

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

WRIT PETITION NO.7285 OF 2015

Miss. Sheetal Balkrishna Sable : Petitioner.
Versus
Sandip Ramchandra Khirade and ors. : Respondents

Mr. Anilkumar K Patil for the Petitioner.
Mr. V A Gangal for the Respondent Nos.1 and 2.
Ms. M S Bane, “B” Panel Counsel for the Respondent Nos.12 and 15.

CORAM : R. M. SAVANT, J.
DATE : 12th August 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 16/06/2015 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 26/02/2015 passed by the Divisional Commissioner, Konkan Division, came to be confirmed.

2 The Petitioner was elected as a Sarpanch of Gram Panchayat Ganeshpuri, Tal. Bhiwandi, Dist.Thane. The said post at the relevant time was reserved for Scheduled Tribe (Woman). A show cause notice came to be issued to the Petitioner under Section 39 of the Maharashtra Village Panchayats Act,

1958 (for the brevity's sake herein after referred to as “the said Act”). The said show cause notice contained the allegations against the Petitioner as regards her functioning as a Sarpanch amongst which allegations were the allegation that the Petitioner has not taken steps to incorporate the name of the newly appointed Gram Vikas Adhikari one Shri Waghmode as the signatory in the bank account of the Gram Panchayat, that the Petitioner has in the resolution No.6(5) dated 17/12/2013 recorded the descent of the member Shri Jagannath B Patil in the remarks column, that the Petitioner has not signed against the said resolution and if the Petitioner was aggrieved by what has been recorded in the minutes book as the business transacted then the procedure of discussing the same in the next meeting was not followed. It was the allegation against the Petitioner that she has not fulfill the duties and obligations of the Sarpanch as enjoined by Section 38 of the said Act as it is the responsibility of the Sarpanch to implement the resolutions passed in the Gram Sabha and carry out the development works, and that the Petitioner has not signed the cheques for the payment to be made in respect of the material supplied to the Gram Panchayat for concretization of 3 roads and construction of platform for crematorium.

3 It appears that in terms of the mandate of Section 39 of the said Act, the Divisional Commissioner directed the Chief Executive Officer of the Zilla Parishad, Thane to submit a report in respect of the allegations which

were made against the Petitioner. The Chief Executive Officer accordingly conducted the inquiry wherein the Petitioner participated and submitted his report dated 17/12/2014 to the Divisional Commissioner. The said report it seems has certain annexures. The Divisional Commissioner, on receipt of the report, heard the Petitioner and the concerned parties and by his order dated 26/02/2015 held that the allegations made against the Petitioner were proved and thereby removed the Petitioner from the post of Sarpanch.

4 The Petitioner aggrieved by the said order dated 26/02/2015 passed by the Divisional Commissioner carried the matter by way of an Appeal under Section 39(4) of the said Act to the State Government. As indicated herein above, the State Government i.e. the Hon'ble Minister for Rural Development who is exercising the powers under the said provisions heard the Appeal and on the ground that the order passed by the Divisional Commissioner did not merit any interference dismissed the Appeal.

5 The learned counsel appearing for the Petitioner Shri Anilkumar Patil was at pains to point out that the allegations made against the Petitioner do not warrant her removal under Section 39 of the said Act. The learned counsel for the Petitioner was at pains to demonstrate to this Court as to how the allegations cannot be said to be proved against the Petitioner. The learned counsel for the Petitioner would contend that the annexures i.e. pages 1 to 84

to the report of the Chief Executive Officer were not furnished to the Petitioner which was also a ground taken in the Appeal before the Divisional Commissioner and the Appellate Authority, but the same was not considered. The learned counsel would contend that the members of the Gram Panchayat who are opposed to the Petitioner appropriated the works that were carried out to themselves.

6 Per contra, the learned counsel for the Respondent Nos.1 and 2 Shri V A Gangal would support the impugned order. The learned counsel would contend that the act of the Petitioner in not taking steps to incorporate the name of Gram Vikas Adhikari Shri Waghmode as the joint signatory in respect of the bank account of the Gram Panchayat resulted in the payment that was required to be made to the employees of the Gram Panchayat being delayed. The learned counsel for the Respondent Nos.1 and 2 would contend that the development works also suffered on account of the functioning of the Petitioner and has resulted in the Gram Panchayat being not able to avail of the funds provided under the Central Scheme. The learned counsel would lastly contend that the payment made to the contractor for the work already carried out was delayed on account of the conduct of the Petitioner. The learned counsel would contend that no work was carried out by the members of the Gram Panchayat and they were only supervising the same.

7 Having heard the learned counsel for the parties I have considered the rival contentions. The provision of Section 39(1) of the said Act can be invoked by the Commissioner if the Sarpanch is guilty of mis-conduct 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. As indicated above, the allegations against the Petitioner are the one's which have been extracted herein above. The said allegations have been held to be proved by the Additional Commissioner and confirmed by the Appellate Authority. The said allegations therefore, having held to be proved, had the effect of affecting the functioning of the Gram Panchayat, the allegations can therefore be said to fall in the category of there being persistent remiss in the discharge of the duties by Sarpanch. In the instant case, it appears that there was constant acrimony between the Petitioner on the one hand and the 9 members on the other side which was affecting the functioning of the Gram Panchayat and may be it is on account of the said fact that the Petitioner may have not taken steps to open the bank account or sign the cheques. However that, as indicated above, has had an effect on the functioning of the Gram Panchayat and as posited in Section 38 of the said Act, the Sarpanch is solely responsible for the functioning of the Gram Panchayat as well as development works are to be carried out on behalf of the Gram Panchayat. On account of the dispute between the Petitioner and the 9 members of the Gram Panchayat, there was virtually a logjam in the functioning of the Gram Panchayat which is

not desirable.

8 In so far as the contention of the learned counsel for the Petitioner that the annexures were not furnished to the Petitioner is concerned, in my view, the said fact would not make any difference as there is no dispute about the fact that the Petitioner was furnished with the report of the Chief Executive Officer. There is also no substance in the contention of the Petitioner that the works have carried out by the members. The bills produced by the learned counsel appearing for the Respondent Nos.1 and 2 Shri Gangal disclose that the Gram Panchayat was billed for the material for which payment was made to the suppliers.

9 In my view, therefore the order passed by the Division Commissioner as confirmed by the Appellate Authority in the facts of the present case do not merit any interference in the writ jurisdiction of this Court. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]