



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

WRIT PETITION NO. 1398 OF 2023

Savitrabai Maroti Nilewar,
Age 40 years, Occu. Agriculture,
and Sarpanch of Village Panchayat
R/o. Rajapur, Taluka Dharmabad,
District Nanded

.. Petitioner
(Original Respondent)

Versus

1. The Collector,
Nanded, District Nanded

2. Village Development Officer,
Age Major, Occu. Service,
Gram Panchayat Office,
Rajapur, Taluka Dharmabad,
District Nanded

3. Ganeshrao Baloji Hatnure,
Age Major, Occu. Agriculture,
R/o. Rajapur, Taluka Dharmabad,
District Nanded

.. (Original Disputant)

4. Block Development Officer,
Panchayat Samiti, Dharmabad,
District Nanded

.. Respondents

...

WITH CA/12578/2023 IN WP/1398/2023

Ganeshrao Baloji Hatnure

.. Petitioner

Versus

The Collector, Nanded and others

.. Respondents

Mr. Umakant B. Deshmukh, Advocate for Petitioner;

Mrs. M. L. Sangit, A.G.P. for Respondent No.1;

Mr.Syed Parvez Sayed Gani, Advocate for Respondent No.2;

Mr. Vaibhav B. Kulkarni, Advocate for Respondent No.3 (Applicant
in CA/12578/2023);

Mr. S. B. Pulkundwar, Advocate for Respondent No.4

CORAM : S. G. MEHARE, J.

DATE : 06-03-2024

PER COURT :-

1. Heard learned counsel for the petitioner, learned A.G.P. for respondent No.1 and learned counsel for respondents No.2 to 4.
2. The petitioner was a Sarpanch elected in the month of February-2021. Respondent No.1 filed an application under Sections 7 and 36 of the Bombay Village Panchayats Act, 1958 (for short, "Act") before the Collector on 13.09.2022. Pursuant to the said complaint, the Collector issued a notice to the petitioner calling upon her to produce the document and say in person or through lawyer.
3. It was alleged against the petitioner that she did not convene the meeting as required under the Act. Therefore, she is not entitled to continue as a Sarpanch of the village Panchayat.
4. The petitioner opposed the complaint and raised the specific ground that the notice dated 10.11.2022 does not disclose the charges levelled against her. Since the Collector called the factual report, the Block Development Officer (B.D.O.) has submitted the report to the Collector. In his report, he submitted that the present petitioner did not convene the meeting for the months of March, June, September, October, and December of 2021 and again in March, April, June and July of 2022. He also reported that she did not convene Gramsabha in the months of May, August, November of 2021 and January, April / May of 2022. The petitioner had a

stand before the Collector that since holding a charge of Sarpanch, she has convened the meetings from time to time. She also convened the monthly meetings. The attendance register bears the signature of the members. She specifically denied the report of the B.D.O. She has also taken a stand that as per Section 7 of the Act, she convened four Gramsabhas and gave the details of the dates of the Gramsabha.

5. The Collector, hearing both parties, allowed the complaint of respondent No.1 and declared that the petitioner is not entitled to hold the office of the Sarpanch.

6. The vehement argument of the petitioner's counsel is that the Collector has to apply his mind and examine the allegations and then issue a notice disclosing the charges levelled against the alleged errant member. In the petitions under Sections 7 and 36 of the Act, the Collector is bound to frame the charges and serve it upon the person against whom the allegations have been levelled. However, the Collector did not follow the mandate of law.

7. To bolster his argument, he relied on the case of ***Sunil Daulat Patil vs. the State of Maharashtra and others, Writ Petition No.3419 of 2023, dated 04.12.2013***, in which a landmark judgment of this Court in ***Pratibha Sanjay Hulle vs. Additional Collector and others, 2010(4) Bom.C.R. 700***, has been referred.

8. On facts, he further argued that the record before the Collector itself shows that the report of B.D.O. is false for the reason that in a report, he contended that the monthly meetings of March and June 2021 were not convened, but the meetings for those months were convened. Therefore, the report of the B.D.O. was doubtful. In such circumstances, the Collector ought to have allowed the prayer of the petitioner to call for the original proceeding book of the village Panchayat. However, he did not pay serious attention to his request and passed a mechanical order. There was no basis for the report of the B.D.O. He also argued that before the report was prepared, the B.D.O. was to call the petitioner to make known the source of his report and the principle of natural justice of giving the hearing and inspecting the record was not followed. Therefore, the impugned order is incorrect. He also added that the decision of the Collector under Sections 7 and 36 of the Act is final. It is the first fact-finding Court. Since the order is final, the only remedy is a Writ. In such circumstances, the principle of natural justice ought to have been followed strictly. In that circumstance, he prayed to remit the matter to the Collector to decide afresh by giving an opportunity of hearing.

9. Per contra, learned counsel for respondent No.3 vehemently argued that the specific allegations were raised against the petitioner. A copy of the complaint was supplied with a notice. Therefore, the petitioner knew about the allegations levelled

against her. Since the petitioner learnt about the allegations in a notice of Collector, calling upon her to appear before him could not be said defective, much less affecting her rights. The B.D.O. is a public servant. He has no reason to create a false record. He prepared the report upon discharge from his duty. Therefore, his report is presumed to be genuine, true and correct. He referred to notes of written arguments of the petitioner and contended that the burden was on the petitioner to prove that the meetings were convened. The record and proceeding book of the village Panchayat was in the custody of the Sarpanch. So, she should produce that record. He further argued that the petitioner produced some documents from the proceeding books for the first time before this Court. Therefore, the Collector had no opportunity to go through the evidence produced in rebuttal. He also argued that there is a great possibility of creating a false record of convening the meetings. The Collector perused the record, applied his mind and then passed the order. He read over the impugned order to support his contention that the order is well reasoned and the opportunity of hearing was given to the petitioner. However, he has vehemently argued that the ratio laid down in the case of **Pratibha** (supra) would not help the petitioner.

