

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9012 OF 2019

MATHURABAI W/O NAGORAO FASATE
VERSUS
THE LD. MINISTER, VILLAGE DEVELOPMENT AND PANCHAYAT
RAJ DEPARTMENT, MANTRALAYA, MUMBAI AND OTHERS

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Mr. S. K. Savangikar, Advocate for the Petitioner.
Mr. A. S. Shinde, AGP for Respondent Nos. 1 and 2.
Mr. S. B. Ghute, Advocate for Respondent No.3.
Mr. A. G. Thitte, Advocate for Respondent No.4.
Mr. M. A. Kulkarni, Advocate for Respondent No.5.

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CORAM : V. K. JADHAV, J.
DATED : 13th JANUARY, 2020

ORDER :-

1. Heard finally with consent at admission stage.
2. This Writ Petition pertains to removal of the petitioner Sarpanch from the office under Section 39(1) of the Maharashtra Village Panchayats Act, 1958 (for short, "the Act of 1958") by the order of the Hon'ble Minister.
3. Brief facts giving rise to the present Writ Petition are as follows:
 - a. The petitioner is the Sarpanch of Gram Panchayat of village Singi (Naga), Taluka Sengaon, District Hingoli. One Balaji

Kashiram Gite, who is Gram Rojgar Sevak of Grampanchayat office, Singi (Naga), had filed a complaint dated 01.01.2016 to the Collector with a copy to respondent no.3-Chief Executive Officer, Zilla Parishad, Hingoli, alleging therein that the honorarium for the period 08.02.2015 to 11.07.2015 was utilized by the petitioner-Sarpanch and the respondent-Gramsevak and the amount of honorarium was misappropriated by them. He was not paid the said amount and it was paid to one Ananta Ramji. On the basis of the said complaint, the Block Development Officer had conducted an inquiry into the matter under the directions of the District Collector and submitted a report concluding therein that the petitioner-Sarpanch is an illiterate woman and the Gramsevak has misused her thumb impression by taking advantage of her illiteracy. He had recommended to issue show cause notice to the Sarpanch and after calling for an explanation, the said amount to the tune of Rs.11,235/- may be recovered.

b. Thereafter, respondent no.5 herein had initiated the proceedings before the Additional Divisional Commissioner and sought removal of the petitioner- Sarpanch under the provisions of Section 39 (1) of the Act of 1958. In consequence thereof, the learned Additional Divisional Commissioner had directed the Chief

Executive Officer to conduct an inquiry into the matter by giving an opportunity of being heard to both sides. The Chief Executive Officer, Zilla Parishad, Hingoli had conducted an inquiry into the matter by giving an opportunity of being heard to both the parties. Learned Chief Executive Officer has observed that the petitioner-Sarpanch has paid the fine of Rs.1,000/- in consequence of the said misconduct pertaining to the honorarium paid to one other person than the incumbent and further concluded that the amount of the alleged misappropriation has been deposited in the concerned account and *prima facie* it does not reveal that the petitioner-Sarpanch has misused her position. The learned Additional Divisional Commissioner, after giving opportunity of being heard to both the parties and further considering the report of the Chief Executive Officer, rejected the application filed by respondent no. 5 herein and concluded that the report of the Chief Executive Officer, Zilla Parishad dated 04.04.2018 is proper and the petitioner is not liable to be removed from the post of Sarpanch under Section 39 (1) of the Act of 1958. Being aggrieved by the same, respondent no.5 herein had approached the Hon'ble Minister. The Hon'ble Minister, by order dated 17.06.2019, quashed and set aside the order passed by the Additional Divisional Commissioner and

disqualified the petitioner- Sarpanch under Section 39 (1) of the Act. Hence, this Writ Petition.

4. Learned counsel for the petitioner submits that despite two reports in favour of the petitioner-Sarpanch with the specific observations therein that the concerned Gramsevak had taken advantage of the illiteracy of the petitioner-Sarpanch and misused her thumb impression for withdrawing the amount of honorarium to be paid to one Balaji Kashiram Gite, and on the basis of the said report, the Additional Divisional commissioner exonerated the petitioner with a reasoned order, the Hon'ble Minister without assigning any cogent reasons, quashed and set aside the said order passed by the Additional Divisional Commissioner. Learned counsel submits that respondent no.5 herein is the close relative of the earlier complainant, namely, Balaji. Said Balaji had not initiated any proceedings. However, respondent no.5 herein had approached the Additional Divisional Commissioner for removal of the petitioner from the post of Sarpanch under Section 39(1) of the Act of 1958. Learned counsel submits that there is no evidence against the present petitioner-Sarpanch to hold her guilty of misconduct or negligent in discharge of her duties or incapacity to perform her duties as Sarpanch. The concerned authority has imposed costs on

the petitioner as a punishment and she has deposited the said costs. Learned counsel submits that respondent no.5 has no *locus standi* to file complaint against the petitioner after imposition of the said punishment. Learned counsel submits that though the honorarium amount came to be withdrawn by respondent no.4-Gramsevak, however, the amount has been deposited and paid to the said Balaji. Thus, there is no misappropriation of the said amount of honorarium to be paid to Balaji. Learned counsel submits that the Writ Petition deserves to be allowed by setting aside the order passed by the Hon'ble Minister and the order passed by the Additional Divisional Commissioner may be confirmed.

