

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.896 OF 2019**

Rakhi Naik alias Rakhi Amit Naik
 or Rakhi Prabhudessai Naik,
 Indian National, married,
 Housewife Vice President
 /Spokesperson of Shiv Sena,
 Goa unit with office at
 Emerald Towers, 5th Floor,
 Above Pudhari Newspaper,
 St. Inez, Panaji, Goa 403001
 and resident of H.No.358,
 Kasabwada, Netravli/Neturlim,
 Sanguem, Goa 403704.

.... Petitioner

Versus

1. Rajani Gaonkar,
 wife of Dayanand Gaonkar,
 30 years old, (Ex-Sarpanch),
 Neturlim Gram Panchayat,
 Resident of H.No.112, Salgini,
 Neturlim, Sanguem, Goa 403704.

2. Abhijit Satyavan Dessai,
 son of Satyavan Dessai,
 38 years old (Ex Deputy Sarpanch),
 Neturlim Village Panchayat,
 R/o. H.No.17/1, Nundem,
 Neturlim, Sanguem, Goa 403704.

3. **The Director of Panchayat, having office at 3rd floor,
 3rd lift, Junta House, Panaji-Goa.**

.... Respondents

Shri S.G. Desai, Senior Advocate with Shri P.S. Shirodkar, Advocate for
 the Petitioner. **with Shri Dhaval D. Zaveri**

Shri C.A. Ferreira, | Advocate for Respondents No.1 & 2.

Shri Tukaram Gawas, Additional Government Advocate for
 Respondent No.3.

CORAM : DAMA SESHADRI NAIDU, J.

Reserved on : 13th March 2020

Pronounced on : 16th July 2020

Corrections carried
 out as per order
 dtd.04/12/2020 in
 LD-VC-OCW-199-
 2020.

Sd/-

PS

10/12/2020

ORDER :**Introduction:**

Newly elected members of a gram panchayat unanimously resolve to collect parking and garbage fees from the tourists visiting the wildlife sanctuary within its territorial limits. They write to the Government for its approval, too. But before they get the approval, they start collecting the fees. For that, they print receipts and affix Panchayat's stamp on those receipts as well. Someone cries foul and complains to the authorities. The authorities ask the Panchayat to stop collecting the fees. It stops. It all begins and ends in one week.

2. The Director of Panchayats, on inquiry, disqualifies the Sarpanch and Deputy Sarpanch alone, and none else. They not only cease to hold office but also get barred from contesting civic polls for the next five years. Is that action justified?

Facts:

3. Petitioner Rakhi Naik is a resident and voter of Neturlim Garam Panchayat. She claims to be the vice-president of a prominent political party's Goa Unit. She asserts that she has filed this writ petitioner both as an individual voter of the Gram Panchayat and also as the vice-president of the political party.

4. In the panchayat elections held in June 2017, first respondent Rajani Gaonkar and second respondent Abhijit Satyavan Dessai were elected as Panchayat Members. In the same month, Rajani and Abhijit were elected as the Sarpanch and Deputy Sarpanch, respectively. Whenever we refer to them together in this discussion, we will call them "the Officeholders".

5. In July 2017, the Panchayat resolved to collect garbage and parking fees from tourists visiting Netravali Wildlife Sanctuary, which

falls within Neturlim Panchayat jurisdiction. As Panchayat required Government's approval for collecting the proposed fees, it wrote to the Director of Panchayats. But without waiting for the approval, the Panchayat started collecting the fees.

6. Rakhi Naik complained. First, she held a press meet, and that led to an inquiry. Later, she filed a criminal complaint, which resulted in an FIR for the offences under Sections 467, 468, 471, 472, 420 read with 34 IPC. Still later, she complained to the Director, who first secured a report from Deputy Director and, then, adjudicated the issue. The Director invoked Section 50 (4) of the Panchayat Raj Act and disqualified the Officeholders. Aggrieved, the Officeholders filed a statutory revision before the District Court, Sought Goa. Eventually, The District Judge allowed the Revision. Now, it is Rakhi Naik's turn to be aggrieved. She has filed this Writ Petition under Article 227 of the Constitution.

