

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 4453/2019

Damayanti w/o Omprakash Tapadiya,
 Aged about 58 years, Occ. Agriculturist,
 R/o. Wai, Tah. Karanja (Lad),
 District Washim.

..... **PETITIONER**
(Appellant)

...V E R S U S...

- 1] Ashok s/o Dadarao Thakare,
 Age Major, Occ. Not Known,
 R/o Wai, Tah. Karanja Lad, District Washim.
- 2] Dinesh S/o. Ramesh Gawande,
 Age Major, Occ. Not Known,
 R/o Wai, Tah. Karanja Lad, District Washim.
- 3] Panjab s/o Kashiram Thakre,
 Age Major, Occ. Not Known,
 R/o. Wai, Tah. Karanja Lad, District Washim.
- 4] Vinod s/o Prakash Thakare,
 Age Major, Occ. Not Known,
 R/o Wai, Tah. Karanja Lad, District Washim.
- 5] The Secretary,
 Gram Panchayat, Wai,
 Wai, Tah. Karanja Lad, District Washim.
- 6] The Chief Executive Officer,
 Zilla Parishad, Washim,
 Tah. & District Washim.
- 7] The Divisional Commissioner,
 Amravati Division, Amravati.
 Tah. & District Amravati.
- 8] The State of Maharashtra,
 through its Hon'ble Minister of State,
 Rural Development and Panchayati Raj,
 Government of Maharashtra Mantralaya,
 Madam Cama Road, Mumbai.
 Tah. and District Mumbai.

..... **RESPONDENTS**

Shri Anup H. Lohiya, Advocate for the petitioner.
Shri T.U.Tathod, Advocate for the respondent nos. 1 to 4.
Shri V.G.Wankhede, Advocate for the respondent no.6,
Mrs. Harshada N. Prabhu, Assistant Government Pleader for the respondent
nos. 7 and 8.

CORAM : A.S.CHANDURKAR, J.
DATED : 09.12.2019

P.C.

The challenge raised in the present writ petition is to the order passed by the Hon'ble Minister of State, Rural Development in proceedings under Section 39(3) of the Maharashtra Village Panchayats Act, 1958 (for short, 'the said Act') dismissing the appeal preferred by the petitioner thereby confirming the order passed by the Divisional Commissioner under Section 39(1) of the said Act removing the petitioner from the post of Sarpanch.

2. The petitioner was initially elected as member of the Gram Panchayat, Wai, Tahsil Karanja (Lad), District Washim on 21.12.2015. She was then elected as Sarpanch on 08.01.2016. The respondent nos. 1 to 4 herein sought removal of the petitioner under the provisions of Section 39(1) of the said Act on the ground that the petitioner by misusing her authority as Sarpanch had cut about twelve trees without any due permission. These trees valued at Rs.60,000/- were then sold also without any permission. Complaints were made by the said respondents before the Tahsildar which resulted in fine being imposed upon the petitioner. Since the act on the part of the petitioner of illegally cutting the trees amounted to misconduct, the aforesaid proceedings came to be filed under Section 39(1) of the said Act. The

Divisional Commissioner on 14.09.2017 directed the Chief Executive Officer, Zilla Parishad, Washim to conduct an enquiry into the matter. The Chief Executive Officer thereafter directed the Deputy Chief Executive Officer to hold a preliminary enquiry. On his instructions, the Block Development Officer conducted a preliminary enquiry by granting opportunity to the petitioner and the respondent nos. 1 to 4. He recorded various statements and also inspected the spot in question. The Tahsildar also submitted his report on 23.10.2017 in which it was stated that about seven trees had been cut from their base and branches of three trees had also been cut. It was further stated that fine of Rs.6,000/- had been imposed upon the petitioner. The Chief Executive Officer thereafter held further enquiry into the matter and after giving due opportunity to the petitioner submitted his report on 20.03.2018. As per that report he concluded that the petitioner had cut six trees without due permission. He therefore opined the petitioner was liable to be removed under Section 39 (1) of the said Act.

3. Pursuant to the aforesaid report, the Divisional Commissioner after hearing both the sides passed an order dated 01.11.2018 holding therein that there was no document on record to indicate permission having been sought prior to cutting of six trees. He held that this action resulted in misuse of the post held by the petitioner. Hence by his order dated 01.11.2018 the petitioner was removed from the post of Sarpanch as well as member of the Gram Panchayat. The petitioner therefore challenged this order by filing an appeal before the State Government. The Hon'ble Minister of State, Rural Development after hearing both the sides was pleased to confirm the order passed by the Divisional Commissioner and by his order

dated 04.06.2019 the appeal came to be dismissed. Being aggrieved, that order has been challenged in the present writ petition.

