

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

WRIT PETITION NO.2135 OF 2022

Radhabai w/o Gangadhar Jogewar
Age: 55 years, Occu.: Sarpanch
of Grampanchyat Ghungrala,
R/o- Ghungrala, Tq. Naigaon,
District- Nanded.

... Petitioner

Versus

- 1) The Collector, Nanded
Tq. & District- Nanded
- 2) The Grampanchyat Ghungrala
Tq- Naigaon, District- Nanded
Thorough the Gramsevak
- 3) Kishan s/o Apparao Sugave
Age- Major, Occ.- Agri,
R/o – Ghungrala,
Tq- Naigaon, District- Nanded

... Respondents

...

Mr. P. P. Mandlik, Advocate for Petitioner
Mr. K. S. Patil, AGP for Respondent Nos. 1 and 2 – State
Mr. V. D. Salunke h/f Mr. U. B. Deshmukh, Advocate for Respondent
No.3

...

CORAM : NITIN B. SURYAWANSHI, J.

**RESERVED ON : 23rd FEBRUARY, 2022
PRONOUNCED ON : 30th MARCH, 2022**

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally by the consent of the parties.
2. This petition is directed against the order dated

09-02-2022, passed by the Collector, Nanded, in file No.2021/JB/DESK/1/GramPanchayat Decision/Appeal/CR-151, thereby disqualifying the petitioner from continuing as Sarpanch of Gram Panchayat Ghungrala.

3. Respondent No.3 filed application under Section 36 of the Maharashtra Village Panchayat Act, 1958 (For short, 'the Act, 1958'), before the Collector, Nanded, seeking removal of petitioner from the post of Sarpanch for not taking monthly meeting of August, 2021. The Collector, Nanded by issuing notice dated 17-11-2021 called upon the petitioner to appear in the matter. The petitioner appeared and denied the allegations in the application by filing a detailed reply. In the reply the petitioner contended that the application is filed due to political rivalry. The petitioner has filed written complaint against the Up-Sarpanch and six other members of Gram Panchayat, Ghungrala, before the Collector and the present application under Section 36 is filed as a counter blast to the same. In August, 2021, due to medical reasons the petitioner could not conduct the meeting. The petitioner had informed the Gramsevak that she is not well and requested Gramsevak to ask Up-Sarpanch to call and conduct the meeting in her absence. The Gramsevak by letter dated 26-08-2021 addressed to the Up-Sarpanch requested him to call and conduct the monthly meeting of August, 2021. The Up-Sarpanch refused to accept the said letter/notice in the presence

of two Panchas. It was the duty of Up-Sarpanch to conduct meeting in absence of Sarpanch. However, he has failed to do so. The petitioner, therefore, prayed for rejection of the application filed by respondent No.3.

4. In his report the Block Development Officer has stated that the petitioner has failed to conduct monthly meeting of August, 2021. The Collector, by the impugned order held that the petitioner deliberately failed to conduct monthly meeting of August, 2021 and therefore, disqualified the petitioner.

5. Heard the learned advocate for petitioner, the learned advocate for respondent No.3 and the learned Assistant Government Pleader for respondent – State.

6. The learned advocate for petitioner strenuously submits that the impugned order is unsustainable as in the notice issued to the petitioner no specific charge is disclosed against her. The allegation against the petitioner is that the monthly meeting of August, 2021, was not conducted by the petitioner, however, in the impugned order the collector has referred to 'Gramsabha' which shows non-application of mind on the part of the Collector. By relying on decision of the Coordinate Bench of this Court in ***Shubhangi Anil Gawande and Another***

Vs. Additional Collector and Others, reported in **2010 (2) Mh.L.J. 368**, the learned advocate contends that, in terms of Section 36 of the Act, 1958, Sarpanch or Up-Sarpanch have to convene monthly meeting and not convening such meeting without sufficient cause incurs disqualification. The said provision clearly shows that something more than not convening meeting has to be brought on record to incur disqualification. Even if Sarpanch or Up-Sarpanch have not set up a plea, Collector has to make inquiry and then pass orders. Mere not holding the meeting is not sufficient ground to incur disqualification as per the ratio of this judgment and since in the present case the disqualification is ordered only because one meeting of August, 2021 is not held, the impugned order suffers from non-application of mind and the same is liable to be quashed and set aside. He, therefore, submits that the writ petition deserve to be allowed by setting aside the impugned order.

7. The learned advocate for respondent No.3, on the other hand, submits that complaint is specific that the petitioner failed to convene monthly meeting of August, 2021. The petitioner has filed detailed reply to the said complaint and hence, there is no substance in the first ground of challenge that the notice does not disclose specific charge against the petitioner. He further submits that the Block

Development Officer's report is specific that no monthly meeting was held in August, 2021. According to him, merely because inadvertently word 'Gramsabha' is typed at two places in the impugned order that by itself does not render the impugned order unsustainable. It is a technical/typographical error in the impugned order. By relying on the Maharashtra Village Panchayat Act and Meeting Rules (for short, 'the Rules'), he submits that it is mandatory that in previous meeting the date of next meeting has to be announced. According to him, the petitioner could have sought leave of absence as per Section 40 of the Act, 1958, but no such leave for absence was sought by the petitioner. According to him, the medical certificate is created by the petitioner in terms of Rule 7. The notice has to be affixed on the house in the presence of two members. The said procedure is not followed while serving notice on Up-Sarpanch. The petitioner was allegedly ill between 24th to 29th of August, 2021, but as per the certificate relied on by the petitioner (page No.31) she is not advised to take bed rest. The certificate only states that she was suffering from viral fever and was asked to take rest from 24th to 29th of August, 2021. The petitioner could have held the meeting on 30th or 31st of August, 2021 which the petitioner has failed to do. There is no justification given by the petitioner for not holding monthly meeting prior to 24th August, 2021.

