

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8336 OF 2019

Saundaji Namdev Sose
Age 50 years, Occ. Agriculture
and membe and Upa-Sarpanch
of Village Panchayat, Resident
of Chitra Wadgaon, Post.
Karadgaon, Tq. Ghansavangi,
District Jalna.

..Petitioner

Versus

1. The District Collector, Jalna.

2. The Gram Sevak,
Village Panchayat,
Chitra Wadgaon, Post.
Karadgaon, Tq. Ghansavangi,
District Jalna.

3. Shivaji Raghuji Sose
Age 55 years, Occ. Agriculture
and membe and Upa-Sarpanch
of Village Panchayat, Resident
of Chitra Wadgaon, Post.
Karadgaon, Tq. Ghansavangi,
District Jalna.

4. Smt. Prayagbai Uttamrao Sose
Age 70 years, Occ. Agriculture
and membe and Upa-Sarpanch
of Village Panchayat, Resident
of Chitra Wadgaon, Post.
Karadgaon, Tq. Ghansavangi,
District Jalna.

5. Smt. Indirabai Vithalrao Malne
Age 65 years, Occ. Agriculture
and membe and Upa-Sarpanch
of Village Panchayat, Resident
of Chitra Wadgaon, Post.
Karadgaon, Tq. Ghansavangi,
District Jalna.

..Respondents

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Advocate for Petitioner : Shri Bagal Vishal A.

AGP for Respondent 1 : Shri Tiwari S.P.

Advocate for Respondent 2 : Shri Bondar Hanumant P.

Advocate for Respondents 3 to 5 : Shri Tope Sambhaji S.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: July 16, 2019

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ORAL JUDGMENT:-

1. Heard the learned counsel for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final hearing.
4. The issue involved in this matter, in the event the petitioner / Up-Sarpanch is held to have incurred disqualification, under Section 36 of the Maharashtra Village Panchayat Act ("the said Act"), is as to whether such a disqualification would unseat the petitioner from the position of Up-Sarpanch or whether he would stand disqualified even as a Member of the Village Panchayat.
5. Having considered the exhaustive submissions of the learned Advocates for the respective sides, I have gone through the petition

paper book and the record available.

6. The petitioner was elected as a Member of the Village Panchayat Chitra Wadgaon, Tq. Ghansavangi, District Jalna. The position of the Sarpanch was reserved for Scheduled Tribe (Woman) category. Out of the 7 members elected to the Gram Panchayat, there was no candidate available for occupying the said reserved position. The petitioner was elected as an Up-Sarpanch and therefore, took the additional charge of Sarpanch and has continued as an in-charge Sarpanch.

7. On 5.7.2017, respondent Nos.3 to 5, who are the members of the Village Panchayat, lodged a complaint with the Additional Collector, under Section 7, read with Section 36 of the said Act seeking disqualification of the petitioner for having failed in conducting 9 monthly meetings.

8. The petitioner contends that the District Collector ordered the Block Development Officer to submit a report as regards the factual position. The Block Development Officer has tendered his report dated 10.5.2018, concluding that the petitioner has failed to conduct only 2 monthly meetings in October 2016 and January 2017. Though the petitioner makes a grievance that the report is submitted without

consulting him or on his back, I do not find any provision under the Act or the Rules that the Block Development Officer is precluded from submitting his report without consulting the Sarpanch.

9. The petitioner has admitted that though he had issued notices for holding the meetings on 10.10.2016 and 9.1.2017, he himself could not remain present as he had some health issues. He further concedes that 3 members of the Village Panchayat have been disqualified earlier under Section 10(1A) of the said Act, leaving 4 members in the Panchayat. He also concedes that in both these meetings, he was absent and the remaining 3 members, eligible to sit in the meeting and vote, had boycotted the two meetings.

10. Shri Tope, learned Advocate has strenuously opposed the contention of the petitioner that they had boycotted the two meetings. He submits that there is no record to indicate that any notice of the meeting was issued by the petitioner, which can be said to have been served upon these three members. There is nothing on record to establish service of notice. He places reliance upon Rules 3, 8, 9 and 10 of the Village Panchayat Meeting Rules, 1959. He contends that the notice of the meeting has to be served upon each Member. Rule 3 mandates atleast one meeting in each month. Rule 4 requires three clear days' notice of the meeting. Rule 6 mandates a

specific date, time and place to be mentioned in the notice. Rule 7 prescribes the manner of service of notice.

