
(2015) 01 BOM CK 0165
In the Bombay High Court
Case No : Writ Petition No. 927 of 2015

Tukaram Krushnaji Parve

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 36, 38, 39, 7

Citation : (2015) 4 ALLMR 788 : (2015) 3 MhLj 652

Hon'ble Judges : R.V. Ghuge, J.

Bench : Single Bench

Advocate : Sachin S. Deshmukh, for the Appellant; V.H. Bhogale, AGP,
Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

R.V. Ghuge, J.—The Petitioner seeks to challenge the judgment of the Additional Collector, Latur dated 12.01.2015 delivered in the proceedings bearing Case No. 2014/GPN/CR/684 by which the Petitioner, who is the Sarpanch of the Village Panchayat, Devangra, Taluka Chakur, District Latur, has been disqualified as Sarpanch and at the same time, he has been removed as a member of the Village Panchayat and his position has been declared vacant.

2. I have heard the respective counsel at length. I am adverting to only those submissions which are relevant at this stage and in the light of the order that I intend to pass.

3. The submissions of Mr. Deshmukh, learned Advocate for the Petitioner, are summarized as under:-

(a) The Petitioner was elected as Sarpanch for the seventh time pursuant to the elections held in December, 2012.

(b) The Financial Year as enshrined under the law is from 01st April to 31st March in a given year.

(c) A complaint has been lodged with the Additional Collector, Latur by the Respondent Nos. 2 to 5, namely, Shivaji Venkatrao Narwade, Tukaram Trimbak Narwade, Jalindar Trimbak Waghmare and Dhondopant Prabhakar Narwade.

(d) The said complaint invoked Sections 7 and 36 of the Maharashtra Village Panchayats Act (the Act).

(e) The Complainants are elected members of the Village Panchayat.

(f) In the entire complaint, the contention of the Complainants is that monthly meetings, meetings for women and the Gramsabha were not held, as is the requirement of law.

(g) The Complaint pertains to the Financial Year 01.04.2013 to 31.03.2014.

(h) Besides merely alleging that no meetings as required by Section 7 were conducted, there are no pleadings as to which were the monthly meetings, meetings for women and the Gramsabha that have not been held and which fall short of the minimum number of meetings as prescribed under the Act.

(i) The Petitioner in his reply dated 18.11.2014 to the said complaint filed on 14.08.2014 has set out certain dates on which the Gramsabhas, special Gramsabhas, meetings for women and the monthly meetings that were held.

(j) By the impugned order dated 12.01.2015 the Additional Collector, Latur has drawn his conclusions by which certain meetings said to have been held, have been invalidated on the ground that the record produced was forged.

(k) Some of the meetings have been invalidated since there was no proposer or seconder for conducting such meetings, despite the fact that no provision either under the Maharashtra Village Panchayats Act or under any of the Rules applicable, has been quoted to indicate that a monthly meeting or meeting for women or the Gramsabha cannot be held unless such a meeting is proposed and seconded by the members of the Village Panchayat.

(l) The conclusions pertaining to the meetings that have been discarded, are based on conjectures and surmises.

(m) The meetings held for women were discarded on the same ground that there was no proposer or seconder.

(n) The record placed before the Additional Collector has been disbelieved only on the solitary ground of lack of proposer and seconder.

(o) The impugned judgment of the Additional Collector is unsustainable in law.

4. Mr. Gunale, learned Advocate appearing for the Respondent Nos. 2 to 5, has strenuously supported the impugned judgment of the Additional Collector. His submissions are summarized as under:-

(a) The complaint dated 14.08.2014 has pointedly indicated the lapses on the

part of the Petitioner.

(b) The grounds, on which the lapses of the Petitioner have occurred, are specifically set out in the complaint.

(c) The documents produced by the Secretary of the Village Panchayat have been rightly disbelieved.

(d) Under Section 7 r/w Section 36 of the Maharashtra Village Panchayat Act, the Petitioner can be removed as Sarpanch as well as he is liable to lose his membership of the Village Panchayat for the remainder of the term.

(e) The moment the Additional Collector comes to a conclusion that the Petitioner is guilty of lapses under Sections 7 and 36, he is automatically removed as Sarpanch and also as a member.

