



**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.554 OF 2024
WITH
MISC. CIVIL APPLICATION NO.482 OF 2026
IN
WRIT PETITION NO.554 OF 2024**

Ulhas Morajkar,
age 53, son of Mahadev N. Morajkar,
R/o H.No.408, Norod Waddo,
Sangolda, Bardez-Goa.

Petitioner.

Versus

1. Mr. Anand Tulaskar,
major of age,
R/o H.No.96/5, Mae-de-Deus,
Sangolda, Bardez Goa.

2. Director of Panchayats,
Office of the Directorate of Panchayats,
Junta House, Panaji, Goa.

Respondents.

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Mr. Chaitanya Padgaonkar with Ms. Anushri Ajay Naik Dessai with Mr. Shlok Rai, Advocate for petitioner.

Mr. Vitthal Naik, Advocate for respondent no.1.

Mr. Tukaram Gawas, Additional Govt. Advocate for respondent no.2.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 31st AUGUST, 2026.

PRONOUNCED ON : 22nd SEPTEMBER, 2026.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is heard finally at admission stage.

2. The petitioner impugns the judgment and order dated 13.5.2024 passed by learned District Judge-1, North Goa, Panjim in Civil Revision Application No.28 of 2024 as well as the order dated 26.3.2024 passed

by the Director of Panchayats in case No.DD/PP/Comp/21/2023/8197, thereby holding petitioner as ineligible to be re-elected as Member of Village Panchayat till expiry of five years period and directing his removal from post of Member of village panchayat of Sangolda for present term which began from 22.8.2022.

3. The petitioner was elected as Panch Member of the Village Panchayat Sangolda for the term 2017 to 2022. Petitioner was also elected as Sarpanch w.e.f. 7.4.2021. He continued in the office of Sarpanch till 18.6.2022 till expiry of his term of election. Upon expiry of term, fresh elections of village panchayat were held for the term 2022 to 2027. The petitioner contested election and was elected as a Panch Member for the period from 2022 to 2027. The petitioner was also elected as Deputy Sarpanch from August 2022 and was holding his office.

4. On 17.8.2023 respondent no.1 filed a complaint with the Director of Panchayats/Respondent No.2 *inter alia* alleging that the petitioner during his last term from 2017 to 2022, while acting as Sarpanch, arbitrarily withdrawn Panchayat's funds to the tune of Rs.8,70,935/- by way of self withdrawals and same were utilized in gross violation of prescribed procedure under Goa Panchayat Raj Act, 1994 (for short hereinafter referred to as "said Act"). It is accordingly alleged that the conduct of petitioner during the period from 2017 to 2022 amounted to

remiss in discharge of the duties which was detrimental to the interest of panchayat and therefore petitioner is liable to be removed from the office of Sarpanch. The complaint filed by respondent no.1 was registered as case No.DD/PP/Comp/21/2023/8197. Petitioner was served with the notice of complaint. The petitioner filed his reply contending that there are no grounds to invoke the provisions of section 210 of the said Act. The allegations in the complaint are pertaining to his past term as a Sarpanch and no action can be taken against him after his fresh election in absence of any act of remiss in discharge of his duties in his present term. The Respondent no.2 framed following issues:-

ISSUES

- A. Whether it is legally permissible for this authority to act under Section 210-A of the Panchayat Raj Act, and order the removal of the Respondent as a member of the panchayat, for acts of misconduct or remiss in duty, which may have been committed during his previous tenure.*
- B. Whether this Authority has jurisdiction to take cognizance of a complaint filed under section 210 of the Panchayat Raj Act.*
- C. Whether this authority can direct the Chief Executive Officer to take cognizance of the statements contained in the complaint and initiate an inquiry in terms of Section 210 of the Panchayat Raj Act.*
- D. Whether the respondent has withdrawn an amount of Rs.8,70,935/- from the savings bank account of the V.P. Sangolda without the authority of law and sans the statutorily prescribed procedure.*

E. Whether the Respondent has acted detrimental to the interest of the panchayat and exercised powers which are not expressly vested in him by or under this Act or rules or by-laws framed thereunder?

and finally concluded that the conduct of petitioner was detrimental to the interest of the Panchayat and/or misuses or abuses of powers beyond his authority in a capacity of Sarpanch in terms of deducts of section 210-A of the Act and directed removal of the petitioner as a Member of village Panchayat Sangolda w.e.f 20.05.2021 and further declared him ineligible for election for the term of five years w.e.f 20.05.2021. Eventually, hold that fresh election of the petitioner on 22.8.2022 is void ab-initio and directed his removal as a Member for the present term of Panchayat.

