

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4193 OF 2021

Sau. Kalpana w/o Baburao Thakre
Aged about 35 years,
Occu. Agriculturist and Sarpanch,
Gram Panchayat, Nandgaon,
Tq. Mangrulpir, Distt. Washim.

}

.. Petitioners

Versus

1. Ravindra s/o Baliram Bhagat
Aged about 39 years,
Occ.: Member, Gram Panchayat,
Nandgaon, R/o. Chincholi,
Tq. Mangrulpir, Distt. Washim.
2. Secretary, Gram Panchayat,
Nandgaon, R/o. Nandgaon,
Tq. Mangrulpir, Distt. Washim.

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.. Respondents

3. Collector, Washim,
Tq. & Distt. Washim.

4. Gram Panchayat, Nandgaon,
Tq. Mangrulpir, Distt. Washim,
Through its Secretary.

Mr. D.R. Khapre, Advocate for petitioner.

Mr. A.R. Deshpande, Advocate for respondent No.1.

Mr. K.L. Dharmadhikari, AGP for respondent No.3.

CORAM : MANISH PITALE, J.

DATED : 27.04.2022.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard finally
with the consent of the learned counsel appearing for the rival parties.

(2) By this writ petition, the petitioner has challenged order dated 23.09.2021, passed by the respondent No.3 – Collector, Washim, under Section 36 of the Maharashtra Village Panchayat Act, 1958, whereby the petitioner as the elected Sarpanch of Gram Panchayat, Nandgaon, has been disqualified, due to failure to hold meetings of the Gram Panchayat at least once a month.

(3) This Court, while issuing notice in the present writ petition on 21.10.2021, passed interim order in favour of the petitioner, as a result of which she has continued on the said post during the pendency of the writ petition.

(4) The petitioner was elected as Sarpanch of the said Gram Panchayat in the year 2017. The respondent No.1, also an elected Member of the said Gram Panchayat, filed an application and initiated proceedings under Section 36 of the aforesaid Act against the petitioner for her disqualification, on the ground that she had failed to conduct meetings of the Gram Panchayat at least once in every month during the period between March, 2020 to October, 2020. It was claimed that a meeting ought to have been held at least once in a

month in terms of Rule 3 of the relevant Rules.

(5) It was further submitted that there was no sufficient cause shown for failure on the part of the petitioner to hold such meetings and therefore, she had invited disqualification as contemplated under Section 36 of the said Act. The petitioner appeared before the respondent No.3 – Collector and opposed the said application. The parties relied upon various documents.

(6) The respondent No. 3 - Collector called for a report from the Block Development Officer of the Panchayat Samiti, Mangrulpir. The report drew adverse inferences against the petitioner. The respondent No. 3 - Collector took into consideration the aforesaid report and material on record and concluded that monthly meetings were indeed not held during the said period and that therefore, the petitioner invited disqualification under Section 36 of the said Act. Accordingly, the application filed by respondent No.1 was allowed and the petitioner was held to be disqualified to hold the elected post of Sarpanch of the said Gram Panchayat.

(7) Mr. D.R. Khapre, learned counsel appearing for the petitioner vehemently submitted that the impugned order was unsustainable as it was casually passed by respondent No.3 – Collector, without appreciating the drastic consequences on the petitioner, who held the elected post of Sarpanch of the Gram Panchayat. It was submitted that persons democratically elected cannot be unseated in a casual manner.

(8) It is further submitted that the material placed on record on behalf of the petitioner belied the conclusions rendered in the report of the Block Development Officer and that the Collector ought not to have relied on the said report. It was submitted that sufficient cause was indeed demonstrated for not being able to hold the meetings and that therefore, the respondent No.3 – Collector ought not to have exercised power under Section 36 of the said Act to disqualify the petitioner. Reliance was placed on the judgment of this Court in the case of *Shubhangi Anil Gawande and anr. Vs. Additional Collector, Amravati and Ors. 2010 (2) Mh.L.J. 368.*

(9) Mr. A.R. Deshpande, learned counsel appearing for the contesting respondent No.1 submitted that the respondent No.3 – Collector in the present case, correctly found that, not only was the petitioner responsible for having failed to conduct meeting for the month of October, 2020 but, the petitioner was found to have failed in conducting meetings of the Gram Panchayat at least once a month between March, 2020 and July, 2020, without sufficient cause. It was submitted that the material on record was properly appreciated to render findings against the petitioner. Apart from this, the learned counsel for respondent No.1 relied upon the documents filed along with reply placed before this Court on behalf of the said respondents. By inviting attention of this Court to copies of the attendance register and the details pertaining to the meetings for the months of August, September and October, it was contended that when the documents received by the respondent No.1 from the Gram Panchayat were compared with the copies of the documents on which the petitioner relied before the respondent No.3 – Collector as well as this Court, it was evident that there were manipulations and over-writing. This indicated that the petitioner not only tried to mislead respondent No.3 during the proceedings under Section 36 of the said Act, but this Court

has also sought to be misled by such manipulations. It was submitted that therefore, the present writ petition ought to be dismissed on this ground also.

