

(1981) 06 BOM CK 0008
In the Bombay High Court
Case No : Writ Petition No. 39 of 1981

Gunwantro Yeshwantrao Deshmukh

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 15-06-1981

Acts Referred:

Bombay Village Panchayats (Meetings) Rules, 1959 — Rule 13, 15, 23, 29, 3
Bombay Village Panchayats Act, 1958 — Section 36, 39

Citation : AIR 1982 Bom 295 : (1981) 83 BOMLR 448 : (1981) MhLj 815

Hon'ble Judges : Dharmadhikari, J; Bhonsale, J

Bench : Division Bench

Advocate : C.A. Phadkar, for the Appellant; C.J. Sawant and N.D. Bhalkar, for the Respondent

Judgement

Dharmadhikari, J.—The petitioner who is a Sarpanch of village Panchayat of Bodwad, has challenged in this writ petition the order passed by the Collector, Jalgaon Dt. 31st Dec., 1980 Holding that the Petitioner stands disqualified as a Sarpanch u/s 37 of the Bombay Village Panchayats Act, 1958.

2. It appears from record that the Block Development Officer, Panchayat Samiti, Bhusawal submitted a report to the Collector on 17th Sep., 1980. Bringing to his notice that the monthly meetings of the panchayat for the months Apr., 1979, May 1979, July 1979, Oct., 1979, Dec., 1979, Feb., 1980, Mar., 1980, Apr., 1980, June and July 1980 were not convened by the Petitioner Sarpanch and, therefore he is disqualified u/s 36 of the Bombay Village Panchayats Act from continuing as a Sarpanch of the Village Panchayat. After getting this report from the Block Development Officer, a show cause notice was served on the petitioner by the Collector on 17th Oct., 1980. The Petitioner submitted his reply on 3rd Nov., 1980, showing the cause as to why he should not be disqualified. According to the Petitioner the circulating memos were issued during these months and as these circulating memos served the purpose of the meetings, it was not necessary to convene the meetings of the village panchayat. The Collector

however, came to the conclusion that this is not a sufficient cause for failure to convene the meetings as contemplated by Section 36 read with rules framed thereunder and, therefore, ultimately declared that the Petitioner is disqualified to continue as a Sarpanch.

3. It was neither disputed in the written reply submitted by the petitioner nor it is disputed in this petition, that in the months referred to hereinbefore the meetings of the panchayat were not convened by him.

4. Shri Phadkar the learned Counsel appearing for the petitioner contended before us that u/s 26 read with the proviso, failure to call meetings in a financial year only can result in disqualification and an omission of not calling meetings for some months will not amount to failure to convene meetings of the panchayat in a financial year. According to Shri Phadkar in the present case the petitioner had not called meetings for about 10 months which period is spread over in two financial years and therefore it cannot be said that no meeting was called in a financial year as contemplated by the proviso to Section 36 of the Act. And therefore, the order passed by the Collector is wholly illegal.

5. It is not possible for us to accept this contention. It is not necessary to deal with this appeal of the matter in detail in view of the Division Bench decision of this Court in Spl., civil appln, No. 2274 of 1965 with Spl. Civil Appln. No. 11 of 1965 decided on 13th June 1966. The Division Bench of this Court consisting of K. K. Desai and Chandrachud. JJ. After making a detailed reference to S. 36 as well as under framed thereunder has held as under :

"Now, it is clear on a reading of Rule 3 that it casts compulsory obligation in connection with holding of at least one meeting of the panchayat in every month. This provision indicated and appears to have been made because the due administration of the affairs of a village panchayat needs that it should be duly looked after and attended to be meeting of the Panchayat once in ever month. The meeting of the panchayat under the rule could, therefore, be carried outland completed only by the action of convening the meeting of the panchayat that must be taken by "the Sarpanch" and in his absence by "the Upa-Sarpanch". The phrase "according to the rules prescribed in that behalf" as contained in the proviso to Section 36 has clear reference to the obligation created for holding one meeting of the panchayat every month as contained in Rule S. In our view, it is the intent of the proviso that breach of that obligation and/or the failure to act according to the rules prescribed in connection with holding of the meeting of the panchayat should disqualify the Sarpanch from continuing in office. That is the result of the following phrase in the proviso:-

"Fails without sufficient cause, to convene the meetings of the panchayat according to the rules prescribed in the behalf" We are, in this connection, unable to accept the submission made by Mr. Rane that emphasis is on the phrase in any financial year "as contained in the proviso. We are unable to accept the contention of Mr. Rane that the phrase "the meetings" as contained in the proviso

was intended to mean that the failure should be in connection with more than one meeting. In our view, the plural in the phrase "the meetings" was intended to include and to mean singular also. In our view, therefore failure to convene even a single meeting in breach of the rules prescribed would attract the penalty as contained in the proviso. The above interpretation is in consonance with the intent and purpose of Rule 3 and also the amended provisions of Section 36, We are, therefore, unable to accept the submission made as above by Mr. Rane on behalf of the petitioner."

6. In view of this decision of the Division Bench holding that even failure to convene a single meeting in breach of the Rules prescribed would attract the penalty as contained in the proviso to Section 36 of the Act, the submission made by Shri Phadkar cannot be accepted.

