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wp1123.23

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

WRIT PETITION NO.1123 OF 2023

Dnyaneshwar Ravan Gavate,
Age-32 years, Occu-Agriculture,
and Sarpanch of Village Panchayat
R/o. Penure, Tq. Loha,
Dist. Nanded

...PETITIONER

VERSUS

1. The Collector, Nanded,
Dist. Nanded
2. Village Development Officer,
Age-major, Occu-Service,
Gram Panchayat Office,
Penur, Tq. Loha, Dist. Nanded
3. Babarao Nivruttirao Gavate,
Age-51 years, Occu-Agriculture,
R/o. Penur, Tq. Loha,
4. Block Development Officer,
Panchayat Samiti, Loha,
Dist. Nanded
5. Kondiba Buddhiram Farkandkar,
Age-62 years, Occu-Agriculture and
Upsarpanch of Village panchayat,
Penur, R/o. Penur, Tq. Loha,
Dist. Nanded.

...RESPONDENTS

Mr. Umakant B. Deshmukh, Advocate for the petitioner
Mr. P. D. Patil, AGP for the respondent No.1
Mr. M. P. Kale, Advocate for respondent No.3
Mr. S. B. Pulkundwar, Advocate for respondent No.4

CORAM : KISHORE C. SANT, J.
RESERVED ON : 07th OCTOBER, 2024
PRONOUNCED ON : 19th NOVEMBER, 2024

P. C.

1. The petitioner has approached this court challenging the judgment and order dated 12-01-2023 passed by the learned Collector, Nanded in File No. 2022/G.B./Desk-1 GPN/Appeal-201 holding the petitioner disqualified under Sections 7 and 36 of the Maharashtra Village Panchayat Act, 1958. The petitioner was elected as a member of Grampanchayat Penur, Tq. Loha, Dist. Nanded and further as a Sarpanch by the members.

2. Respondent No.3 had approached the Collector, Nanded by filing the Grampanchayat Dispute bearing No. 201 of 2021 alleging that the Sarpanch- present petitioner and respondent No.5 namely Kondiba who was working as a Up-

Sarpanch did not hold the meetings of the Grampanchayat as required under Section 7 of the Maharashtra Village Panchayat Act ('M.V.P. Act' for short). It is alleged that the Sarpanch and Up-Sarpanch failed to conduct four Gramsabha meetings in a year. They did not hold even Special Gramsabha meetings. They further failed to hold the special gramsabha meeting for women. There are no development schemes implemented in the village etc.

3. The learned Collector, called for report from the Block Development Officer. The Block Development Officer submitted a report. In the report, it is recorded that though the meetings were held, however, no business was transacted in the meetings held in the month of March, 2021 and May, 2021. About the meetings in respect of budget, though it was held it was not held by following covid protocol. Conclusion is drawn that the meetings though were held those were not held by strictly adhering to the rules.

4. The Sarpanch and Up-sarpanch appeared and filed their say in the proceedings. It is their case that they held the special meeting as required under the law on 12-02-2021 under the orders of the learned Collector. On 30-03-2021 though the meeting was called, however, members of the Gramapanchayat did not attend the said meeting due to Covid-Pandemic. On 28-04-2021 again the members left the meeting because of Covid Pandemic. The Sarpanch however, still hold the meetings. It is stated that such monthly meetings were held on 18-06-2021, 28-07-2021 & 28-08-2021, 29-09-2021, 30.10.2021, 27-11-2021, 05-01-2022, 29-01-2022, 28-02-2022, 30-03-2022. Only meeting dated 30-10-2021 was required to be postponed because of model code of conduct. Further meeting was held on 08-07-2021. Similarly meeting dated 29-12-2021 was not held for want of corum. However, same was conducted later on, on 05-01-2022. They denied the conclusion arrived at in the enquiry report submitted by the Block Development Officer. About the meetings in the month of March-April, 2020 because of the covid-pendamic same was not held because of Nation

wide lockdown. After the lockdown was over meetings were held by following covid protocol on 30-08-2021, 08-09-2021 02-10-2021, 29-11-2021, 09-12-2021, 26-01-2022 and 07-03-2022. It is submitted that about holding of the meetings there is nothing adverse to the Sarpanch and Up-Sarpanch in the report. Only conclusion is that those were not held by strictly adhering to the rules.

