



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 3791 OF 2024

Vaibhav Ashok Barde, aged about 32 years,
Occupation: Agriculturist, R/o Mudana,
Tah. Mahagaon, Dist. Yavatmal.

....**PETITIONER**

....VERSUS....

1. The Additional Collector, Yavatmal
Collector Office, Yavatmal.

2. Block Development Officer, Panchayat
Samiti Mahagaon, Tah. Mahagaon, Dist.
Yavatmal

3. The Secretary, Grampanchayat Mudana,
Tah. Mahagaon, Dist. Yavatmal.

4. Sau. Anjali Chandrashekhar Paikrao,
aged about adult, Occupation: Member
Gram Panchayat-Mudana, R/o Mudana,
Tah. Mahagaon, Dist. Yavatmal.

....**RESPONDENTS**

Shri A.A.Zade, Advocate for petitioner.
Shri H.D.Futane, AGP for respondent no. 1/State.
Shri Vikas M. Kulsange, Advocate for respondent nos. 2 and 3.
Ms. Anjana M. Raut, Advocate for respondent no. 4.

CORAM : SMT. M.S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 22/04/2025
DATE OF PRONOUNCING THE JUDGMENT: 06/06/2025

JUDGMENT

. Heard learned counsel for the petitioner, learned AGP for the State and learned Counsel for the other respondents.

2. Being aggrieved by the order dated 10.06.2024 passed by the respondent No.1 - the Additional Collector, Yavatmal in Gram Panchayat Dispute Case No. 25/36/2023 Gram Panchayat Mudana, Tah. Mahagaon, Dist. Yavatmal allowing the application filed by the respondent No. 4 under Section 36 of the Maharashtra Village Panchayats Act, present petition is filed.

3. The petitioner came to be elected as a Sarpanch of Gram Panchayat Mudana, Tah. Mahagaon, Dist. Yavatmal in the year 2021. The respondent No.1 is the Additional Collector, Yavatmal, a statutory authority under the provisions of the said Act and respondent No.2 is the Block Development Officer, Panchayat Samiti, Mahagaon. The

respondent No.3 is the Secretary of the Gram Panchayat, Mudana, Tah. Mahagaon and respondent No.4 is the elected member of Gram Panchayat, Mudana.

4. The respondent No. 4 had filed an application under Section 36 of the said Act before the respondent No.1 praying that the petitioner be disqualified from the post of Sarpanch of the said Gram-Panchayat. The petitioner has stated that on 08.09.2023, he made a complaint of Secretary to respondent No.2 stating therein that he remained absent on multiple occasions and requested to transfer him. However, no significant action has been taken. The respondent No.1 allowed the above said application filed by the respondent No.4 by an impugned order dated 10.06.2024 and held that the petitioner stands disqualified in view of provisions of Act of 1959.

5. The respondent No.2 Block Development Officer submitted the report on 05.01.2024 carried out by the

Extension officer (Pancha) Panchayat Samiti, Mahagaon dated 15.12.2023 before respondent No.1.

6. Similarly, the Respondent No.3- Secretary had also submitted his report on 15.12.2023 wherein a statement is made that the relevant record shows that the petitioner has failed to conduct/held monthly meeting for the month of September 2023.

7. It is submitted that respondent No. 3 i.e. Secretary of Gram Panchayat Mudana- Shri P.D. Patange was on medical leave, therefore, the charge of Secretary was handed over to In-charge Secretary- Shri R.D. Mane for said period i.e. from 11.08.2023 till 30.09.2023.

8. The respondent No.1 reiterated the contentions made by him in the statement. He contented that he tried to conduct the meeting for the month of September, 2023 but as

respondent No.3 was on medical leave, meeting could not take place.

9. By the impugned order dated 10.06.2024, the respondent No. 1 allowed the application filed by the respondent No.4 and held that the petitioner stands disqualified in view of provisions of the said Act and therefore, from the date of said order, he has been declared as disqualified. The aforesaid order is the subject matter of challenge in present writ petition.

