



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

911 WRIT PETITION NO. 874 OF 2024

Durgabai Namdeo Dandge & othersPetitioners

VERSUS

State of Maharashtra & othersRespondents

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Mr. M. U. Shelke, Advocate holding for Mr. D. S. Barote, Advocate for the Petitioners.

Mr. S. N. Kendre, AGP for the State.

Mr. V. B. Kulkarni, Advocate for Respondent No. 4.

CORAM : R. M. JOSHI, J.

DATE : 6th MARCH, 2025.

PER COURT :

1. Petitioners are the members of Village Panchayat Borgaon Jahangir, Tq. Bhokardan, Dist. Jalna. They are the complainants against Respondent No. 4 who is the Sarpanch of the village. It is the contention of Petitioners that Respondent No.4 Sarpanch has failed to convene Gram Sabha as well as monthly meetings as required by provisions of Sections 7 and 36 of Maharashtra Village Panchayat Act. It is also contended that before convening the said meetings, women Gram Sabha were not convened. Pursuant to the said complaint before Collector, Jalna, report of Block Development Officer was called. Block Development Officer in turn directed Extension

Officer of Panchayat Samiti, Bhokardan, to submit report. In the said report, observations are recorded by Extension Officer that the Gram Sewak is responsible for non conduct of meetings of Gram Sabha as required. It is however, held that no meeting of women was convened prior to Gram Sabha. This report came to be accepted ultimately by the Collector and by passing impugned order, application filed by the Petitioners for disqualification of Respondent No. 4 from the post of Sarpanch came to be rejected. Hence, this petition.

2. Learned counsel for Petitioners submits that there is admission on the part of Respondent No. 4 with regard to non-compliance of Sections 7 and 36 of the Act when Respondent No. 4 accepts non-conducting of requisite number of meetings. It is his submission that the explanation/justification given by Respondent No. 4 about absence of Gram Sewak cannot be accepted for the reason that in view of sub-section 11 of Section 7, it was open for the Sarpanch to convene the said meeting with the help any Government or semi Government employee in the village including Teacher, Talathi, Anganwadi Sewika etc. It is his submission that the Collector has failed to take into consideration the fact that non-

convening of women Gram Sabha will attract dis-qualification. To support his submissions, he has placed reliance on judgments of this Court in case of Gunwantrao Yeshwantrao Deshmukh vs. State of Maharashtra and another, **1981 Mh.L.J. 815** and Salimbi Mubarak Tamboli vs. State of Maharashtra and others, **2019 (5) Mh.L.J. 207**.

3. Learned counsel for Respondent No. 4 supported the impugned order.

4. At the outset, it needs to be mentioned that in view of provision of Section 7 of the Act, the disqualification is not attached only on non convening of the meeting but the same is not explained satisfactorily. Secretary as per Section 3(10) is Secretary of Panchayat appointed or deemed to be appointed. Gram Sewak is Secretary of Village Panchayat and is responsible for convening meeting. There cannot be any dispute with regard to the preposition that in case the Sarpanch and in his absence the Deputy Sarpanch fails in explaining satisfactorily to convene the meeting as contemplated by Sections 7 and 36 of the act, disqualification would get attracted. At the same time, it cannot be ignored that the meeting is to be called by the Gram Sewak who is the Secretary. It is the

responsibility of the State Government to appoint Gram Sewak in each Panchayat Samiti. In absence of Gram Sewak, his charge must be given to the Gram Sewak from the other Gram Panchayat. Here in this case, there is nothing to indicate that such charge was kept on account of whose absence the meeting could not be convened and the Gram Sewak is held responsible therefor. Thus, for inaction on the part of the concerned officer of the State, Sarpanch cannot be held responsible and certainly cannot be disqualified, when such absence is duly communicated. In exercise of writ jurisdiction, this Court is not inclined to cause interference in the findings of fact recorded by the Collector while dismissing the application.

