

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

WRIT PETITION NO. 6550 OF 2020

Smt. Panchfula Ramakant Patil
Age: 55 years, Occu.: Agriculture and
Sarpanch of Village Panchayat Ashta,
Tq. Chakur, Dist. Latur.

... Petitioner

Versus

1. Savta Pandu Gaikwad
Age: Major, Occu.: Agriculture,
2. Sayyad Shabbir Gaffursab
Age: Major, Occu.: Agriculture,
3. Manik Namdeo Mule
Age: Major, Occu.: Agriculture,
Resp. Nos. 1 to 3,
R/o: Ashta, Tq. Chakur,
Dist. Latur.
4. The Collector,
Dist. Latur.
5. The Divisional Commissioner,
Aurangabad Division,
Aurangabad.

... Respondents

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Advocate for Petitioner : Mr. V. D. Salunke
AGP for Respondent Nos. 4 & 5 : Mr. P. G. Borade
Advocate for Respondent Nos. 1 to 3 : Mr. S. V. Natu

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CORAM : NITIN B. SURYAWANSHI, J.

**RESERVED ON : 02nd DECEMBER, 2021
PRONOUNCED ON : 21st DECEMBER, 2021**

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with
the consent of the parties.

2. This petition challenges the disqualification order passed by respondent No.4 – Collector, Latur on 24-06-2020, in appeal No. 2020/GRAPANI/CR-02, thereby disqualifying the petitioner from the post of Sarpanch of village Ashta, Tq. Chakur, Dist. Latur, which is confirmed by respondent No.5 – Divisional Commissioner, Aurangabad vide order dated 11-09-2020 in appeal No. Pr.Kr.2020/ZPVP/Appeal/CR-48.

3. Brief facts, leading to this petition, are as follows:

The petitioner was elected as Sarpanch of village Panchayat Ashta, Tq. Chakur, Dist. Latur, on 23-11-2017. Respondent Nos. 1 to 3 filed complaint before respondent No.4 – Collector contending that the petitioner has incurred disqualification for not holding monthly meetings and that the petitioner has misappropriated Gram Panchayat funds of Rs.25,000/-. Thus, the petitioner has incurred disqualification under Section 16(B) read with Sections 14(g) and 36 of the Maharashtra Village Panchayats Act, 1959 (for short ‘the Act, 1959’). Pursuant to the said complaint, respondent No.4 – Collector called report of Block Development Officer and after giving opportunity of hearing to the petitioner and respondent Nos. 1 to 3, respondent No.4 – Collector, by the impugned order, disqualified petitioner as Sarpanch of village Ashta, Tq. Chakur, Dist. Latur. The petitioner unsuccessfully

challenged the order of respondent No.4 – Collector, by filing appeal before respondent No.5 – Divisional Commissioner, Aurangabad.

4. Heard the learned advocate Mr. V. D. Salunke for petitioner, the learned advocate Mr. S. V. Natu for respondent Nos. 1 to 3 and the learned Assistant Government Pleader Mr. P. G. Borade for respondent Nos. 4 and 5 – State.

5. The learned advocate for petitioner vehemently submitted that the petitioner is a victim of political rivalry and in a calculated manner she is victimised. He submitted that the petitioner by representation dated 01-11-2019 complained to respondent No.4 – Collector that respondent No.1 – Savta, Deputy Sarpanch, as well as husbands of other female members of Village Panchayat obstruct the monthly meetings of the Village Panchayat and they use unparliamentary language. On 21-08-2019, the petitioner sent a representation to the Block Development Officer stating that the Village Development Officer is not cooperating in conducting the monthly meetings. He is absent from the village Panchayat Ashta since 15th August, hence, he may be transferred from Ashta and another Village Development Officer be posted in his place. The learned advocate, therefore, submitted that it was because of the non cooperation on the part of the Village Development Officer, the meetings could not be held,

for which the petitioner cannot be blamed. By pointing out the say of the petitioner filed before respondent No.4 – Collector, he submitted that the petitioner has explained that the Village Development Officer had taken away the proceedings of the monthly meetings. Though, he had recorded the proceedings of the monthly meetings conducted from time to time, he has failed to keep it up-to-date. The Village Development Officer has deliberately misplaced the proceedings of the monthly meetings. Monthly meetings were held between February, 2019 to June, 2019 in every month in the last week, for which agenda was sent to the members and the meetings were conducted. The allowance of the meetings was paid to the members, however, the Village Development Officer and respondent No.1 – Savta, Deputy Sarpanch, have, in collusion with each other, manipulated the notices and the proceedings of monthly meetings.

