15 days of his nomination. I, however, need to make it clear that this liberty would not mean that the conduct of the District Collector is countenanced.

36 The learned advocate of the Zilla Parishad submits that as the petitioner was disqualified and the impugned order was passed by the Honourable Minister on 30.01.2019, the Block Development Officer was given the charge of the Village Panchayat in order to avoid a void. Needless to state, the said charge shall be handed over to the petitioner Sarpanch.

37 At this juncture, the learned advocate for respondent no.7 prays that this judgment may be stayed. The learned advocate for the petitioner opposes the said request on the ground that this Court has considered the effect of Rule 4 in the light of the judgment of this Court in *Murlidhar Bhaiyaji Kapgate (supra)*.

38 Considering the reasons assigned by me while concluding that the petitioner could not have held the election to the post of Up Sarpanch in violation of Rule 4 and since she became helpless insofar as such election is concerned with effect from 08.12.2017, I do not find that the request of respondent no.7 deserves to be entertained. Hence, the request is rejected.

kps

(RAVINDRA V. GHUGE, J.)