

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

WRIT PETITION NO. 6326 OF 2020

- 1] Uttam s/o Dhondiba Eklare,
Age 55 years, Occu : Agriculture
R/o Village Risangaon, Taluka Loha
District Nanded.
- 2] Kalawatibai w/o Uttam Eklare,
Age 50 years, Occu : Household,
R/o As above.
- 3] Padminbai w/o Balaji Habgunde,
Age 48 years, Occu : Household,
R/o As above.
- 4] Amol s/o Vitthal Tigote,
Age 28 years, Occu : Education and
Agriculture, R/o As above.
- 5] Arjun s/o Gyanoba Tigote
Age 55 years, Occu : Agriculture
R/o As above.
- 6] Balaji s/o Bapurao Eklare
Age 45 years, Occu : Agriculture,
R/o As above.

..PETITIONERS

[Aggrieved persons/Co-complainants]

VERSUS

- 1] State of Maharashtra
Through its Secretary for
Rural Development Department,
M.S. Mantralaya, Mumbai
- 2] The Collector, Nanded

District Nanded.

- 3] The Chief Executive Officer,
Zilla Parishad, Nanded.
- 4] The Tahsildar, Loha,
Taluka : Loha, District:Nanded
- 5] The Block Development Officer (Class-I)
Panchayat Samiti, Loha,
Taluka : Loha, District : Nanded.
- 6] The Extension Officer (Panchayat)
Panchayt Samiti, Loha,
Taluka Loha, District : Nanded.
- 7] The Gram Sevak,
Gram Panchayat Office,
Village Risangaon, Taluka : Loha
District : Nanded.
- 8] Hanumant s/o Pandurang Pawar,
Age : 39 years, Occu : Agriculture.
R/o Village Risangaon, Taluka Loha
District : Nanded.
- 9] Ajay s/o Haibatrao Naik,
Age 27 years, Occu : Agriculture
R/o As above.

..RESPONDENTS

[No.8 Orig.disputant/Writ Petitioner
in W.PNo.12466/2019 and No.9-Orig
Respondent No.1 in dispute/Respondent
No.2 in W.PNo.12466/2019]

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Mr. R.S.Deshmukh,Senior Advocate i/b Mr.D.R.Deshmukh for the petitioners.
Mr. S.N.Morampalle, A.G.P for Respondent Nos.1,2 and 4.
Mr. V.D.Salunke, Advocate for Respondent No.9

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CORAM : MANGESH S. PATIL, J.
RESERVED ON :10/12/2020
PRONOUNCED ON : 15.12.2020

JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

2] In this Petition under Article 227 of the Constitution of India the only question that needs to be answered is as to if the villagers who are not parties to a proceeding before a Collector under Sections 7 and 36 of the Maharashtra Village Panchayats Act, 1959 (The Panchayat Act) can challenge his order by a Petition under Article 227 of the Constitution of India that too when the original disputant challenges it in an independent Writ Petition under Article 227 but withdraws it unconditionally.

3] The issue arises on the following backdrop:

i] The respondent no.9 was elected as a Sarpanch of village Risangaon, Tq. Loha, District Nanded. The respondent no.8 preferred a proceeding under Sections 7 and 36 of the Panchayat Act before the Collector alleging that the respondent no.9 had failed to convene and hold monthly meetings and Gram Sabhas. The respondent no.9 contested the proceeding and the learned Collector by the impugned order dismissed the dispute.

ii] Feeling aggrieved by the dismissal of his complaint the respondent no.8 preferred Writ Petition No.12466/2019 under Article 227 of

the Constitution of India. By the order dated 3/2/2020 Rule was issued and an interim relief was granted to the effect that the respondent no.9 shall not perform the functions and duties as a Sarpanch till the Writ Petition was decided.

iii] The respondent no.8 sought leave to withdraw the Writ Petition and he was allowed to do so and the Writ Petition was disposed of by order dated 28/07/2020.

4] It is the stand of the petitioners herein that though respondent no.8 had alone filed a dispute before the Collector under Sections 7 and 36 of the Panchayat Act, in fact he was merely acting for and on behalf of many villagers including the petitioners who had a serious grievance against the respondent no.9. It is also the case of the petitioners that sensing that the respondent no.8 was about to withdraw the Writ Petition, they filed an application and made an attempt to seek permission to intervene. However, the Court did not allow them to file their application.

5] The petitioners, filed Writ Petition No.5877/2020 and sought a direction against the Collector to hold the respondent no.9 disqualified under Sections 7 and 36 of the Panchayat Act. The Division Bench allowed the petitioners to withdraw the Writ Petition and allowed them to prefer a separate Petition i.e. the present one, challenging the order of the Collector dismissing the complaint filed by the respondent no.8.

6] The learned Senior Advocate Mr.Deshmukh would strenuously submit that though the respondent no.8 alone had filed the complaint with the

Collector under Sections 7 and 36 of the Panchayat Act, in fact he was only a torch bearer who was acting for and on behalf of the petitioners and other villagers who were of the view that the respondent no.9 was not discharging his duties as a Sarpanch properly. In order to substantiate his such submission he would point out several papers/communications showing that the petitioners alongwith respondent no.8 or even without him were repeatedly putting up their grievance against the respondent no.9. He would point out the letter dated 12/10/2018 addressed by the Block Development Officer, Panchayat Samiti Loha to the Extension Officer, Panchayat Samiti putting up the grievance of the petitioners and other villagers against the respondent no.9 and the then Gram Sevak for enquiring into the allegations of misappropriation and of not holding meetings. He would also point out the letter dated 5/10/2018 addressed by the petitioners and few others to the Collector and the Block Development Officer putting up a similar grievance against the respondent no.9. Similar complaints were filed by them on 26/10/2018, 29/11/2018 and 22/7/2019. The learned Senior Advocate would emphasize and point out that even the wife of the respondent no.8 was one of the signatories on these complaints.