Submissions:

Petitioner:

7. Shri S. G. Desai, the learned Senior Counsel, has advanced elaborate arguments for the Petitioner. Summarised, his contentions are these:

7.1 The expression "opportunity" in terms of section 50(4) of the Panchayat Raj Act means reasonable opportunity in tune with the principles of natural justice, but it does not include the right of cross-examination. He relies on *Agnelo Alexinho Lobo v. Director of Panchayats*^[1].

7.2 The Revisional Court has misinterpreted the expression "persistently" in section 50(4) of the Act.

¹[1] 2002 Vol 104 (2) Bom LR 579

7.3. The Revisional Court has also wrongly concluded that the collection of fees for seven days would not amount to illegality under section 50(4) of the Act.

7.4 The Revisional Court's finding that only the Sarpanch and Deputy had been singled out is a perverse finding. So is the finding on the receipt books and the seal.

7.5 Though there had been sufficient reasons in the Director's primary order about why the Sarpanch and his Deputy should be disqualified, the Revisional Court has erroneously held that the primary order was laconic.

7.6 Without the Government's sanction, the action by the Sarpanch and his Deputy in collecting the fees was grossly illegal and, therefore, the order of disqualification merited no interference. See *State of Punjab v. Gurudev Singh*²].

7.7 Once Section 50 (4) is attracted, the consequences under Section 50(5) of the Act must follow, and they did follow. Besides, the Sarpanch and his Deputy are also guilty of offences under Sections 467, 468, 471, 472, 420 read with 34 IPC.

7.8 A Panchayat member's disqualification also amounts to disqualification for him to contest Zilla Panchayat elections, too, as was held in *Laxmibai v. the Collector, Nanded*³] and in *Gokul Chandamal Sangvi v. State of Maharashtra*⁴].

7.9 So, the Returning Officer ought not to have accepted the Dy. Sarpanch's nomination for Zilla Panchayat elections, as it falls foul of Rule 15 of Panchayat and Zilla Panchayat (Election Procedure)

²[(1991) 4 SCC 1

³[CA, 14 February 2020 (SC)

⁴[2018 DGL(BOM) 348

Rules 1996.

7.10 Section 2 of the Goa Panchayat Raj Act commences with a disclaimer: “In this act, unless the context otherwise requires”. Therefore section 2(14) and 2(21) must be understood in the context of the entire election law contained in Goa Panchayat Raj Act.

7.11 The Act and the Rules are composite and compendious; they apply as much to Zilla Panchayats as they apply to Gram Panchayats. There is no compartmentalisation.

7.12 This Writ Petition under Article 227 of the Constitution commends consideration because the Revisional Court has misinterpreted Section 50 (4) of the Act. The precedential prop for this proposition is *Radhey Shyam v. Chhabi Nath*^[5].

7.13 This Court can consider the later developments—say about the Dy. Sarpanch’s contesting the Zilla Panchayat elections—and mould the relief.

7.14 All the decisions the respondents cited are distinguishable.

Respondents:

C.A. Ferreira

8. Shri ~~Dhaval Zaveri~~, the learned counsel for the Sarpanch and

the Dy. Sarpach, in summary, has contended thus:

8.1 *Standing*: Petitioner Rakhi Naik has no standing to take judicial recourse on the dispute because she has suffered no personal loss. Besides, she admits to being a political adversary. It is so held in *Ravi Yashwant Bhoir v. Collector*^[6]. Not even Sections 20 (1) and 21 (1) of the Act enable Rakhi Naik to litigate, for the present petition is not an Election Petition. So holds *Radhey Shyam*^[7].

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⁵ [2015 (5) SCC 423]

⁶ [2012] 4 SCC 407

⁷ [Radhey Shyam (n 5)]

8.2 *Laches*: Rakhi Naik filed the writ petition on 30th September before this Court but kept it on the back burner for about two months; she mentioned it in November 2019 and secured ex parte interim orders.

8.3 *Collective Decision*: The Revisional Court's intervention was justified because it was the Panchayat's collective decision that was sought to be implemented; no individual could be called to account for it.

