

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10956 OF 2018

Salimbi Mubarak Tamboli,
Age: major, occu: Sarpanch/housewife
R/o Savargaon (Dare), Tq. Bhoom,
Dist. Osmanabad

Petitioner

Versus

- 1 The State of Maharashtra
through Secretary,
Gram Vikas Department,
Mantralaya, Mumbai
- 2 The Collector,
Osmanabad
- 3 The Chief Executive Officer,
Zilla Parishad, Osmanabad
- 4 Sanjay Janardhan Borade,
Age: major, occu: Up-Sarpanch
R/o Savargaon (Dare), Tq. Bhoom
Dist. Osmanabad

Respondents

Mr.D.A. Mane advocate for the petitioner
Mr.S.R. Yadav, AGP for Respondents No.1 and 2
Mr. S.D. Kaldade advocate for respondent No.3
Mr. V.S. Undre advocate for respondent No.4

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CORAM : **RAVINDRA V. GHUGE, JUDGE**

(Date : 12th MARCH, 2019)

ORAL JUDGMENT

- 1 Rule.

2 Rule made returnable forth-with and heard finally by the consent of the parties.

3 The issue raised in this petition by the disqualified Sarpanch is, as to whether the mandate of holding a monthly meeting of the village panchayat is cast on the Sarpanch under section 36 of the Maharashtra Village Panchayat Act or the responsibility is cast upon the Village Development Officer, who is commonly known as the Secretary under Rules 4, 5 and 6 of the Bombay Village Panchayat (Meeting) Rules, 1959.

4 The petitioner was elected as the Member of the Grampanchayat Savargaon (Dere), Tq. Bhoom, District: Osmanabad, in 2015. Since the post of Sarpanch for the said Panchayat was reserved for the OBC category and the petitioner was the only candidate who belonged to the said category, she was elected as the Sarpanch, unopposed.

5 The Upasarpanch lodged a complaint with the District Collector, that the petitioner did not convene the Grampanchayat monthly meetings for the months of August and November, 2017. By the Impugned order dated 20.8.2018, passed by the District Collector, the petitioner has been disqualified.

6 The contention of the petitioner Sarpanch is that, the Gramsevak Mr. N.S. Jadhavar was continuously remaining absent and was irregular in his duties. He was negligent. He did not call for a monthly meeting in August, 2017. It was on account of the complaint of the Sarpanch that the Gramsevak was removed and another Gramsevak Viz. Shri Tapure was appointed in his place. In November, 2017 Mr. Tapure suffered an accident and his leg was fractured. He was on leave from 23.11.2017 till 3.12.2017. It is, therefore, contended that, no fault lies with the Sarpanch and as such, she cannot be held to be guilty of having failed in conducting two monthly meetings.

7 It is further contended that, the petitioner had issued a Notice to the Gramsevak, calling upon him to explain as to why, he should not be punished for having neglected his duties. On account of such complaint, the Gramsevak was transferred and this would indicate that, the petitioner was not at fault. It is strenuously canvassed that the proviso to section 36 mandates an inquiry as to whether the Sarpanch had any justifiable cause for not holding the monthly meetings.

8 The Learned AGP appearing on behalf of respondents No.1 and 2, the learned counsel for respondent No.3 Zilha Parishad and respondent No.4 Upasarpanch, support the Judgment of the

District Collector. It is their contention that, if the Rules and Section 36 of the Act are considered, unless the petitioner indicates a justifiable cause, she will have to be held guilty for having failed in conducting the monthly meetings of the panchayat.

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 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 Upasarpanch 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 asunder:-

“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.

26 Needless to state that the statutory authorities are at liberty to initiate the process for conducting the elections to the post of Sarpanch with promptitude.

**(RAVINDRA V. GHUGE),
JUDGE**