

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

WRIT PETITION NO. 5210 OF 2020

- 1] Amar S/o Pundlik Nade
Age 40 years, Occu. Agril.,
R/o : Murud, Tq.&Dist.Latur.
- 2] Mahesh S/o Dynoba Kanse,
Age : 30 years, Occu.Agril.,
R/o Murud, Tq. & Dist.Latur.
- 3] Amar S/o Sahebrao More,
Age : 40 years, Occu.Agril.,
R/o Murud, Tq. & Dist.Latur

.. PETITIONERS
[Original Complainants]

VERSUS

- 1] The State of Maharashtra
Through its Secretary
Rural Development Department
Mantralaya, Mumbai-32.
- 2] Divisional Commissioner,
Commissioner Office,
Aurangaad Division,
Aurangabad.
- 3] Chief Executive Officer,
Zilla Parishad,Latur
Tq. & Dist.Latur.
- 4] Gramsevak,
Grampanchayat Office,
Murud, Tq.& Dist.Latur.
- 5] Abhaysing S/o Dilip Nade
Age 31 years, Occu. Sarpanch,

R/o Murud, Tq. & Dist.Latur.

.. RESPONDENTS

...
Adv. Mr.VV.Deshmukh for petitioners.
A.G.P Smt.VS.Choudhary for Respondent- State.
Adv.Mr.S.S.Manale for Respondent no.2
Adv.Mr.S.P Urgunde for Respondent no.5.

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CORAM : MANGESH S. PATIL, J.
RESERVED ON : 11/09/2020
PRONOUNCED ON : 25/09/2020

JUDGMENT :-

Heard.

2] Rule. The Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

3] By way of this Petition, the petitioners who are the villagers of Murud, Tq. and District Latur are impugning the order passed by the Minister, Rural Development Mantralaya, Mumbai in Appeal No.VPM-2020/C.No.06/PR/6 dated 2/7/2020. The petitioner no.1 is an elected member of the Murud Gram Panchayat. They made a complaint to the respondent no.3 Chief Executive Officer of the Zilla Parishad, Latur against the then Gram Sevak respondent no.4 and the elected Sarpanch respondent no.5 alleging *inter alia* of various misconducts and misappropriation. An inquiry was directed by a committee consisting of the Block Development Officer of Panchayat Samiti, Latur alongwith Development Officer of AUSA and Shirur Anantpal and the Deputy Chief Executive Officer of Zilla Parishad, Latur. It submitted a report holding that there was substance in the complaint. Pursuant thereto the petitioners

filed an application to the respondent no.2 Divisional Commissioner, Aurangabad Division seeking removal of the respondent no.5 from the office of Sarpanch as contemplated under Section 39 (1) of the Maharashtra Village Panchayats Act, 1959 (hereinafter referred to as the Act). After extending an opportunity of being heard to the respondent no.5, by the judgment and order dated 20/2/2019 the respondent no.2 Commissioner allowed the application and removed the respondent no.5 from the office of Sarpanch. Being aggrieved and dissatisfied by such a judgment, the respondent no.5 preferred an Appeal under Section 39(3) of the Act to the State Government. By the impugned judgment and order dated 2/7/2020, the Minister of Rural Development allowed the Appeal and quashed and set aside the order of the respondent no.2 Commissioner. Hence this Petition.

4] The learned advocate Mr.Deshmukh for the petitioners took me through the entire record and pointed out as to how the conclusions drawn by the respondent no.2 Commissioner were clearly borne out from the material before him which was sufficient to reach a conclusion about the respondent no.5 having committed a misconduct. He pointed out as to how without following any procedure and even without holding proper meetings, one J.K. Consultancy, Beed was allotted the contract to survey the residential and commercial properties situated within the Gram Panchayat limits for assessment of property tax. He pointed out as to how there is a discrepancy in mentioning the date and number of the Resolution further pointing out as to how the work order was issued only under the signature of the Gram Sevak. No proper tenders were invited and surreptitiously the contract was given. He further pointed out as to how even in the copy of the Resolution there are manipulations showing that the words "*Gram Sabha*" have been scored off

and replaced by words "*Masik Sabha*" in respect of the Resolution No.6/8 (page 70). He further pointed out as to how a different date is written at the right hand top corner whereas the words "*Masik Sabha* dated 27/2/2018, 11/8" are written in hand. He would also point out that even this Resolution does not bear signature of respondent no.5 Sarpanch. The learned advocate also pointed out that by virtue of Government Resolution dated 27/5/2015, any development work of Gram Panchayat costing Rs.3 lakhs and above can be done only by adopting e-tender process. Giving a complete go-bye to such Government Resolution, the respondent nos.4 and 5 have allotted the contract to J.K. Consultancy. He would point out that the Commissioner has rightly concluded about such a misconduct.