10. Learned Counsel for petitioner contended that in the impugned order, the respondent No. 1 observed that perusal of the above-mentioned documents show that the respondent No.2- Block Development Officer and respondent No.3- Secretary have given reports stating therein that the petitioner has failed to conduct monthly meeting of the month September, 2023. The respondent No.1 further observed that the petitioner has complained that respondent

No.3 was absent for several months, however, further observed that respondent No. 4- Block Development Officer has not mentioned anything about the absence of respondent No.3 in his report and, therefore, respondent No.1- Additional Collector held that the petitioner is liable to be disqualified.

11. The learned Counsel for the petitioner relied on the following citations:-

i) Pundlik S/o. Tulshiram Sapkale V/s. State of Maharashtra and ors. [(2023) 5 Mah LJ 271]

ii) Radhabai W/o. Gangadhar Jogewar V/s. The Collector, Nanded and ors. [Judgment of this Court in WP No. 2135/2022 d/d on 30/03/2022.]

12. On the contrary, respondent No. 4 submitted that Section 36 of the said Act, mandates that the Sarpanch is responsible person to convene monthly meeting. If the Sarpanch is absent to convening monthly meeting or Sarpanch was not available, as per the record of the Gram

Panchayat, the Upsarpanch would officiate as a Sarpanch and would be under an obligation to convene such meeting. The petitioner admitted that he was present as per record, so petitioner was responsible person and able to hold monthly meeting. The petitioner has stated that he was unable due to the reason that the Secretary was on medical leave. As per Rule 5(1) of the Rules, 1959, that, the Sarpanch or in his absence the Up-sarpanch as may on his own motion, call a special meeting means that when Secretary is not available then right and duties casted on Sarpanch can be exercised by Upsarpanch. However, only Sarpanch is responsible person to hold monthly meeting.

13. It is further contended that the petitioner has not convening such monthly meeting of September, 2023 without sufficient cause, on the contrary, that, the petitioner has represented false and forged documents and information before the Court to obtain favourable order. The findings of respondent No.1 i.e. Additional Collector is correct legal and

not arbitrary to disqualify the petitioner under Section 36 of Maharashtra Village Panchayat Act, 1959. It is submitted that the petitioner is liable to be punished under the Criminal Laws producing to false and forged documents and information. Accordingly, prayed for the dismissal of present writ petition.

14. The learned Counsel for respondent No. 4 relied on the following citation:-

i) K. Jayaram and ors. V/s. Bangalore Development Authority and ors. [(2022) 12 SCC 815]

15. Learned Counsel for respondent Nos.2 and 3 contended that that the respondent No. 4 had lodged a complaint with the Additional Collector, that the petitioner did not convene the Gram Panchayat monthly meeting for the month of September, 2023. On the complaint filed by the respondent No.4 that the petitioner has been disqualified under Section 36 of the Maharashtra Village Panchayat Act,

1959.

16. After the complaint was filed by the respondent No.4, the respondent No.2 investigated and submitted its report stating that it is clear that the petitioner has not conducted the meeting of the Month of September, 2023.

17. It is further contended that respondent No.3 has also inquired into the same and concluded that the petitioner has not conducted the meeting of the month of September 2023, stating that the respondent No.3 was on medical leave from 11.08.2023 to 30.09.2023 and the charge of the post of Gram Panchayat Secretary was handed over to one Shri R. D. Mane. It is submitted that the petitioner should have issued notice as per Section 36 of the said Act, through the In-charge Secretary, Upsarpanch for the meeting of the month of September, 2023, which is mandatory under the law but the petitioner failed to do so. All these facts were rightly taken into consideration by respondent No.1- Additional Collector

and passed an appropriate order which needs no interference and also needs to be confirmed.

18. I have heard learned Counsel for petitioner, learned Counsel for respondents and learned AGP for the State. Perused impugned order and considered citations relied on by all the parties. On perusal of impugned order dated 10.06.2024, it is contention before the authority i.e. Deputy Collector, Yavatmal that present petitioner came to be elected as Sarpanch in first meeting of Gram Panchayat in the month of February, 2021. It is further contention that the petitioner Sarpanch is not performing his duties properly and deliberately neglected his responsibility and duty towards Gram Panchayat, therefore, development of Gram Panchayat has stalled. He has not conducted monthly meeting as per requirement. He was arrogant with the villagers and used to obtain signature in monthly meeting on proceeding book and he has not taken subject as per notice and used to write anything as per his whims and wishes. He has not called

meetings for month of September, 2023. Therefore, he is liable to be disqualified. There is report of Secretary in that regard. He has specifically reported that there was no meeting called by the Sarpanch in the month of September, 2023. The Block Development Officer also reported the same.