4. Shri A.H.Lohiya, learned counsel for the petitioner submitted that the enquiry in question was required to be conducted by the Chief Executive Officer. However such enquiry was not conducted by him and instead directions were given to the Block Development Officer to hold such enquiry. This course was not permissible and as the enquiry was not held by the Chief Executive Officer, the subsequent action of removal was vitiated. In that regard, he placed reliance on the decisions in Writ Petition No.700/2009 (*Suman P.Rangari Vs. State of Maharashtra and others*) decided on 19.06.2009 and Writ Petition No.7551/20918 (*Kashinath M.Lonkar Vs. The State Minister, Rural Development Department, and ors.*) decided on 21.11.2018. It was then submitted that the observations in the enquiry report were based merely on hearsay evidence. There was no eye witness who had stated that it was the petitioner who had cut the trees. According to him on the request made by several villagers that the trees were causing obstruction, some branches of the tress had been cut. Since mere branches of the trees had been cut, there was no permission required of any authority. He also referred to the letter issued by the Maharashtra State Electricity Distribution Company Limited (MSEDCL) dated 22.05.2017 in which a request was made by the Junior Engineer to cut branches of various trees since they were causing disruption to the electricity supply. As this action was taken in public interest, the petitioner could not have been disqualified. It was then submitted that the order passed by Sub-Divisional Magistrate imposing fine upon the petitioner could not be relied upon as the Sub-Divisional Officer had

directed the Tahsildar to conduct a fresh enquiry as per order dated 11.09.2019. According to the learned counsel, the entire foundation of the case of the respondent nos. 1 to 4 that fine had been imposed upon the petitioner for wrongful cutting of the trees therefore did not survive. Another contention raised by the petitioner was that the proceedings under Section 39(3) of the said Act were concluded after hearing the parties on 16.01.2019 and the matter was closed for passing of orders. However the impugned order came to be passed after almost five months on 04.06.2019. In view of the law laid down in *Shivsagar Veg Restaurant Vs. Asstt. Commissioner of Income-Tax, 2009 (2) BCR 153*, the order passed after a period of more than five months from conclusion of the arguments was therefore liable to be set aside. On this count also, it was submitted that the removal of the petitioner was contrary to law and the impugned orders were thus liable to be set aside.

5. Shri T.U.Tathod, learned counsel for the respondent nos. 1 to 4 supported the impugned orders. He submitted that the enquiry in question as contemplated by Section 39(1) of the said Act had been held by the Chief Executive Officer and his report dated 20.03.2018 had been considered by the Divisional Commissioner while deciding the proceedings. The enquiry conducted earlier by the Block Development Officer was merely a preliminary and fact finding enquiry which was in addition of the enquiry conducted by the Chief Executive Officer. It was then submitted that statements of various persons were recorded and it was found that the trees had been cut at the instance of the petitioner without any due permission. Since it was the stand of the petitioner herself that only branches had been cut and not the trees, this indirectly indicated that it was the only petitioner as Sarpanch who

was responsible for cutting of the trees. Insofar as the letter dated 22.05.2017 of the Junior Engineer of MSEDCL, it was submitted that the same did not bear any inward number of the Gram Panchayat to indicate that it was actually received by the Office of the Gram Panchayat. That document was created only to serve the petitioner's interest. This fact was also noted in the enquiry conducted in the matter. Mere fact that a fresh enquiry was directed to be conducted by the Tahsildar would not mean that the illegal act of the petitioner of cutting trees without permission stood condoned. That enquiry was only for the purposes of imposing fine and it was independent in nature. As regards the time taken to decide the appeal under Section 39(3) of the said Act it was submitted that no prejudice had been pointed out by the petitioner on the ground that the appeal was decided after a period of about five months from the conclusion of the arguments. It was thus submitted that the petitioner had been rightly removed under Section 39(1) of the said Act in view of the fact that about six trees had been found cut without due permission at the instance of the petitioner. Hence no interference with the impugned orders was called for.

Shri V.G.Wankhede, learned counsel for the respondent no.6 produced the records of the enquiry conducted by the Chief Executive Officer in the present proceedings as per the order passed by this Court on 22.10.2019. He also supported the impugned action.

Mrs. Harshada N. Prabhu, learned Assistant Government Pleader for the respondent nos. 7 and 8 also supported the impugned orders.