7. He, further submitted that signature of the petitioner was obtained on the cheque by respondent No.1 – Savta and Gram Sevak on the pretext that water supply of the village was stopped and it was necessary to restore the same immediately. Respondent No.1 has deliberately created record by writing cheque in the name of petitioner and has misused the said cheque. It is, therefore, necessary to inquire who has presented the cheque and who has withdrawn the amount. By

pointing out the receipt dated 19-07-2018 issued by the Marathe Agro Industry of Rs.25,000/-, he submits that the said amount was paid to the said industry for repairs of submersible pump.

8. He further submitted that since there was no complaint from the said industry about non receipt of amount of Rs.25,000/- and in the absence of any interest of the petitioner having been shown in the work done for Panchayat, the allegation of misappropriation of Rs.25,000/- against the petitioner is unsubstantiated and the same cannot be accepted. He also submitted that the complaint was filed against the petitioner as well as against the Village Development Officer, however, the Collector has failed to take any action against the Village Development Officer. On that count also, the impugned order is liable to be quashed and set aside. In support of his submissions, he relied in **Jyotitai Vikas Gawande Vs. Additional Commissioner and Others**, reported in 2009(5) Mh.L.J. 486 and **Shubhangi Anil Gawande and Another Vs. Additional Collector and Others**, reported in 2010(2) Mh.L.J. 368, so also, the decision of this Court dated 08-03-2011 in **Writ Petition No.691/2011, Latabai Ramprasad Thorat Vs. The State of Maharashtra and Others**.

9. The learned advocate for respondent Nos. 1 to 3, on the other hand, submitted that it is clear from the report of the Block

Development Officer that the petitioner failed to conduct monthly meetings. The stand of the petitioner that the record is misplaced by the Gram Sevak is afterthought and there is no material on record to substantiate this contention. This stand was not taken before the Collector or the Divisional Commissioner. Thus, it is clear from the record that the petitioner failed to conduct five meetings.

10. He, further submitted that, admittedly, the petitioner has signed the cheque of Rs.25,000/- which was drawn in her name. Hence, the petitioner has incurred disqualification under Section 14(1)(g) of the Act, 1959, as it can be inferred that the petitioner had interest in the said amount. He, therefore, supported the order passed by respondent No.4 – Collector and confirmed by respondent No.5 – Divisional Commissioner.

11. The learned Assistant Government Pleader, by relying on the reply filed by respondent No.4, supported the impugned order.

12. Heard the learned advocate Mr. V. D. Salunke for petitioner, the learned advocate Mr. S. V. Natu for respondent Nos. 1 to 3 as well as the learned Assistant Government Pleader Mr. P. G. Borade for respondent Nos. 4 and 5 – State at length. Perused the record made available by the learned Assistant Government Pleader.

13. Perusal of the report submitted by the Block Development Officer dated 28-11-2019 shows that the petitioner failed to conduct monthly meetings on 24-02-2019, 23-03-2019, 24-04-2019, 26-05-2019, 28-06-2019 and 30-07-2019. No notices for the monthly meetings between February, 2019 to July, 2019, were issued and served on the members. There are no proceedings of the monthly meetings held between that period. It is, therefore, clear from the record that the petitioner has failed to convene six monthly meetings without there being any sufficient cause. The petitioner has failed to assign sufficient cause for not convening said monthly meetings. Therefore, there is violation of Section 36 of the Act, 1959.