5. Aggrieved petitioner preferred Revision Application no.28 of 2024 before the District Judge at North Goa, Panji. The learned District Judge, by his order dated 13.05.2024 dismissed the revision application, thereby upholding the order passed by Respondent no.2-Director. Hence, this petition.

6. Mr. Chaitanya Padgaonkar, learned advocate appearing for the petitioner submits that the scheme under section 50 (4) as well as 210-A of the Panchayat Act nowhere prescribes for removal of the Sarpanch, Deputy Sarpanch or Member of the Panchayat for any Act in discharge

of his duties during expired term of membership. The acts alleged in the complaint are pertaining to last term of election for the period from 2017 to 2022. The complaint is filed on 17.8.2023 when petitioner was freshly elected as member of Panchayat for term of 2022 to 2027. As such, Director was not competent to direct petitioner's removal on the basis of allegations of misconduct during past term. Mr.Padgaonkar would further submit that even otherwise petitioner was not served with the show cause notice with specific charges which were to be answered by him. Eventually, the procedure adopted by Director is contrary to the law. On this count also, impugned orders are liable to be quashed and set aside.

7. In support of his contentions, he relies upon observations of judgment of Division Bench of this Court in case of *Narayan Atmaram Borse Vs. State of Maharashtra and others*¹, *Vilas Bhagwat Jagtap Vs. State of Maharashtra and others*² and judgment of the Supreme Court in case of *Ravi Yashwant Bhoir Vs. District Collector, Raigad and others*³ to contend that an elected member can be removed in exceptional circumstances upon strict adherence to the statutory provisions and holding full fledged inquiry meeting requirements of principles of natural justice and giving an incumbent an opportunity to defend himself.

¹ 2005 (2) Mh.L.J. 1093.

² (2022) 3 Mh.L.J. 209.

³ 2012 (4) SCC 407.

8. Per contra, Mr. Vitthal Naik, learned advocate appearing for respondent no.1 and Mr. Tukaram Gawas, learned Additional Government Advocate appearing for respondent no.2 supports the impugned orders contending that petitioner's gross misconduct/abuse of the powers while performing his duties as Sarpanch has been duly proved. His election for subsequent term would not exonerate him from misdeeds of last term and his removal is perfectly in accordance with the scheme of the Act, which does not require interference in writ jurisdiction of this Court.

9. Having considered submissions advanced by learned advocates appearing for respective parties, questions that require consideration are as under:

“Whether the complaint under section 50 (4) read with section 210-A of the said Act could have been entertained against petitioner based on the allegations of remiss/misuse of powers for the last term of election of petitioner after his fresh election and assuming office for present term?”.

“Whether the procedure followed by the Director has been vitiated for want of specific show cause notice incorporating the charges of misconduct to be answered by the petitioner.?”

10. Before entering into merits of contentions of the parties, it is apposite to refer to the relevant provisions of the said Act. Section 50 of the Act reads thus :-

“50. Resignation or Removal of Sarpanch or Deputy Sarpanch :

(1) The Sarpanch of the Panchayat may resign his office by writing under his hand addressed to the Director and the Deputy Sarpanch of the Panchayat may resign his office by writing under his hand addressed to the Sarpanch and in the absence of the Sarpanch to the Director.

(2) Every Sarpanch or Deputy Sarpanch of the Panchayat shall be deemed to have vacated his office forthwith if he ceases to be a member of the Panchayat.

(3) Every resignation under sub-section (1) shall take effect on the expiry of ten days from the date of its receipt by the Director or the Sarpanch as the case may be, unless within the period of ten days he withdraws such resignation by writing under his hand.