7] Apart from such material, the learned Senior Advocate Mr.Deshmukh would also point out that even in the complaint filed by the respondent no.8 before the Collector under Sections 7 and 36 of the Panchayat Act he had specifically alleged that the villagers had many a times raised a grievance with the superior Officers regarding the negligence of respondent no.9 as a Sarpanch. The learned Senior Advocate would therefore, submit that since the respondent no.9 was a Sarpanch and the grievance being put up was his omission in convening and holding Gram Sabha and monthly meetings, in a

sense all the villagers should be regarded as aggrieved persons. If such is the state of affairs, the learned Senior Advocate would submit, the conduct of the respondent no.8 in unilaterally withdrawing the Writ Petition was like back stabbing the villagers who were together had raised the grievance against respondent no.9. Since the respondent no.8 was espousing a public cause, the petitioners are entitled to agitate and challenge the order of the Collector in dismissing the complaint against the respondent no.9.

8] The learned advocate Mr.V.D.Salunke would raise a preliminary objection as to the maintainability of the Petition. He would submit that admittedly the petitioners were not the parties to the proceeding before the Collector which is a quasi-judicial proceeding and consequently there is no question of any right in them to challenge the order of the respondent-Collector.

9] The provisions of Sections 7 and 36 of the Panchayat Act empower a Collector to decide as to if there is sufficient cause for suspending and for being proceeded against for a disciplinary action against a Sarpanch or Up-Sarpanch for the remainder of the term for not holding meetings of the Gram Sabha during a financial year and Section 36 further empowers the Collector to disqualify a Sarpanch or Up-Sarpanch on that count.

10] Pursuant to such a power the respondent no.8 alone had put up a grievance before the Collector seeking disqualification of the respondent no.9. Though it is alleged in the complaint that other villagers were also aggrieved, their names were not appearing in this complaint and no other person was a signatory to it. Pursuant to such a complaint, the Collector conducted a quasi-

judicial enquiry and by the impugned order dismissed the complaint. It is thus apparent that an enquiry to be conducted by a Collector before declaring a Sarpanch to be disqualified would be in the form of a quasi judicial enquiry. If that be so, there would be no occasion or reason for anybody else except the parties to such a proceeding to make any grievance before the High Court. It is only a person who is a party to a litigation can sustain a challenge to the order passed therein.

11] Needless to state that the law admits of few exceptions to such a legitimate rule. In cases of public interest litigations, if petitioner choses to withdraw it, the Court may *suo-moto* or may be at the instance of a stranger continue to entertain such a Petition in larger interest of public. Similarly when a suit is in a representative capacity under Order 1 Rules 8 and 8A of the C.P.C., a person who is not a party to the suit can still prosecute it even if the plaintiff choses to withdraw from the proceeding.

12] Admittedly such is not a state of affair in the matter in hand. The petitioners are rank strangers as far as the proceeding that was filed, conducted before and decided by the Collector. They were equally strangers to the Writ Petition that was filed by the respondent no.8. It is in view of such state of affairs, one can safely answer the question framed at the inception emphatically in negative.

13] True it is that it does appear that not only the respondent no.8 but even the petitioners were putting up their grievance in writing against the omissions of the respondent no.9 as a Sarpanch. It is equally true that even in the complaint filed by the respondent no.8 before the respondent-Collector he

had asserted that apart from him so many other villagers were aggrieved by the omissions of the respondent no.9. But then being the participants in making grievance is one thing and filing a proceeding before a quasi-judicial authority is another thing. Therefore, howsoever highly interested the petitioners might be in the disqualification of the respondent no.9 and howsoever genuine and well founded their grievance is, it would be inappropriate and illegal to allow them to maintain a Writ Petition challenging the order of the Collector before whom they were not the parties. Needless to state that being the villagers, like the respondent no.8 had done, even they may legitimately maintain a proceeding before the Collector and seek a similar relief regarding disqualification of the respondent no.9. However, the law does not permit them to challenge the order of the Collector and no separate Writ Petition of the present kind would be maintainable.

14] In the result, precisely for the reason that the petitioners were not the parties to a proceeding before the respondent Collector under Sections 7 and 36 of the Panchayat Act, they cannot challenge the order passed therein. Consequently the Writ Petition is not maintainable and is liable to be dismissed.

15] Needless to state that the learned Senior Advocate Mr.Deshmukh for the petitioners as well as learned Advocate Mr.Salunke had also put up several submissions touching the merits of the matter to point out as to how the grounds for disqualifying the respondent no.9 can be made out or not. Since I am dismissing the Writ Petition on the ground of being not maintainable, it would not be necessary and appropriate to go into the merits and record redundant findings. I therefore, desist from indulging in any enquiry into the

merits.

16] The Writ Petition is dismissed. The Rule is discharged.

[MANGESH S. PATIL, J.]

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17] After pronouncement of the judgment, the learned Advocate for the petitioners seeks stay to the operation of the order and extension of the ad-interim relief.

18] The view which I have taken while dismissing, the Writ Petition being not maintainable, the interim relief cannot be extended. The request is rejected.

[MANGESH S. PATIL, J.]

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