

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

WRIT PETITION NO.9427 OF 2022

Shri. Manohar s/o. Dnyaneshwar Pote,
Age: 27 years, Occu : Agriculture,
R/o. Gundwadi, Tq. & Dist. Jalna. .. **PETITIONER**

VERSUS

- 1] The Collector, Jalna,
Tq. & Dist. Jalna.
- 2] The Gramsevak,
Grampanchayat Office Gundewadi,
Tq. & Dist. Jalna.
- 3] Shri. Sahebrao s/o. Balwanta Pote
Age: 72 years, Occu : Agriculture,
R/o. Gundewadi, Tq. & Dist. Jalna. .. **RESPONDENTS**

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Mr.Aniruddha A. Nimbalkar, Advocate for the petitioner.
Mr.G.O.Wattamwar, AGP for the respondent-State
Mr.D.P.Munde, Advocate for the respondent no.2
Mr.S.G.Kawade, Advocate for the respondent no.3.

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CORAM : ARUN R. PEDNEKER, J.

Reserved on : 02.02.2023.
Pronounced on : 24.02.2023

JUDGMENT :

- 1] Rule. Rule made returnable forthwith and heard finally.

2] The petitioner is challenging the order dated 08.09.2022 passed by the respondent no.1 – Collector, Jalna under section 7 read with 16 of the Maharashtra Village Panchayats Act, 1958 [for short ‘the 1958 Act’], and thereby disqualifying the petitioner as a member and Sarpanch of village Panchayat, Gundewadi, Taluka & District, Jalna, for not conducting at least four meetings of the Gram Sabha in the financial year.

Brief facts leading to filing of the petition can be summarised as under :

3] The petitioner is a Sarpanch of Grampanchayat, Gundewadi. The respondent no.3 filed an application to the Collector, respondent no.1, seeking disqualification of the petitioner under Section 7 read with 16 of the 1958 Act, on 22.10.2021. It was contended in the said application that the applicant has not attended any meeting of the Gram Sabha and as such the petitioner should be disqualified from holding the post of the Sarpanch and also from his membership of the village panchayat for not holding four

meetings of Gram Sabha in the financial year. Pursuant to the said application, the respondent no.1 – Collector, Jalna, by letter dated 30.12.2021, issued notice to the petitioner. On 11.05.2022, the respondent no. 2 – Gramsevak, Village Panchayat, Gundewadi submitted his report in the office of the respondent no.1 - Collector. Vide its say dated 14.06.2022, the petitioner submitted that he has conducted Gramsabha meetings and that there was a delay in taking meeting in the beginning of the year, on account of Covid-19 pandemic and the various prohibitory orders being passed under Section 144 of the Criminal Procedure Code by the Collector, Jalna, himself.

4] By order dated 8th September, 2022, the respondent no.1 – Collector, Jalna disqualified the petitioner for violation of mandate of Section 7 [1] of the 1958 Act. The Collector held that the petitioner has conducted consecutive meetings in short period without explanation for the same and has also not held one of the meeting at the beginning of the financial year within first two months.

Submissions :

5] The learned counsel for the petitioner submits that time of the election, covid-19 pandemic was prevalent and that there were Government Circulars and prohibitory orders passed by the respondent no.1 in force. The Government Circular was issued on 12th May, 2020 under the Disaster Management Act wherein it was directed that in view of the prevalent pandemic situation there shall be a stay to conducting of Gram Sabhas as per Section 7 of the Maharashtra Village Panchayats Act. This Circular was in force for a period of one year, which was again extended further. It is further contended that the respondent no.1 – Collector of the Jalna District had also issued prohibitory order under Section 144 from 05.04.2021 to 15.06.2021.

6] The petitioner submits that he conducted the requisite minimum four [4] Gram Sabhas. The first Gram Sabha meeting was held by the petitioner on 03.09.2021. The second Gram Sabha meeting was held on 16.11.2021. The third Gram Sabha meeting was fixed on 26.11.2021 but

the same was postponed to 30.11.2021 and the fourth Gram Sabha meeting was held on-line on 26.01.2022, in view of the direction issued by the Deputy Chief Executive Officer [Panchayat], Zilla Parishad, Jalna to conduct the meeting of Gram Sabha on-line on 26.01.2022.

7] The petitioner submits that he has conducted requisite number of meetings within the relevant financial year after the prohibitory orders were lifted. The Act of 1958 does not contemplate nature and manner in which the meetings are to be conducted except that there has to be not more than four months gap in between two meetings.

8] The learned counsel further submits that even if it is held that the meetings are not conducted as per the provisions of the Act of 1958 unless there is *mala fide* reasons for not doing so, the petitioner cannot be removed from his office for mere violation unless there are exceptional circumstances.

9] The learned counsel for the respondent no.2, who supports the petitioner, submits that the notice issued by the Collector, Jalna dated 30.12.2021 in the application filed by the respondent no.3, does not specify the charge and is bad in law, in view of the judgment of this Court in the case of **Sunil Daulat Patil Vs. The State of Maharashtra & others** in Writ Petition No.3419 of 2023, decided on 04.12.2013 at paras 13 to 18 wherein it is held that the charges have to be specific, in absence of which, the notice is bad in law and the subsequent proceedings are also bad in law.