5. Insofar as the contention of learned counsel for Petitioners about non-convening of the meeting of women members, which according to him is mandatory and non-compliance thereof would result in disqualification is concerned, the intention of legislation needs to be considered while making the said provision. It is settled position of law that the word 'shall' used in any provision shall not be construed as mandatory and it would depend upon the object and purpose of the statute. In this regard, reference can be made to the judgment of Constitution Bench of Supreme Court in

case of Raza Buland Sugar Co. Ltd. Rampur vs. The Municipal Board, Rampur, **AIR 1965 SC 895**, wherein it is held that

“The question whether a particular provision of a statute which on the face of it appears mandatory inasmuch as it uses the word “shall” or is merely directory cannot be resolved by laying down any general rule and depends upon the facts of each case and for that purpose the object of the statute in making the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory.

At this stage, it would be relevant to take note of provisions of sub-section 5 and 5A of Section 7 of the act which read thus :-

(5) The meeting of the women members of the Gram Sabha shall be held before every regular meeting to the Gram Sabha, convened under sub-section (1) [and the

proceedings of such meeting shall invariably be brought or caused to be brought before every regular meeting of the Gram Sabha by the Sarpanch, and the Gram Sabha shall consider the recommendations made in the meeting of the women members, and the panchayat shall ensure the implementation of such recommendations :

Provided that, if the Gram Sabha is not agreeable to the recommendations made in the meeting of the women members, it shall record the reasons therefor.]

(5A) Every member of the panchayat representing a ward shall, before every regular meeting of the Gram Sabha and meeting of the women members of the Gram Sabha, convene a meeting of all the voters in such ward and such ward sabha may discuss issues relating to development of the ward, selection of individual beneficiaries for individual beneficiary scheme of the State, or as the case may be, of the Central Government, development projects and programmes and such other related issues as the ward sabha deems fit and which are likely to be placed before the regular meeting of the Gram Sabha for consideration and decision. The proceedings of such meeting shall be maintained by such member under his signature and a copy of the same shall invariably be sent to the panchayat which shall form part of the records of the panchayat.]

In view of amendment to sub-section 5 with introduction of Section 5A, before convening such meeting every member of Gram Panchayat representing the ward is required to convene meeting of the voters in such ward and if it is done so, it becomes obligatory on the part of the Sarpanch to call meeting of such women members. The purpose behind the enactment needs to be considered. According to Section 5, such convening of meeting of women members is necessary to seek their recommendations. However, such recommendations are not binding on the Panchayat for its implementation. Thus, the convening of such meeting is to seek recommendations from women for proper decision making and cannot be considered as mandate to cause disqualification. In any event, for calling women's meeting under Section 5, there is necessary compliance of Section 5A by the members of Panchayat. In this case, Petitioners, who are members of the Gram Panchayat do not claim to have complied with Section 5A of the act, and therefore, the calling of women's meeting would be left to be an empty formality. A note can be taken of the fact that whole purpose of disqualification for not convening Gram Sabha is to ensure that the issues of the voters/citizens are being taken up by convening the meetings of

Gram Sabha. However, that cannot be permitted to be used as a tool for causing disqualification of the Sarpanch/Deputy Sarpanch.

6. Learned counsel for Petitioners has also sought to make submission that sub-section 9 contemplates that Gram Sabha shall generally fix the date, time and place of the next meeting of Gram Sabha in its previous meeting. If this contention is accepted then there shall not be any responsibility of the Sarpanch or Deputy Sarpanch to convene meeting because if Gram Sewak decides the date, time and place of the next meeting, it shall be only responsibility of the Gram Sewak to issue notice in this regard.

7. Similarly, contention of Petitioners with regard to the appointment of any Government servant, teacher, talathi etc. for issuance of notice of Gram Sabha also deserves no acceptance. Section 7(11) only permits recording of the proceedings i.e. minutes of meeting with help of such persons. However, that cannot give authority to Sarpanch to substitute Secretary for all other purposes, including the convening of meeting. The other provisions of the said section clearly indicate responsibility of the Gram Sewak to convene the meeting.

8. Having regard to the peculiarity of the facts involved in this case, the acceptance of explanation of Respondent No. 4 by Collector being not perverse, this Court finds no reason to cause interference in the impugned order. Hence, petition is dismissed.

(R. M. JOSHI)
Judge

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