

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION STAMP NO.15337 OF 2015

Bhanudas Ragho Chaudhari : Petitioner.
Versus
Dyaneshwar Krushnaji Kaule and ors. : Respondents.

Mrs. Manisha Jagtap i/by J Shekhar and & Co. for the Petitioner.
Ms. M S Bane "B" Panel Counsel for the Respondent Nos. 2 to 4.

CORAM : R. M. SAVANT, J.
DATE : 07th July 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 29/5/2015 passed by the Hon'ble Minister for State for Rural Development, Government of Maharashtra by which order the Appeal filed by the Petitioner came to be dismissed and resultantly the order dated 30/3/2013 passed by the Divisional Commissioner came to be confirmed.

2 The Petitioner was elected as a Sarpanch of village Vadhane, Tal. Baramati, District Pune. The Respondent No.1 herein had filed a Complaint against the Petitioner before the Divisional Commissioner alleging certain illegalities committed by the Petitioner in the implementation of the Gharkul Scheme as well as in respect of the work relating to Padmavati Percolation Dam. The Respondent No.1 had accordingly sought removal of the Petitioner as Sarpanch under the provisions of the Bombay Village Panchayats Act, 1958

(for short herein after referred to as “the said Act”). In terms of the said provision i.e. Section 39(1) of the said Act, if the allegations have been made against the Sarpanch or Up-Sarpanch and his removal is sought under the said provision, then an inquiry has to be held by the Chief Executive Officer of the Zilla Parishad concerned under Section 39(1)(i) of the said Act, who pursuant to the said inquiry is required to submit his report to the Divisional Commissioner who is vested with the powers under Section 39(1) of the said Act. In the instant case the record discloses that the Chief Executive Officer appointed a Committee of 3 persons i.e. the Extension Officer of the Zilla Parishad, Shri S D Jadhav and Shri S D Kamble to inquire into the allegations made by the Respondent No.1 against the Petitioner. The said 3 members' committee accordingly submitted its report to the Chief Executive Officer, Zilla Parishad, Pune who in turn submitted his report to the Divisional Commissioner on the basis of the report submitted by the 3 members' committee.

3 The Divisional Commissioner having regard to the report submitted by the Chief Executive Officer, Zilla Parishad, Pune by his order dated 30/3/2013 removed the Petitioner as Sarpanch on the ground that in the report the charges are held to be proved against the Petitioner and also directed removal of the Petitioner and his wife as members of the Grampanchayat.

4 The Petitioner aggrieved by the said order dated 30/3/2013 passed by the Divisional Commissioner filed an Appeal under Section 39(3) of the said Act before the State Government. The said Appeal was heard by the Hon'ble Minister for Rural Development, Government of Maharashtra who by his order dated 31/12/2013 has allowed the said Appeal.

5 As indicated above there were two allegations made against the Petitioner, one being in respect of Gharkul Scheme and the second being in respect of the work relating to Padmavati Percolation Dam. In so far as the first allegation relating to Gharkul Scheme is concerned, the Appellate Authority came to a conclusion that there is no double benefit granted to the allottee and hence did not find any substance in the said charge. However, in so far as the second charge relating to the work of Padmavati Percolation Dam is concerned, the Appellate Authority held that since the FIR has been registered against the Petitioner and since the scope of the inquiry under Section 39(1)(i) of the said Act as also the criminal case would overlap, it is not necessary to proceed against the Petitioner under Section 39 of the said Act and it would be proper to await the outcome of the criminal case which is pending in the Sessions Court, in which Court the Petitioner has made the deposit of Rs.1,39,500/- which was the amount in respect of which financial irregularities were alleged in respect of the work relating to Padmavati

Percolation Dam.

6 The said order dated 31/12/2013 passed by the Appellate Authority was taken exception to by the Petitioner by way of Writ Petition No.4663 of 2014. This Court in view of the fact that the Appellate Authority has failed to exercise the powers under Section 39(1) of the said Act had remanded the Appeal back to the Appellate Authority for a de-novo consideration restricting it to charge No.2 i.e. relating to the Padmavati Percolation Dam. It is on remand that the instant impugned order dated 29/5/2015 has been passed.

7 In the instant order dated 29/5/2015, the Appellate Authority had adverted to the antecedent facts which have been narrated herein above and thereafter has proceeded to consider the Appeal in terms of the mandate of the order dated 25/3/2015 passed in the said Writ Petition No.4663 of 2014. In so far as the second charge is concerned, the Appellate Authority has heard the Petitioner and the concerned officials of the Zilla Parishad. The Appellate Authority also considered the report submitted by the Chief Executive Officer which is dated 11/5/2011 and in which report it has been stated that the expenditure shown in the cash book of the Grampanchayat appears to be doubtful and suspicious. The Appellate Authority has further observed that the muster for the said work also contains bogus entries and that the Sarpanch i.e.

the Petitioner has got the cheques issued to himself and has got the said cheques encashed, when the need was to issue the cheques in the name of the parties who have allegedly carried out the work. The Appellate Authority held that the said facts create a serious doubt and suspicion as regards whether the work was carried out. The Appellate Authority held that for the aforesaid misconduct the Sarpanch and the Gramsevak are responsible and therefore did not deem it appropriate to interfere with the order passed by the Divisional Commissioner unseating the Petitioner.

8 In my view, having regard to the concurrent findings recorded by the Divisional Commissioner as well as the Appellate Authority as regards the mis-conduct alleged against the Sarpanch i.e. the Petitioner in the matter of work relating to Padmavati Percolation Dam, the exercise of the writ jurisdiction of this Court under Article 227 of the Constitution of India is not warranted. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]