

(2021) 11 BOM CK 0128
In the Bombay High Court
Case No : Writ Petition No.400 Of 2021

Manik S/O Laxmanrao Zate

APPELLANT

Vs

District Collector, Hingoli And Others

RESPONDENT

Date of Decision : 30-11-2021

Acts Referred:

Maharashtra Village Panchayat Act, 1958 — Section 7, 36

Citation : (2021) 11 BOM CK 0128

Hon'ble Judges : Mangesh S. Patil, J

Bench : Single Bench

Advocate : Sudhir K. Chavan, Y.G. Gujrathi, S.S. Tope, A.N. Nagargoje, Vaibhav Pawar

Final Decision : Partly Allowed

Judgement

Mangesh S. Patil, J

1. Heard.

2. Rule. The Rule is made returnable forthwith. The learned A.G.P. waives service on behalf of respondent No.1, learned Advocate Mr. S.S. Tope waives service for respondent No.2, learned Advocate Mr. A.N. Nagargoje waives service for respondent Nos.3, 5 and 6 and learned Advocate Mr. Vaibhav Pawar waives service for respondent Nos.4 and 7 to 10. At the joint request of learned Advocates for the parties, the matter is heard finally at the stage of admission.

3. The petitioner is challenging the order passed by respondent No.1 Collector dated 31.12.2020 holding him to have incurred a disqualification under Section 36 read with Section 7 of the Maharashtra Village Panchayat Act, 1958 (hereinafter referred to as 'the Act') from holding the post of Sarpanch of village Ukhali, Taluka Aundha (Nagnath), District Hingoli for not holding the requisite number of monthly meetings and gram sabhas. The decision was rendered on a complaint filed by respondent No.2.

4. Mr. S.K. Chavan, learned Advocate for the petitioner would strenuously submit that the decision under challenge has been rendered in blatant disregard to the principles of natural justice. The petitioner was served with a vague notice dated 26.05.2020 (Exh-A) without containing specific allegations as to what were the lapses on his part so as to constitute the disqualification. In the absence of such specific charges having been ever communicated to him, the decision was rendered. By referring to the rojnama of the proceeding before respondent No.1 Collector, he would point out that the last date before pronouncement of the order under challenge was 03.08.2020. It only marks presence of the parties i.e. petitioner and respondent No.2 and the other respondents through their Advocates. It does not mention about any arguments having been heard by the learned Collector. He would further point out that it reads that a report from Tahsildar, Aundha was called and the matter was straightway reserved for final decision. Subsequently, the impugned judgment and order has been pronounced on 31.12.2020. He would further point out from the observations in the impugned order that a report from the concerned Deputy Chief Executive Officer (Panchayat), Zilla Parishad, Hingoli was also perused. It was dated 31.08.2020 and no opportunity was ever extended to the petitioner to know the contents of the report, which were subsequently relied upon by respondent No.1 Collector while passing the impugned decision. If at all he was to rely upon such a report, a copy of it ought to have been served to the petitioner. That having not happened, the impugned order suffers from gross illegality. In support of his submission, the learned Advocate would place reliance upon the following decisions:

(i) Pratibha Sanjay Hulle Vs. Additional Collector & Ors.; 2010 (4) Bom.C.R.700

(ii) Sunil Daulat Patil V. State of Maharashtra & Ors.; 2014(1) Bom.C.R.1

(iii) Laxmibai Yadavrao Panchal Vs. The Additional Collector & Ors.; Writ Petition No.8668 of 2015, decided on 05.05.2016

(iv) Saw. Padminbai Narsing Panchal Vs. The Additional Collector & Ors.; Writ Petition No.2971 of 2017, decided on 05.12.2017

5. The learned A.G.P. and Mr. S.S. Tope, learned Advocate for respondent No.2, by referring to their respective affidavits-in-reply, submit that though the notice served to the petitioner to appear and contest the proceeding before respondent No.1 Collector did not contain the particulars, he was aware about the contents of the complaint filed by respondent No.2 (Exh-B) and had even filed his written statement (Exh-C) and made an attempt to show that there was sufficient cause for him not to hold the meetings. They would, therefore, submit that it was not a case where the incumbent was completely in dark when he faced the enquiry. They would, therefore, submit that the petitioner is not entitled now to put up a grievance about absence of an opportunity of being heard and to meet the charges. Having once participated in the enquiry, he cannot now be allowed to turn around and put up such a defence.

6. The learned A.G.P. and learned Advocate Mr. S.S. Tope would then refer to the decision of the Division Bench of this court in the case of Gunwantrao Yeshwantrao Deshmukh Vs. State of Maharashtra and another; 1981 Mh.L.J.815 and submit that the disqualification from continuing as a Sarpanch for not convening the meeting as per the provisions of the Act and Rules, without there being sufficient cause, is automatic.

7. By referring to the decision in the case of Pralhad Bhikaji Bargaje Vs. State of Maharashtra and others; 2016(6) Mh.L.J.900, learned A.G.P. and Mr. Tope, learned Advocate would submit that in similar set of facts, this court had concluded that the petitioner therein had knowledge about the specific allegations against him. He had filed a reply and it could not be said that an opportunity of being heard was not extended to him. They would also place reliance on the decision of coordinate bench of this court in the case of Salimbi Mubarak Tamboli Vs. The State of Maharashtra & Ors.; Writ Petition No.10956 of 2018, decided on 12.03.2019.