10] The learned counsel further submits that the requirement of the meeting to be held within first two months of the financial year is contemplated in the Rules and not in the Act and violation of the Rule cannot lead to disqualification. The learned counsel for the respondent no.2 relies upon the judgment in the case of **Pratibha Sanjay Hulle Vs. Additional Collector & ors.** reported in **2010 (4) Bom.C.R. 700** at paras 4, 5 and 6 wherein it is held that no

penal action can be initiated for violation of the rules if there is no provisions for the same in the Statute.

11] The learned counsel for the respondent no.3 submits that in the reply of the petitioner before the Collector no dates are mentioned of the meetings and therefore there were no meetings conducted by the petitioner and that the petitioner has created bogus record to show the meetings were held and as such the petitioner should be disqualified.

Consideration and conclusions :

12] The relevant provisions i.e. section 7 (1) and 16 of the Maharashtra Village Panchayats Act, 1958 are quoted 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 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.]

16. Disability from continuing as members. -

(1) If any member of a panchayat, -

(a) who is elected or appointed as such, was subject to any of the disqualifications mentioned in Section 14 at the time of his election or appointment, or

(b) during the term for which he has been elected or appointed, incurs any of the disqualifications mentioned in Section 14,

he shall be disabled from continuing to be a member, and his office shall become vacant.

(2) [If any question whether a vacancy has occurred under this section is raised by the Collector suo motu or on an application made to him by any person in that behalf, the Collector shall decide the question as far as possible within sixty days from the date of receipt of such application. Until the Collector decides the question, the member shall not be disabled under sub-section (1) from continuing to be a member.] Any person aggrieved by the decision of the Collector may, within a period of fifteen days from the date of such decision,

appeal to the State Government, and the orders passed by the State Government in such appeal shall be final :

Provided that no order shall be passed under this sub-section by the Collector against any member without giving him a reasonable opportunity of being heard.

13] Having heard the rival submissions of both parties. It is to be noted that the requirement of Section 7 of the 1958 Act is that there has to be at least four meetings in the financial year. In the present case, we are concerned with the financial year i.e. 1st April, 2021 to 31st March, 2022. The petitioner was appointed as Sarpanch on 12.02.2021. The record indicates that first meeting of Gram Sabha was held on 03.09.2021. The record further indicates that the Gramsabha meeting dated 16.11.2021 was conducted as a special meeting. Thereafter, the next Gramsabha meeting was scheduled on 26.11.2021, however, on account of lack of requisite quorum, the said meeting was postponed and the said meeting was held on 30.11.2021. Thereafter, the meeting was held online on

26.01.2022 on account of direction issued by the authority to hold on-line meeting.

14] As per the Government Circular dated 12th May, 2020 issued under the Department of Revenue and Forest, Disaster Management, Relief and Rehabilitation, the meetings of Gram Sabha were directed to be stalled until further orders or for a period of one year.

15] The learned counsel for the petitioner has submitted that this order dated 12.05.2020 was again continued. It appears from the record that from 5th April, 2021 the Collector, Jalna, had issued the orders under Section 144 of the Code of Criminal Procedure in the entire Jalna District and the same were extended up to 15th June, 2021. The requirement of law under Section 7 (1) of the 1958 Act is that there has to be four [4] meetings in the financial year and that there should not be a gap of more than 4 months between the meetings.

16] The law on the subject i.e. disqualification of an

elected member for not complying mandatory provisions is dealt with in the cases of **Ravi Yashwant Bhoir Vs. District Collector, Raigad and others** reported in [2012] 4 SCC 407, **Gangabai Vithal Bade Vs. State of Maharashtra & ors.** Reported 2013 [3] Bom.C.R. 277 and **Sunil Daulat Patil Vs. The State of Maharashtra & others** in Writ Petition No.3419 of 2013, decided on 04.12.2013. The Hon'ble Supreme Court in the case of **Ravi Yashwant Bhoir Vs. District Collector, Raigad and others** reported in [2012] 4 SCC 407 has held at para nos.35, 36 and 37 as under:

35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his

removal (vide Jyoti Basu v. Debi Ghosal, Mohan Lal Tripathi v. District Magistrate, Rae Bareilly and Ram Beti v. District Panchayat Raj Adhikari].

36. *In view of the above, the law on the issue stands crystallised to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency / electoral college is also deprived of representation by the person of their choice.*

37. *A duly elected person is entitled to hold office for the term for which he has been elected and he can be removed only on a proved misconduct or any other procedure established under law like “no confidence motion”, etc. The elected official is accountable to its electorate as he has been elected by a large number of voters and it would have*

serious repercussions when he is removed from the office and further declared disqualified to contest the election for a further stipulated period.

