

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

906 WRIT PETITION NO. 1762 OF 2017

SANTOSH SHIVAJI BOINE
VERSUS
SHRIKRUSHNA SAMBHAJI NAIKWADE AND OTHERS

...
Advocate for Petitioner : Mr. A. N. Sabnis, h/f Mr. V. D. Gunale.
Advocate for Respondent No.1 : Mr. S. N. Patil, h/f Mr. G. K. Sontakke.
Advocate for Respondent No.2 : Mr. P. R. Tandale.
AGP for Respondent Nos.4 & 5 : Mr. N. T. Bhagat.
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CORAM : **V. K. JADHAV, J.**
DATE : 16th November, 2017.

ORDER:

. By way of this writ petition, the Petitioner is challenging his removal from the office as Sarpanch under the provisions of Section 39 (1) of the Maharashtra Village Panchayat Act, 1958 (hereinafter referred to as "the Act of 1958").

2 Brief facts giving rise to the present writ petition are as follows:

Respondent No.1 herein has submitted an application dated 29th January, 2016 before Respondent No.4 stating therein that he was allotted the construction work of cement concrete road in the

slum area of village Panchayat and though he was initially paid certain amount, after completion of the entire work, the present Petitioner has retained the amount of Rs.1,03,400/-. It has been further stated in the said application that even though the Gramsevak of the village Panchayat has signed the cheque of the aforesaid amount and handed over the said cheque to the present Petitioner for his signature, the present Petitioner has demanded certain amount as bribe by saying that he would not sign the cheque free of cost. The Petitioner has demanded an amount of Rs.50,000/-. Consequently, Respondent No.1 herein has lodged a complaint with the department of Anti Corruption Bureau and accordingly, the raid was arranged. It has been further stated in the said application that the present Petitioner was caught red handed while accepting the bribe amount of Rs.10,000/- and accordingly, Crime No.2 of 2016 for the offences punishable under Sections 7, 13(1)(d) and 13 (2) of the Prevention of Corruption Act, 1988 came to be registered. Even the Petitioner was remanded to the police custody when he was produced before the Court and thereafter, remanded to Magisterial custody till he was released on bail by the Court. Respondent No.1 has thus, requested the authority for

removal of the Petitioner from the office of Sarpanch in terms of the provisions of Section 39 (1) (2) of the Act of 1958. On the basis of the aforesaid application by giving an opportunity of being heard to the Petitioner and after complying the procedural aspect as contemplated under Section 39 of the Act of 1958, the learned Commissioner has passed the impugned order directing removal of the present Petitioner from the post of Sarpanch in terms of the provisions of Section 39(1) of the Act of 1958 as aforesaid. Being aggrieved by the said order, the Petitioner has approached the State Government by filing an appeal. However, the Honourable Minister has also dismissed the said appeal. Hence, this writ petition.

3 The learned counsel for the Petitioner submits that the orders passed by the learned Commissioner and the Honourable Minister suffer from non application of mind and also there is gross violation of the principles of natural justice. The learned counsel submits that the learned Commissioner as well as the Honourable Minister have not considered the contentions raised by the Petitioner. The learned counsel submits that Respondent No.1 herein was a defeated candidate in the election where the Petitioner

got elected. The construction work of the cement concrete road in the slum area of the village was completed at the behest of the Village Panchayat and the said work was carried out under the supervision of the Gram Panchayat through the Gramsevak. The Petitioner was not concerned in any way to the said work and the payment of the outstanding amount after completion of the work. The learned counsel submits that the Petitioner has already signed the cheque and therefore, there is no question of asking any amount for signing the cheque. The learned counsel submits that mere registration of the crime is not enough for removal of the Petitioner from the post of Sarpanch. The Petitioner is an elected candidate and he cannot be removed only on the basis of certain registration of the crime. The learned counsel submits that the orders impugned in this petition, clearly demonstrate that the learned Commissioner as well as the Honourable Minister have removed the Petitioner from the post of Sarpanch mainly on the ground that the crime has been registered against the Petitioner for accepting the bribe amount. The learned counsel submits that on the basis of registration of said crime, no inference could be drawn about the misconduct or disgraceful conduct on the part of the Petitioner.

4 The learned counsel for the Petitioner in order to substantiate his submissions place his reliance on the following two cases:

- a) **Kali Ram Vs. State of Himachal Pradesh,**
reported in, **(1973) 2 Supreme Court Cases 808,**
- b) **Ravi Yashwant Bhoir Vs. District Collector,**
Raigad and others, reported in, **(2012) 4**
Supreme Court Cases 407.

5 The learned counsel for Respondent No.1 and the learned counsel appearing for other Respondents supported the order passed by the learned Commissioner and the order passed by the Honourable Minister confirming thereby the order passed by the learned Commissioner. The learned counsel submit that the Chief Executive Officer has conducted an inquiry as directed to him by the Commissioner as contemplated under Section 39 of the Act of 1958. The Chief Executive Officer, Zilla Parishad has recorded the statement of present Respondent No.1 and also recorded the statement of Petitioner and after giving an opportunity of being heard to the Petitioner, submitted the report to the Commissioner

about the misconduct and disgraceful conduct on the part of the present Petitioner.

6 I have also heard the learned AGP for the State.

7 On perusal of the orders passed by the Commissioner as well as the Honourable Minister, it appears that the learned Commissioner has given an opportunity of being heard to the present Petitioner. The Petitioner has filed his written statement before the Commissioner. Even in the inquiry conducted by the Chief Executive Officer, an opportunity of being heard was given to the Petitioner. It thus, appears that the learned Commissioner has strictly followed the principles of natural justice and complied the procedural aspect as contemplated under Section 39 of the Act of 1958. It further appears that on the basis of inquiry conducted by the Chief Executive Officer, the report came to be submitted before the Commissioner with specific observation that the Petitioner is guilty of misconduct and his conduct was disgraceful.