14. Though the petitioner contends that the meetings were conducted and the Village Development Officer has deliberately misplaced the proceedings and record of the said meetings, the same appears to be an afterthought stand of the petitioner. Even the complaint/representation of the petitioner made against the Village Development Officer dated 21-08-2019 does not contain such allegations against the Village Development Officer. In that view of the matter, it is not possible to accept the contention of the petitioner that the said meetings were conducted and its minutes were recorded in the proceedings and the Village Development Officer has misplaced the

same. If at all that was the case, the petitioner would have approached the Collector and the other authorities at that point of time only.

15. So far as the allegations against the petitioner about the withdrawal of amount of Rs.25,000/- by drawing cheque in her own name is concerned, admittedly, the petitioner has signed the cheque which was in her name and the amount of Rs.25,000/- was withdrawn. It is the case of the petitioner that respondent No.1 – Savta, Deputy Sarpanch, has deliberately obtained the signature of petitioner on the said cheque with a view to create a record. According to the petitioner the said amount was, on the same day, paid to Marathe Agro Industry towards repairs of the electrical pump.

16. In Writ Petition No.691/2011, Co-ordinate Bench of This Court, in similar facts, held that:

“6. ... The petitioner must be shown to have directly or indirectly any share or interest in any work done by order of Panchayat or any contract with/by or on behalf of Panchayat. The pleadings in complaint looked into by Collector do not shown any such share or interest. Only because amount of cheque was withdrawn by Petitioner that by itself is not sufficient to infer such share or interest. Something more is required and there is no pleading or no evidence about that material ingredient.

7.....

8..... When there are no complaints by any labour about short payment or non-payment, why and how withdrawal by Sarpanch itself constitutes financial irregularity has not been clarified.”

17. In **Jyotitai Vikas Gawande** (supra), where there was complaint of withdrawal of amount by the husband of the petitioner/Sarpanch, it was held that:

“.... there is no allegation that he had any interest or share in works done for Panchayat. Merely because cheques were drawn in favour of the petitioner would by itself not attract disqualification under Section 14(1)(g) of the Act, 1959.”

“11. There has to be material on record to suggest that the said amount was payable in the interest of contract or work done for Gram Panchayat. As such allegations are missing, much less for want of proof of such allegations no inference against the petitioner can be drawn. Remote unsubstantiated possibility cannot be considered for inviting liability of disqualification. The same is the case as regards the alleged payments to Raju Wardhe, Ganajanan Building Material Supplier as well as Ajay Deorao Gawande.”

In the case in hand, the petitioner has placed on record the receipt of Rs.25,000/- paid to Marathe Agro Industry for repairs of submersible pump. The same is not disputed. Marathe Agro Industry has not complained about non receipt of the said amount.

18. Considering the above ratio in the facts of the present case, it is required to be held that the complaint in respect of withdrawal of Rs.25,000/- against the petitioner cannot be said to be proved on record. The findings recorded by respondent No.4 that the petitioner incurred disqualification under Section 14(1)(g) is, therefore, unsustainable and the same is liable to be set aside.

19. However, respondent No.4 was justified in coming to the conclusion that the petitioner has incurred disqualification under Section 36 of the Act, 1959, for not holding monthly meetings of Ashta Village Panchayat between February, 2019 to July, 2019. In the result, following order:

ORDER

- (I) Writ Petition No.6550 of 2020 is partly allowed.
- (II) The disqualification of the petitioner under Section 14(1)(g) of the Maharashtra Village Panchayats Act, 1959, in the order passed by the Collector, Latur, on 24-06-2020, in appeal No. 2020/GRAPANI/CR-02, is hereby quashed and set aside.
- (III) The disqualification of the petitioner under Section 36 of the Maharashtra Village Panchayats Act, 1959, in the order passed by the Collector, Latur on 24-06-2020, in appeal No. 2020/GRAPANI/CR-02, is hereby confirmed.
- (IV) Rule is made partly absolute in the above terms, with no order as to costs.

(NITIN B. SURYAWANSHI, J.)