6. After hearing the learned counsel for the parties at length and after giving due consideration to the respective submissions, I find that the impugned orders do not call for any interference. The petitioner who was elected as member of the Gram Panchayat and thereafter as Sarpanch was sought to be removed under Section 39 (1) of the said Act on the ground that she was responsible for cutting of six full grown trees located in the Gram Panchayat area without obtaining any prior permission from the competent authority. A preliminary enquiry was conducted by the Tahsildar and after inspecting the location in question and by recording statements of several villagers, it was reported by him on 23.10.2017 that six trees had been cut from their base and branches of three trees had also been cut. There was no permission duly obtained that was brought to his notice during the enquiry. This enquiry was a fact finding enquiry. It was thereafter followed by another enquiry by Chief Executive Officer as required by the provisions of Section 39(1) of the said Act. It is not the grievance of the petitioner that she was not given due opportunity in that enquiry to put-forth her stand. After considering the relevant material including the statement of the petitioner, the Chief Executive Officer concluded that the trees in question had been cut without obtaining due permission. The trees cut had also been disposed of and the amounts received in that regard had not been credited to the funds of the Gram Panchayat. The fact finding report submitted by the Chief Executive Officer is based on material available on record and the same has been rightly accepted by both the Authorities. Since such enquiry has been held by the Chief Executive Officer himself, the ratio of the decisions in *Suman Parmeshwar Rangari* and *Kashinath Motiramji Lonkar* (supra) cannot apply to the

case in hand. That contention of the petitioner therefore cannot be accepted.

7. As regards the submission that there was only hearsay evidence of the villagers that was taken into consideration by the Chief Executive Officer, it is to be noted that the stand of the petitioner is not one of complete denial. In her statement dated 09.11.2017 she has stated that as the electricity supply in the village used to be disrupted, at the request made by Junior Engineer of MSEDCL branches of several trees had been cut for the convenience of the villagers. The stand therefore taken by her indicates her admission that she had cut only the branches of the trees. However the spot inspection conducted by the Tahsildar clearly indicates that full grown six trees having been cut from their base. Hence the stand taken by the petitioner that merely on the basis of hearsay evidence it was concluded that the petitioner had cut the trees cannot be accepted.

8. Insofar as the stand taken by the petitioner that the order imposing fine by the Tahsildar on 23.10.2017 stood subsequently revoked with the Sub-Divisional Officer directing fresh enquiry dated 11.09.2019, the same is only for the purposes of imposing fine on the petitioner for cutting trees without prior permission. This would not wipe out the act of the petitioner of cutting trees without obtaining prior permission. Even as regards the stand taken by the petitioner that the trees were cut in view of the letter dated 22.05.2017 issued by the Junior Engineer, MSEDCL, it has been found by both the Authorities that the said letter was not found on the record of the Gram Panchayat nor did it bear any inward number. That letter has therefore been rightly discarded by both the Authorities. It is thus clear that after finding the

petitioner guilty of having cut full grown six trees from their base without due permission and thereafter failure to deposit the amounts received from the sale of the said trees in the funds of the Gram Panchayat, the same amounted to misconduct on her part while acting as Sarpanch and member of the Gram Panchayat. It is not the case of the petitioner that she had obtained any prior permission or that there was any resolution of the Gram Panchayat which authorised her to cut the trees. Considering the action of the petitioner of cutting the trees without due permission, her removal is justified not requiring any interference. The submission made on behalf of the petitioner that as the Hon'ble Minister decided the proceedings after about five months from conclusion of the hearing cannot be accepted in the facts of the present case and this ground by itself would not vitiate the impugned order. It is not the case of the petitioner that due to passage of time after conclusion of the hearing certain contentions urged by her had not been considered by the Hon'ble Minister. The only complaint of the petitioner is that the order was passed after a period of about five months from conclusion of the hearing. In absence of any prejudice being pointed and there being no grievance as to non-consideration of any contentions raised before the Hon'ble Minister, the impugned order does not deserve to be interfered with on that count.

9. It is thus found that in the facts of the present case the petitioner has been rightly removed under Section 39(1) of the said Act. While holding the responsible post of Sarpanch as well as member of the Gram Panchayat, the petitioner was expected to follow the due process of law by obtaining prior permission for cutting the trees. Not only have trees been cut without any due

permission but the amount received from the sale of those trees has also not been credited in the account of the Gram Panchayat. The impugned orders do not call for any interference. The writ petition is therefore dismissed with costs.

JUDGE

Andurkar..