

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

WRIT PETITION NO.1874 OF 2019

Prakash Parmeshwar Chavan & others ... **Petitioners**

Versus

The Collector, Jalna & others ... **Respondents**

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Advocate for Petitioners : Mr. V. B. Kulkarni.

AGP for Respondent/s-State : Mr. S. P. Deshmukh.

Advocate for Respondent No.3 : Mr. S. S. Randive & Mr. D. U.
Manwatkar.

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CORAM : V. K. JADHAV, J.

DATE : 12.02.2021.

ORDER :-

1. Heard finally at admission stage by consent of the parties.

2. Respondent No.3 is elected as a Sarpanch of village Chincholi, Taluka Partur, District Jalna. The petitioners have filed a complaint / dispute before the Collector, Jalna alleging that respondent No.3 being a Sarpanch of Village Panchayat though under an obligation to conduct the meetings of Gram Sabha, Mahila Gram Sabha as well as the monthly meetings of Gram Panchayat in terms of the provisions of the Maharashtra Village Panchayats Act, 1959, she has failed to conduct the

meeting as required and therefore disqualified to be a Sarpanch of village Chincholi, Taluka Partur, in terms of Section 36 of the Maharashtra Village Panchayats Act, 1959. Respondent No.3 has appeared before the Collector and filed her say. According to her, she has conducted some monthly meetings, but there is no reply regarding conducting the Gram Sabha and Mahila Gram Sabha. The Collector, Jalna by impugned judgment and order dated 30.10.2018, has rejected the objection / dispute raised by the petitioners. Hence, this Writ petition.

3. The learned counsel for the petitioners submits that respondent No.3 was declared and elected as a Sarpanch of village Chincholi on 09.10.2017 and since then respondent No.3 is working as a Sarpanch. The learned counsel submits that in terms of the provisions of Section 7, there shall be held at least four meetings of the Gram Sabha every financial year and before every such Gram Sabha, there shall be four meetings of the Mahila Gram Sabha. The learned counsel submits that in terms of the provisions of Section 36, it is incumbent upon respondent No.3-Sarpanch to conduct the monthly meetings of the Gram Panchayat members. The

learned counsel submits that after respondent No.3 elected as a Sarpanch, she had never conducted any Gram Sabha till the end of the financial year of 2017-2018 till the month of March 2018 and further respondent No.3 has failed to conduct the Mahila Gram Sabha in the month of November 2017, December 2017, January 2018, February 2018 and March 2018. The learned counsel submits that the Collector has made the observations about the monthly meetings of the month of December 2017 to March 2018, however, there is no whisper about conducting the Gram Sabha and Mahila Gram Sabha by respondent No.3-Sarpanch during the financial year of 2017-18. The learned counsel submits that even respondent No.3 has also accepted that she has not conducted the monthly meeting of the Gram Panchayat members. According to respondent No.3-Sarpanch, she had filed a complaint against Gram Sevak for misappropriation of Fourteenth (14th) Finance Commission funds of village panchayat and therefore the inquiry was conducted against him. According to respondent No.3, the meeting in the month of January 2018 could not have been conducted because of the same. Respondent No.3 has also accepted that she has not conducted the Gram Sabha

meetings, Mahila Gram Sabha meetings due to the said reason. The learned counsel submits that even failure to convene a single meeting in breach of the Rules prescribed, would attract the penalty as contained in the proviso of Section 36 of the Act.

4. The learned counsel submits that respondent No.3 has not cited any good reasons to show that she was precluded for the reasons beyond her control in conducting the monthly meetings of village panchayat so also the Gram Sabha and Mahila Gram Sabha meetings. The learned counsel submits that the responsibility is cast upon the Secretary to issue notice to the members of the Panchayat and even the Sarpanch and in his absence Up-Sarpanch, on his own motion can call for special meeting of the Panchayat, at any time. The learned counsel submits that the Sarpanch is expected to be a responsible person for holding a meeting. The learned counsel submits that the 1959 Rules mandates that every Panchayat shall meet at least once in a each month.

5. The learned counsel for the petitioners in order to substantiate his contentions placed reliance on the following cases :

- (i) Gunwantrao Yeshwantrao Deshmukh Vs. State of Maharashtra and another, reported in 1982 AIR (Bom.) 295.
- (ii) Nanasaheb Dhondiram Mundhe Vs. Additional Collector and others, reported in 2010(4) Bom.C.R. 823.
- (iii) Salimbi Mubarak Tamboli Vs. State of Maharashtra, reported in 2019(3) Bom.C.R. 572.
- (iv) Jijabai Bapurao Zingare (Smt.) Vs. State of Maharashtra and others, reported in 2009 (2) Bom.C.R. 681.
- (v) Pralhad Bhikaji Bargaje Vs. State of Maharashtra and others, reported in 2017 (3) Bom.C.R. 304.

