

**IN THE HIGH COURT AT BOMBAY  
APPELLATE SIDE, BENCH AT AURANGABAD**

922 WRIT PETITION NO. 6786 OF 2015

RAJU VITHAL PURHE  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Kulkarni M.A.  
AGP for Respondents 1 & 2 : A.P. Baraskar  
Advocate for Respondent 3 : R.R. Shaikh  
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**CORAM : T.V. NALAWADE, J.**  
**DATED : 1st October, 2016.**

**ORDER :**

1. The petition is filed to challenge the decision given by respondent No. 2, the learned Commissioner in a proceeding referred to him under section 39 (1) of the Bombay Village Panchayat Act, 1958. Both the sides are heard.

2. The petitioner was Sarpanch of village Takli Kadim, Tahsil Gangapur, District Aurangabad. Complaints were received against the petitioner that there were irregularities in Chara Chavani [चारा छावणी], the camp created by the State Government for giving shelter to the cattle as the district was affected due to drought and there was no fodder in the district. There was allegation that the amount of Rs. 18,03,482/-, which was collected as contribution from villagers, was not kept in the bank account and there was no record kept to show that the amount

of Rs. 16,45,382/- was spent and for spending this amount also, there was no resolution of Village Panchayat. Similarly, the amount of Rs. 17,60,505/- was received from the Government as grant for the same purpose, but in respect of that amount also, there was no resolution of Village Panchayat and no proper record was created of the expenditure. One fodder cutter machine was shown to be purchased, but it was not entered in the record of Village Panchayat and there was allegation that the articles and machinery purchased for the camp were taken to the field of the Sarpanch and they were used by him. Similarly, other articles were taken to the field for his own use by the Sarpanch and he had taken even the cattle dung to his field for his own use and account of that was not maintained. In view of these complaints, report was obtained from Block Development Officer (B.D.O.). He made enquiry with the persons and he went through the record and he gave report to the Chief Officer of Zilla Parishad, Aurangabad of aforesaid nature. He noticed that no record at all of the purchase of the material required for erection of sheds, the machinery required for crushing fodder and the purchase of other cattle-food was prepared. No approval was taken of Village Panchayat and also of Gram Sabha and he also noticed that there was substance in the allegations that most of the material including the machine was taken to his own

field by Sarpanch and he was using it.

3. The Chief Executive Officer of Zilla Parishad issued notice to Sarpanch and after giving hearing to him, the Chief Officer formed the opinion that there were irregularities and there was apparent misappropriation of the public money. He then referred the matter to the learned Commissioner for taking further action.

4. After receipt of the report of the Chief Officer of Zilla Parishad, the learned Commissioner of Aurangabad Division, Revenue Department issued notice to Sarpanch, the present petitioner. He did not appear, but, his advocate remained present and time was given to him to file reply and argue the matter. There was no explanation at all with the present petitioner, Sarpanch. Submissions were made that subsequently, record was created and in view of the urgency, the purchase was made immediately and that was done without getting resolution in monthly meeting of Village Panchayat. Submission was also made that the dung was collected, but there was no permission of Block Development Officer to sell it as manure and so it was kept there. The learned Commissioner held that there was no convincing explanation in respect of the allegations made

against the present petitioner and made order of removal of Sarpanch from the office due to misconduct under the provision of section 39 (1) of the Act. Direction was given against Gram Sevak to take disciplinary action against him for aforesaid misconduct. This decision was challenged before the Hon'ble Minister and she has dismissed the appeal by holding that there is no explanation with regard to aforesaid irregularities.

5. The learned counsel for the petitioner placed reliance on the case reported as **2002 (Supp.) Bom.C.R. 944 [Nimba Yadav Bhoi Vs. President, Standing Committee, Zilla Parishad & Ors.]**. He took this Court through para Nos. 6, 12 and 15 and submitted that the procedure which is required to be followed for taking action was not followed and so, the orders cannot sustain in law. This Court has carefully gone through the observations made by this Court in this reported case. It appears that the provision which was there prior to amendment of year 2006 to section 39 of the Act was considered by this Court. As per that provision, the Chief Officer was required to make enquiry under the orders of Commissioner and it was found that such enquiry was not done and there was no enquiry done by the Chief Executive Officer himself and so, such proceeding was null and void. After the amendment of 2006, there is not only the

provision like section 39, there is the provision like section 39-A. The State Government has also power to direct enquiry in to the irregularities and such direction can be given by the Government to Chief Executive Officer. In the present matter, the complaints were received by Collector and he had given direction to the Chief Executive Officer. The record was verified by Chief Executive Officer through Block Development Officer. But, he himself conducted the enquiry in which opportunity was given to the petitioner to have his say. Then as provided in section 39, he had referred the matter to the Commissioner and the Commissioner has made order of removal of Sarpanch from the Office. Thus, the procedure as laid down in the Act after amendment of 2006 was followed. The case cited supra cannot come to the help of the petitioner. There is misappropriation and there are irregularities in respect of huge amount and particularly when, the persons are suffering from drought, such things were done. Such things cannot be taken lightly. This Court sees no reason to interfere in the order made by the learned Commissioner and the decision given by the State Government in the appeal. In the result, the petition stands dismissed.

**[ T.V. NALAWADE, J. ]**

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