

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 10224 OF 2017

Sou. Chetna Chandrakant Meher

....Petitioner

Vs.

Sou. Bharati Bhaskar Vaitti and Ors.

....Respondents

Dr. R.A. Thorat, Senior Counsel a/w. Mr. Himanshu Kode for Petitioner
Mr. S.H. Kankal, Agp for Respondent Nos. 3,4 and 5

CORAM : M.S. SANKLECHA, J.
MONDAY, 27TH NOVEMBER, 2017

P.C.

1. This petition challenges the order dated 23rd August, 2017 passed by the Hon'ble Minister, Village Development Department, Maharashtra State. By the impugned order dated 23rd August, 2017, the appeal of the Respondent Nos. 1 and 2 i.e. Sarpanch and Deputy Sarpanch of Village Arnala Killa, Taluka Vasai, Dist. Palghar was allowed under section 39(3) of the Maharashtra Village Panchayat Act (the Act).

2. On 21st September, 2017, a notice before admission was issued by this Court to the Respondents. The above notice informed the Petitioner that it is likely that the petition will be disposed of finally at the stage of admission.

On the last occasion, Mr. Vilas Mali, Advocate appeared for the contesting Respondent Nos. 1 and 2 i.e. Sarpanch and Deputy Sarpanch and sought time till today. However, none appears on behalf of Respondent Nos. 1 and 2 today.

3. The origin of the present dispute is the complaint filed by the Petitioner against Respondent No.1-Sarpanch and Respondent No.2- Deputy Sarpanch of having misappropriated Government funds received under the Nirmal Bharat Abhiyan and Maharashtra Gramin Rojgar Hami Yojna (two schemes).

4. Consequent to the complaint, Respondent No.4 i.e. the Chief Executive Officer of the Zilha Parishad, Palghar made an inquiry into the alleged complaint and concluded that the Sarpanch- Respondent No.1 and Deputy Sarpanch- Respondent No.2 had misappropriated funds aggregating to Rs.92,000/- meant for construction of toilets under the two Schemes. On the basis of the above report of the Chief Executive Officer - Respondent No.4, proceedings for disqualifying them was initiated by the Divisional Commissioner, Respondent No.3 in terms of Section 39 of the Act. Thereafter, personal hearing was granted to the Petitioner as well as Respondent Nos.1 and 2. On consideration of the facts and evidence before him the Divisional

Commissioner, held that in terms of section 39 (1) of the Act, the Sarpanch and the Deputy Sarpanch were guilty of misconduct on account of misappropriation of government funds. Thus by order dated 10th July, 2017, the Divisional Commissioner, Respondent No.4 removed Respondent Nos.1 and 2 i.e. Sarpanch and Deputy Sarpanch from their posts as also from the Panchayat.

5. Being aggrieved with the order dated 10th July, 2017 passed by Respondent No.3 i.e. the Divisional Commissioner, the Respondent Nos. 1 and 2 preferred an appeal to the Minister under Section 39(3) of the Act. By the impugned order dated 23rd August, 2017 of the Minister confirms the finding of the Commissioner that there has been misappropriation of Government funds by the Gram Panchayat. However, she holds that neither the Sarpanch nor the Deputy Sarpanch could be held responsible for the misappropriation of the government funds as their signatures are not found against withdrawal of the government funds. Curiously, the Minister after holding that the Gram Sevak's signature is also not found against the entries evidencing withdrawal of the funds yet holds that misappropriation has been done only by him and absolves both the Sarpanch and Deputy Sarpanch of any misdemeanor which would invite disqualification.

6. The impugned order dated 23rd August, 2017 is contradictory as the same yardstick has not been applied while holding that the gram sevak is the person responsible for financial misappropriation even though his signatures are not found evidencing withdrawal of the aggregate amount of Rs.92,000/- and the Sarpanch and Deputy Sarpanch are absolved of any misappropriation because there is no evidence/ signatures to establish that they have withdrawn Rs.92,000/-. This finding by the impugned order dated 23rd August, 2017 is perverse and needs to be set aside.

7. It is in the aforesaid circumstances that the impugned order dated 23rd August, 2017 is quashed and set aside. The appeal filed by the Sarpanch and Deputy Sarpanch – Respondent Nos.1 and 2 filed on 17th July, 2017 is restored to the Hon'ble Minister for fresh consideration in accordance with law.

8. Writ petition is disposed of in the aforesaid terms. No orders as to costs. Parties to act on an authenticated copy of this order.

[M. S. SANKLECHA, J.]