6. The learned counsel for respondent No.3 submits that after elected as a Sarpanch of village Chincholi, respondent No.3 has conducted the first monthly meeting on 11.12.2017. The learned counsel submits that the said meeting was held for electing the Up-Sarpanch of the village. The learned counsel submits that on 09.01.2018, respondent No.3-Sarpanch has filed a complaint against Gram Sevak for misappropriation of Fourteenth (14th) Finance Commission funds to the Chief Executive Officer, Zilla Parishad, Jalna and in terms of the allegations made in the said complaint, the inquiry was conducted by the Extension Officer, Panchayat Samiti, Partur, wherein the statement of Up-Sarpanch, the present petitioner

No.2 was recorded. The learned counsel submits that in view of the same, the meeting in the month of January 2018 could not be conducted. Further the said Gram Sevak was transferred elsewhere and therefore due to non-availability of the post of Gram Sevak, Village Panchayat, Chincholi, it was not possible for respondent No.3 to conduct the Gram Sabha meetings, Mahila Gram Sabha meetings. The learned counsel submits that thereafter the monthly meetings were conducted on 15.02.2018, 16.03.2018 and 13.04.2018, in which all the members have signed the proceedings including present petitioner Nos.1 and 2. The learned counsel submits that respondent No.3 is a woman Sarpanch and petitioner No.1 and 2 are herein are consistently trying to cause obstructions in her work. The learned counsel submits that the Collector, after hearing all the parties has rightly rejected the complaint filed by the petitioners. There is no substance in this writ petition. Thus, the writ petition is liable to be dismissed.

7. I have also heard the learned AGP for the respondent/s-State Authority. I have heard the learned counsel appearing for the respondent No.3.

8. I have carefully considered the submissions advanced by the learned counsel for the respective parties. With their able assistance, I have perused the pleadings, the grounds taken in the petition, annexures thereto and the reply filed by the respondent.

9. It appears from the affidavit-in-reply of respondent No.3 so also the defence raised by her in the dispute before the Collector that she had conducted only three monthly meetings of the financial year 2017-2018 and she could not conduct the fourth monthly meeting so also Gram Sabha meeting and Mahila Gram Sabha meeting due to the reason of the action proposed against Gram Sevak at her behest for misappropriation of the funds so also owing to the inquiry being conducted against the said Gram Sevak by Extension Officer, Panchayat Samiti, Partur. In the back drop of these admitted facts, the provisions of Section 7 and Section 36 are reproduced herein below :

"7. **Meetings of Gram sabha.** - (1) There shall be held at least [four meetings] of the *Gram sabha* [every financial year] on such date, at such [time and place, and in such manner], as may be prescribed [and if the] *Sarpanch*, or in his absence the Upa-Sarpanch fails without sufficient cause, to [hold [any of such four meetings, 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 term of office of the members [of the *panchayat*]; and the Secretary of the *panchayat* shall also if, *prima facie*, found responsible of any lapse in convening such meeting, be liable to be suspended, and for being proceeded against, for such other disciplinary action as provided under the relevant rules.] The decision of the Collector on the question whether or not there was such sufficient cause shall be final]:

[Provided that, the *Sarpanch* may, at any time of his own motion, and shall, on requisition of the Standing Committee, *Panchayat Samiti*, or Chief Executive Officer, call a meeting of the *Gram sabha* within the period specified in the requisition; and, on the failure to do so, the Chief Executive Officer shall require the Block Development Officer to call the meeting within fifteen days from the date he is so required to do. The meeting shall, notwithstanding the provisions of sub-section (3), be presided over by him or any officer authorised by the Block Development Officer, in that behalf]:

[Provided further that, a period of not more than [four months] shall be allowed to elapse between the two meetings of the *Gram sabha*:

Provided also that, if the *Sarpanch* or *Upa-Sarpanch*, as the case may be, fails to call any such meeting within the specified period, the Secretary shall call the meeting and it shall be presumed that, such meeting has been called with the concurrence of the *Sarpanch* or, as the case may be, *Upa-Sarpanch*.]

(2) Any Officer authorized in this behalf by the [Standing Committee, *Panchayat Samiti* or Chief Executive Officer] by general or special order shall have the right to speak in, and otherwise to take part in, the proceedings of a meeting of the *Gram sabha*, but shall not be entitled to vote.

[(3) Unless otherwise provided in this Act, the first meeting of the Gram Sabha after each general election to a panchayat and thereafter the first meeting of every year, shall be presided over by the *Sarpanch* and in his absence by the *Upa-Sarpanch*; and all other subsequent meetings of the year of the Gram Sabha, shall be presided over by a person elected by the persons present in that meeting of the Gram Sabha.]