(f) Holding monthly meeting, meeting for women and the Gramsabha is mandatorily required and there can be no excuse for not convening such meetings.

(g) The Up-Sarpanch is presently officiating as a Sarpanch.

(h) The impugned judgment is supported with reasons and there is no necessity to remand the matter for a fresh hearing.

(i) The Writ Petition deserves to be dismissed.

5. In support of his submissions, Mr. Gunale has placed reliance on the following judgments:-

(1) Nanasaheb vs. Additional Collector, Parbhani, reported in 2010 (6) All M.R. 764. (WP No. 4660/2009 Aurangabad Bench dated 15.02.2010)ENDLAWFINDER

(2) Govindrao Tulshiram Waghmare vs. Ranjit Mukundrao Halse in WP No. 3887/2013 dated 08.08.2013, Aurangabad Bench.

(3) Kishan Madhavrao Kadam vs. State of Maharashtra in WP No. 1542/2013 dated 05.08.2013, Aurangabad Bench.

6. The learned AGP appearing on behalf of the State has adopted the submissions of Mr. Gunale.

7. Sections 7 and 36 of the Maharashtra Village Panchayat Act read as under:-

"7. Meetings of Gram Sabha:-

(1) There shall be held at least four meetings of the Gram Sabha every financial year on such date, at such time and place, and in such manner, as may be prescribed and if the Sarpanch, or in his absence the Upa-Sarpanch fails without sufficient cause, to hold any of such four meetings 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; and the Secretary of the panchayat shall also if, prima facie, found responsible of any lapse in convening such meeting, be liable to be suspended, and for being proceeded against, for such other disciplinary action as provided under the relevant rules. The decision of the Collector on the question whether or not there was such sufficient cause shall be final:

Provided that, the Sarpanch may, at any time of his own motion, and, shall, on requisition of the Standing Committee, Panchayat Samiti, or Chief Executive Officer, call a meeting of the Gram Sabha within the period specified in the requisition; and, on failure to do so, the Chief Executive Officer shall require the Block Development Officer to call the meeting within fifteen days from the date he is so required to do. The meeting shall, notwithstanding the provisions of subsection (3), be presided over by him or any officer authorised by the Block Development Officer, in that behalf.

Provided further that, a period of not more than three months shall be allowed to elapse between the two meetings of the Gram Sabha:

Provided also that, if the Sarpanch or Upa-Sarpanch, as the case may be, fails to call any such meeting within the specified period, the Secretary shall call the meeting and it shall be presumed that such meeting has been called with the concurrence of the Sarpanch or, as the case may be, Upa Sarpanch;

(2) Any Officer authorised in this behalf by the [Standing Committee, Panchayat Samiti or Chief Executive Officer] by general or special order shall have the right to speak in, and otherwise to take part in, the proceedings of a meeting of the Gram Sabha, but shall not be entitled to vote.

(3) Unless otherwise provided in this Act, the first meeting of the Gram Sabha after each general election to a Panchayat and thereafter the first meeting of every year, shall be presided over by the Sarpanch and in his absence by the Upa-Sarpanch; and all other subsequent meetings of the year of the Gram Sabha, shall be presided over by a person elected by the persons present in that meeting of the Gram Sabha.

(4) If any dispute arises as to whether a person is entitled to attend a meeting of Gram Sabha, such dispute shall be decided by the person presiding, regard being had to the entry in the list of voters for a whole village or ward thereof, as the case may be, and his decision shall be final.

(5) The meeting of the women members of the Gram Sabha, shall be held before every regular meeting of 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 thereof.

(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 schemes 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 sahba 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.

(6) The Gram Sabha shall have the disciplinary control over the Government, semi Government and Panchayat employees working in the village including the matters relating to their daily attendance in the office. The annual evaluation of such employees shall be brought to the notice of their respective higher authorities by the Gram Sabha.

Provided that, Gram Sabha may, by resolution, delegate its authority to the panchayat to exercise general supervision over the Government, semi-Government and panchayat employees including regular and timely attendance at their work place. The mode of recording of attendance and supervision shall be such as the Government amy, from time to time, specify by an order in the Official Gazette.