17] This Court in the case of **Gangabai Vithal Bade Vs. State of Maharashtra & ors.** Reported 2013 [3] Bom.C.R. 277, it has been held at paras 4 and 5, as under:-

4. No doubt, provisos of section 7 provided various other requirements of Gram Sabha meetings. In addition to section 7, there are rules made for providing procedure etc. of Gram Sabha meetings. Section 7 on the whole read with rules indicates that a Sarpanch or in his absence Upsarpanch should at least hold six meetings of Gram Sabha every financial year. Proviso and rules provided inter alia that maximum period of three months is permitted between two meetings of Gram Sabha. Sub-section (5) of section 7 further provides that meeting of women members of Gram Sabha should be held before the regular meeting of Gram Sabha. In addition to this, prescribed rules, namely, Bombay Village Panchayats Rules, 1959 further enjoins a Sarpanch to hold first meeting of Gram Sabha of every financial

year within two months from the commencement of the year and second should be held in November every year. They further provide that Gram Sabha meeting should be held also in August and January of every year. In my view, since the rule in respect of disqualification is mentioned in sub-section (1) and since it is a penal provision, strict construction is required to be given to it. Sub-section (1) clearly lays down a rule that only in case of failure to hold six Gram Sabha meetings, the Sarpanch would incur disqualification. Other requirements of meeting are not included in sub-section (1) and so in case of non observance of other requirements penal consequence of disqualification is not incurred. In other words, if six meetings are held in one financial year, but they were not held as per remaining provisions contained in section 7 or in the rules, a Sarpanch may not incur disqualification.

5. *Second point that arose in this case is whether the petitioner / sarpanch incurred disqualification in case he did not give notice of meetings. Learned Assistant Collector held that because of want of notice, he incurred*

disqualification. The rules provided that sarpanch is responsible for giving seven days notice of each Gram Sabha meeting. It is observed that seven days notice for meetings was not given by the petitioner. The learned Assistant Collector held that because of this lapse the petitioner would incur disqualification. I am not in agreement with this ruling also. I would place reliance only on subsection (1) of section 7 when I would examine whether the petitioner incurred disqualification. As said above, other lapses or infringement of other rules and provisos, in my view will not incur drastic result of disqualification. The petition, therefore, should succeed on merit. The impugned order stands set aside.

18] In the case of **Sunil Daulat Patil Vs. The State of Maharashtra & others** in Writ Petition No.3419 of 2013, decided on 04.12.2013 held at para nos.14 and 15 :

14. Upon careful perusal of the contents of the notice, which was issued to the petitioner under Sections 7 and 36 of the said Act, it is abundantly clear that there is no mention of any specific charges-points, which are required to be answered by

*the petitioner. This Court in the case of **Pratiba Sanjay Hulle Vs. Additional Collector & others** reported in **2010(4)Bom.C.R.700**, more particular, in para No. 36 held that, 'to enable Sarpanch to raise proper defence and explain sufficient cause for his failure to perform any statutory function, he must be informed essentially as regards his failure meaning thereby he must be communicated the specific charges.'*

15. In the facts of that case, the allegation was that the petitioner therein i.e. Sarpanch, did not perform his statutory obligation as envisaged under Sections 7 and 36 of the said Act. This Court taking into consideration the fact that the specific charges were not communicated to the petitioner therein, held that enquiry and the order passed against the petitioner therein is vitiated.

19] Thus, from the judgments quoted above, it is made clear that an elected member is to be removed in exceptional circumstances and that he has to be explained the specific charge against him and also the elected member

should be given an opportunity to explain sufficient cause for his failure to perform statutory duty. Mere non-performance of the statutory duty would not disqualify the elected member unless he is not able to give a good reason for non-performing of the statutory duty. Thus, non-performance of statutory duty does not lead to automatic disqualification.

20] In the instant case, the petitioner has held four [4] meetings of Gram Sabha after lifting of the prohibitory orders under the Disaster Management Act and prohibition under Section 144 of the Criminal Procedure Code and thus he has not violated provisions of Section 7 of the 1958 Act, which contemplates that there has to be four meetings every financial year and that there should not be a gap of more than four months in between two meetings. The petitioner has indisputably held meetings on 03.09.2021, 16.11.2021, 30.11.2021 and on-line meeting on 26.01.2022.

21] In view of the fact that I hold that the petitioner has complied with the Section 7 of the 1958 Act it is not

necessary for me to go into the issue of notice being served without specific charges.

22] The Collector by the impugned order has held that there was no reason given for holding consecutive meetings, however, the Act does not contemplate holding of meetings in a particular way. The requirement of law is that in the financial year there has to be at least four meetings of the Gram Sabha and that gap in between meetings should not be more than 4 months. Even otherwise excluding period of covid-19 whereby the State had directed not to hold the meetings of Gram Sabha and that the various prohibitory orders are passed under Section 144 of Code of Criminal Procedure, placing restrictions on holding meetings up to 15th June, 2021, the petitioner has complied with the provision of holding of Gram Sabha meetings as contemplated in the Act.

23] In view of this, the Writ Petition is allowed. The impugned order dated 08.09.2022 passed by the respondent no.1 – the Collector, Jalna is quashed and set aside.

24] Rule is made absolute in above terms.

Accordingly, the Writ Petition is disposed of.

[ARUN R. PEDNEKER]
JUDGE

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