

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

WRIT PETITION NO.5209 OF 2017

(GOVINDGULABRAO WANJARI, YAVATMAL....VS..DIVISIONAL COMMISSIONER, AMRAVATI & OTH)

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

Court's or Judge's orders

Shri M.P.Kariya, Advocate for Petitioner.
Shri Amit Chutke, A.G.P. for Respondent No.1.

CORAM : S.C.GUPTE, J.
DATED : AUGUST 11, 2017.

Heard.

The subject matter of the present writ petition is removal of the petitioner as Sarpanch of Gram Panchayat, Kolambi. The removal of Sarpanch was upon an application by respondent No.3 herein. The removal was sought under Section 39 of the Maharashtra Village Panchayats Act, 1958 (hereinafter referred to as "the Act"). By his order dated 22nd February, 2016, Divisional Commissioner, Amravati allowed the application for removal and declared the petitioner to be disqualified to continue as Sarpanch and Member of Village Panchayat. That order is challenged in the present petition. Any order passed by the Commissioner under Section 39 of the Act is appealable before the State Government. There is no apparent reason why the petitioner, aggrieved by the disqualification by the Commissioner, could not have approached the State Government in appeal. The only ground urged in support of the petitioner's approach to this Court is that notwithstanding the provisions of appeal, this Court can always be approached under Articles 226 and 227 of the Constitution of India if the impugned order passed by

an authority is *ex facie* illegal. It is submitted that the authority which passed the order did not hear the matter and therefore, was incompetent to pass the order. Secondly, it is submitted that the petitioner's defence was not considered by the authority. If one has regard to the Roznama of the proceedings, it is apparent that at no stage the matter was argued before the Commissioner at Amravati though the Commissioner has signed some of the minutes. After the matter was adjourned on a number of occasions the petitioner herein filed a written reply, whereafter the matter was closed for orders. There is nothing in the record of the case to indicate that the petitioner had at any time applied for oral hearing in the matter. In the premises, both the grounds, urged by the petitioner have no merit. The matter was exclusively contested on the basis of a written reply, which appears to have been considered by the Divisional Commissioner, who passed the impugned order. There being an adequate alternative remedy available under the Act, the writ petition is not maintainable.

The writ petition is accordingly **dismissed**. No order as to costs.

The petitioner will be at liberty to approach the State Government invoking its appellate powers in the matter.

JUDGE