

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 13575 OF 2018

Hari Gunda Gurav	...	Petitioner
V/s.		
Hon'ble Minister for Rural Devp. & Ors.	...	Respondents

Mr.Y.P. Narvankar for Petitioner.
Mr.P.P. Pujari, AGP for Respondent Nos.1, 2 and 4.
Mr.Utkarsh S. Desai for Respondent Nos.5 to 8.
Mr.Ramesh Rane for Respondent Nos.3 and 9.

CORAM : A.S. GADKARI, J.

DATE : 16th July 2019.

P.C. :

1] By the present Petition, the Petitioner has taken exception to the Order dated 10/10/2018 passed by the Hon'ble Minister for Rural Development of Maharashtra, i.e. respondent No.1, dismissing Appeal No.VPM/113 of 2018 preferred by the Petitioner under Section 39(3) of *the Maharashtra Village Panchayats Act, 1959* (for short, "*the said Act*"), and confirming the Judgment and Order dated 18/07/2018 passed by the Divisional Commissioner, Pune Division, Pune, in Case No. SR-3/2008 under Section 39(1) of the said Act, removing the petitioner

from the post of 'Sarpanch' of village Padkhambe, Taluka Bhudargad, District Kolhapur.

2] Heard Mr.Narvankar, the learned counsel for the petitioner, Mr.Desai, the learned counsel for the respondent Nos.5 to 8, Mr.Rane, the learned counsel for the respondent Nos.3 & 9, and Mr.Pujari, the learned AGP for the Respondent Nos.1, 2 and 4. Perused the record annexed to the petition.

3] The record indicates that, the election for the post of 'Upa-Sarpanch' was scheduled on 26/11/2017 in the office of the Grampanchayat of Village Padkhambe, Taluka Bhudargad, District Kolhapur, at 2.00 pm. The petitioner being 'Sarpanch' was presiding over the said meeting as 'President'. It is the allegation of the respondent No.5 that, petitioner did not conduct the said meeting, committed gross irregularity, did not see to it that the said meeting was properly conducted and the elections are completed, as per the provisions of law.

The Chief Executive Officer, Zilla Parishad, Kolhapur, i.e. the respondent No.3 herein, conducted preliminary enquiry in the matter and submitted its report dated 08/05/2018 to the respondent No.2-Divisional Commissioner, Pune, in that behalf.

The respondent No.2 after hearing the parties to the said proceedings was pleased to pass an Order dated 18/07/2018 under Section 39(1) of the said Act, thereby removing the petitioner from the post of 'Sarpanch' of the said village.

The Appeal No.VPM/113 of 2018 preferred by the petitioner under Section 39(3) of the Act has been turned down by the respondent No.1 by the impugned Order dated 10/10/2018 as noted hereinabove.

4] The record indicates that, at the time of conducting the said election of 'Upa-Sarpanch' on 26/11/2017, there were in all eight elected members present at the said meeting. At the time of voting of the said election, amongst the 8 members, 4 members requested the petitioner to conduct election/process of voting by raising hands and 3 members informed the petitioner that, they will not vote in the election i.e. they will be abstaining from elections. At that time, the petitioner who was presiding the said meeting as 'President' boasted that, "the whole village has elected him and he being the Sarpanch, is competent and capable to conduct the whole Grampanchayat work". That on 26/11/2017 the Special Meeting to conduct the election of Upa-Sarpanch could not be completed and therefore, the respondent No.5

lodged a complaint with the respondent No.3 in that behalf.

The material available on record clearly indicates that, the petitioner acted in disgraceful manner and neglected to perform his duty bestowed upon him under the provisions of the said Act.

5] Both the authorities below after analyzing the entire evidence on record has reached to the conclusion that, the petitioner deserves to be removed from the post of Sarpanch of Village Pedkhambe, Taluka Bhudargad, District Kolhapur. It is thus clear that, there is concurrent finding recorded by both the authorities below.

6] The Constitution Bench of the Supreme Court in the case of *Syed Yakoob Vs. K.S. Radhakrishnan & Ors.*, reported in AIR 1964 SC 477, while enumerating the nature and limits of the jurisdiction of the High Court in issuing a writ of certiorari has held that, the jurisdiction of the High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that the findings of fact reached by the inferior court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. That, an error of law which is apparent on the face of the record can be corrected by a

writ, but not an error of fact, however grave it may appear to be.

In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot, however, be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding.

7] The Supreme Court in the case of *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil*, reported in (2010) 8 SCC 329 has enumerated the principles in the exercise of High Court's jurisdiction under Article 227 of the Constitution of India. It is held that, the High Courts cannot, at the drop of a hat, in exercise of its power under Article 227 of the Constitution, interfere with the Orders of tribunals or courts interior to it. Nor can it, in exercise of this power, act as a court

of appeal over the orders of the court or tribunal subordinate to it. In cases, where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court. That, the High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

It is further held that, in exercise of its power of superintendence, the High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised. That, the power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

The afore-stated view expressed in the case of *Shalini S. Shetty (Supra)* has been further affirmed by the larger Bench of the Supreme Court in the case of *Radhey Shyam & Anr. Vs. Chhabi Nath and Ors. Reported in (2015) 5 SCC 423*.

8] The contentions of the petitioner and the arguments advanced at bar amounts to re-appreciation of evidence. After perusing the entire record, this Court is of the considered view that, both the authorities below have not committed any error either on law or on facts while passing the impugned orders.

The Petition being devoid of merits is accordingly rejected.

9] At this stage, the learned counsel for the petitioner submitted that, the interim relief which is already running in favour of the petitioner may be continued for a period of four weeks from today. The learned counsel for the respondent vehemently opposed the said prayer.

In view thereof, the said prayer is rejected.

[A.S. GADKARI, J.]