8. The learned A.G.P. and learned Advocate Mr. Tope would then refer to the report of Tahsildar dated 27.11.2020 (Exh-R4) and submit that the report was eloquent enough to demonstrate the number of lapses for which the petitioner was guilty in not holding the meetings and even there was an attempt in manipulation of the gram panchayat record. They would further submit that even the gramsevak has indulged in the illegality and respondent No.1 Collector specifically directed a disciplinary proceeding to be initiated against him by his communication dated 4. 08.2020 (Exh-R3).

9. I have carefully considered the rival submissions and perused the papers, including the decisions cited at the bar.

10. It is the basic tenet of the law that whenever some adverse action is to be taken, particularly of the kind of non-sitting a publicly elected person, principles of natural justice have to be followed and the charges have to be strictly established [see : Ravi Yashwant Bhoir Vs. District Collector, Raigad and others; (2012)4 SCC 407]. There cannot be any quarrel about the principle laid down in Gunwantrao (supra) that a consequence of not holding necessary meetings pursuant to the provisions of Section 7 of the Act and Rule No.4 of the Rules framed thereunder is automatic. proceeding is as to if there is a failure on the part of respondent No.1 Collector in conducting enquiry by adhering to the principles of natural justice and as to if, based on the material before him, his conclusion as to the proof of charge are sustainable.

12. There cannot be dispute about the fact that the petitioner was served with a notice (Exh-A) which simply called upon him to appear before respondent No.1 Collector and to furnish his written and oral submissions. It did not contain the particulars for which he was called upon to tender his explanation. In similar set of facts and circumstances, in the matters of Pratibha, Sunil, Laxmibai and Padminbai (supra), the coordinate benches of this Court had remanded the

matters back to the concerned Collector for taking a decision afresh by extending an opportunity of being heard to the concerned petitioners by communicating specific charges to them.

13. At the first blush, the submission on behalf of the petitioner, referring to these decisions, seems to be attractive. However, it needs to be borne in mind that though the notice (Exh-A) was vague and did not contain the particulars, the petitioner had subsequently appeared before respondent No.1 Collector and has filed his written statement (Exh-C) to the complaint of respondent No.2 (Exh-B). In his complaint, respondent No.2 had given particulars as to how the petitioner had committed lapses in holding the mandatory meetings. It was specifically pleaded that neither any gram sabha nor a monthly meeting was ever held after 08.08.2018. It was specifically alleged that even an endorsement to that effect was made by the concerned gramsevak on the proceeding book. Therefore, it cannot be said that the petitioner was completely oblivious of the allegations made against him. This is what had happened and was held by a coordinate bench in the matter of Pralhad (supra). In view of the peculiar facts and circumstances akin to the present matter, it was held that the petitioner therein was aware about the charges against him and had even made an attempt to demonstrate that there was sufficient cause for not holding the gram sabha and thereby had failed to discharge the burden cast upon him.

14. But then, there are certain other facts and circumstances which are peculiar to the matter in hand, which are sufficient to demonstrate that the enquiry that was conducted by respondent No.1 Collector was not conducted strictly by adhering to the principles of natural justice. As can be seen from the rojnama, the last date before pronouncement of the impugned order was 03.08.2020. Apart from the fact that the rojnama did not mention about the parties having been heard finally, the matter was directed to be reserved for decision. It was specifically mentioned that the report from Tahsildar to be called. The impugned order was subsequently passed on 31.12.2020. It further reads in paragraph 9 that the Collector had relied upon the report of the Deputy Chief Executive Officer (Panchayat) dated 31.08.2020 and based on such report, it was concluded by the Collector that there was sufficient material to demonstrate that the petitioner had failed to hold mandatory meetings. If such is the state-of-affairs, when the last date of hearing was 03.08.2020 and the Collector had received the report of the Deputy Chief Executive Officer on 31.08.2020 and subsequently passed the impugned order dated 31.12.2020, there is absolutely no material to demonstrate that the report of the Deputy Chief Executive Officer, inspite of having sufficient time at hand before pronouncing the impugned decision, was ever communicated to the petitioner. If the contents of the report were to be relied upon by the learned Collector before taking the decision, the principles of natural justice ought to have been followed by giving its copy to the petitioner and enabling him to meet the contents thereof. This is not an empty formality but would have enabled him to demonstrate that the contents were not factually correct.

15. Pertinently, the impugned order reads that the concerned gramsevak in the proceeding book dated 18.08.2018 having made an endorsement that no meetings were ever held after 18.08.2018. The Collector, by his communication dated 04.08.2020 (Exh-R3) addressed to the Chief Executive Officer of Zilla Parishad, Hingoli, specifically mentioned that after conclusion of the enquiry by the Collector, the concerned gramsevak had made a statement denying the contents of his earlier report. In view of his such change in the stance, it was concluded that he was misleading the Government and a disciplinary proceeding be initiated against him. This circumstance clearly indicates that there is a serious dispute as to the genuineness of the endorsement appearing in the proceeding book of the village panchayat dated 18.08.2020, which reads to the effect that no meeting was ever held after that date. If this is the state-of-affairs, factually, even it is doubtful as to if this entry could have been relied upon by the learned Collector while holding the charge having been proved.

16. In view of such peculiar state-of-affairs, in my considered view, even this matter requires the course adopted by this court in the matters of Pratibha, Sunil, Laxmibai and Padminbai (supra) to be followed.

17. The Writ Petition is allowed partly. The impugned order is quashed and set aside and the matter is remitted back to respondent No.1 Collector for taking a decision afresh by conducting a fresh hearing in the light of the observations made hereinabove.

18. The parties shall appear before respondent No.1 Collector on 15. 12.2021 and there shall be no need for him to issue any notice to them. He shall thereafter conduct appropriate hearing and decide the matter as early as possible and in any case within six weeks thereafter.

19. The Rule is made absolute in above terms.