5] The learned advocate further pointed out that in violation of the regulations governing financial matters, the respondent nos.4 and 5 Gram Sevak and the Sarpanch withdrew money by drawing self-cheques and shown to have paid the daily workers and for purchasing books and incurring other expenditure which is clearly contrary to the Maharashtra Village Panchayat Account Code 2011. Having noticed such a lapse, the Commissioner had rightly concluded about the respondent nos.4 and 5 having committed misdeeds. It is only after objective satisfaction reached by the Commissioner that he had directed the respondent no.5 Sarpanch to be removed from the post.

6] The learned advocate then submitted that without adverting to, rather getting swayed away from the matter in dispute, the learned Minister has without sound reasons reversed the judgment and order passed by respondent no.2 Commissioner. The impugned judgment and order passed by the

Minister does not stand the scrutiny of law and may be quashed and set aside and the one passed by the respondent no.2 Commissioner be restored.

7] The learned A.G.P. supported the reasonings given by the learned Minister in his impugned judgment and order.

8] The learned advocate for the respondent no.5 submitted that the entire process is vitiated for not following the mandate of requiring a Chief Executive Officer to inquire into the allegation as laid down under the proviso to sub Section 1 of Section 39 of the Act. He would submit that when this provision specifically requires the Chief Executive Officer to be assigned with the inquiry, lapse goes to the root of the validity of the process undertaken. He would submit that whenever a complaint is received by the Commissioner for removal of a Sarpanch or Upa-Sarpanch from his office on account of some misconduct in discharging his duties, the Commissioner is expected to direct the Chief Executive Officer to hold an inquiry. However, giving a complete go-bye to such a mandate, the Chief Executive Officer in the matter in hand has delegated the inquiry to a committee of his subordinates instead of undertaking the inquiry himself. He himself being a delegate could not have further delegated the inquiry to his subordinates. In support of his such submission, the learned advocate placed reliance on the decision of this Court in the case of Nimba Yadav Bhoi V/s President, Standing Committee; 2002 (3) Mh.L.J. 466.

9] Apart from such legal submission the learned advocate for the respondent no.5 strenuously made attempt to show as to how factually there was no misconduct committed by respondent no.5. He pointed out that it was

merely a matter of undertaking a survey of the properties situated within the village limits to facilitate the Gram Panchayat to collect the taxes. Though the tenders were not invited, proposals were received from four establishments and being the lowest offer, the contract was assigned to J.K. Consultancy, Beed. He would submit that a proper procedure was followed, proper meeting was held on 26/2/2018 whereby it was resolved to get the properties reassessed. Accordingly monthly meeting was conducted on 27/2/2018 and after discussing the four proposals it was resolved that the work was to be assigned to J.K. Consultancy, Beed. The learned advocate further pointed out that in fact no Government money was being sought to be spent for any development work so that the Government Resolution dated 27/5/2015 can be said to be applicable. He would point out from the minutes of Resolution dated 27/2/2018 that it was specifically resolved that the payment was to be made to J.K. Consultancy, Beed for undertaking survey at the rate of Rs.200/- for residential property and the money was to be paid by recovering it from the property holders. No expenditure was to be incurred by the Gram Panchayat independently. Therefore, there was no illegality committed while giving work/contract.

10] Alternatively, the learned advocate for the respondent no.5 submitted that the work order was issued by the then Gram Sevak and does not bear signature of the respondent no.5 who is a layman. When the work order was to be issued the Gram Sevak ought to have consulted the respondent no.5 Sarpanch. That having not been done, the latter cannot be blamed much less can be said to be guilty of some acts or omissions.

11] I have carefully gone through the papers. Since a preliminary objection

is being raised by the learned advocate for the respondent no.5 regarding validity of the procedure leading upto passing of the order by the respondent no.2 Commissioner it would be apt to deal with it. In order to appreciate the argument, it is necessary to reproduce the relevant portion of the provision contained in Section 39 of the Act.

"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 (1-A) of Section 8 :

1] 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.