(10) This Court has considered the rival submissions in the backdrop of the material placed on record. In the aforesaid judgment in the case of *Shubhangi Anil Gawande (supra)* this Court in paragraph 6 has held as follows:

“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.”

(11) It is evident that from the aforesaid position of law that absence of sufficient cause for failure to hold meetings is indeed the material ingredient in the scheme contemplated under Section 36

of the said Act. Therefore, it is not only necessary to demonstrate that there was indeed a failure to hold at least one meeting in every month but, it has to be demonstrated that such failure to hold meeting was without sufficient cause.

(12) In the present case, the impugned order shows that the respondent No.3 – Collector has heavily relied upon the report submitted by the Block Development Officer. After referring to the said report, the respondent No.3 appears to have agreed with the recommendations in the said report that the petitioner had failed to hold meetings at least once in a month without sufficient cause between March, 2020 to July, 2020 and also for the month of October, 2020. The respondent No.3 - Collector recorded that the Block Development Officer correctly rendered adverse findings against the petitioner, because there was no Government Circular to show that even for the period between March, 2020 to July, 2020, the meetings ought not to be held due to the Covid-19 Pandemic. As regards failure to hold meeting for the month of October, 2020, there does not appear to be any detailed discussion in the backdrop of the attendance registers and other such material produced on record by the rival parties.

(13) This Court is of the opinion that the respondent No.3 – Collector committed a grave error in agreeing with the report submitted by the Block Development Officer, insofar as the period between March, 2020 to July, 2020, was concerned. Due to the onset of the Covid – 19 Pandemic, lock-down had to be imposed in March, 2020. The situation pertaining to the said Pandemic continued to be serious and many activities, including even Court sittings could not take place due to periodic directions issued by the Government in order to curtail the spread of the Covid-19 virus. In such a situation, the respondent No.3 – Collector could not have held against the petitioner for the period between March, 2020 to July, 2020, only on the ground that there was no Circular issued by the Government that meetings of the Gram Panchayat need not be held in the backdrop of the Covid -19 Pandemic. The aforesaid reason is wholly unsustainable.

(14) This Court is of the opinion that the respondent No.3 – Collector himself being a senior functionary in the Government machinery, ought to have realized the seriousness of the situation during the Covid-19 Pandemic and absence of such a Circular could not have been a ground to hold that the petitioner was at fault for

having failed to conduct at least one meeting in a month for the said period when the Covid-19 Pandemic was raging. On the contrary, if such meetings were insisted upon, perhaps appropriate action would have been warranted against the persons responsible for holding such meetings. Therefore, at least for the period between March, 2020 to July, 2020, the findings rendered in the impugned order are wholly unsustainable.

(15) In this situation, the question of failure to hold meeting at least once a month stands limited only for the month of October, 2020. As regards the failure to hold meeting at least once in the said month, the petitioner has relied upon the attendance register and other such documents before this Court. If the contents of the said documents are to be appreciated, it would be this Court for the first time appreciating such material to render findings either for or against the petitioner. The impugned order shows that the respondent No.3 – Collector failed to examine such material in detail as regards the alleged failure on the part of the petitioner to hold a meeting of the Gram Panchayat at least once in the month of October, 2020.

(16) The serious allegations of manipulations made on behalf of respondent No.1, against the petitioner have given a different colour to the present controversy. But, any pronouncement on the same would have to be rendered by the respondent No.3 – Collector, on the basis of material that may be placed on record by the rival parties. The contentions sought to be raised on behalf of respondent No.1 as regards alleged manipulations of the records, were not raised before the respondent No.3 – Collector and that was indeed not a factor taken into consideration by the respondent No.3, while examining as to whether the petitioner had indeed made out sufficient cause to explain as to why meeting could not be held at least once in the month of October, 2020.

(17) Therefore, this Court is inclined to partly allow the present writ petition and to remand the matter back to the respondent No.3 – Collector, for fresh consideration on the basis of material that may be placed on record by the rival parties, only in respect of alleged default to hold even one meeting during the month of October, 2020.

(18) In view of the above, the writ petition is partly allowed. The impugned order is quashed and set aside. The matter is sent back to respondent No.3 – Collector for fresh consideration.

(19) It is made clear that the question as to whether the petitioner invited disqualification under Section 36 of the said Act, would be examined by respondent No. 3 – Collector only in respect of alleged failure to hold meeting at least once during the month of October, 2020. This Court has already found that no fault could be attributed to the petitioner for failure to hold meetings at least once in a month between March, 2020 to July, 2020.

(20) The parties will be at liberty to file further affidavits and documents in support of their respective stands within a period of two weeks of appearance before the respondent No.3 – Collector. The parties shall appear before the respondent No.3 – Collector on 05.05.2022.

(21) The respondent No.3 – Collector shall endeavour to dispose of the proceedings initiated by respondent No. 1, in the light of

the above observations, as expeditiously as possible and in any case within a period of three months from the aforesaid date when the parties appear before the respondent No.3 – Collector.

(22) Rule is made absolute in above terms. No costs.

[MANISH PITALE J.]

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