7. It was then contended by Shri Phadkar that the order passed by the Collector in effect amounts to removal of the Sarpanch and, therefore, is with out jurisdiction because the power to remove a Sarpanch is conferred upon the Standing Committee under Sec. 39 of the Act and the Collector by taking action u/s 36 cannot exercise the said jurisdiction. It is not possible for us to accept this contention also. Section 36 of the Bombay Village Panchayat Act reads as under:

"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 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 who that or not there was sufficient cause shall be final"

From the bare reading of this section it, is quite clear that the disqualification form continuing as a Sarpanch for not convening the meeting of the panchayat as per the rules without a sufficient cause is authomatic. The matter as to whether the disqualification has been incurred, if in doubt or dispute or whether there was sufficient cause for failure to convene the meeting without sufficient cause, then such a question has to be decided or adjudged by the Collector. This declaration cannot be equated with the removal of Sarpanch u/s 39 of the Act. The order passed by the Collector merely amounts to a declaration of disqualification Section 38 of the Act deal with the removal of any member or Sarpanch or Upa-Sarpanch of the Panchayat. The removal is contemplated for the misconduct in the discharge of his duties or disgraceful conduct or incapacity is perform his duty etc. The area and field covered by Section 39 is distinct and different from the one covered by Section 39 Disqualification is laid down by Section 38 itself. Once the facts constituting disqualification are proved and sufficient cause is not shown, then the disqualification to continue as Sarpanch

comes into operation. The section does not contemplate any further order of removal as is contemplated by Section 39 of the Bombay Village Panchayats Act. Therefore, it is not possible for us to accept this contention of Shri Phadkar.

8. It was then contended by Shri Phadkar that the Collector was in error in not considering the cause shown and in coming to the conclusion that the petitioner had failed to convene the meeting of the panchayat without any sufficient cause. According to Shri Phadkar the business which is to be transacted by the Village Panchayat being obviously trifling one, what could be done in a meeting by circulation, then it cannot be said that there was failure to convene the meeting. According to Shri Phadkar in any case this could be treated as sufficient cause for not convening the meetings. It is not possible for us to accept this interpretation of Shri Phadkar for the obvious reasons. Section 36 read with rules enjoins a duty upon the Sarpanch or Upa-Sarpanch to convene the meeting as per the rules prescribed. The proviso makes this position further clear because it provides for a penalty for not convening meeting as per rules. The proviso therefore makes it very clear that the substantive part of the section is mandatory one. The rules framed under Bombay Village Panchayat Rules known as Bombay Village Panchayat (Meeting) Rules, 1959, prescribed that the panchayat shall meet at least once in every month on such day as may be fixed by the Sarpanch or in his absence by the Upa-Sarpanch. The Rule 3 which is mandatory in form, thereafter lays down that at least one meeting in every month should be convened. The rules also lay down as to how the business will be treated at the meeting, Rule 13 then lays down that no resolution of the panchayat shall be modified or cancelled within 3 months of the passing thereof unless certain conditions are fulfilled. According to Rule 15 every meeting is open to the public unless the person presiding decides that any enquiry or deliberations of the panchayat should be held in camera. Rule 23 then provides for as to how the motion will be considered. As per R. 28 when the votes are on voting paper which shall be not be signed by him etc. Then according to Rule 39 no motion shall be discussed or noted in the minute book unless and until it has been properly proposed and seconded. According to R. 40 the proceedings of each meeting of the panchayat is to be recorded in a bound book and a copy of the proceeding is to be submitted to the Chairman of the Panchayat Samiti and to the Chairman of the Standing Committee within 7 days of the meeting. If all these rules are read together and harmoniously it is quite clear that decision by circulation is wholly ruled out and is not contemplated. To say the least such a method is prohibited by necessary implication. In substance it will amount to negation of the object of Section 26 itself as well as rules framed thereunder. In these circumstances a thing which is prohibited by the statute itself cannot be pleaded as sufficient cause for failure to convene the meeting. The Collector has considered the cause shown by the petitioner and has also come to the conclusion that the circulating memos were issued by the Sarpanch for very trifling and non-urgent matter which cannot be treated as substitute for the meeting be treated as substitute for the meeting. In our opinion of finding

recorded by the Collector is correct and calls for no interference, in this writ jurisdiction.

9. It cannot be that decentralization of power is one of the basic concepts of democracy. As a part of this scheme, village administration for the purpose of local self Government is entrusted to village panchayat. Village Panchayat is a body corporate having a perpetual succession etc. The enactment also provides for holding a meeting of "Gram Sabha" which consists of entire adult population of the village. A body corporate is not a human being and therefore can act through resolutions only. These resolutions can be adopted in a duly convened meeting. Any act of an individual separately or independently done, is not an act of a body corporate. A thing or act, which is either prohibited or not provided for or is inconsistent with the method prescribed, cannot be done even indirectly. The Legislature in its wisdom has used the word "Meeting" in Section 26 of the Act. In the very nature of things meeting contemplates coming together of more than one person for certain purposes. It is a meeting of minds. (See *Awadhoot and Others Vs. State of Maharashtra and Others*, The object of meeting is to take collective decision which is to be expressed in the form of resolution. This active participation of the members of the panchayat method and, therefore in our opinion the Collector was right in coming to the conclusion that the circulating memos issued by the petitioner cannot be accepted as sufficient cause for his failure to convene the meetings of the panchayat.

10. A grievance was also made by Shri Phadkar that a copy of the report submitted by the Block Development Officer was not submitted to the petitioner before calling upon him to submit his explanation or showing cause for his failure to convene meeting. Such a request was not made by the petitioner before submitting his written reply. The petitioner very well knew as to on what point his explanation was called for and in fact the petitioner has submitted his written reply on 3rd Nov., 1980 in reply to the show cause notice. Further the fact that the meetings of the village panchayat were not held is practically admitted. In these circumstances it cannot be said that any prejudice has been caused to the petitioner because of the non-supply of the copy of report submitted by the Block Development Officer.

In this view of the matter there is no substance in this writ petition. The petition fails and is dismissed. Rule is discharged. However, in the circumstances of the case there will be no order as to costs.

11. Petition dismissed.