

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

WRIT PETITION NO. 5877 OF 2020

Uttam s/o Dhondiba Eklare
and others

... Petitioners

VERSUS

The State of Maharashtra and others

... Respondents

Mr. R. S. Deshmukh, Senior Advocate i/by Mr. D. R. Deshmukh, Advocate
for the petitioner,
Mrs. V. N. Patil-Jadhav, A.G.P. for the respondents State.
Mr. Shambhuraje Deshmukh, Advocate for respondent No.8.

CORAM : RAVINDRA V. GHUGE &
SHRIKANT D. KULKARNI, JJ.

DATE : 27th August, 2020

ORDER:

1. We have heard the learned Senior Advocate on behalf of the petitioners, the learned A.G.P. on behalf of respondent Nos. 1, 2 and 4 and the learned Advocate for respondent No.8.

2. Considering the order that we are passing today, we are adverting, briefly, to the submissions made before us as follows:

a) Respondent No.8 Hanumant Pawar had approached the District Collector in his Grampanchayat Appeal No. 09/2018 under Sections 7 and 36 of the Maharashtra Village Panchayats Act, 1959 contending that respondent No.9 Ajay Naik, Sarpanch of Grampanchayat Risangaon, Taluka Loha, District Nanded is guilty of not convening monthly meetings, Gramsabha and, hence, should be disqualified. The District Collector, Nanded rejected the appeal by his order dated 03.09.2019 and concluded that Ajay Naik had not incurred any disqualification.

b) Hanumant Pawar approached this Court in Writ Petition No. 12466/2019. His grievance was considered by the learned Single Judge of this Court and by order dated 03.02.2020, this Court observed in paragraphs 1 to 7 as under:

"1. Learned counsel for the petitioner has relied upon the order dated 17.07.2019 passed by this Court (Coram: Ravindra V. Ghuge, J.) in Writ Petition No.8631 of 2019. This Court had an occasion to deal with the questions as to 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 Upa-sarpanch and 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.

2. In paragraph nos. 9 to 13, this Court has made the following observations:

"9. Considering the law laid down, it is obvious that the Sarpanch is responsible for holding such meetings. In the absence of the Sarpanch, an Up-Sarpanch can hold such meetings and he is also equally responsible. In the matter of Saundaji Namdev Sose Vs. The District Collector, Jalna (supra), an Up-Sarpanch who was officiating as a Sarpanch had failed to hold 2 monthly meetings.

10. The learned Advocate for the petitioner has submitted that the reasons assigned by the petitioner may be considered. She being a lady Sarpanch and being semi-literate, such a person depends upon the assistance of an employee of the State like the Gram Sevak. Such agriculturists, who are Sarpanch and Up-Sarpanch, are not aware of the provisions under the Maharashtra Village Panchayat Act.

11. *Though I find that the learned Advocate for the petitioner has strenuously made an attempt to convince me, the said submission cannot be accepted for the reason that if due to some unforeseen circumstances, which are well explained, had the Sarpanch not held a meeting, such case could have been looked into. However, in the instance case, the Sarpanch has not held the monthly meetings in November 2017 and from May 2018 till August 2018 continuously. In this backdrop, I am unable to accept the contention of the petitioner.*

12. *An amendment to Section 7 of the Maharashtra Village Panchayat Act was introduced by the Maharashtra Act No.16 of 2012 w.e.f. 02/10/2012. Section 7(11) would indicate that the proceedings of every meeting of the Gram Sabha shall be prepared 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 may be directed by the Sarpanch.*

13. *As such, this petition, being devoid of merit, is therefore dismissed."*

3. *In the light of the above submissions and observations made by this Court in the aforesaid case, in the instant case, I find that the learned Collector in identical facts of the case, justified the failure on the part of respondent no.2 – Sarpanch to conduct the monthly meetings of Gramsabha.*

4. *Learned counsel for respondent no.2 submits that the Collector has to record the findings as to the negligence on the part of respondent no.2 in conducting the monthly meetings of Panchayat so also Gramsabha.*

5. *In view of the submissions above, it appears that the*

arguable points have been raised.

6. **'Rule'**

7. *There shall be interim order in the following manner;*

(a) Respondent no.2 viz. Ajay Haibatrao Naik shall not perform the functions and duties of the office of the Sarpanch and those powers, functions and duties shall vest in the Ups-Sarpanch till this writ petition is decided finally. "

c) Hanumant Pawar, the petitioner in Writ Petition No.12466/2019, approached the learned Single Judge on 28.7.2020 and put-forth a formal request of seeking withdrawal of the writ petition. By order dated 28.07.2020, the learned Single Judge, dismissed the petition as withdrawn.

d) The petitioners, who were not the respondents before the District Collector or this Court in Writ Petition No 12466 of 2019, attempted to file a Civil Application, which was affirmed on 28.07.2020. It was prayed in the said Civil application that these petitioners/applicants be permitted to be added as co-petitioners since the withdrawal of the petition by Hanumant Pawar was likely to legalize the illegality allegedly committed by Ajay Naik, Sarpanch.

3. The learned Senior Advocate canvasses before us that the civil application could not be filed as it was not to be entertained by the learned Single Judge since the writ Petition was dismissed as withdrawn. It is, therefore, prayed vide prayer clause (C) in this petition that the Collector, Nanded should record a finding as regards the negligence of Ajay Naik in

his capacity as a Sarpanch in not holding the monthly meetings and Gramsabha which attracts disqualification under sections 7 and 36 of the Maharashtra Village Panchayat Act.

4. The learned Advocate appearing on behalf of respondent No.8 Hanumant Pawar, the petitioner in the petition which was withdrawn, submits that the elders in the village came forward and brokered peace and it was under such moral obligation, that Hanumant Pawar withdrew the petition.

5. We find that this petition cannot be entertained by us since the petitioners claim to be aggrieved persons in relation to the order of the District Collector dated 03.09.2019. They cannot be rendered remediless. The learned Senior Advocate submits that he is instructed to state that the petitioners may be permitted to withdraw this petition since they intend to challenge the said order of the District Collector in their capacity as aggrieved persons, before the learned Single Judge of this Court.

6. In view of the above, this petition is disposed off as withdrawn.

7. We make it clear that we have not expressed any opinion about the writ petition which these petitioners desire to file and all contentions of the parties to the litigation are kept open.

(SHRIKANT D. KULKARNI, J.)

(RAVINDRA V. GHUGE, J.)

JPC