

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO. 8006 OF 2016**

Vishwas Pandurang Mokal

..Petitioner

Vs.

Bhaskar Rama Mhatre & Ors.

..Respondents

Mr. Sachin Chavan for the Petitioner

Mr. S. V. Gavand for the Respondent No.1

Ms. Aparna Vhatkar AGP for the Respondent

**CORAM : R. M. SAVANT, J.
DATE : 16th MARCH, 2016**

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 9-3-2016 passed by the Hon'ble Minister for Rural Department, Government of Maharashtra, by which order, the Appeal filed by the Petitioner came to be dismissed and resultantly the order dated 1-2-2016 passed by the Divisional Commissioner Konkan Division, disqualifying the Petitioner under Section 39 of the Maharashtra Village Panchayat Act 1958, came to be confirmed.

2 The elections to the Grampanchayat Shihu, Taluka Pen, District Raigad, were held sometime in the year 2013. The Petitioner was elected as a

Sarpanch of the Grampanchayat Shihu. The Respondent Nos.1 to 6 are the complainants against the Petitioner who are also members of the Grampanchayat Shihu. Pursuant to the complaint made by the said Respondent Nos.1 to 6 herein that the proceedings under Section 39 of the said Act were commenced against the Petitioner. The gravamen of the allegations against the Petitioner were to the following effect:

- (i) that the Petitioner had carried out civil works without following the process of inviting E tenders.
- (ii) that the Petitioners had made payment in respect of work carried out by one Deep Constructions by cash as a self drawn cheque was issued.
- (iii) procuring material for carrying out the work without calling for any comparable rates.
- (iv) That the crematorium in Shihu Village in Buddhawadi was shifted without there being any decision taken in the meeting of the Grampanchayat.

3 The Petitioner replied to the said allegations which were levied against him and the reply was to the effect that the Petitioner had taken the said decisions in the best interest of the Grampanchayat. In terms of the

procedure that is required to be followed, a report was obtained from the Chief Executive Officer (CEO) of the Zilla Parishad in respect of the said allegations. The CEO has in his report observed that the allegations made were true, however, in so far as the non calling of the E tender is concerned, the CEO observed that the fault for the same has to be both with the Sarpanch and the Gramsevak who is the Administrative Officer of the Grampanchayat. In so far as the other two aspects are concerned, the CEO observed that the said allegations were justified.

4 The Divisional Commissioner considered the material on record and including the report of the CEO. The Divisional Commissioner held that having regard to the material on record the allegations were proved against the Petitioner and accordingly by his order dated 1-2-2016 has disqualified the Petitioner and removed him as Sarpanch as well as from being a member of the Grampanchayat.

5 The Petitioner aggrieved by the said order dated 1-2-2016 passed by the Divisional Commissioner carried the matter in Appeal before the State Government. The said Appeal was heard by the Hon'ble Minister Rural Development Government of Maharashtra. The Appellate Authority having regard to the findings recorded by the Divisional Commissioner and also having regard to the material on record did not deem it appropriate to

interfere with the order passed by the Divisional Commissioner and accordingly dismissed the Appeal.

6 The Learned Counsel appearing on behalf of the Petitioner Mr. Chavan would seek to reiterate the case of the Petitioner before the authorities below. It was the submission of the Learned Counsel that though E tenders were not called for, the Petitioner with a view to provide employment to unemployed had assigned the work to the unemployed persons. In so far as the non payment of the amount by cheque to the said Deep Constructions is concerned, though it was a self drawn cheque the amount which was ultimately paid to the said Deep Constructions.

7 In my view, it is not possible to accept the contentions of Mr. Chavan the Learned Counsel appearing for the Petitioner. Once the procedure has been prescribed for carrying out the works, there cannot be any deviation from the said procedure. In the instant case, the procedure prescribed is that the tenders are to be invited for any civil works to be carried out, that in the instant case has not been followed. In fact the material has been procured by the Petitioner for the said works without calling for any comparable rates. In so far as crematorium is concerned, though a decision was taken in the meeting of the Grampanchayat to construct a crematorium in Shihu Village Buddhawadi, the Petitioner has unilaterally changed the site of the said crematorium without

there being any decision taken in the meeting of the Grampanchayat and without there being any resolution. Hence the Petitioner's conduct as a Sarpanch can be said to be bordering on non compliance or non observance of the procedure that is required to be followed in the matter of carrying the work of the Grampanchayat. Such conduct on the part of the Sarpanch cannot be countenanced. It is precisely for the said reason that the disqualification has been provided under Section 39 of the said Act.

8 In my view, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]