19. The only reason put-forth by the petitioner before the Deputy Collector, Yavatmal is that the Secretary Shri P.D. Patange was on medical leave and, therefore, meeting could not be called in the month of September, 2023. It was concluded by the Deputy Collector that the petitioner has not called any meeting in the month of September, 2023. As per Secretary Mudana, Shri Patange was on medical leave since 11.08.2023 to 30.09.2023. Therefore, he is not aware why meeting could not be called in the month of September, 2023. In view of his medical leave, one Shri R.D. Mane was handed over with the additional charge as a Secretary Gram Panchayat Mudana. It is his contention that as no charge was handed over by the then Secretary who has proceeded on

medical leave on 11.08.2023, therefore, he could not have conducted any administrative proceedings. However, it is his contention that during that period, he has orally informed to the Sarpanch and staff of the Gram Panchayat about conducting monthly meeting, Gram Sabha meeting, Flag Hosting, Platinum jubilee of Independence. The petitioner herein admitted that he has not called meeting for the month of September, 2023 as Secretary Shri P.D. Patange was on medical leave.

20. The learned Deputy Collector concluded that it was the duty of the petitioner herein to call monthly meeting. The In-charge Secretary also informed him orally to conduct monthly meeting, Gram Sabha meeting etc. Therefore, there was no reason for not calling meeting in the month of September, 2023 nor any sufficient cause. The Deputy Collector also considered for disqualification under Section 36 of Maharashtra Village Panchayat Act and also Rules of Bombay Village Panchayat Meeting Rules, 1959, Clause-3 and

declared Sarpanch as disqualified.

21. Learned Counsel for petitioner relied on judgement in *Pundlik s/o Tulashiram Sapkale (supra)*, wherein similar question arose in the matter wherein it is held by this Court (Aurangabad Bench) in paragraph Nos. 15, 16 and 17 which reads as under:

“15. Thus, in view of the various rules as quoted above, the Village Development Officer is the responsible officer who has various duties cast upon him to conduct monthly meetings and, as such, the Petitioner had sufficient cause in not holding the meeting for the month of October. This Court in the earlier 2022 Mh. L.J. Online 94: Writ Petition No. 10504 of 2022 had also by its earlier order dated 11-10-2022, at paragraph No. 10, has also held that there was sufficient cause within the meaning of section 36 of the Maharashtra Village Panchayats Act, 1959 for not holding the meeting for the month of October. However, the matter was remanded on the aspect of, whether the assistance could have been taken from the various Government Officers in terms of section 7(11) to conduct the meetings and whether non joining of Mr. Dandge, who had not taken the charge of Village Development Officer this aspects being not considered by the Collector that the matter was remanded in entirety. As regards the availability of section 7(11) it is to be noticed that the same is available for only conducting the proceedings of meetings of the Gram Sabha and there is no similar

parallel provision under section 36 for seeking assistance of any Government officer for conduct of the monthly meeting.

16. *Having held so above, I hold that the Collector has wrongly disqualified the Petitioner and that there was sufficient cause in not holding the meeting for the month of October of Gram Panchayat. The Hon'ble Supreme court in the case of Bhoir (supra), has held that unsetting an elected member is a very serious issue and there has to be sufficient evidence to unseat a publicly elected person.*

17. *..... It has held in the case of Salimbi (supra), that considering Rule 3 the entire responsibility of convening ordinary meeting of each month was on the Sarpanch and in absence by Upa-Sarpanch. The Responsibility is cast upon the Sarpanch or the Upa-Sarpanch to hold the monthly meeting, however, if, the meeting is not held for sufficient reason then there is no disqualification under the Act. In the instant case, it was beyond the apprehension of anybody that the Village Development Officer would proceed on leave from 11-10-2021, and, did not take charge till the end of the month, so also, the substitute officer appointed near the end of October month also did not take charge and, as such, the explanation given by the Sarpanch that he could not hold the meeting for the said reason has to be accepted."*