11. He then submits that Rule 8 casts a legal obligation on the Sarpanch or in his absence on the Up-Sarpanch to conduct such meetings. Rule 9 describes the quorum to be one half of the total number of members of the Panchayat including the Sarpanch and the Up-Sarpanch. He, therefore, contends that Rules 9 and 10 would prescribe as to how a meeting, in the absence of quorum can be adjourned and reconvened. Any such meeting which is adjourned and re-convened would not have the fetters of quorum.

12. He then relies upon the judgment delivered by this Court dated 12.3.2019 in the matter of Salimbi Mubarak Tamboli Vs. State of Maharashtra - Writ Petition No.10956 of 2018, wherein this Court has considered as to who is responsible for conducting a meeting and what is the manner of conducting such a meeting, inasmuch as, whether the notice is mandatorily required to be served on all members.

13. I find that the above stated issues have already been dealt with by this Court in the above referred judgment in the matter of Salimbi (supra). It would be apposite to reproduce paragraph Nos.9 to 25

hereinafter:-

“9 In view of the above, I find that the following two issues need adjudication:-

(a) Whether the Gramsevak is wholly and solely liable for conducting the monthly meetings or whether the responsibility lies on the Sarpanch and in his absence the Upasarpanch ?

(b) Whether negligence or laxity on the part of the Gramsevak in discharging his duties in the village Panchayat can be construed to be a justifiable reason for the failure on the part of the Sarpanch in holding grampanchayat monthly meetings ?

10 Section 36 along with the proviso reads as under:-

“ 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 meetings of the panachayat 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 terms 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.

11 *I find from the Village Panchayat Act that, there is no specific provision, which would indicate that the Sarpanch and in his absence the Upa-sarpanch would be solely responsible for conducting a monthly meeting. Section 36 only prescribes the time and place for the purpose of the meeting of the panchayat. In this context, the proviso would assume significance, as it would have to be construed to be in aid of the statute. The effect and significance of a proviso and an explanation has been considered by the apex Court in the matter of **S. Sundaram Pillai and others Vs. V.R. Pattabiraman and others (1985 1 SCC 591)**. Paragraph 43 and 53 of the said Judgment reads as under:-*

“43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:

(1) qualifying or excepting certain provisions from the main enactment;

(2) It may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in

order to make the enactment workable;

(3) It may be embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision.

53 *Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is -*

(a) to explain the meaning and intendment of the Act itself,

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,

(d) An Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is

relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and

(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of any Act by becoming an hindrance in the interpretation of the same. “

12 *The Honourable Apex Court, therefore, while interpreting the significance of a proviso, has concluded that a proviso would serve the purpose of qualifying or excepting certain provisions from the main enactment or would entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled, in order to ensure that the enactment becomes workable or it may be embedded in the Act itself, so as to become an integral part of the enactment and thus acquire the tenor and the colour of a substantive enactment itself. It can only be used to meet an additional addenda to the enactment with the sole object of explaining the rules, enactment or statutory provision.*

13 *The proviso to section 36, would, therefore clearly indicate the intent and object of the legislature that a Sarpanch shall be responsible for convening the monthly meeting. If the Sarpanch is absent or not available, as per the record of the Grampanchayat, the Upasarpanch would then officiate as a Sarpanch and would be under an obligation to convene such*

meetings. Keeping in view the law laid down by the Honourable Apex Court in **S. Sundaram Pillai (supra)**, it will have to be interpreted that the proviso that prescribed a disqualification of a Sarpanch for failing to convene a monthly meeting of the Panchayat, would be the mandate of law. The decision of the Collector, on the question, as to whether there was a sufficient cause, is assumed to be final.

14 The contention of the petitioner is that, the District Collector has not dealt with the issue of sufficiency of reasons in the impugned Judgment and on this count, prays for a remand of the matter. I do not find that, the said submission can be entertained, in view of the fact that the District collector has concluded that the reasons cited by the petitioner are not good enough to hold that she was precluded by reasons beyond her control in conducting the village Panchayat monthly meetings. So also, I have substantially heard the Advocate for the petitioner on this point for the reason that, if he can convince this Court that it was on account of a sufficient cause, that she could not convene the monthly meeting in August and November, 2017, this Court can exercise its jurisdiction to conclude that, the findings of the Collector are perverse and that the petitioner can be said to have established a sufficient cause for such failure.