5. After considering the report and the say of the petitioner and respondent No.5, the learned Collector held that though the meetings were held however, those were not in accordance with the rules. The learned Collector was pleased to allow the dispute filed by the respondent No.3.

6. The learned advocate for the petitioner vehemently argued that elections took place in the Month of February, 2021. The Sarpanch was elected in February, 2021. Dispute is raised on 21-12-2021. From the dispute it is clear that there are no specific allegations made against the Sarpanch and Upsarpanch. Notice sent by the learned Collector was also not

specific. No specific charges are mentioned in the notice. The charges ought to have been framed and communicated by the learned Collector in the notice. The report of the Block Development Officer also clearly shows that Sarpanch had in fact hold the meetings. The only allegations as per the report is that the meetings were not held by following the rules in strict sense. However, there is no specific violation of any of the rules is shown. Reasoning of the learned Collector is also very vague. The report by the Block Development Officer clearly shows on extraneous consideration even the learned Collector has given vague reasons while passing the order. The learned Collector did not consider the defense of the petitioner and respondent No.5. He, thus, prays to allow the petition by setting aside the impugned judgment and order.

7. Mr. Kale, learned advocate for respondent No.3 original disputant opposed the petition. He submits that the Block Development Officer's report is clear in respect of meetings. The report shows that though the meetings were held on 21st March, & 21st May, 2021 and though the members were present, no business was transacted. No

mandatory rules were followed in the meetings. He, thus, prays for rejection of the petition.

8. Mr. Deshmukh, learned advocate for the petitioner relied upon judgment reported in 2013 (3) Bom. C.R. 277 in the case of Gangabai Vithal Bade Vs State of Maharashtra and others, Writ Petition No.992/2017 Gangabai Namdev Gawalwad Vs the Additional Collector, Nanded, Writ Petition No.2971/2017 Padminibai Narsing Panchal Vs the Additional Collector, Nanded, Writ Petition No.3419/2013 Sunil Daulat Patil Vs State of Maharashtra and others, Writ Petition No.8668/2015 Laxmibai Yadavrao Panchal Vs the Additional Collector, Nanded and others. He also relied upon circular dated 21-11-1989 issued by the Joint Secretary, Village Development Department, State of Maharashtra. The circular is in respect of manner of conducting enquiry by the Collector. It prescribes that the Collector shall consider the explanation given for not holding gramsabha and whether it is sufficient and satisfactory. The BDO needs to ensure as to whether sufficient number of gramsabha are held within a year.

9. Mr. Pulkundwar, learned advocate supports the order.

10. This court has perused the report of the Block Development Officer. From the report it is seen that the Block Development Officer has held that in some of the meetings though corum was shown to be complete, still no business is shown to have been transacted. In some meetings it is veguly stated that meetings were not conducted in accordance with rules. However, there is no specific violation mentioned. Taking the report as it is this court does not find that it would attract any of the provision of disqualification.

11. In the case of Gangabai Bade (supra) this court considered the provision of Section 7 of the Act which requires that at least six Gramsaabha meetings be held in a year including the special meetings. It is further considered that as per said rules, it is only in the case of failure to held six meetings in a year Sarpanch incurres disqualification. It is further held that in case of non-observance of other requirements, there is no question of other penal

consequences of disqualification. It is laid down that when the meetings are held, required number of held in one financial year and even in those are not as per remaining provisions contained in section 7 or in rules the Sarpanch will not incur disqualification. Further it is held that even no notice is given of the meeting that will not incur a disqualification.