22. Similarly learned Counsel for petitioner relied on judgement in *Radhabai w/o Gangadhar Jogewar (supra)*, wherein this Court (Aurangabad Bench) relied on *Shubhangi Anil Gawande and another vs. Additional Collector and others, reported in 2010 (2) Mh.L.J. 368*, held as under:

“6. The provisions of Section 36 of the Act show that the obligation to convene meeting of Panchayat is contemplated upon Sarpanch and in his absence on Upsarpanch. Disqualification accrues for not convening such meeting without sufficient cause. The finding of the Collector on question of availability of such sufficient cause has been made final. This, therefore, clearly shows that mere not holding of meeting is not disqualification and something more is required to be brought on record. The absence of meeting has to be shown as deliberate failure to hold meeting and for that purpose, it is required to be established that though meeting could have been held as required, it was not held. Thus, absence of sufficient cause for not holding the meeting is the material ingredient in the entire scheme.”

23. Per contra, learned Counsel for respondent No.4 relied on *K. Jayaram and others (supra)*, wherein the Hon’ble Apex Court held that,

“The jurisdiction exercised by the High Court under Article 226 of the Constitution is extraordinary,

equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all facts before the court without concealing or suppressing anything. A litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the opposite parties which cannot be countenanced."

24. There is no dispute over this proposition of law. However, respondent No.4 failed to raise any such grounds of fraud or consideration of facts.

25. In my considered opinion, the facts involved in the case of *Pundlik s/o Tulashiram Sapkale (supra)*, are similar facts as involved in the present matter. Considering the fact that the petitioner herein regularly conducted the monthly meeting, however, for the reason of Secretary proceeded on medical leave and has not handed over the charge to substitute Secretary, the same will be sufficient cause for not holding the monthly meeting. Section 36 of the

said Act, which reads as under:

“36. Time and place of sitting of panchayat and procedure at meetings.- The time and place of sitting, and the procedure at a meeting, of the panchayat shall be such as may be prescribed:

Provided that, if the Sarpanch, or in his absence the Upa-Sarpanch, fails without sufficient cause, to convene the meetings of the panchayat in any financial year according to the rules prescribed, in that behalf, he shall be disqualified for continuing as Sarpanch or, as the case may be, Upa-Sarpanch or for being chosen as such for the remainder of the term of office of the members of the Panchayat. The decision of the Collector on the question whether or not there was sufficient cause shall be final.”

26. From the said provision, mere not holding of meeting is not disqualification and something more is required to be brought on record. The absence of meeting has to be shown as deliberate failure to hold meeting and for that purpose, it is required to be established that though meeting could have been held as required, it was not held. Thus, absent of sufficient cause for not holding the meeting is the material ingredient in the entire scheme. As referred in the Writ Petition No.10504/2022, the matter was remanded on

the aspect of, whether the assistance could have been taken from the various Government Officers in terms of Section 7 (11) of the said Act to conduct the meetings. However, as regards the availability of Section 7 (11) of the said Act, it is to be noted that the same is available for only conducting the proceedings of meetings of the Gram Sabha and there is no similar parallel provision under Section 36 of the said Act for seeking assistance of any Government Officers for conduct of the monthly meeting. This aspect is not considered by the Deputy Collector. As such, there is sufficient cause for not conducting monthly meeting. Therefore, the impugned order does not stand to the scrutiny of the ratio of the above judgment of the Hon'ble Apex Court. In my considered opinion, the Deputy Collector has failed to consider the factual aspects of the controversy in proper perspective. Accordingly, I proceed to pass the following order:

ORDER

- i) The Writ Petition is allowed.
- ii) The order dated 10.06.2024 passed by the Deputy

Collector in Gram Panchayat Dispute Case No.25/36/2023,
Gram Panchayat Mudana, Tah. Mahagaon, Dist. Yavatmal is
hereby quashed and set aside.

27. The Writ Petition is disposed of in above terms.
No order as to costs.

(Smt. M.S.Jawalkar, J.)

B.T.Khapekar/R.S. Sahare