



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

WRIT PETITION NO. 862 OF 2024

Shrimati Hiramani Kisan Khanpatte And Others
VERSUS
Additional Divisional Commissioner And Others

Mr. V. D. Hon Sr. Counsel h/f Mr. P. P. Uttarwar, Advocate for petitioner
Mrs. M. N. Ghanekar, AGP for respondent/State
Mr. S. B. Pulkundwar, Advocate for respondent Nos. 2 and 3
Mr. U. B. Deshmukh, Advocate for respondent No. 4

CORAM : R. M. JOSHI, J.

DATE : 21st January, 2025

PER COURT :-

1. By consent of both sides, heard finally.
2. This petition takes exception to the order passed by the Additional Commissioner, Aurangabad rejecting appeal filed by the petitioner under Section 40 of the Maharashtra Village Panchayat Act (for short "**the Act**"), taking exception to the order passed by Chief Executive Officer (CEO), Zilla Parishad, Nanded by which the petitioners were disqualified as the members of Gram Panchayat, Naygaon (Khurd).
3. Respondent No. 4 invoked provisions of Section 40 of the Act for seeking disqualification of the petitioners as members of Gram Panchayat. On the basis of the proceedings initiated by them, the CEO of Zilla parishad, Nanded passed order dated 16.06.2023 whereby it was

held that the petitioners failed to attend six consecutive monthly meetings held by the Village Panchayat and thus, in view of Section 40, they become disqualified to hold the said post. This order was taken exception before the Additional Commissioner, Aurangabad and the said appeal came to be rejected by order dated 01.01.2024. Hence this petition.

4. It is the case of the petitioner that the respondent No. 4 is political rival of the petitioner and that with mala fide intention and in collusion with the respondent No. 2, preferred an application under Section 40 of the Act. It is further case of the petitioners that they did not receive notices of the concerned monthly meetings. It is also claimed that the relevant period was affected by Covid 19 pandemic and owing to the said reason, if there is any absence, the same cannot become a reason for disqualification. It is also case of the petitioner that both authorities below have failed to take into consideration the relevant evidence on record and have not recorded the reasons for passing the order.

5. Heard learned senior counsel appearing on behalf of the petitioners. He has drawn attention of the Court to the documents placed on record i.e., notices received of the monthly meetings. According to him, there are discrepancies in the signature of petitioner Mamata. In so

far as petitioner Mamata is concerned, it is contended that her thumb impression does not appear on notice dated 20.04.2022 for meeting of 30.04.2022. It is also sought to be contended that on notice dated 20.11.2021, signature of petitioner Ayesha does not appear. With respect to petitioner No.1, Smt. Hiramani, it is contended that notice was not duly served upon her for the meeting dated 30.12.2021 and that her absence in meetings dated 26.08.2021, 27.09.2021, 22.10.2021 and 26.11.2021 was in view of the Covid pandemic period. Thus, it is his contention that in absence of any concurrent proof about the service of notice, it cannot be held that in spite of service of notice, the petitioners have failed to attend the meetings concerned. He has also drawn attention of the Court to impugned orders in order to contend that the orders are un-reasoned order. Hence, require interference. To support his judgment, he placed reliance on the judgment of **Shri. Manohar s/o. Dnyaneshwar Pote Vs. The Collector, Jalna and others in Writ Petition No. 9427/2022.**

6. Learned counsel for respondent No. 4 supported the impugned orders.

7. At the outset, the relevant provisions of Section 40 needs to be considered and the same is reproduced herein below:-

(1) Any member of a panchayat who, during his term of

office,-

(a) is absent for more than four consecutive months from the village, [(such absence not being on account of his being a Chairman or Deputy Chairman of a Panchayat Samiti)], unless leave not exceeding six months so to absent himself has been granted by the panchayat, or

(b) absents himself for six consecutive months from the meetings of the panchayat, without the leave of the said panchayat,

shall cease to be a member and his office shall be vacant.

[(2) If any question whether a vacancy has occurred under this section is raised by the President of Zilla Parishad suo motu or an application made to him in that behalf, the President shall as far as possible decide the question within sixty days from the date of receipt of such application. Until the President decides the question, the member shall not be disabled from continuing to be a member of the panchayat. Any person aggrieved by the decision of the President may, within fifteen days from the date of such decision, appeal to the State Government, and the decision of the State Government in appeal shall be final:

Provided that, no decision shall be given under the sub-section by the President against any member without giving him a reasonable opportunity of being heard.]

(3) Whenever leave is granted under sub-section (1) to a member who is an Upa-Sarpanch another member shall, subject to the conditions to which the election Upa-Sarpanch so absenting himself was subject be elected to perform all the duties and exercise all the powers of an Upa-Sarpanch during the period for which

such leave is granted.

This provision indicates that it is open for a member of Gram Panchayat to seek leave for his/her absence in a monthly meeting. There is no case that it was not open for the petitioners herein to seek leave of absence from the concerned authority. If the petitioners were not in a position to attend the meetings in question, the whole purpose of enacting this provision is to ensure that the citizens who are members of Gram Panchayat take care of their interest by participating in the monthly meetings held by the Gram Panchayat.

8. Here, in this case, though the case sought to be made out by the petitioners that they did not receive notice of the monthly meetings, there is no specific plea raised before the authorities below that the record which indicates about their acknowledgment of receipt of the notice of the meeting are not acknowledged by them. In absence of any such specific contention, it is not open for the petitioner in this petition to raise that issue for the first time. It is pertinent to note that documents in respect of monthly meetings are recorded in due course of the business of the Gram Panchayat. Unless and until contrary is proved, the record of the Gram Panchayat cannot be displayed.

9. The record placed before the CEO clearly indicates that there was service of notice of meeting to petitioner Nos. 1 and 2 of meetings

dated 26.08.2021, 27.09.2021, 22.10.2021, 26.11.2021, 30.12.2021 and 25.01.2022, notice to petitioner No. 3 of 26.11.2021, 30.12.2021, 25.01.2022, 28.02.2022, 31.03.2022, 30.04.2022. Similarly, there is attendance register indicating the presence of the members of Gram Panchayat in the said meeting. The said evidence indicates that present petitioner did not attend the meetings as alleged in the application filed by respondent No. 4.

10. It was contended before the CEO as well as the Divisional Commissioner that the relevant period was affected by Covid 19 Pandemic. Though, such statement is made, there is nothing placed on record to indicate that the conduct of the meeting during the relevant period was prohibited into the pandemic situation. Apart from this, admittedly, petitioner No. 3 has attended monthly meetings on 26.08.2021, 29.07.2021 and 22.10.2021. This indicates that even for the period prior to the alleged absence, she could attend the meeting. Thus, there is no substance in the contention that owing to the Covid 19 pandemic situation, the meeting could not be attended. In any case, it was open for the petitioner to take leave of absence from the authorities concern. Admittedly, no such leave is sought.

11. Though, Exhibit H (Page 85) filed along with petition is not part of the proceedings before the authorities below, however, this letter

has been issued in the form of complaint made by the petitioners to the Block Development Officer. Perusal of the said letter indicates that it was grievance of these petitioners that though they attended the meetings, false record is created showing their absence. This individual stand was not taken before the authorities below. The only stand was for want of receipt of notice, the petitioners could not attend prima facie meetings. Thus, both stands taken seem not to be acceptable. Having regard to the afore stated facts and considering the conclusive nature of evidence before the authorities, this Court finds no merit in the petition. Hence, petition is dismissed.

(R. M. JOSHI, J.)

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