Hence, he submits that there is no substance in the petition and the petition is liable to be dismissed.

8. The learned Assistant Government Pleader has produced the record and has supported the impugned order.

9. It is clear from the record that in the application filed under Section 36 of the said Act by respondent No.3 it is alleged that the petitioner failed to conduct monthly meeting of August, 2021. The Block Development Officer has submitted inquiry report wherein it is mentioned that as per Section 36 of the said Act, it is necessary to hold monthly meeting of Gram Panchayat once in every month and the petitioner has failed to hold the meeting of Gram Panchayat of August, 2021. The record further reveals that the Gramsevak has submitted say before the Collector stating that monthly meetings were being regularly held. In August, 2021, since the petitioner was not feeling well she informed the Gramsevak to conduct monthly meeting in the presence of Up-Sarpanch by communication dated 26-08-2021. When the Gramsevak went to give the letter dated 26-08-2021 to the Up-Sarpanch asking him to convene the monthly meeting, the Up-Sarpanch refused to accept the said letter in presence of two Panchas namely Maloji Ramji Yamalwad and Babarao Sambhaji Sugave.

10. By relying on the report of Block Development Officer the Collector has come to a conclusion that the petitioner has intentionally failed to hold monthly meeting of August, 2021 and committed default. Hence, the Collector disqualified the petitioner.

11. In ***Shubhangi Anil Gawande*** (supra), the Co-ordinate Bench of this Court held thus:

“6. The provisions of Section 36 of the Act show that the obligation to convene meeting of Panchayat is contemplated upon Sarpanch and in his absence on Upsarpanch. Disqualification accrues for not convening such meeting without sufficient cause. The finding of the Collector on question of availability of such sufficient cause has been made final. This, therefore, clearly shows that mere not holding of meeting is not disqualification and something more is required to be brought on record. The absence of meeting has to be shown as deliberate failure to hold meeting and for that purpose, it is required to be established that though meeting could have been held as required, it was not held. Thus, absence of sufficient cause for not holding the meeting is the material ingredient in the entire scheme.

7.The relevant part of application under Section 36 of the Act moved by respondents No.2 and 3 shows that the meeting for March 2006 was not called by Sarpanch or in his absence by Upsarpanch. It is pleaded that as meeting was not called, there is default. The application, therefore, does not show that though the meeting could have been called, it was not held. The absence of any justification for not holding meeting is not pleaded. Even if it is not pleaded and the collector is called upon to record a finding on the point of disqualification, section 36 of the Act requires the Collector to find out whether the meeting of March 2006 could not be held for any valid reason....”

“Legislature has given finality to the decision of Additional Collector on the question whether or not there was sufficient cause for not holding the meeting. In view of this finality, it is clear that the absence of decision on said aspect by the Additional Collector, vitiates the entire exercise undertaken by him”.

12. Applying the above ratio to the facts of the present case, it is clear that there is no averment in the application filed by respondent No.3 that the petitioner failed to hold meeting of August, 2021, without there being any sufficient cause and though the said meeting could have been called it was not held. The absence of justification for not holding the meeting is not pleaded by respondent No.3. From the impugned order it is obvious that the Collector has failed to apply his mind and has failed to ascertain as to whether it was possible to hold the meeting of August, 2021. The Collector has failed to make necessary inquiry in that behalf and to record a finding whether the meeting of August, 2021 could not be held for any valid reason. There is nothing on record to establish that though as required the meeting could have been held, it was not held. No finding is recorded by the Collector that without there being sufficient cause the meeting was not called and held. The impugned order, therefore, does not stand to the scrutiny of the ratio of the above ruling. Without there being any basis and/or reason assigned in the impugned order the collector has simply observed that the petitioner intentionally failed to hold the meeting. Thus, it is obvious

that the Collector has failed to consider the record and the factual aspects of the controversy in proper perspective. As Section 36 of the said Act gives finality to the decision of the Collector, it was incumbent on the part of the Collector to decide the question whether or not there was sufficient cause for not holding the meeting. There is non-compliance on the part of the Collector with the legal requirements of Section 36 of the said Act. For these reasons, the impugned order cannot be sustained.

13. In the result, the impugned order 09-02-2022 is quashed and set aside. The application filed by respondent No.3 before the Collector, Nanded, is hereby dismissed. The writ petition is allowed.

14. Rule is made absolute in the above terms. No costs.

(NITIN B. SURYAWANSHI, J.)