10. He relied on the case of **Pralhad Bhikaji Bargaje vs. State of Maharashtra and others, 2016(6) Mh.L.J. 900**, and argued that holding the Gram sabha is mandatory. He further

relied on the case of **Govindrao Tulshiram Waghmare vs. Ranjit Mukundrao Halse and others, Writ Petition No.3887 of 2013, dated 08.08.2013**, and argued that in this case, the ratio laid down in case of **Pratibha** (supra) has been discussed and it has been held that in my opinion in the facts of the case, the judgment in the case of **Pratibha** (supra) does not advance the case of the petitioner.

11. He further relied on the case of **Maroti Sheshrao Kendre vs. The State of Maharashtra and others, Writ Petition No.4164 of 2020, dated 01.03.2022**, and argued that the petitioner did not put a grievance that no notice disclosing the charges and copy of the complaint was served on him. In this premise, this Court held that the decisions of "**Pratibha Sanjay Hulle**" and "**Sunil Daulat Patil**" (supra) are, therefore, not applicable to the facts of the present case.

12. He further relied on the case of **Prakash Parmeshwar Chavan & Others vs. The Collector, Jalna & Others, Writ Petition No.1874 of 2019** and argued that the law holding the field on the subject discussed on the various case laws were considered, and it was held that Sarpanch is the only person who shall be responsible to convene the monthly meetings.

13. Lastly, on the identical point mentioned above, he relied on the case of **Salimbi Mubarak Tamboli vs State of**

Maharashtra and others, 2019 SCC OnLine Bom 667.

14. Considering the arguments of the learned counsels, a short question is, whether the charges were made known to the petitioner in a notice and whether from the copy of the complaint, the petitioner was able to know the charges, therefore, notice is not defective.

15. The learned counsel for the petitioner submits that the Hon'ble Supreme Court confirmed this view in a petition preferred before it against the judgment of ***Pratibha*** (supra) itself.

16. The ratio laid down in the case of ***Pratibha*** (supra) was that after the receipt of the complaint against Sarpanch under Sections 7 and 36 of the Act, the Collector should examine the complaint and apply his mind and satisfy first that there is substance in the complaint and the charges would be framed. The Collector cannot mechanically issue the notice on receipt of the complaint. Removing someone from an elected post is a serious matter. It may be a stigma to someone's social or political life. The law is that every person must know what has been alleged against him, and he must get an opportunity to contest the same. Sufficient time must be given to the person against whom some stringent action is proposed. In the case at hand, the petitioner had alleged that the report of the B.D.O. was false. Therefore, she had prayed that the original proceeding books, which were in the custody of

the B.D.O. should be called and produced for her inspection. The Collector did not pay heed as requested and relied upon the report of the B.D.O. Barely allowing the person to advance the arguments is not the only opportunity for a hearing. The authority or Court is neutral in each case. It has to assist the weaker or both sides in making a transparent judgment. Even after the request to call for the record was made, the Collector did not call the record and make it available for the inspection of the petitioner.

17. *Prima facie*, it appears that the report of the B.D.O. showed that the monthly meetings in March and June 2021 were convened. That raises doubt over the report of the B.D.O. It was a sufficient ground for the Collector to call for the original proceeding books lying in the custody of the B.D.O. When such serious objections were raised, and the record of the proceedings supports it, the Collector should not have blindly accepted the report of the B.D.O. The view of **Pratibha** (*supra*) is consistent. It has not been disturbed by any other further judgment. The said ratio still holds the field. However, in the case of **Govindrao** (*supra*) and **Maroti** (*supra*) on facts, the law laid down by this Court and the Hon'ble Supreme Court is distinguishable on facts. In the case of **Govindrao** (*supra*), the report of B.D.O. was not doubted. Therefore, the Court believed the document that was available before the Collector, and on this premise, the legality and validity of the Collector's order was accepted. The same was

the view of this Court in the case of **Maroti** (supra).

18. Learned counsel for respondent No.3 is correct in saying that holding the meeting is the duty of the Sarpanch. However, the petitioner said that she held all meetings. However, she could not prove it because the proceeding for the relevant period was seized with B.D.O. and her access to that record was closed. It appears that she did not deny her responsibility to convene the meetings. She also has no case that there were sufficient reasons for not calling the meetings.

19. Considering the facts of the case and ratio laid down in the case of **Pratibha** (supra), the Court is of the view that a fair opportunity has not been granted to the petitioner to prove her defence which was based on the record lying in the custody of B.D.O. Therefore, the petition deserves to be allowed. However, it is a matter of fact-finding. So, the matter should be remitted to the Collector to decide afresh. Hence, the following order;

ORDER

- i) Writ petition is allowed.
- ii) The impugned order of the Collector is quashed and set aside.
- iii) The matter is remitted to the Collector for a fresh decision.

- iv) The Collector shall call for the proceeding books in the custody of B.D.O., make them available for inspection to both parties and decide the matter within a month of receipt of this order.
- v) Both parties are directed to appear before the Collector, Nanded, on 19.03.2024 at 2.30 p.m.
- vi) Leave granted to file documents, if any.
- vii) R & P be returned to the Collector.
- viii) Pending civil application stands disposed of.

(S. G. MEHARE)
JUDGE

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