(7) The Gram Sabha or as the case may be, the panchayat shall report to the concerned Block Development Officer, the irregularities, if any, committed by any of such employees. The Block Development Officer shall consider such report within the period of three months from the date of its receipt. Such matters and the actions taken thereon shall be reviewed in the regular meetings of the Panchayat Samiti. If, the Block Development Officer fails to dispose of such reports within the specified period of three months, the same shall on the expiry of the said period, stand transferred to the Chief Executive Officer of the concerned Zilla Parishad for disposal, whose decision shall be final. The Chief Executive Officer of the Zilla Parishad shall take the decision on such reports so transferred to him, within a period of three months from the date of their receipt.

(8) The Gram Sabha shall select the beneficiaries for individual beneficiary schemes of the State, or as the case may be, of the Central Government.

(9) The Gram Sabha shall generally fix the date, time and place of the next meeting of the Gram Sabha, in its previous meeting.

(10) Unless exempted by the Gram Sabha or as the case may be, the panchayat, all the Government, semi-Government and Panchayat employees working in the village shall attend the meetings of the Gram Sabha.

(11) The proceedings of every meeting of the Gram Sabha shall be prepared and maintained in a separate register by the concerned Secretary of the Panchayat and in his absence, the proceedings shall be prepared by any Government, semi-Government or Panchayat employee working in the village, such as Teacher, Talathi or Anganwadi Sevika as directed by the Sarpanch and the same shall be handed over to the Panchayat for records."

Provided that, it shall be a joint responsibility of the Sarpanch and Secretary of the concerned panchayat to maintain secured custody and proper safety of proceeding register, attendance register and other relevant records of the Gram Sabha, and they shall be primarily held responsible for any tampering, alteration, manipulation of entries or contents or loss or mutilation of such record unless proved otherwise and shall be liable to be prosecuted under relevant provisions of the Indian Penal Code."

"36. 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 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."

8. I find from the above provisions that the Competent Authority, while dealing with a complaint under Sections 7 and 36, initially has to identify those meetings which have been validly held under the categories of monthly meetings, meetings for women and the Gramsabha. Before invoking its jurisdiction under Sections 7 and 36 to disqualify the Sarpanch or Up-Sarpanch, the Additional Collector has to arrive at a specific conclusion as regards the meetings under each of these heads. Thereafter, he can draw his conclusions as regards the shortfall in the number of meetings under these heads.

9. I do not find from the impugned judgment that the Competent Authority-Additional Collector has concluded as to which are the meetings validly held insofar as the monthly meetings, meetings for women and Gramsabhas are concerned. I also do not find a conclusion as to whether, even a single meeting was held under either of these three heads.

10. In the impugned order, the Competent Authority has discarded the record as regards the meetings alleged to have been held on 20.04.2013, 01.05.2013, 07.07.2013, 15.09.2013 and 24.04.2014 on the ground that there was no proposer or seconder for convening these meetings.

11. The complaint lodged by the Respondents is as regards the Financial Year 01.04.2013 to 31.03.2014. The meeting allegedly held on 24.04.2014 is,

therefore, inconsequential. However, neither of the learned Advocates appearing for the Respondents have pointed out any provision from the Act or the Rules that the Sarpanch or Up-Sarpanch, as the case may be, can convene a meeting only if there is a proposer or seconder for holding such a meeting. This is one ground on which the contention of the Petitioner needs to be accepted that the Competent Authority has discarded the meetings on the ground of lack of proposer and seconder, without his conclusions being supported by provisions of law.

12. Insofar as the meetings dated 17.06.2013, 14.08.2013 and 24.01.2014 pertaining to the monthly meetings are concerned, the Competent Authority concludes that there is a proposer or seconder. However, from the impugned judgment it does not emerge that the Competent Authority has concluded that some of the monthly meetings, meetings for women and Gramsabha have been validly held. Similar is the case as regards the meetings held on 30.04.2013, 14.08.2013, 01.10.2013 and 25.01.2014.

