

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.320 OF 2019

**DHANANJAY PARSHURAM PATIL AND OTHERS
VERSUS
THE DIVISIONAL COMMISSIONER NASHIK DIVISION AND OTHERS**

Mr. D.B.Thoke, Advocate for the petitioners

Mr. A.R.Kale, AGP for the respondent/State.

**CORAM : PRASANNA B. VARALE &
S.M.GAVHANE, JJ.**

DATED : 09.01.2019

P.C. :-

1. Heard learned counsel for the petitioner.
2. It is the submission of the learned counsel for the petitioners that the petitioners are the members of the village panchayat Mauje Shevge (Bk), Tal. Parola, Dist. Jalgaon. The grampanchayat is comprising of 9 members out of which the petitioners are 4 members of the panchayat. The petitioners raised complaints to the authorities in respect of irregularity and illegality committed by the Sarpanch and the Village Development Officer in respect of purchase of certain materials, such as lights, furniture etc. On receiving the complaint an inquiry was conducted through Block Development Officer. The Inquiry Officer who conducted inquiry submitted report with a proposal for removal of the Sarpanch. The Chief Executive Officer also submitted a proposal to the Divisional Commissioner, Nashik Division, for initiation of action for disqualification of the Sarpanch by invoking the provision of the Village

Panchayats Act and more particularly such section 39(1) of the Act.

3. The petitioners approached the Commissioner by representation dated 22.11.2018 and submitted before the Commissioner that as these petitioners raised complaints and on the complaints inquiry was initiated and in the inquiry report is prima facie holding the Sarpanch guilty, these petitioners be permitted to participate in the proceeding seeking disqualification of the Sarpanch. Learned counsel submitted that the Commissioner has not passed any order on the application as such the petitioners are before this Court seeking a direction to the respondent No.1-The Divisional Commissioner, Nashik Division, to allow the petitioners to participate and to give sufficient opportunity of hearing in the inquiry proposed to be initiated against the Sarpanch.

4. The learned counsel for the petitioners vehemently submitted that as the petitioners made complaints, opportunity of hearing be granted to the petitioners under the provisions of the Act and more particularly under Section 39 of the Village Panchayats Act.

5. With the assistance of the learned counsel appearing for the petitioners, we have gone through the scheme of the provisions under 39. Though the learned counsel for the petitioner Mr. Thoke submitted that the proviso refers to the hearing on going through the provision and the proviso particularly, we are unable to

accept the submission of the counsel. For better appreciation, we quote the provision complete.:

"39. Removal from office.:[(1) The Commissioner may,-

(i) remove from office any member or any Sarpanch or Upa-Sarpanch who has been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct, or of neglect of or incapacity to perform his duty, or is persistently remiss in the discharge thereof. A Sarpanch or an Upa-Sarpanch so removed may at the discretion of the Commissioner also be removed from the panchayat', or

(ii) remove from office the member, Sarpanch or, as the case may be Upa-Sarpanch, if not less than twenty per cent of the total number of voters in the village who have paid all dues of the panchayat regarding taxes on buildings and lands and water charges, make a complaint that the annual accounts and the report of the expenditure incurred by the panchayat on the development activities are not placed before the Gram sabha; and the information thereof is not displayed on the notice board as required by sub-section (1) or (1A) of section 8:

Provided that, no such person shall be removed from office unless, in case of clause (i), the Chief Executive Officer or in case of clause (ii), the Deputy Chief Executive Officer as directed by the Chief Executive Officer; under the orders of the Commissioner, holds 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 and thereafter the Chief Executive Officer or, as the case may be, the Deputy Chief Executive Officer concerned, through the Chief Executive Officer, submits his report to the Commissioner. The inquiry officer shall submit his report within a period of one month:

Provided further that, the Commissioner shall, after giving the person concerned a reasonable

opportunity of being heard, take a decision on the report submitted by the Chief Executive Officer or, as the case may be, the Deputy Chief Executive Officer, within a period of one month from the date of receipt thereof.];

[(1A) Where a person is removed from office of the Sarpanch or Upa-Sarpanch, he shall not be eligible for re-election as Sarpanch or Upa-Sarpanch during the remainder of the term of office of members of the panchayat.]

[(2) The Commissioner may subject to like condition disqualify for a period of not exceeding [six years], any person who has resigned his office as a member, Sarpanch or Upa-Sarpanch and has been guilty of the acts and omissions specified in sub-section (1).

(3) Any person aggrieved by an order of the Commissioner under sub-section (1) or (2) may, within a period of fifteen days from the date of the receipt of such order, appeal to the State Government and the Government shall decide the appeal within a period of one month from the date of receipt thereof.]

(Emphasis is supplied by us)

6. Learned counsel then made submission that clause 3 also refers to hearing and this hearing can be granted to the petitioners. We are unable to accept even this submission for the simple reason that the language of clause 3 of Section 39 opens with the word any person aggrieved by order of Commissioner.

7. Now in the present case the Commissioner has not passed any order and considering language of the provision, the person aggrieved word will have to be read co-jointly reading the provisions comprehensively

and this comprehensive reading leaves us no scope to accept the submission of the learned counsel that this provision makes it mandatory for the authority to hear these petitioners who were the complainants against the respondent Sarpanch. For these reasons we are unable to entertain the petition as the petition is thoroughly meritless. No other option is open for us but to dismiss the petition at the threshold.

8. The writ petition is dismissed, no costs.

[S.M.GAVHANE, J.]

[PRASANNA B. VARALE, J.]