(4) Every Sarpanch or Deputy Sarpanch of a Panchayat shall, after an opportunity is afforded for hearing him, be removable from his office as Sarpanch or Deputy Sarpanch by the Director for being persistently remiss in the discharge of his duties or misconducting himself or misuses or abuses the powers or exercising the powers not expressly vested in him by or under the Act or the rules framed thereunder and the Sarpanch or Deputy Sarpanch so removed who does not cease to be a member under sub-section (2) shall not be eligible for re-election as Sarpanch or Deputy Sarpanch for such period not exceeding five years as the Director may specify in his order.

(5) A Sarpanch or Deputy Sarpanch removed from his office under sub-section (4) may also be removed by the Director from the membership of the Panchayat for such period not exceeding five years as the Director may specify in his order.”

SECTION 210-A

“210-A. Liability of members for removal. - A member of a Panchayat shall, after an opportunity is afforded for

hearing him, be removable from his office as a member by an order passed by the Director, for persistent remiss in the discharge of his duties, or if such member acts detrimental to the interest of the Panchayat or misuses or abuses the powers or exercises powers which are not expressly vested in him by or under this Act or rules or bye-laws framed thereunder and the member so removed shall not be eligible for re-election for a period not exceeding five years as the Director may specify in his order.”

11. Mr. Padgaonkar, learned advocate appearing for the petitioner heavily relied upon the exposition of law by the Division Bench of this Court in case of **Narayan Atmaram Borse** (supra), wherein this Court while dealing with section 39 (1), (1A) and 2 of the Bombay Village Panchayats Act (3 of 1959) made following observations :-

“7. In our view, the scheme of section 39 (1) and (1A) of the said Act is quite clear. It is the misconduct during the tenure which is sought to be proceeded against the Sarpanch or Upsarpanch. Therefore, he is to lose his office for the remaining period of that term and therefore, also under sub section (1A) it is provided that once he is removed, he shall not be eligible for the election during the remainder part of the term of the Panchayat Samiti. The section does not provide for disqualification spreading beyond the term and if it does not so provide, we cannot read it into the section. That is clearly not the object of the provisions.”

12. In light of the aforesaid observations, it is submitted that, removal of Sarpanch under the scheme of Act cannot be beyond the term as section does not provide for disqualification spreading beyond the term. With a view to appreciate the aforesaid observations, it is necessary to

refer section 39 of the Bombay Village Panchayats Act, which reads thus :-

39. Removal from Office.

(1) The [Standing Committee] may remove from office any member or any Sarpanch or Upa-Sarpanch who has been [guilty of misconduct in the discharge of his duties, or of any disgraceful conduct, or of neglect of] or incapacity to perform his duty, or is persistently remiss in the discharge thereof. A Sarpanch or an Upa-Sarpanch so removed may at the discretion of the '[Standing Committee]' also be removed from the Panchayat :

[Provided that, no such person shall be removed from office unless the Chief Executive Officer under the orders of the President of the Zilla Parishad concerned holds an inquiry after giving due notice to the Panchayat and the person concerned; and the person concerned has been given a reasonable opportunity of being heard and thereafter the Chief Executive Officer submits his report to the Standing Committee.]

5[(1A) Where a person removed from office of the Sarpanch or Upa-Sarpanch, he shall not be eligible for re-election as Sarpanch or Upa-Sarpanch during the remainder of the term of office of members of the panchayat.]

(2) The [Standing Committee] may subject to like condition disqualify for period not exceeding five years, any person who has resigned his office as a member, Sarpanch or Upa-Sarpanch and has been guilty of the acts and omissions specified in sub-section (1):

Provided that such action is taken within reasonable time after such resignation.

(3) Any person aggrieved by an order of the [Standing Committee] under sub-section (1) or (2) may, within a period of thirty days from the date of the communication of such order, appeal to the Commissioner.

13. Plain reading of the aforesaid provision would show that once a person is removed from the office of Sarpanch or Upsarpanch, he stands disqualified for re-election during the remainder of the term of office of members of the panchayat. In wake of aforesaid backdrop, in case of ***Narayan Atmaram Borse*** (supra), the Division Bench of this Court held that the petitioner Sarpanch on expiry of his term on 31.4.2001 was elected as Sarpanch on 20.11.2002 and then removed from the post of Sarpanch by order dated 15.05.2004 passed by President of the Standing Committee, hence, this Court held that scheme of section 39 does not prescribe removal of Sarpanch or Upsarpanch holding him disqualified spreading beyond the term. Similar view has been re-iterated by the learned Single Judge of this Court in case of Vilas Jagtap (supra).

