

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 4167 OF 2017

(Balasaheb Laxmanrao Langote...VS...Hon'ble Minister, Rural Development Department Mantralaya
Mumbai and Others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N. A. Gawande, Advocate for Petitioner.
Shri V. P. Maldhure, A.G.P. for Respondent Nos.1 and 2.
Shri P. S. Patil, Advocate for Respondent Nos.5 and 6.

CORAM : S.C.GUPTE, J.

DATED : 27th SEPTEMBER, 2017.

Heard learned counsel for the parties and learned
Assistant Government Pleader for the State (respondent Nos.1
and 2).

02] The subject matter of challenge in the present
petition is an order of disqualification of Sarpanch passed by
the Divisional Commissioner under Section 39(1) of the
Maharashtra Village Panchayat Act and confirmed by the
Minister of State, Rural Development. The disqualification
was on the ground of misconduct of the petitioner as
Sarpanch. The proceeding was initiated at the instance of
respondent Nos.5 and 6, who were the original complainants.
It appears that the original complainants had also earlier
filed complaint and based on which the Block Development
Officer had made certain inquiry. The complainants,
thereafter, applied to the Divisional Commissioner of
Amravati for initiating proceedings under Section 39. As
directed by the Divisional Commissioner, the Chief Executive

Officer of the Zilla Parishad, Amravati made an inquiry. Notice was duly issued to the petitioner. The petitioner presented his case in writing. After considering the allegations and the cause shown by the petitioner, the Chief Executive Officer by his report dated 25th October, 2016 observed that there appeared to be excess expenditure over and above the valuation of the work and that such excess expenditure amounted to misconduct on the part of the petitioner as Sarpanch. The matter was, thereafter, heard by the Divisional Commissioner under Section 39(1) of the Act, when the petitioner was given further opportunity to show cause. The Divisional Commissioner, after extensively considering the material placed before him including the application of original complainants, written notes of argument submitted by the petitioner herein and the arguments of both sides and the other record of the case and statutory provisions, came to seven specific conclusions *inter alia* holding that the petitioner had committed financial and procedural irregularities including disbursement of fund in cash in breach of statutory rules in that behalf and awarding contracts without calling for tenders and expending amounts without estimates or without seeking any administrative or technical approval or valuation for the same. Based on these findings, the Divisional Commissioner held the petitioner to be guilty of misconduct within the meaning of Section 39(1) of the Act and disqualified him from the post of Sarpanch. This order was carried in appeal under Section 39(3) of the Act by the petitioner before the Minister of Rural Development. By his impugned order dated 28th June, 2017, the appeal was rejected by the Hon'ble Minister expressing concurrence with the findings of the Divisional Commissioner.

03] Learned counsel for the petitioner submits that the Chief Executive Officer has merely reproduced earlier findings of the Block Development Officer and not applied his mind independently to the facts of the case. Learned counsel relies on the judgment of a learned Single Judge of our Court in the case of **Nimba Yadav Bhoi ..vs.. President, Standing Committee, Zilla Parishad, Jalgaon and Others, reported in 2002(3) Mh. L. J. 466**. Based on this judgment, learned counsel submits that an enquiry under Section 39(1) of the Act must be conducted by the Chief Executive Officer himself and it was not permissible to delegate this power to any other officer.

04] If one has regard to the report of enquiry presented by the Chief Executive Officer to the Divisional Commissioner, it is apparent that the Chief Executive Officer has himself conducted the enquiry in the matter after due notice to the petitioner. Each of the observations and opinions of the Chief Executive Officer is based on a proper enquiry and after considering the material before the Chief Executive Officer. Merely because whilst making these observations, the Chief Executive Officer employs a language of similar tenor, or even text, for that matter, as the earlier report of the Block Development Officer, it does not mean that the Chief Executive Officer has simply relied on, or copied, the report of the Block Development Officer and not made any independent enquiry. The judgment of this Court in **Nimba Yadav Bhoi**, accordingly, has no application to the facts of the present case. The Chief Executive Officer has himself made enquiry in the present case and there is no question of delegation of the power to make such inquiry to any officer including the Block Development Officer.

05] The impugned orders of the authorities below show a fair and proper application of mind to the material before the authorities. The orders are based on evidence. There is no irrelevant or non-germane material considered, or relevant or germane material disregarded for arriving at these orders. No interference is, accordingly, called for under Articles 226 and 227 of the Constitution of India.

06] There is, in the premises, no merit in the writ petition. The writ petition is **dismissed**.

07] The petitioner shall pay costs of the petition quantified at Rs.15,000/- to the Zilla Parishad, Amravati.

JUDGE

PBP