8 In the case of *Ravi Yashwant Bhoir Vs. District Collector, Raigad and others* (supra) relied upon by the learned

counsel for Petitioner, the Supreme Court has made the observations about the expressions “misconduct” and “disgraceful conduct”. The Supreme Court has observed that when the office bearer is expected to act with absolute integrity and honesty in handling the work, any misappropriation, even temporary of the funds etc. constitutes a serious misconduct, inviting severe punishment. So far as the term “disgrace”, the Supreme Court has observed that it signifies the loss of honor, respect, reputation, shame or bring disfavour or discredit. “Disgraceful” means giving offence to moral sensibilities and injurious to reputation or conduct or character deserving or bringing disgrace or shame. The Supreme Court has also observed that disgraceful conduct is also to be examined from the context in which the term has been employed under the statute. The Supreme Court in paragraphs 11, 18, 19 and 20 of the aforesaid judgment, has made the following observations:

“11. “Misconduct” has been defined in *Black's Law Dictionary*, 6th Edition as:

"A transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, wilful in character, improper or wrong behavior, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety,

mismanagement offence, but not negligence or carelessness."

"Misconduct in office" has been defined as:

"Any unlawful behavior by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office-holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

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18. The expression "misconduct" has to be understood as a transgression of some established and definite rule of action, a forbidden act, unlawful behaviour, wilful in character. It may be synonymous as misdemeanour in propriety and mismanagement. In a particular case, negligence or carelessness may also be a misconduct for example, when a watchman leaves his duty and goes to watch cinema, though there may be no theft or loss to the institution but leaving the place of duty itself amounts to misconduct. It may be more serious in case of disciplinary forces.

19. Further, the expression "misconduct" has to be construed and understood in reference to the subject-matter and context wherein the term occurs taking into consideration the scope and object of the statute which is being construed. Misconduct is to be measured in the terms of the nature of misconduct and it should be viewed with the consequences of

misconduct as to whether it has been detrimental to the public interest.

Disgraceful conduct

20. The expression “disgraceful conduct” is not defined in the statute. Therefore, the same has to be understood in given dictionary meaning. The term “disgrace” signifies loss of honor, respect, or reputation, shame or bring disfavour or discredit. “Disgraceful” means giving offence to moral sensibilities and injurious to reputation or conduct or character deserving or bringing disgrace or shame. Disgraceful conduct is also to be examined from the context in which the term has been employed under the statute. Disgraceful conduct need not necessarily be connected with the official (*sic duties*) of the office-bearer. Therefore, it may be outside the ambit of discharge of his official duty.”

In paragraphs 34 to 36 of the aforesaid judgment, the Supreme Court has made the following observations:

“34. In a democratic institution, like ours, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law or he is removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the

authority has applied its mind to the allegations made and the explanation furnished by the elected office-bearer sought to be removed.

35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (*vide Jyoti Basu v. Debi Ghosal (AIR 1982 SC 983); Mohan Lal Tripathi v. District Magistrate, Rai Bareilly (AIR 1993 SC 2042); and Ram Beti v. District Panchayat Raj Adhikari (AIR 1998 SC 1222)*).

36. In view of the above, the law on the issue stands crystallised to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only

the elected office-bearer but his constituency/electoral college is also deprived of representation by the person of their choice.”

9 In terms of the provisions of Section 39 of the Act of 1958, in case of clause (1) the Chief Executive Officer under the orders of Commissioner require to hold an inquiry after giving due notice to the *Panchayat* and the person concerned and the person concerned has been given a reasonable opportunity of being heard, the Chief Executive Officer is required to submit his report to the Commissioner within a period of one month. Except this provision, there is no provision in the Act or the Rules framed therein directing the mode, conduct and form of inquiry. In the instant case, in terms of the said proviso under Section 39(1), the Chief Executive Officer under the orders of Commissioner has conducted an inquiry after giving due notice to the Petitioner herein and the present Petitioner has been given an opportunity of being heard. The learned Commissioner has given strict adherence to the statutory provisions of holding inquiry as stated above, meeting the requirements of principles of natural justice and after giving an opportunity to the Petitioner to defend himself, passed the impugned order.

10 It is true that in our system of administration of justice for criminal cases, the accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence with which he is charged. However, it is to be borne in mind that the appreciation of evidence in criminal case is altogether different. In the instant case, even if the facts emerging from registration of crime are considered to the limited extent, it appears that the Petitioner had accepted the amount of bribe of Rs.10,000/- and he was caught red handed while he was counting the said notes in one hotel in presence of present Respondent No.1 and of-course the witnesses of the Anti Corruption Bureau. Apart from this, the Chief Executive Officer has verified from Respondent No.1 the aforesaid incident. Respondent No.1 herein has stated before the Chief Executive Officer during the course of inquiry that there was a demand of an amount by the Petitioner and accordingly, he has paid that amount as a bribe to the Petitioner. In the given set of facts, the learned Commissioner as well as the Honourable Minister rightly come to the conclusion that this amounts to disgraceful conduct on the part of the Petitioner. I do not find any fault in the impugned orders.

There is no substance in the writ petition. Hence, the following order:

ORDER

The writ petition is hereby dismissed with costs.

[V. K. JADHAV, J.]

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