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59wp7290.23

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

59 WRIT PETITION NO. 7290 OF 2023

RAMESHWAR ABASAHEB BHORE

....Petitioner

VERSUS

**THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS**

.....Respondents

Mr. G. K. Kshirsagar, Advocate for the petitioner

Mr. Vaibhav B. Kulkarni, Advocate for respondent Nos. 4 and 5

Mrs. A. S. Mantri, AGP for the respondents/State

CORAM : S. G. MEHARE, J.

DATE : 08th APRIL, 2024

P. C.

1. Heard the learned counsel for the petitioner, learned APP for the respondents/State and learned counsel for the contesting respondents.

2. The petitioner was a Sarpanch at Village Panchayat Macchindanath Chincholi, Tq. Ghansawangi, Dist. Jalna. The complaint under Sections 7 & 36 of the Maharashtra Village Panchayats Act, 1958 ('the Act 1958' for short) was filed against

him for non convening three consecutive monthly meetings. It was prayed that since he failed to convene the meeting as required under the Act of 1958, he should be disqualified from continuing as a member for remaining term of office of the member of the Panchayat.

3. The learned Collector viewed that the petitioner failed to convene three meetings for the months of March to May, 2022. However, instead of disqualifying him to continue as a Sarpanch, he disqualified him to be a member of the village panchayat.

4. Learned counsel for the petitioner argued that there was a record showing that meetings were convened. However, for want of quorum those meetings could not be convened. His evidence has not been correctly appreciated and wrong conclusion has been drawn.

5. Per contra, learned AGP and learned counsel for

respondent Nos. 4 and 5 argued that there shall be no two proceedings/resolutions of the same meeting, in one proceeding book at some pages, it establish that no meetings were called and from the other pages of the same proceeding book, it shows that meeting was not convened for want of quorum. Therefore, there is a serious doubt about maintaining the proceeding book properly as required under the Act, 1958. He also argued that if the quorum is not available, the business of the meetings is transacted after sometime. However, the meeting cannot be shown not held. However, he fairly conceded that for failing to convene the monthly meeting, the elected member cannot be expelled from membership.

6. Learned counsel for the petitioner relied on the case of Tukaram Krushnaji Parve Vs State of Maharashtra and others reported in 2015 (3) MHLJ 652. In the said case, it is held that for declaring Sarpanch or Upsarpanch disqualified, the competent authority must initially has to identify whether those meetings were validly held under the categories of the monthly

meetings. Competent authority has to arrive at a specific conclusion as regards validity of the meetings. Law is well settled that not convening the meeting by the Sarpanch or Upsarpanch, as the case may, be without sufficient cause, Sarpanch or Upsarpanch shall be disqualified for continuing as Sarpanch or as the case may be Upsarpanch or being chosen at such for remained of the term office of the member of the Panchayat. However, non-convening the meeting by Sarpanch or Upsarpanch, they are not disqualified to continue as member of village panchayat.

7. In the case of Tukaram (supra) laid down the law that competent authority under Sections 7 and 36 of the Act of 1959 has jurisdiction to disqualify Sarpanch or Upsarpanch but not his membership and order of disqualification of Sarpanch will prohibit from seeking re-election to the post of Sarpanch till his term as member of the village would last.

8. Considering the law declaring Sarpanch or

Upsarpanch disqualified and member to be disqualified to continue as member, the order of the District Collector, Jalna is apparently illegal declaring the petitioner disqualified for the remaining term as member of the village panchayat. Therefore, the petition is liable to be partly allowed.

ORDER

- a] The Writ Petition stands partly allowed.

- b] The impugned judgment and order of the District Collector, Jalna in the case Outward No. jakra2022/sasha/grapani/cr-168 dated 19-06-2023 is quashed and set aside to the extent of disqualifying the petitioner to continue as a member of the village panchayat.

- c] No order as to costs.

[S. G. MEHARE, J.]