14. So far as the provisions of Goa Panchayat Raj Act, sub-clause 4 of section 50 prescribes for removal of Sarpanch or Upsarpanch and puts embargo for re-election as Sarpanch or Deputy Sarpanch for the period not exceeding five years from the date of removal. Similarly, sub-clause (5) of section 50 provides removal of Sarpanch or Deputy Sarpanch from membership once removed for misconduct up to the period of five years as specified by Director in his order. Similarly, section 210-A of the Act provides for removal of the Member of Panchayat for persistent remiss in discharge of his duties or misuse or abuses of powers for the period up to five years as specified by Director

in the order from the date of his removal. Apparently, removal of Sarpanch/Deputy Sarpanch or the Member is permissible for any act, which is detrimental to the interest of the panchayat or for persistent remiss in discharge of duties or misuse or abuse of the powers. Such removal comes with further disqualification from re-election up-to five years from the date of removal.

15. Cumulative reading of aforesaid provisions demonstrates that, if a complaint prescribing grounds for removal of the member, Upsarpanch/Sarpanch of the panchayat as prescribed under section 50(4) or section 210-A of the said Act is received, the Director, on evidence or proof of existence of the grounds, not only direct removal from the office; but also direct disqualification from election for the period not exceeding five years as specified in the order. As such, there is substantial difference in section 39(1) and (1A) of Bombay Village Panchayats Act (3 of 1959) and section 50(4) read with section 210-A of Goa Village Panchayats Act. In Bombay Village Panchayats Act, removal is prescribed for remainder of the Term of the Sarpanch or Upsarpanch. As such, once term is expired, no disqualification attaches to such removal and election to village panchayat in the next term is not forbidden or removal does not spread over next term of election of the panchayat. In Goa Panchayat Raj Act, once a Director is convinced of existence of grounds of removal, under Section 210-A he can direct

removal from membership with further disqualification from election up-to five years and such disqualification is not restricted to term of election as a Member, Upsarpanch or Sarpanch. It can bring disqualification for the election for next term, if it begins within the period of five years of disqualification or the period prescribed by the Director under his order.

16. In wake of aforesaid provisions of law, this Court needs to consider as to whether Director can initiate proceeding for removal of member on the basis of alleged misconduct of last term of membership once he acquired office on expiry of earlier term by way of fresh election and mandate for fresh term. In present case undisputedly petitioner is alleged of misconduct during his last term which expired on 18.06.2022. Thereafter, he has been elected as member for fresh term of 2022 to 2027 w.e.f. 22.08.2022 and application/complaint for his removal has been filed by respondent no.1 on 17.08.2023. Admittedly, after petitioner's election for fresh term, he is not alleged to have indulged into any activity which is detrimental to the interest of Panchayat or persistent remiss in discharge of his duties. The action of removal is solicited on the basis of alleged acts committed during his last term.

17. In light of aforesaid factual backdrop, it was not permissible to initiate proceeding for removal against petitioner invoking Section 50(4)

and (5) or Section 200-A of said Act. The literal interpretation of provision would suggest that Sarpanch or Up-Sarpanch can be removed for being persistently remiss in discharge of his duties or misconducting himself or misuse of powers. This would relate to acts committed during that term of election. Once member acquires fresh mandate and assumes office of member for his fresh term, Director cannot take cognizance of any act of misconduct during last term of election. The exception would be if proceeding for removal has been initiated during same term of election for which misconduct is alleged and Director after taking cognizance of such acts has already issued show cause notice to the member and passes order of removal with further disqualification for election for the period upto five years from date of removal and next election takes place during currency of disqualification period prescribed. In present case complaint for removal of petitioner has been filed after fresh election for term 2022 to 2027 attributing misconduct during last term of election. As such, fresh mandate in favour of petitioner would nullify past misconduct during previous term which stood closed. The Director was therefore not justified in taking cognizance of complaint and pass order of removal of petitioner invoking Section 210-A of said Act.