15 The petitioner has, then canvassed that, Rule 4 of the Bombay Village Panchayats (Meeting) Rules, 1959 mandates that the Secretary, i.e. the Gramsavek should convene the meetings. As two successive Gramsevak have been casual and negligent in performing their duties, action needs to be taken against the Secretary.

16 Rule 4 of the 1959 Rules reads as under:-

“4. The Secretary shall, at least three clear days before the date fixed for any ordinary meeting, or for any meeting called under Sections 28, 33 or 43, send or cause to be sent to all the members intimation of the date, time and place of and the business to be transacted at such meeting.”

17 It is, therefore, apparent that, the only responsibility cast upon the Secretary is that, he would issue notices to the members of the panchayat, giving at least three clear days intimation to such members of the date which is fixed for an ordinary meeting or for any meeting under sections 28, 33 or 43. Section 28 is with regard to commencement of the term of office. Section 33 is with regard to the elections of Sarpanch and Upasarpach and section 43 is with regard to filling-up of the vacancies. I am informed by the learned AGP that, considering Rule 4, the services of the Secretary of the Grampanchayat are normally utilized for issuing such notices of meeting and therefore, the petitioner has canvassed that it is only the Secretary who can convene the meeting. Such an argument is in contravention of the provisions of the Village Panchayat Act and out of ignorance.

18 Rule 5(1) of the Rules of 1959 reads as under:-

“5. (1) The Sarpanch or in his absence the Upa-Sarpancha, may, on his own motion, call a special meeting of the panchayat at any time or on the written requisition of not less than half the number of the members or of the (Standing

Committee, Panchayat Samiti, or the Chief Executive Officer, or of any officer authorised in this behalf by the standing committee, or Panchayat Samiti or Chief Executive Officer) by a general or special order, shall call such special meeting within eight days from the date of the receipt of such requisition. ”

19 It, therefore, appears, even under rule 5(1) that the Sarpanch or in his absence the Upa-sarpanch, on his own motion can call for a special meeting of the panchayat at any time or on written requisition of not less than half the number of members of the various committees. The intent and object of law, in the absence of a direct provision, would indicate that the Sarpanch is expected to be the responsible person for holding a meeting. Such interpretation can be made on the basis of Rule 3(1 & 2) which reads as under:-

“3. (1) Every panchayat shall meet at least once in every month. Subject to the provisions of these rules, the person presiding at such ordinary meeting may, at the ends of such meeting, in consultation with the majority of the members present, announce the date of the next ordinary meeting.

Provided that, the Sarpanch, or in his absence the Upa-Sarpanch may having regard to the exigencies of the situation, fix another date of such next ordinary meeting.

(2) The date of every special general meeting

shall be fixed at the Sarpanch, or in his absence by the Upa-Sarpanch.”

20 *The 1959 Rules, therefore, mandate that every Panchayat shall meet at least once in each month. The person presiding over such ordinary meeting, may, at the end of such meeting, in consultation with the majority of the members present, announce the date of the next ordinary meeting. Provided that, the Sarpanch or in his absence the Upa-Sarpanch may, having regard to the exigencies of the situation, fix another date of such next ordinary meeting. In my view, if there is such an alteration in the date of the meeting, the Sarpanch can then utilise the services of the Secretary to issue notices for convening such meeting. It is, therefore, quite clear, considering Rule 3(2) that the entire responsibility of convening such ordinary meeting in each month shall be on the Sarpanch and in his absence Upa-sarpanch. No Sarpanch can therefore, shy away from such a responsibility.*

21 *As such, in so far as the first issue is concerned, and in view of no judicial pronouncement cited before me, holding a different view, the Sarpanch shall be the only person who shall be responsible for convening such monthly meetings.*

22 *In so far as the second issue of sufficiency of the reasons is concerned, I find an answer in the Judgment delivered by this Court in the matter of **Gunwantrao Yeshwantrao Deshmukh Vs. State of Maharashtra & another**, reported in (1982) AIR (Bom) 295. The Division Bench of this Court was considering the issue of failure on the part of the Sarpanch in convening the monthly meeting. Placing reliance upon another Judgment of the*

learned Division Bench in the matter of Special Civil Application No.2274/1965 with Special Civil Application No.11/66, delivered on 13.6.1966, it was concluded that Rule 3 casts a compulsory obligation in connection with holding at least one meeting of the village panchayat in every month. It was further concluded that the monthly meeting of the panchayat, under the above Rule, can be convened only by the Sarpanch and in his absence by the Upa-Sarpanch. The obligation under the Rule could, therefore, be discharged only by the action of convening the meeting of the panchayat, by the Sarpanch and in his absence, by the Upa-Sarpanch.