8.4 *Political Rivalry*: Rakhi Naik tried to make political capital out of, if ever, the Panchayat's enthusiasm for better administration.

8.5 *Principles of Natural Justice*: The revisional intervention was also justified because the Officeholders were not given access to many documents during the inquiry. The show-cause notice ought to have been clear and precise and must have contained adequate information on the allegations. So says *Biecco Lawrie Ltd v. State of WB*^[8].

8.6 *The Sanctity of Electors' Wish*: An elected member can be removed only in exceptional circumstances, with strict adherence to the statutory provisions and after a full-fledged inquiry that meets the principles of natural justice. See *Ravi Yashwant Bhoir*^[9]; *Ayaaubkhan Noorkhan Pathan v. State of Maharashtra*^[10]; *Narayandas JeskarANJI Rathi v. The State of Maharashtra*^[11].

8.7 *Fraud and Forgery*: The allegations of forgery, misappropriation, and so on are absurd and abusive, besides being false. See *State of*

⁸[] (2009) 10 SCC 32

⁹[] Ravi Yashwant Bhoir (n 6)

¹⁰[] (2013) 4 SCC 465

¹¹[] 1981 Bom CR 508

Orissa v. Bibishan Kanhar^[12]. The Panchayat resolved in good faith to improve its financial position so people could get better amenities. Such resolution with legitimate legal consequences cannot be branded invalid or illegal. See *Laxman Ladu Raut v. Union of India*^[13].

8.8 *Reasons are the heart of adjudication*: The Director's order contained no reason, so the Revisional Court has justly set it aside. *Dipak Babaria v. State of Gujarat*^[14]. Besides, it is a fit case for the invocation of the doctrine of proportionality. See *Coimbatore District Central Co-op Bank v. Employees Assn*^[15].

8.9 *Error of judgment, if ever*: The respondents' conduct cannot be termed misconduct. A mere error of judgment does not amount to misconduct.

8.10 *No bar to contest other elections*: A disqualified member of Gram Panchayat can still contest Zilla Panchayat elections, as is evident from the interplay of Sections 2 (21), 9, 10, 50, 122, 123, 135. Precedential support comes from *Srikant v. Vasantrao*^[16]. And the proper course for Rakhi Naik is through an election petition. See *M. Karunanidhi v. H. V. Hande*^[17].

9. Heard Shri S. G. Desai, the learned Senior Counsel for the petitioner and Shri ~~Dhaval Zaveri~~ ^{C.A. Ferreira}, the learned counsel for the respondents 1 & 2, and Shri Tukaram Gawas, the learned Additional

¹²[] 2017 (8) SCC 608

¹³[] 2007 (5) ALL MR 642

¹⁴[] 2014 (3) SCC 502

¹⁵[] (2007) 4 SCC 669

¹⁶[] (2006) 2 SCC 682

¹⁷[] (1983) 2 SCC 473

Government Advocate for the respondent 3.

Issues:

I. Have the Sarpanch and the Deputy Sarpanch been (a) persistently remiss in the discharge of their duties, or (b) misconducting themselves, or (c) misusing or abusing their powers, or (d) exercising the powers not expressly vested in them by the Act or the Rules, to attract disqualification under Section 50 (4) and (5) of the Act?

II. If so, upon their disqualification, have they been disentitled to contest the elections for Zilla Panchayat?

Discussion:

I. Factual Background:

How has the Dispute Unfolded?

(a) Elections and Officeholders:

10. In June 2017, Neturlim Gram Panchayat elections were held. Rajani Gaonkar and Abhijit Satyavan Dessai were elected as Panchayat Members. A week later, they were elected as the Sarpanch and Deputy Sarpanch. On 13th July 2017, the Panchayat resolved to charge the tourists visiting Netravali Wildlife Sanctuary. That is, the Panchayat wanted to collect garbage and parking fees from the tourists coming to the wildlife sanctuary. After resolving to that effect, the Panchayat wrote to the District Officer, South Goa, Directorate of Panchayats, Panaji, for permission.