(4) If any dispute arises as to whether a person is entitled to attend a meeting of a *Gram sabha*, such dispute shall be decided by the person presiding, regard being had to the entry in the list of voters for a whole village or ward thereof, as the case may be, and his decision shall be final.

[(5) The meeting of the women members of the *Gram sabha* shall be held before every regular meeting to the *Gram sabha*, convened under sub-section (1) [and the proceedings of such meeting shall invariably be brought or caused to be brought before every regular meeting of the *Gram sabha* by the *Sarpanch*, and the *Gram sabha* shall consider the recommendations made in the meeting of the women members, and the *panchayat* shall ensure the implementation of such recommendations:]

Provided that, if the *Gram sabha* is not agreeable to the recommendations made in the meeting of the women members, it shall record the reasons therefore;]

[(5-A) Every member of the *panchayat* representing a ward shall, before every regular meeting of the *Gram sabha* and meeting of the women members of the *Gram sabha*, convene a meeting of all the voters in such ward and such ward *sabha* may discuss issues relating to development of the ward, selection of individual beneficiaries for individual beneficiary schemes of the State, or as the case may be, of the Central Government, development projects and programmes and such other related issues as the ward *sabha* deems fit and which are likely to be placed before the regular meeting of the *Gram sabha* for consideration and decision. The proceedings of such meeting shall be maintained by such member under his signature and a copy of the same shall invariably be sent to the *panchayat* which shall form part of the records of the *panchayat*.]

(6) The *Gram sabha* shall have the disciplinary control over the Government, semi-Government and *panchayat* employees working in the village including the matters relating to their daily attendance in the office. The annual evaluation of such employees shall be brought to the notice of their respective higher authorities by the *Gram sabha*.

[Provided that, *Gram sabha* may, by resolution, delegate its authority to the *panchayat* to exercise general supervision over the Government,

semi-Government and *panchayat* employees including regular and timely attendance at their work place. The mode of recording of attendance and supervision shall be such as the Government may, from time to time, specify by an order in the *Official Gazette*.]

(7) The *Gram sabha* [or as the case may be, the *panchayat*] shall report to the concerned Block Development Officer, the irregularities, if any, committed by any of such employees. The Block Development Officer shall consider such report within the period of three months from the date of its receipt. Such matters and the actions taken thereon shall be reviewed in the regular meetings of the *Panchayat Samiti*. If, the Block Development Officer fails to dispose of such reports within the specified period of three months, the same shall on the expiry of the said period, stand transferred to the Chief Executive Officer of the concerned *Zilla Parishad* for disposal, whose decision shall be final. The Chief Executive Officer of the *Zilla Parishad* shall take the decision on such reports so transferred to him, within a period of three months from the date of their receipt.

(8) The *Gram sabha* shall select the beneficiaries for individual beneficiary schemes of the State, or as the case may be, of the Central Government.

(9) The *Gram sabha* shall generally fix the date, time and place of the next meeting of the *Gram sabha*, in its previous meeting.

(10) Unless exempted by the *Gram sabha*, [or as the case may be, the *panchayat*] all the Government, semi-Government and *panchayat* employees working in the village shall attend the meetings of the *Gram sabha*.

(11) The proceedings of every meeting of the *Gram sabha* shall be prepared and maintained [in a separate register] 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 directed by the *Sarpanch* and the same shall be handed over to the *panchayat* for records.

[Provided that, it shall be a joint responsibility of the *Sarpanch* and Secretary of the concerned *panchayat* to maintain secured custody and proper safety of proceeding register, attendance register and other

relevant records of the *Gram sabha*, and they shall be primarily held responsible for any tampering, alteration, manipulation of entries or contents or loss or mutilation of such record unless proved otherwise and shall be liable to be prosecuted under relevant provisions of the Indian Penal Code.]”

“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 *panchayat* 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 term 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.]”

10. In a case ***Gunwantrao Yeshwantrao Deshmukh Vs. State of Maharashtra and another***, reported in ***1982 AIR (Bom.) 295***, relied upon by the learned counsel for the petitioners, in para No.5 of the order referred the decision of the Division Bench in Special Civil Application No.2274 of 1965 with Special Civil Application No.11 of 1966, date of decision : 13.06.1966 with regard to the detailed reference to Section 36 as well as Rules framed thereunder. In para No.5, the observations made by the Division Bench in the aforesaid case are reproduced as follows :

"5. It is not possible for us to accept this contention. It is not necessary to deal with this aspect of the matter in detail in view of the Division Bench decision of this Court in Special Civil Application No. 2274 of 1965 with Special Civil Application No.11 of 1966 decided on 13th June 1966. The Division Bench of this Court consisting of K. K. Desai and Chandrachud, JJ. after making a detailed reference to Section 36 as well as rules framed thereunder has held as under :