23 *In the above backdrop, the sufficiency of reasons for failing to conduct such a meeting can be considered, to assess as to whether the Sarpanch had a frivolous or a lame excuse or whether he was precluded by such reasons which would convince any prudent person that it was beyond his control to convene such monthly meeting. In the matter of **Govindrao Tulshiram Waghmare versus Ranjit Mukundrao Halse** and others, Writ petition No.3887 of 2013, decided on 8.8.2013 (Aurangabad bench), this Court perused the material on record and ultimately concluded that Rule 3 of the Meeting Rules is a mandatory provision. It was concluded that the reason cited by the said petitioner Govindrao that, there was a death in the family and hence, the meeting was adjourned on 20.9.2011 and was never held in the said month, was not a unconvincing reason. It was also recorded that in so far as the meeting of 15.8.2011 was concerned, the same was adjourned without transacting any business and there was no material to indicate that it was subsequently held in the month of August, 2011.*

24 *In similar circumstances, in the matter of **Kishanrao Madhavrao Kadam versus The State of Maharashtra and others, Writ petition No.1542 of 2013 (Aurangabad Bench)**, this Court concluded that merely because the Election Commission imposed the code of conduct w.e.f. 3.1.2012 till 16.2.2012, would not be a sufficient cause for not holding a meeting in the month of February, 2012, when the monthly meeting was held on 15.1.2012, notwithstanding the imposition of the code of conduct. It was further held that, there was no provision suggesting that, without the permission of the State Election Commission, such a monthly meeting mandated by law, could not have been held.*

25 *In view of the above, I find that the plea put forth by the petitioner Sarpanch that she could not conduct the monthly meetings in August and November, 2017 due to the non-cooperation of the Gramsevak, cannot be said to be a cause sufficient to justify the failure to hold such meetings. As such, this petition being devoid of merit, is therefore, dismissed. Rule is discharged.”*

14. As such, it is apparent from the record that the petitioner has himself remained absent on 10.10.2016 and 9.1.2017. Even if it is presumed that respondent Nos. 3 to 5 were served with the notice of the meeting and they remained absent, it would yet not absolve the petitioner of his responsibility of conducting the meeting in view of the Rules prescribing the adjournment of such meeting and reconvening the same without notice. Having remained absent, there

was a zero attendance in the said two meetings. It cannot be a coincidence that the petitioner suddenly developed illness on 10.10.2016 and again on 9.1.2017. There is nothing on record to indicate any efforts taken by him to reissue notice of meeting for convening a meeting on any date prior to 31.10.2016 and 31.1.2017. There is no prohibition for convening more than one meeting in the month, though the mandate is that there shall be atleast one monthly meeting. In these circumstances, I do not find that the petitioner has explained away his conduct for not holding the meetings in October 2016 and January 2017.

15. The petitioner is aggrieved by the impugned orders, by which, he has been disqualified as an Up-Sarpanch being in-charge Sarpanch and as a member as well, by the District Collector. This issue is no longer res-integra. This Court has held in the case of Wandana Ramkrushna Neskar Vs. State of Maharashtra and others [2019 (1) BCR 890], that in such circumstances, the petitioner would be disqualified to continue as a Sarpanch, though he continues to be the member of the village panchayat. In the instant case, the petitioner, who is actually an Up-Sarpanch and was officiating as a Sarpanch, would suffer disqualification and would not continue as a Sarpanch. However, in view of Rules 5 & 8 and Section 38, whenever the Sarpanch is not available, the Up-Sarpanch shall be liable for

conducting such mandatory meetings and therefore, the petitioner would stand disqualified from continuing only as an Up-sarpanch till the expiration of his tenure as a Member of the Village Panchayat.

16. This petition is, therefore, partly allowed only to the extent of quashing and setting aside the direction of the District Collector, thereby disqualifying the petitioner even as a member of the Village Panchayat.

17. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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