12. In the case of Sunil Patil (supra), this court considered the question of issuance of notice by the learned Collector to the Sarpanch in disqualification proceedings. In the said case, the notice only stated that at the time of hearing the petitioner therein who remained present with required documents towards evidence. It was held that such notice was not sufficient as it did not contain specific charges. It is held that not framing of charges and not communicating the charges is violation of basic principles of natural justice. In that view the petition was allowed by quashing and setting aside the order passed by the Collector holding the petitioner disqualified. In the case of Pratibha Sanjay Hulle Vs Additional Collector and others reported in 2010 (4) Bom CR this court was pleased to allow the writ petition filed by the Sarpanch

who was held to be disqualified. This court considered that notice was not specific and allowed the petition. In the case of Pralhad Bhikaji Bargaje Vs State of Maharashtra reported in 2016(6) Mh.L.J. this court held that specific charges are necessarily to be informed to the persons and the proceedings involved in the penal consequences like disqualification.

13. In the case of Manohar Dnyaneshwar Pote Vs the Collector, Jalna this court considered the petition in the light of the ground that there is no sufficient discussion about the explanation offered by the petitioner therein before the learned Collector. In that view of the matter this court allowed the petition stating that explanation was not considered and order was passed. It is also considered that the learned Collector failed to appreciate that rules provided for holding the meetings. The disqualification is for not holding the meetings. However, there is nothing to indicate that if meeting is held without following any procedure it would incur disqualification. The case of Rangnath Vs State and others is also on the same lines. There are also judgments on the similar lines. In the case of Govind Waghmare Vs Ranjit Halse

Writ Petition No. 3887/2013 this court held that from the material before the learned Collector, the petitioner therein failed to show that the findings of the learned Collector were perverse and without any material on record. In the case of Salimbi Tamboli Vs State of Maharashtra and others reported in 2019 SCC Online Bom 667, defense of the Sarpanch was that he could not conduct the monthly meetings due to non cooperation of the Gramsevak. This court held that said reason was not sufficient for not holding the meetings. In the case of Gunwantrao Deshmukh Vs State of Maharashtra reported in 1982 Bombay 295 in the the facts of the case the court did not accept the reasons assigned as sufficient reason for not holding the meetings.

14. Considering the above judgments this court finds that the judgments relied upon by Mr. Kale advocate for the respondent are not applicable to the present case. This court has already discussed the judgment cited by the learned advocate for the petitioner. This court finds that the said judgments are applicable on two counts, firstly; there is no doubt that meetings were held. The petitioner is held

disqualified for not conducting the meetings in accordance with rules. However, there is no specific violation shown. Secondly, the learned Collector did not issue a notice containing specific charges against the petitioner. The petitioner, therefore could not answer the charges specifically. Thirdly, the learned Collector has not considered the explanation offered by the petitioner as is necessary. On these three counts this court finds that the judgments are applicable to the present case.

15. One more aspect that needs to be considered in the present case is a circular dated 21-11-1989. The circular requires that the Sarpanch should be given proper opportunity to explain circumstances due to which meetings could not be convened. The Block Development Officer should ensure in the meetings as to whether the meetings were held or not. Circular would show that notice should be given to the Sarpanch with specific charges. Calling of the explanation necessarily implies that same should be considered by the learned Collector. It further provides that the Block Development Officer should ensure specifically to ascertain

about holdings of the meetings.

16. This court finds that the learned Collector failed to give specific notice with specific charges and secondly he failed to consider the explanation offered by the petitioner. As regards the report of the Block Development Officer is concerned, the Block Development Officer has categorically submitted in its report that meetings were held. It only states that no proper procedure was followed in the meetings. However it is not specifically shown as to which procedure is not followed.

17. On considering all these aspects this court has no hesitation in holding that the impugned order is illegal and deserves to be set aside. The petition, therefore deserves to be allowed. The petition is thus allowed in terms of prayer clause-B.

[KISHORE C. SANT, J.]