

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5836 OF 2021

KAMALBAI KSHAN ARKE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Govind Rangrao Ingole
AGP for Respondents No.1 and 2 - State : Mr. K. B. Jadhavar
Advocate for Respondent No.5 : Mr. Pravin B. Rakhunde
...

CORAM : AVINASH G. GHAROTE, J.

DATE : 27th JULY, 2021

PER COURT :-

Heard Mr. G. R. Ingole, learned counsel appears for the petitioner, Mr. Rakhunde, learned counsel appears for respondent No.5 and learned AGP appears for respondents No.1 and 2. None appears for other respondents though served.

2. The petitioner questions the Judgment and order dated 04-02-2021 passed the respondent No.2, whereby the petitioner has been disqualified on the ground, that she has not held the requisite number of meetings as required by Section 36 of the Maharashtra Village Panchayats Act, 1958 (here-in-after, referred to as "Act of 1958"). It is not in dispute, that the petitioner was elected as Sarpanch of Grampanchayat Kotari, Tahsil Kinwat, District Nanded, on 27-09-2018. Rule 3 of the Bombay Village Panchayat Meeting Rules, 1959, mandates that every Panchayat

shall meet atleast once in every month. Section 36 of the Act of 1958, requires, that "the time and place of sitting, and the procedure at a meeting, of the Panchayat shall be such as may be prescribed". The case against the petitioner is that she failed to hold four meetings, from February 2019 to May 2019, as a result of which, the proceedings were initiated by the respondent No.5 before the respondent no.2 for disqualification under the proviso to Section 36 of the Act of 1958. The respondent No.2 called for report from the respondent No.3, who submitted that from February-2019 to May-2019, only four meetings were held of the Grampanchayat. In the written notes of arguments placed on record by the petitioner, in paragraph No. 3 thereof, there is no mention of any meeting been conducted from February-2019 onwards. In paragraph No. 4 it is contended, that for holding the meeting in the month of February 2019 and onwards, the respondent No.4 - Gramsevak was approached time to time, but request was ignored. There is, however, nothing on record to indicate this aspect.

3. Another ground raised is that of holding of the Parliamentary Election from April to May-2019, which is claimed to be a sufficient cause, as contemplated by the proviso to Section 36 of the Act of 1958.

4. The third contention is that in fact the meetings were

held, however, inadvertently, documents indicating the holding of meetings were not placed on record before the respondent No.2 - the Collector.

5. Mr. Rakhunde, learned counsel appearing for the respondent No.5 contends, that holding of the Parliamentary Election was no reason not to hold the meetings of the Grampanchayat in the month of February and March 2019. He contends, that even otherwise the holding of Parliamentary Election cannot be sufficient reason, as there is no prohibition for holding of the meeting of the Grampanchayat. He further contends, that the documents placed on record, at pages No. 31, 34, 37 and 40, the minutes of the meetings claimed to have been held on 14-02-2019, 10-03-2019, 07-04-2019 and 05-05-2019, were not before the respondent No.4 and, therefore, ought not to be considered, as these according to him, are fabricated documents.

6. Learned AGP has supported to the impugned order.

7. In so far as the contention, that the holding of the Parliamentary Election was a sufficient cause within the meaning of expression as contained in the proviso to Section 36 of the Act of 1958 is concerned, it is material to note that, no notification has been placed on record issued by the Election Commission prohibiting the holding of meetings of the Grampanchayat on this count. Even otherwise, the Parliamentary Elections were held in the

month of April and May - 2019 and, therefore, the plea of not holding the meetings of the Grampanchayat in the month of February and March, on this ground, is clearly not tenable. Reliance placed on the Judgment in the case of - ***Pralhad s/o. Bhikaji Bargaje Versus State of Maharashtra and others, Writ Petition No. 6743 of 2015, decided on 27th August, 2015***, is clearly misplaced, as in that case, the Court found that various aspects involved in the matter, were not considered, which is not the case here. The plea, therefore, is rejected.

8. Mr. G. R. Ingole, learned counsel for the petitioner has relied upon the Judgment in the case of - ***Pratibha w/o. Sanjay Hulle Versus Additional Collector, Latur and others***, reported in ***2010 (5) Mh.L.J. 47***, to contend, that the charge was not specifically communicated to him, and therefore, he has been deprived of an opportunity to put-forth his defence and disclose circumstances for his failure to hold any of the mandatory meetings. In the instant case, the notice issued to the petitioner, has admittedly not been placed on record to substantiate his contention, as a result of which, the judgment in ***Pratibha w/o. Sanjay Hulle (supra)***, is also not applicable.

9. The case of ***Tukaram Krushnaji Parve Versus State of Maharashtra and others***, reported in ***2015(3) Mh.L.J. 652***, holds that sufficient opportunity has to be granted, to establish a

sufficient cause for not holding the meetings. In the instant case, it was permissible for the petitioner to place on record before the respondent No.2, any cause, which according to him, was sufficient enough to justify not holding the monthly meeting. However, except for throwing the blame upon the respondent no.4, in his submission at page No. 44-A, of the record there is nothing else.

10. In so far as the contention, that the meetings actually have been held, however, the respondents No. 3 and 4, intentionally did not place the relevant record before the respondent No.2 is concerned, the petitioner relies upon the minutes of the meetings, dated 14-02-2019, 10-03-2019, 07-04-2019 and 05-05-2019, which have been placed on record at pages No. 31, 34, 37 and 40. However, these documents were admittedly not before the respondent No.2, when the impugned order was passed. Though, the learned counsel for respondent No. 5 contends, that these are false and fabricated documents, that contention, shall have to be tested upon by the respondent No.2 by calling for the actual record and proceeding and verifying for himself the veracity of these documents in light of the allegations made against respondents No. 3 and 4. In that view of the matter, the impugned order dated 04-02-2021, is hereby quashed and set aside and the matter is remanded to respondent No.2, who shall decide the same afresh, by considering and determining the matter, in light of the minutes of the meetings from February-2019

to May-2019, as mentioned above. It shall be open for the petitioner to place on record the minutes of the above meetings, which shall be verified from the record. The parties shall appear before the respondent No.2 on 13th August, 2021, who shall then proceed to decide the proceeding on or before 9th September, 2021, by requisitioning the record and proceeding to verify for himself the veracity of the submissions of the petitioner of having held the meetings. All other contentions as canvassed above, except the one in paragraph No. 10 above stand rejected. No costs.

(AVINASH G. GHAROTE)
JUDGE

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