13. In the light of the phraseology in Sections 7 and 36 of the Maharashtra Village Panchayats Act, the Competent Authority is empowered to disqualify a Sarpanch from continuing in such capacity and such disqualification will operate against the said person for the remainder of the term as a member of the Village Panchayat. In other words, an order of disqualification of a Sarpanch under Sections 7 and 36 will prohibit such a person for seeking a re-election to the post of Sarpanch till his term as a member of the Village Panchayat would last.

14. Therefore, the contention of Mr. Gunale that the Additional Collector can disqualify a Sarpanch from the said position and disqualify him as a member of the Village Panchayat as well, is fallacious. The Competent Authority has the jurisdiction to disqualify a Sarpanch, but not his membership of the Village Panchayat under Sections 7 and 36 of the Act.

15. Insofar as the judgments relied upon by Mr. Gunale are concerned, there can be no dispute as regards the effect of Sections 7 and 36 in not holding the monthly meetings, meetings for women and Gramsabha. The issue is as to whether the meetings held could be termed as unsustainable only on the ground that there was no proposer or seconder for convening the meetings. The Competent Authority has invalidated such meetings, but failed to assign any reason for drawing such conclusions.

16. This Court, in its judgment dated 05.08.2013 delivered in Writ Petition No. 1542/2013 in the matter of Kishan Madhav Kadam and others v/s. State of Maharashtra and others, has placed reliance upon the Division Bench judgment of this Court in the case of Gunwantro Yeshwantrao Deshmukh Vs. State of Maharashtra and Another, . Paragraph 7 of the said judgment of the Division Bench is relevant, which is reproduced as under:-

"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 under Section 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 from continuing as a Sarpanch for not convening the meeting of the panchayat as per the rules without a sufficient cause is automatic. 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 under Section 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 to perform his duty etc. The area and field covered by Section 39 is distinct and different from the one covered by Section 38. 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."

(Emphasis supplied)

17. It is thus, clear that while on the one hand, the Competent Authority has to arrive at a specific conclusion as regards validly held meetings. On the other hand, if the requisite number of meetings are not held, be it monthly or for women or the Gramsabha, the Sarpanch or Up-Sarpanch, as the case may be, should be granted an opportunity to establish a sufficient cause for not holding such meetings.

18. As noted above, most of the meetings have been held to be invalid either on the ground of lack of proposer and seconder and/or the proceedings appear to be forged. All these conclusions have been drawn by the Competent Authority in a

cryptic order without proper reasons.

19. It is in these circumstances that the matter needs to be remanded for a fresh hearing before the Additional Collector.

20. In the light of the above, the impugned judgment and order dated 12.01.2015 passed by the Competent Authority in Case No. 2014/GPN/CR/684 stands quashed and set aside. The proceedings are remitted back to the Additional Collector, Latur for a fresh hearing and adjudication.

21. The litigating parties shall appear before the Additional Collector, Latur on 13.02.2015 at 3:00 pm and separate notices of hearing need not be issued. They shall abide by the dates of hearing as may be posted by the Additional Collector, Latur.

22. The Additional Collector, Latur/Competent Authority shall endeavour to decide the proceedings as expeditiously as possible and preferably on or before the 30th April, 2015. The litigating parties shall cooperate with the Additional Collector, Latur for the expeditious hearing and disposal of the proceedings and shall not seek adjournments on unreasonable grounds.

23. The Competent Authority shall take into account the judgment of this Court in the case of Kishan Madhavrao Kadam and others (supra) as well as the observations made in this order so as to decide all issues involved in the proceedings.

24. Mr. Gunale submits that the Competent Authority be directed to conclude the said proceedings within a period of one month and the Petitioner should not be reinstated as a Sarpanch. This request is opposed by Mr. Deshmukh.

25. Since the impugned order of disqualifying the Petitioner as Sarpanch is quashed and set aside, the Petitioner shall stand restored as the Sarpanch of village Devangra, Taluka Chakur, District Latur. However, the Petitioner shall not draw allowances and shall not propose any subject involving financial burden, till the decision of the Additional Collector, Latur. In case of any urgency in such matters, he shall seek the prior permission of the Additional Collector, Latur before introducing such subject.

26. Writ Petition is, accordingly, partly allowed. No order as to costs.