5. Learned counsel appearing for respondent no. 5 supported the order passed by the Hon'ble Minister. Learned counsel submits that in the circumstances of the present case, the provisions of Section 39(1) of the Act of 1958 stand attracted and the Hon'ble Minister has therefore correctly held the petitioner guilty of misconduct etc. as contemplated under Section 39(1) of the Act of 1958. Learned counsel submits that though the petitioner was found guilty, the Chief Executive Officer, who has conducted inquiry into the matter and so also the Block Development Officer,

have taken a liberal view and saved the petitioner. It is part of record that in connection with the said misconduct, the petitioner was directed to pay costs/penalty of Rs.1,000/-. There is no substance in this Writ Petition and the Writ Petition is liable to be dismissed.

6. Learned counsel for respondent no.4-Gramsevak submits that respondent no.5 has no *locus standi* to file complaint application before the Additional Divisional Commissioner, Aurangabad. Said Balaji has not approached the Additional Divisional Commissioner and initiated proceedings under Section 39(1) of the Act of 1958 against the petitioner. Learned counsel submits that the first complaint dated 01.01.2016 filed by Balaji Kashiram gite has been inquired into by the Chief Executive Officer and it was closed. There was no other complaint filed by said Balaji Gite thereafter. However, respondent no.5 Pandurang, with some ulterior motive, initiated proceedings against the petitioner. Learned counsel submits that even though respondent no.3-Chief Executive Officer, Zilla Parishad, has punished respondent no.4-Gramsevak without his fault, however, the said amount of honorarium to the tune of Rs.11,235/- has been paid to Balaji Kashiram Gite thereafter and

he has withdrawn the same. There is no evidence that the said amount of honorarium has been paid to one Ananta Ramji.

7. I have also heard learned AGP for the respondent-State.

8. I have carefully perused the inquiry report of the Block Development Officer, Panchayat Samiti, Sengaon dated 09.02.2016 and the inquiry report of the Chief Executive Officer, Zilla Parishad. It appears from the inquiry report dated 09.02.2016 that the Block Development Officer has concluded to the effect that the petitioner-Sarpanch and respondent no.4-Gramsevak have committed temporary misappropriation of the said amount of honorarium. Learned Block Development Officer has observed that the said amount of honorarium of Rs.11,235/- was transferred in the account of MREGS, however, under the joint signatures of the petitioner-Sarpanch and the respondent-Gramsevak, it was paid to one Ananta Ramji Mhaske. It has also been concluded in the said report that only after the complaint filed by Balaji Kashiram Gite, Gram Rojgar Sevak, the petitioner-Sarpanch and the respondent-Gramsevak have deposited the said amount in the account of MREGS on 02.01.2016. In the said inquiry, the petitioner-Sarpanch has taken a defence that respondent no.4 has taken advantage of

her illiteracy. The Block Development Officer has thus recommended administrative action as against the respondent-Gramsevak, however, considering that the petitioner-Sarpanch is semi-literate, recommended to issue show cause notice to her. In consequence thereof, the further proceedings went on before the Chief Executive Officer, Zilla Parishad, Hingoli and accordingly, one yearly increment of the respondent-Gramsevak was stopped and a fine of Rs.1,000/- was imposed on the petitioner-Sarpanch in terms of Section 25 of The Mahatma Gandhi National Rural Employment Guarantee Act, 2005. In terms of the said Act, a copy of which is annexed to the petition at page 36, on perusal of Section 23(4), it appears that all the payments of wages in cash and unemployment allowances under the scheme shall be made directly to the person concerned and in the presence of independent persons of the community on pre-announced dates. There is no justification, as to how and why the amount has been paid to one Ananta Ramji by cheque in stead of one Balaji Kashiram Gite, who was working as Gram Rojgar Sevak. In terms of Section 25 of The Mahatma Gandhi National Rural Employment Guarantee Act, 2005, whoever contravenes the provisions of the said Act shall be liable to pay a fine which may extend to

Rs.1,000/-. The petitioner held guilty and on conviction, imposed the maximum fine of Rs.1,000/- as prescribed under Section 25 of The Mahatma Gandhi National Rural Employment Guarantee Act, 2005. It is also part of record that the amount has been paid under joint signature of the petitioner and the respondent-Gramsevak to Ananta Ramji.

9. It appears that the Chief Executive Officer, even though in the earlier proceedings, held the petitioner guilty and imposed fine of Rs.1,000/- in terms of the provisions of Section 25 of The Mahatma Gandhi National Rural Employment Guarantee Act, 2005, in the inquiry conducted as directed by the Additional Divisional Commissioner, given a clean chit to the petitioner on the ground of her illiteracy and also for the reason that the said amount of temporary misappropriation has been redeposited. Learned Additional Divisional Commissioner, though referred the imposition of said fine in terms of Section 25 of The Mahatma Gandhi National Rural Employment Guarantee Act, 2005, concluded to the effect that the petitioner is not guilty of misconduct in discharge of her duties and accordingly exonerated her.

10. In terms of Section 39 of the Act of 1958, a Sarpanch or Upa-Sarpanch may be removed from the post if he is found guilty of (a) misconduct in the discharge of his duties, (b) or of any disgraceful conduct (c) or of neglect of or incapacity to perform his duties, (d) or is persistently remiss in the discharge thereof. In the instant case, the petitioner is found guilty of misconduct in the discharge of her duties. Furthermore, though the petitioner has taken a defence of her illiteracy or semi-literacy, however, that amounts to incapacity to perform her duty. The Hon'ble Minister has thus rightly interfered in the matter and quashed and set aside the order passed by the Additional Divisional Commissioner. I find no fault in the order passed by the Hon'ble Minister. Hence, I proceed to pass the following order.

ORDER

The Writ Petition is hereby dismissed.

(V. K. JADHAV, J.)