"Now, it is clear on a reading of Rule 3 that it casts compulsory obligation in connection with holding of at least one meeting of the panchayat in every month. This provision indicates and appears to have been made because the due administration of the affairs of a village panchayat needs that it should be duly looked after and attended to by a meeting of the Panchayat once in every month. The meeting of the panchayat under the rule could be convened only by the Sarpanch and in his absence by the Upa-Sarpanch. The obligation under the rule, could, therefore; be carried out and completed only by the action of convening the meeting of the panchayat that must be taken by the Sarpanch and in his absence by the Upa-Sarpanch. The phrase according to the rules prescribed in that behalf, as contained in the proviso to Section 36 has clear reference to the obligation created for holding one meeting of the panchayat every month as contained in Rule 3. In our view, it is the intent of the proviso that breach of that obligation and/or the failure to act according to the rules prescribed in connection with holding of the meeting of the panchayat should disqualify the Sarpanch from

continuing in office. That is the result of the following phrase in the proviso:-

Fails without sufficient cause, to convene the meetings of the panchayat according to the rules prescribed in the behalf. We are, in this connection, unable to accept the submission made by Mr. Rane that emphasis is on the phrase in any financial year as contained in the proviso. We are unable to accept the contention of Mr. Rane that the phrase "the meetings", as contained in the proviso was intended to mean that the failure should be in connection with more than one meeting. In our view, the plural in the phrase "the meetings" was intended to include and to mean singular also. In our view, therefore failure to convene even a single meeting in breach of the rules prescribed would attract the penalty as contained in the proviso. The above interpretation is in consonance with the intent and purpose of Rule 3 and also the amended provisions of Section 36. We are, therefore, unable to accept the submission made as above by Mr. Rane on behalf of the petitioner."

11. Thus, by reproducing the said observations in the case cited above, the Division Bench in paragraph No.6 has held that :

"6. In view of this decision of the Division Bench holding that even failure to convene a single meeting in breach of the Rules prescribed would attract the penalty as contained in the proviso to Section 36 of the Act, the submission made by Shri Phadkar cannot be accepted."

12. In a case *Nanasaheb Dhondiram Mundhe Vs. Additional Collector and others*, reported in *2010(4) Bom.C.R. 823*, it is held that unless sufficient cause is shown by Sarpanch and Upa-Sarpanch for holding less than required number of Gram Sabhas disqualification would follow.

13. In a case *Salimbi Mubarak Tamboli Vs. State of Maharashtra*, reported in *2019(3) Bom.C.R. 572*, this Court Ravindra V. Ghuge, Justice had an occasion to deal with two issues (a) Whether the Gram Sevak 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 ? (b) Whether negligence or laxity on the part of the Gram Sevak 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 Gram Panchayat monthly meetings ?

14. It is held that the Sarpanch is the only person who shall be responsible for convening such monthly meetings and in paragraph No.25 following observations have been made :

“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.”

15. In a case *Pralhad Bhikaji Bargaje Vs. State of Maharashtra and others*, reported in *2017 (3) Bom.C.R. 304*, this Court has held that the holding of Gram Sabha meetings is mandatory under Rules. The petitioner Sarpanch has failed to show record that meetings were called or attempt was made to hold adjourned meeting. The burden to show that there was sufficient cause for not holding the meetings, was on the petitioner.

16. In the instant case, the learned Collector has not referred any cause / explanation for not conducting Gram Sabha and Mahila Gram Sabha meetings by respondent No.3-Sarpanch. Admittedly respondent No.3-Sarpanch has not conducted one monthly meeting of the financial year 2017-2018, however, the learned Collector has not even mentioned about it, in its impugned order. Furthermore, in the case cited above, *Salimbi Mubarak Tamboli (Supra)*, this Court has taken a view that the Sarpanch alone is responsible for conducting the monthly

meetings and as such there was no reason for respondent No.3 Sarpanch for not conducting the meetings for the reason that the inquiry was being conducted against the Gram Sevak on the basis of the complaint filed by her. Thus, the views expressed in the cases relied upon by the learned counsel for the petitioners, squarely applies to the facts and circumstances of the present case. The learned Collector has failed to exercise his jurisdiction in terms of the provisions of the Maharashtra Village Panchayats Act, 1959. In view of the same, the writ petition deserves to be allowed. Hence, I proceed to pass the following order :

ORDER

- (i) Writ Petition is hereby allowed in terms of prayer clause 'C'.
- (ii) Writ Petition is accordingly disposed off.

(V. K. JADHAV, J.)

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vmk/-