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

WRIT PETITION NO.4838 OF 2019

Fatemabi Abdul Latif Deshmukh
-vs-
The State of Maharashtra, Thr. The Honourable Minister, Rural Development Dept., Mantralaya, Mumbai and ors.

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

Shri Bhushan Dafle, Advocate for petitioner.
Shri H. D. Dube, Assistant Government Pleader for respondent Nos.1 and 2.
Shri Amol Deshpande, Advocate for respondent Nos.3 and 4.
Shri Anand S. Deshpande, Advocate for respondent No.5.

CORAM : A. S. CHANDURKAR, J.
DATE : December 20, 2019

The challenge raised in this writ petition is to the order passed by the Honourable Minister of State, Rural Development in appeal filed under Section 39(3) of the Maharashtra Village Panchayats Act, 1959 (for short, the said Act) confirming the order passed by the Divisional Commissioner on 28/05/2018 thereby removing the petitioner as Sarpanch and Member of the Gram Panchayat.

2. The facts in brief are that the respondent No.5 made a complaint to the Divisional Commissioner under Section 39(1) of the said Act stating therein that the petitioner was elected as a Member of Gram Panchayat and thereafter as Sarpanch. With regard to the work

undertaken by the petitioner of laying down the pipeline there were various irregularities noticed. The pipeline in question was of inferior quality. The work sanctioned in that regard had not been properly undertaken. Though tenders were called for 100 mm pipeline the supply orders given were for 110 mm pipeline. The amounts that were not liable to be spent under the 14th Finance Commission had been spent at the instance of the petitioner. The Divisional Commissioner therefore directed the Chief Executive Officer to submit his report. Such report was accordingly submitted with the observations that there were certain irregularities noticed in the manner in which the works of the Gram Panchayat had been carried out. After considering that report and by giving opportunity to the petitioner the Divisional Commissioner proceeded to remove the petitioner from the post of Sarpanch as well as Member of the Gram Panchayat. That order has been confirmed by the Honourable Minister of State while dismissing the appeal filed by the petitioner. Hence the present writ petition.

3. Shri B. Dafle, learned counsel for the petitioner submitted that the petitioner has been removed without the requirements of Section 39(1) of the said Act being satisfied. Referring to the report submitted by the Chief Executive Officer it was submitted that the petitioner had been exonerated with regard to most of the matters. With regard to the

matters for which the enquiry had been conducted, there were no allegations of financial misappropriation and on account of some technical deficiencies the impugned order of removal came to be passed. Infact the notice issued to the petitioner to furnish her explanation was without any specific charges as a result of which the petitioner was not in a position to meet the same and to substantiate her defence. Placing reliance on the decision in ***Pratibha w/o Sanjay Hulle vs. Additional Collector, Latur and ors. 2010(5) Mh.L.J. 47*** and ***Sunil Daulat Patil vs. State of Maharashtra and ors. 2014(2) Mh.L.J. 597*** it was submitted that the impugned orders were liable to be set aside on that count. Further, mere omission to discharge duties as Sarpanch and Member would not attract the action of removal as held in ***Shrikant Chahakar and ors. vs. State of Maharashtra and ors. 2010(4) Mh.L.J. 856*** and ***Sureshkumar s/o Kanhaiyalal Jethlia vs. State of Maharashtra and ors. 2001(1) Mh.L.J. 901.*** It was thus submitted that on considering the report of the Chief Executive Officer there was no case made out to remove the petitioner.

3. Shri Anand S. Deshpande, learned counsel for the respondent No.5 supported the impugned order. He submitted that the complaint as made by the respondent No.5 clearly indicated the grounds on which removal of the petitioner was sought. It could not be said that the

charges levelled against the petitioner were vague. The report of the Chief Executive Officer clearly indicated misconduct as alleged and hence there was no reason to interfere with the impugned order.

Shri Amol Deshpande, learned counsel for the respondent Nos.3 and 4 along with Shri H. D. Dube, learned Assistant Government Pleader for respondent Nos.1 and 2 also supported the impugned order by submitting that the petitioner had been removed after following the due procedure.

4. Heard the learned counsel and perused the documents placed on record. As per the complaint made by the respondent No.5 the principal allegation made against the petitioner pertained to the manner in which the work of laying the pipeline under the 14th Finance Commission was concerned. It was noticed by the Chief Executive Officer that though it was necessary under the Government Resolution dated 21/12/2012 to obtain his consent while carrying out the modified work, the same had not been done. Though tenders in respect of 100 mm pipeline were sanctioned, purchase orders were placed for 110 mm pipeline. Consent of the field owners for supplying water was obtained on 17/03/2016 and prior thereto the Work Order came to be issued. It has also been found that no resolutions were passed in the matter of spending amounts in that regard. After

considering the said report of the Chief Executive Officer, the Divisional Commissioner proceeded to exercise jurisdiction under Section 39(1) of the said Act. That order was thereafter confirmed in exercise of appellate jurisdiction.

5. Considering the entire material on record it cannot be said that action had been taken against the petitioner merely on account of some omissions while discharging duties. There are various irregularities noticed in the matter of spending of funds under the 14th Finance Commission and especially amounts being spent on work which was not sanctioned. The amounts spent have been modified without obtaining prior consent of the Chief Executive Officer which was required under Government Resolution dated 21/12/2012. Moreover there has been no justification given by the petitioner that when tenders were called for supply of 100 mm pipeline, purchase order was placed for 110 mm pipeline. There have been irregularities noticed even in obtaining the consent of the field owners and the funds for water supply had been spent without there being any resolution. These irregularities were found sufficient by the Divisional Commissioner for removing the petitioner. Taking a overall view of the matter and after perusing the report of the Chief Executive Officer, the aforesaid conclusion of the Divisional Commissioner does not deserve to be

interfered with.

6. On perusing the complaint as made by the respondent No.5 as well as the report submitted by the Chief Executive Officer, the contention raised on behalf of the petitioner that she was not made aware of the specific charges levelled against her cannot be accepted. The complaint as well as the report are quite clear as regards the case sought to be put up against the petitioner. The entire material were supplied to be petitioner and hence she had an occasion to controvert the same. In that view of the matter the ratio of the decisions relied upon by the learned counsel for the petitioner in that regard can not be applied to the facts of the present case.

7. In absence of there being any jurisdictional error committed either by the Divisional Commissioner or by the Honourable Minister of State while adjudicating the proceedings, I do not find any reason to interfere with the impugned order in exercise of writ jurisdiction. The Writ Petition is accordingly dismissed with no order as to costs.

The learned counsel for the petitioner prays that the interim order granted in favour of the petitioner be continued for a period of six weeks from today. This request is opposed by the learned counsel for the respondents.

As the interim relief has been operating in favour of the petitioner it shall continue to operate for a period of six weeks and shall cease to operate automatically thereafter.

JUDGE

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