

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.7735 OF 2014

Sundar Masaji Sutte,
Age 29 years, Occu. Agri.,
R/o Osmanpur, Taluka Partur,
District Jalna

..Petitioner

Versus

1. The State of Maharashtra,
through Secretary,
Rural Development Department,
Mantralaya, Mumbai 32
2. The Zilla Parishad, Jalna
through its Chief Executive
Officer
3. Anti Corruption Bureau, Jalna,
Taluka and District Jalna
4. Tukaram Changdeo Raut,
R/o Osmanpur, Taluka Partur,
District Jalna

..Respondents

Mr N.J. Pahune Patil, Advocate for petitioner
Mr A.V. Deshmukh, A.G.P. for respondent No.1 and 3
Mr G.V. Shinde, Advocate for respondent No.2
Mr B.G. Kulkarni, Advocate for respondent No.4

CORAM : N.W. SAMBRE, J.

DATE : 18th November 2015

PER COURT

Heard.

2. Under the provisions of Section 39 (1) of the Bombay Village Panchayats Act (hereinafter referred to as “the Act” for brevity), the petitioner was disqualified by the order of Divisional Commissioner, Aurangabad on the ground that petitioner, under the capacity of Sarpanch of Village Panchayat was caught red handed while accepting the bribe on 11th September 2013.

3. While questioning the above referred order, the learned Counsel for the petitioner would urge that the basis i.e. form for ordering disqualification is absolutely incorrect, as according to him, the perusal of the first information report dated 5th June 2013 speaks of unsuccessful trap and further in clear terms could be inferred that the petitioner has signed the cheque of the complainant without accepting bribe.

4. While opposing the above referred contentions, learned A.G.P., while relying upon the provisions of Section 39 (1) of the Act would urge that the conduct of the present petitioner of demanding bribe was recorded on the mobile phone and that was sufficient evidence, that could be taken into account for the purpose of ordering removal of the petitioner from the office. He would urge that the order is just and proper and in accordance with law.

5. The fact remains that in the present case, the petitioner is facing trial in Crime No.3014/2013 punishable under Section 7 of the Prevention of Corruption Act. Perusal of the investigation papers reflects that the trap that was sought to be led, was unsuccessful, however, the Divisional Commissioner exercised powers under Section 39 (1) of the Act and stated that the trap was successful, as the petitioner was caught red hand, while accepting bribe. The said observations are contrary to the record. Apart from above, the fact remains that the complainant himself before the investigating agency has made a statement that petitioner has served the cheque on him without accepting bribe.

6. In view thereof, in my opinion, the exercise of powers under Section 39 (1) of the Act by the Divisional Commissioner in the above referred background was wholly unwarranted and the order impugned is contrary to the scheme of Section 39 (1) of the Act. The order further reflects non-application of mind by the Divisional Commissioner.

7. In view of above, in my opinion, the petition needs to be allowed. The order dated 8th August 2014 passed by the Divisional Commissioner ordering removal of the petitioner from the post of Sarpanch, is hereby quashed and set aside.

8. Writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)

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