[(1-A)]

2] The Commissioner may subject to like condition disqualify for a period of not exceeding five 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)."

12] A careful perusal of this provision shows that a member, Sarpanch or Upa-Sarpanch can be removed by the Commissioner for misconduct, disgraceful conduct, negligence etc. By virtue of Clause(ii), the Commissioner is also empowered to remove from the office a Member, Sarpanch or Upa-Sarpanch if not less than 20% of the total number of voters in a village who have paid all the dues making a complaint to the effect that entire account and the expenditure incurred on the development activities is not placed before a Gram Sabha and is not displayed on the notice board. It is thus apparent that under Clause (i) a Sarpanch can be removed for a general misconduct whereas under Clause (ii) a Sarpanch can be removed for a specific lapse of not publishing the accounts and not placing the accounts

before the Gram Sabha. The first proviso requires the Commissioner to direct an inquiry to be held by the Chief Executive Officer if he wishes to proceed under Clause (i), whereas if he intends to invoke Clause (ii) the inquiry can be directed even to a Deputy Chief Executive Officer. It further lays down that pursuant to such inquiry, the Chief Executive Officer and even if it is held by the Deputy Chief Executive Officer under Clause (ii), it is only through the Chief Executive Officer that the report is to be submitted to the Commissioner and it is only thereafter that by virtue of second proviso, the Commissioner is expected to take a decision after giving an opportunity to the person concerned of being heard.

13] The wording of the first proviso is in the form of a protection given to a person sought to be removed and therefore will have to be interpreted strictly. This is what precisely been discussed and laid down by this Court in the case of Nimba Yadav Bhoi (supra). After referring to various decisions for interpreting the scope and mandate of Section 39 of the Act, this Court has made following observations in paragraph no.26.

"26] Considering the provisions contained in Section 39(1) of the said Act, and the law on the subject matter discussed hereinabove, it is apparent that the enquiry under Section 39 of the said Act has necessarily to be conducted by the Chief Executive Officer and none else. Such enquiry has to be preceded by necessary order directing the Chief Executive Officer to hold the enquiry and such order should be necessarily issued by the President of the Zilla Parishad. Pursuant to such appointment, the Chief Executive Officer himself has to hear the person against whom the enquiry is to be conducted and based on such enquiry, the Chief Executive Officer has to prepare

a report and submit the same to the President of the Zilla Parishad. All these requirements are mandatory in nature and any failure in that regard on the part of the authorities, the proceedings under Section 39(1) of the said Act would be vitiated and any order passed on the basis of such proceedings which are vitiated would be rendered null and void. Reverting to the facts of the case, undisputedly, the order of the removal of the petitioner from the office of Sarpanch was not preceded by any enquiry by the Chief Executive Officer. There was no order of the President appointing the Chief Executive Officer to enquire into the matter."

Since no contrary authority having been cited before me, I find no reason and justification from taking any other view. When it is a matter of taking a drastic action against a Sarpanch and the provision requires inquiry to be conducted by a Chief Executive Officer to whom it is delegated by the Commissioner respondent no.2 he could not have overlooked the fact that instead of the Chief Executive Officer, the inquiry was conducted by a 3 member committee as per the directions of the Chief Executive Officer. It is trite that *delegatus non potest delegare*. The Chief Executive Officer being the delegate of the Commissioner cannot further delegate the powers of holding the inquiry. When the Legislature in its wisdom has expected a superior officer to undertake the inquiry, in all probabilities because a drastic action against an elected Sarpanch is to be taken, the inquiry ought to have been conducted by the Chief Executive Officer himself. That having not been done, the lapse in my considered view goes to the root of the validity of the entire process.

14] True it is that in the impugned judgment there is no whisper touching this aspect of the matter but when independently the inquiry conducted is not

strictly in accordance with the mandate of Section 39 of the Act, for this reason alone, the order passed by the respondent no.2 Commissioner was liable to be quashed and set aside, albeit, the learned Minister has set it aside for other reasons.

15] Since I have reached such a conclusion in my considered view it would not be appropriate and necessary to advert to the factual disputes since the discussion would be academic. Similar course was adopted by this Court in the case of Nimba Yadav Bhoi (supra) and I feel it proper to follow the precedent.

16] In the result, the Petition is liable to be dismissed and accordingly it is dismissed.

17] The Rule is discharged.

[MANGESH S. PATIL, J.]

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