

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

WRIT PETITION NO.4450/2019

Smt. Meerabai w/o Daulatrao Gawali

Vs.

State of Maharashtra, through its Secretary, Deptt. of Rural Development, Mumbai and
others.

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri M.P.Kariya, Advocate for petitioner.

Mrs. Harshada Prabhu, Assistant Govt. Pleader for respondent nos. 1 and 2.

Shri A.S.Thotange, Advocate for respondent nos. 6 to 8.

CORAM : A.S.CHANDURKAR, J.

DATED : NOVEMBER 14, 2019.

The challenge raised in the present writ petition is to the order passed under Section 39 (3) of the Maharashtra Village Panchayats Act, 1959 (for short, 'the said Act') by which the petitioner has been removed from the post of Sarpanch of the Gram Panchayat, Patur Nandapur. In the elections to the said Gram Panchayat that were held in the year 2015 the petitioner was elected as a Member and thereafter as Sarpanch of the said Gram Panchayat. The respondent nos. 6 to 8 on 13.03.2018 moved an application under Section 39(1) of the said Act seeking removal of the petitioner on the ground that as a Sarpanch she had been discharged her duties by contravening the provisions of the said Act and by undertaking activities in a manner contrary to the prescribed procedure for carrying out the works. In those proceedings a report was submitted by the Sub-Divisional Officer (Block Development Officer). Thereafter the Chief Executive Officer conducted an enquiry on 27.09.2018 and submitted his report to the Divisional Commissioner. In that report, it was

opined by the Chief Executive Officer that while carrying out various works under the 14th Finance Commission, the petitioner did not take adequate precaution and this resulted in the works being allotted without calling any tenders as well as in violation of the Maharashtra Gram Panchayat Accounts Code, 2011. The Divisional Commissioner thereafter heard the parties. By his order dated 02.01.2019 he recorded a finding that in absence of any supporting documentary material on record, it was clear that the petitioner had discharged her duties as Sarpanch without taking proper precaution which resulted in various irregularities. The Divisional Commissioner therefore removed the petitioner from the post of Sarpanch and also as Member of the Gram Panchayat. He also directed action to be taken against the then Secretary of the Gram Panchayat under the provisions of Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964. The petitioner then filed an appeal before the State Government. By the order dated 15.06.2019 the Hon'ble Minister of State for Rural Development dismissed that appeal. Being aggrieved the petitioner has challenged the said order in the present writ petition.

Shri M.P.Kariya, learned counsel for the petitioner submitted that the Block Development Officer had no jurisdiction to make any enquiry under Section 39(1) of the said Act. His report did not carry any weightage in view of the law as laid down by this Court in *Nimba Yadav Bhoi Vs. President, Standing Committee, Zilla Parishad, Jalgaon and others, 2002 (3) Mh.L.J. 466* . On that count the enquiry report submitted by the Block Development Officer was liable to be ignored. He then submitted that the Chief Executive Officer instead of conducting a proper enquiry has merely referred to documentary material placed before him and without giving any reasons has recommended

removal of the petitioner. On the contrary from the report submitted by the Secretary of the Gram Panchayat, it was clear that all the works were carried out after following the prescribed procedure. As the said works were required to be carried out on an urgent basis, quotations had been called from interested persons. There was no time to call for tenders and in absence of any allegations of misappropriation, the petitioner's removal was unwarranted. It was further submitted that considering the nature of enquiry conducted by the Chief Executive Officer, it was prayed before the Divisional Commissioner that fresh enquiry should be directed to be conducted by him. The application moved in that regard however was not decided and this aspect has also vitiated the impugned order. He referred to the material on record and submitted that there was no case made out to warrant removal of the petitioner under Section 39(1) of the said Act. It was therefore prayed that the impugned order be set aside.

