IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.345 OF 2015

Shri. Shamrao Govind Shendge .. Petitioner

Versus

Shri. Uttam Dattatraya Gaikwad and others .. Respondents

Shri. R. M. Haridas i/by Shri. Sumit V. Khaire, for the Petitioner.
Shri. Milind Deshmukh, for the Respondent Nos.1 & 2.
Shri. Nitin P. Deshpande, for the Respondent No.4.
Shri. A. D. Kango, AGP for the Respondent Nos.3 & 8.

CORAM : R.M. SAVANT, J.
DATE : 08th MAY, 2015

P.C.

1. The Writ Jurisdiction of this Court under Article 226 and 227 of the Constitution of India is invoked against the order dated 05.01.2015 passed by the Appellate Authority i.e. the Hon'ble Minister for Rural Development, Government of Maharashtra by which order the Appeal filed by the Petitioner came to be dismissed and resultantly, the order dated 14.10.2014 passed by the Divisional Commissioner, Pune came to be confirmed.

2. The Petitioner was the Sarpanch of village Yawat, Taluka Daund, District Pune. A Complaint was filed by the Respondent Nos.1 and

2 invoking Section 39(1)(i) of the Maharashtra Village Panchayat Act, 1958. In the said complaint the Respondents had alleged various financial irregularities against the Petitioner which were inter-alia relating to the allotment of galas, non-issuance of tenders and making payments to the contractors by bearer cheques which were numbering around 300. It seems that on receipt of the complaint from the Respondent Nos.1 and 2, the Divisional Commissioner who is authorized to deal with the complaints filed under Section 39(1) remitted the complaint to the Chief Executive Officer to submit a report in respect of the allegations made against the Petitioner. The Chief Executive Officer it seems in turn directed the Deputy Chief Executive Officer and the Block Development Officer to submit their reports. It seems that the Deputy Chief Executive Officer inquired into the charges levelled against the Petitioner and the reply of the Petitioner was sought to the said allegations. It seems that the Deputy Chief Executive Officer and the Block Development Officer submitted their reports to the Chief Executive Officer. The Chief Executive Officer after receipt of the said reports from the Deputy Chief Executive Officer and the Block Development Officer commenced the proceedings in the manner contemplated by Section 39(1)(i) of the said Act. The Chief Executive Officer inquired into the allegations made against the Petitioner which were comprised into four charges which are now reflected in the

impugned order. The Chief Executive Officer heard the Petitioner on 14.06.2013, 21.06.2013 and lastly on 16.07.2013 which fact is reflected in the report submitted by him. The Petitioner's presence has been recorded in the Roznama of the said dates as being represented by an advocate. It is after hearing the Petitioner that the Chief Executive Officer submitted his report to the Divisional Commissioner. The Divisional Commissioner thereafter considered the application filed by the Respondent Nos.1 and 2 for removal of the Petitioner as Sarpanch. The Divisional Commissioner considered the report submitted by the Chief Executive Officer and as also the reply filed by the Petitioner to the said report and by his order dated 16.10.2014 allowed the said application filed by the Respondent Nos.1 and 2 under Section 39(1)(i) of the said Act. The Divisional Commissioner has recorded a finding that the four charges which are reflected in his order dated 16.10.2014 are proved against the Petitioner. The Divisional Commissioner was of the view that in the light of the fact that the charges are held to be proved against the Petitioner, it would not be proper to continue the Petitioner as Sarpanch and accordingly passed an order removing the Petitioner from the post of Sarpanch on the ground of irregularities and on the ground of misconduct in the discharge of the duties.

3. The Petitioner carried the matter in Appeal by way of an

Appeal under Section 39(3) to the State Government. The Appeal was heard by the Hon'ble Minister for Rural Development. In so far as the financial irregularity committed by the Petitioner is concerned, the Appellate Authority has adverted to the same in paragraph 3 of the impugned order. The Appellate Authority has observed that the Petitioner has issued 247 bearer cheques for the amounts between Rs.500/- to Rs.10,000/-, 69 bearer cheques between Rs.10,001/- to Rs.1,00,000/- and 9 bearer cheques for the amounts over Rs.1,00,001/-. The Appellate Authority did not countenance the submission made on behalf of the Petitioner that though the bearer cheques were issued, no loss was caused to the Gram Panchayat. The Appellate Authority held that issuance of bearer cheques was itself against the rules which are applicable to the Gram Panchayat. The Appellate Authority therefore confirmed the finding of the Divisional Commissioner that the Petitioner is guilty of financial irregularities and that he has not discharged his duties as a Sarpanch in a proper manner. The Appellate Authority accordingly dismissed the Appeal by the impugned order dated 05.01.2015. As indicated above, it is the said order dated 05.01.2015 which is taken exception to by way of the above Petition.

4. The principal contention of the Learned Counsel for the Petitioner is that Section 39(1)(i) mandates the Chief Executive Officer

himself to conduct an enquiry and submit a report to the Divisional Commissioner. However, in the instant case the Chief Executive Officer has not conducted the enquiry, but had delegated the same to the Deputy Chief Executive Officer and Block Development Officer. In support of the said contention, the Learned Counsel sought to place reliance on the judgment of a Learned Single Judge of this Court reported in **2002(3) Mh.L.J. 466** in the matter of **Nimba Yadav Bhoi Vs. President, Standing Committee, Zilla Parishad, Jalgaon and others**. The Learned Counsel would therefore contend that the matter is required to be remitted back to the Appellate Authority for a de-novo consideration of the Appeal as the Appellate Authority has not considered the Appeal from the said stand point.

5. Per contra, the Learned Counsel appearing for the Respondent No.4 would submit that the procedure as envisaged by Section 39(1)(i) has been complied and the reports of the Deputy Chief Executive Officer and the Block Development Officer can only be said to be inputs taken into consideration by the Chief Executive Officer for submitting his report to the Divisional Commissioner. The Learned Counsel would by referring to the record of the case would contend that the hearing of the said application was kept on 14.06.2013, 21.06.2013 and lastly on 16.07.2013 when the Petitioner was present and was heard through his advocate.

6. Having heard the Learned Counsel for the parties, in my view there is no merit in the above Petition. It is required to be noted that the Chief Executive Officer has submitted his report dated 17.01.2014 to the Divisional Commissioner in terms of the procedure prescribed by Section 39(1)(i) of the said Act. The said report itself discloses that the hearing before the Chief Executive Officer took place on 14.06.2013, 21.06.2013 and 16.07.2013. The said fact is also fortified now by the record which is produced by the Learned Counsel Shri. Nitin P. Deshpande, wherein the presence of the Petitioner and his advocate has been recorded for the said three dates. The Chief Executive Officer has therefore made a report after conducting an enquiry and after hearing the Petitioner. In so far as the reports that are submitted by the Deputy Chief Executive Officer and Block Development Officer to the Chief Executive Officer are concerned, they can only be said inputs which the Chief Executive Officer might have taken into consideration. However, as indicated herein above, the Chief Executive Officer has independently inquired into the matter. In so far as the judgment of a Learned Single Judge of this Court in *Nimba Yadav Bhoi (supra)* is concerned, the said case was also under Section 39(1)(i) of the said Act. However, in the said Act, the enquiry was conducted by the Block Development Officer, and there was no report made by the Chief Executive Officer. It is in the said context that a Learned Single Judge found that

there was violation of Section 39(1) and therefore the order passed by the Divisional Commissioner was suffering from an infirmity. However, such is not the case in the instant matter as the Chief Executive Officer has himself submitted the report dated 17.01.2014 which is after hearing the Petitioner. In that view of the matter, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]