18. Second contention raised on behalf of the petitioner that the procedure was not followed or show cause notice was not given

specifying the charges to be answered by him. Perusal of the record indicates that petitioner was served with notice dated 20.11.2023 in DP/PP/Comp/21/2023/8197, which specified that the petitioner is called upon to answer the complaint under section 210-A of said Act. The record indicates that petitioner had filed a preliminary reply dated 23.01.2024 and detailed reply dated 29.2.2024, wherein the petitioner averred in complaint and put up stand that amounts encashed under cheques were paid to respective parties and vouchers were obtained which are reflected in relevant entries of cash book under heading of “Expenditure” on right hand side of the said cash book, and merely because there was no resolution towards any expenditure it would not enable complainant to allege fraud. Petitioner has given a details of the expenditure made by him after withdrawal of cash amount of Rs.8,70,935/- from the Panchayat’s fund through self withdrawal cheques. According to the petitioner, section 64(1)(d) of the Panchayat Act provides for expenditure after Rs.25,000/- p.m. by Sarpanch to specify emergency and urgency. However, the Director found in his order that withdrawal is much more beyond prescribed limit, which is not appropriately accounted for and even beyond the budget approved in terms of section 182 of the act.

19. Admittedly, applicant is not charged for the misappropriation or no criminal proceeding is instituted against him, the allegation remains

that petitioner has withdrawn the amount without adhering to the procedure prescribed under provisions of said Act.

20. In case of ***Tarlochan Dev Sharma Vs. State of Punjab***⁴, Supreme Court while dealing with provisions of Punjab Municipal Act relating to removal of President observed in paragraph no.11, which reads thus:

“The expression ‘abuse of powers’ in context and setting in which it has been used cannot mean use of power which may appear to be simply unreasonable or inappropriate. It implies a willful abuse or an intentional wrong. An honest though erroneous exercise of powers or an indecision is not an abuse of power. A decision, action or instruction may be inconvenient or unpalatable to the person affected but it would not be an abuse of power. It must be such an abuse of power which would render a Counselor unworthy of holding office of President. In as much as an abuse of power would entail adverse civil consequences, the expression has to be narrowly construed.”

It is further observed in paragraph no.12 as under:

“person proceeded against under Section 22 of the Act has to be made aware of precise charge which he is required to meet and therefore he must be apprised of exact content of abuse of power attributed to him. The authority taking decision must apply its mind also the explanation furnished by person proceeded against.”

21. In light of aforesaid exposition of law if nature of allegation against petitioner are seen, it has been alleged that he has withdrawn sum of Rs.8,70,935/- by self withdrawal and utilized same disregard to prescribe procedure under said Act. The petitioner has placed record of expenditure which is accepted to be genuine and correct. There is no

⁴ 2001) 6 SCC 260.

allegation of misappropriation. Admittedly, expenditure is made during difficult time of Covid and amount is utilized for Panchayat.

22. Admittedly, applicant was not served with show cause notice. He was simply given notice of proceeding under Section 210-A of Act without specifying precise charge to be answered by him. Although applicant was served with copy of complaint and he has tendered explanation for allegations made in complaint, that itself would not suffice requirement under law. It was for Director to issue notice containing specific charge to be answered by petitioner and then proceed to decide if such charge is proved. This Court finds that non-observance of aforesaid procedure would vitiate entire proceeding and consequential order.

23. It is trite that removal of elected representative shall be in exceptional circumstances and upon strict adherence to the statutory provisions and after holding a full fledged inquiry meeting requirement of principles of natural justice and giving an incumbent an opportunity to defend himself. As has been laid down by Supreme Court in case of ***Ravi Yashwant Bhoir*** (supra), that elected official in local self government has to be put on higher pedestal as against Government Servant and for his removal more stringent and standard proof is required. The removal of duly elected member must be on the basis of proved misconduct. In present case allegation against petitioner are

relating to violation of procedure for expenditure of panchayat fund and not intentional act that was detrimental to the interest of panchayat. Therefore, going by material on record no case is made out for action of removal.

24. In that view of the matter, the impugned orders are unsustainable in law. Therefore, Writ Petition is allowed in terms of prayer Clause (A).

25. In view of disposal of Writ Petition, pending Civil Application stands disposed of.

26. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

aaa/-f