Shri A.S.Thotange, learned counsel for the respondent nos. 6 to 8 supported the impugned order. He referred to the enquiry report dated 29.11.2017 which had been submitted by the Extension Officer who had acted as an Enquiry Officer. The three member Enquiry Committee enquired into the allegations of misuse of funds by the Gram Panchayat with regard to the 14th Finance Commission. After giving opportunity to the petitioner as well as the erstwhile Secretary, it was found by the Enquiry Committee that the petitioner as well as the Secretary of the Gram Panchayat had been negligent in conducting the affairs of the Gram Panchayat. It was noted that while purchasing material for the Gram Panchayat conditions prescribed by the Maharashtra Gram Panchayat Accounts Code, 2011 had been breached. He therefore submitted that despite opportunity to the petitioner to place on record any documentary material, the same

was not done. It was further submitted that the Chief Executive officer had also conducted enquiry as required by Section 39(1) of the said Act. It was categorically noted by the Divisional Commissioner that no documents were placed on record by the petitioner to indicate that the activities of the Gram Panchayat had been carried out in a fair and proper manner. Such documents were sought to be placed on record for the first time before this Court. It was therefore submitted that as the statutory Authorities had found that the petitioner as Sarpanch did not act exercising due care and caution and there were various procedural lapses while purchasing material for the Gram Panchayat. Hence there was no reason to interfere with the impugned order.

I have heard the learned counsel for the parties at length and I have also perused the material placed on record. Initially in view of various complaints received by the Zilla Parishad as well by the Guardian Minister, the Enquiry Committee was constituted which comprised of the Extension Officer, Assistant Accountant and Sectional Engineer. This Committee conducted an enquiry with regard to misuse of funds that were provided under the 14th Finance Commission. The petitioner as well as the Secretary of the Gram Panchayat participated in those proceedings and the Enquiry Committee noted that before the necessary works could be technically approved, the amounts had been spent on those works. The amounts were disbursed without following the prescribed procedure and in violation of the procedure prescribed for purchase of equipment, the purchases had been effected. No tenders were called for. It was noted that there was administrative and financial breach of conditions in that regard. Hence responsibility was fixed on the petitioner as Sarpanch as well as the Secretary of the Gram Panchayat. After this report was submitted to the Chief Executive Officer the

respondent nos. 6 to 8 moved an application under Section 39 (1) of the said Act seeking removal of the petitioner. The observations of the Enquiry Committee cannot be brushed aside especially when that Committee was directed to enquire into the alleged administrative and financial irregularities of the Gram Panchayat.

The initial enquiry conducted by the Sub-Divisional Officer (Block Development Officer) and its report is also on record. It is true that under Section 39 (1) of the said Act, the Chief Executive Officer has to conduct an enquiry and submit his report. In the present case such enquiry report has been submitted by the Chief Executive Officer on 27.09.2018. Thus requirements of Section 39(1) of the said Act stand complied with. The law laid down in *Nimba Yadav Bhoi* (supra) thus stands complied with. The report submitted by the Sub-Divisional Officer (Block Development Officer) can be referred to as piece of additional material while considering the challenge to the order passed under Section 39(1) of the said Act. There is no grievance raised with regard to lack of proper opportunity being given to the petitioner by the Chief Executive Officer while conducting the enquiry. It has been noted that no documentary material was placed on record by the petitioner to justify her stand. It has also been found that instead of calling for tenders while undertaking the works on behalf of the Gram Panchayat, some quotations were called by the petitioner. This act has been found to be contrary to the requirements of the Maharashtra Gram Panchayat Accounts Code, 2011. It has also been found that various technical requirements as well as administrative approvals were not taken by the petitioner when the said works were done. Hence the petitioner as well as the erstwhile Secretary were found responsible. Considering the contents of the enquiry report

submitted by the Chief Executive officer, I find that the said report has been prepared after giving due opportunity to the petitioner and after considering the entire material on record. This Court in writ jurisdiction cannot interfere with the observations made by the Chief Executive Officer in the enquiry report which have been accepted by the Divisional Commissioner and thereafter by the State Government. There is no reason to discard the enquiry report submitted by the Chief Executive Officer.

It is thus found that both the Authorities after considering all relevant material on record and by giving full opportunity to the petitioner have found that the petitioner was liable to be removed under Section 39(1) of the said Act. In absence of such conclusions being found to be without jurisdiction, there is no reason to exercise writ jurisdiction. The writ petition therefore stands dismissed with no orders as to costs.

JUDGE

Andurkar.