(b) Panchayat Resolution and Fees Collection:

11. Now come the allegations; I will set them as petitioner Rakhi Naik has pleaded. On the strength of the Panchayat resolution, Rajani and Abhijit, as the Sarpanch and Dy. Sarpanch got “printed or forged receipt books in the name of local Panchayat as also forged a seal of the

Local Village Panchayat”. Then, they started collecting the garbage and parking fees from the tourists visiting the sanctuary. They did not wait for the approval of the Panchayat’s resolution, dated 13.07.2017, by the Government. It was a precondition, though. Besides, the Officeholders started to charge an entry fee from each person visiting the sanctuary. They have erected a toll gate, too, for that purpose.

12. It is the Dy. Sarpanch that signed the “forged receipts”. Those receipts contained on the reverse the contact numbers of the Dy. Sarpanch and another Panch Member, Prakash Bhagat.

(c) *Press Meet, Complaints, Preliminary Inquiry:*

13. On 17th July 2017, Rakhi Naik held a press meet and highlighted what she felt to be the illegal acts by the Panchayat in general and Officeholders in particular. On the very next day, the Deputy Director of Panchayats directed Block Development Officer to inquire into Rakhi Naik’s allegations reported in the press. He wanted the report submitted the next day: 19th July 2017.

14. On 19th July 2017, Neturlim Panchayat Secretary reported to the Director of Panchayats that the sanctuary falls within the Panchayat’s jurisdiction but comes under the Forest Department’s control. That apart, no provision in the Goa Panchayat Raj Act enable the Panchayat to collect such fees as being collected. Nevertheless, he drew the authorities’ attention to the Panchayat’s resolution and the pending permission from the Director of Panchayats.

15. One day later, Rakhi Naik wrote to the Director of Panchayats complaining about “illegal and unauthorized collection of garbage and parking fees by the Local Panchayat”. And about the Panchayat “harassing the general public” by illegally extracting money from the tourists and locals visiting the sanctuary.” She requested for

immediate action.

16. On the same day (21 July), the Director forwarded a copy of the complaint to the Sarpanch and the Panchayat Secretary, besides advising them not to collect the garbage and parking fees, for the Panchayat had no permission from the Directorate. Besides stopping the collection forthwith, the Sarpanch, on the same day, notified and scheduled Gram Sabha meeting for 27th July 2017—exactly a week later.

17. In the meanwhile, on 24th July, the Panchayat Secretary informed the Director that he “is not collecting the fees and issuing the receipts in the name of Village Panchayat. As such, need to stop collecting the fees and issuing the receipts in the name of Village Panchayat does not arise. As such need to stop collecting the fees from the tourists from my side does not arise.” (The Secretary, for whatever reason, treats the Panchayat represented by the elected body as one entity and himself as a distinct entity.) He has never alleged—not even suggested—that the Officeholders had been collecting the fees in their own names, for private gain. But Rakhi Naik wants us to infer a crime form their conduct.

18. On 26 July, the Sarpanch informed the Director that the Panchayat did collect the fees for one week on a trial basis “to work out their project.” He, however, denied erecting any toll gate. Besides claiming that the tourists had contributed voluntarily, the Sarpanch further informed the Director that they “have not used regular Panchayat receipt book and rubber stamp, but [they] printed different receipt book and rubber stamp in the name of village Netravali.” On the same day, Rakhi Naik wrote, as she claims, to the Sarpanch for information about the fee collection and its legality.

(d) *Gram Sabha, Explanation, and an Apology:*

19. As notified, the Panchayat had the Gram Sabha meeting held on 30th July 2017. The Sarpanch has informed the Sabha how their drive to collect the garbage and parking fees has fared. According to her:

20. The fees were collected under the Green Netravali and Clean Netravali; the collected money was with them, and the tourists were issued the receipts; the receipts were not printed “on Panchayat letterhead”, nor were the Panchayat funds used. The stamp and seal, too, were prepared in the name of “Green Netravali and Clean Netravali.” The expenditure was from the fees charged to the tourists. And they have the money, for which they have maintained the account. “Netravali Panchayat has no connection with this money or any other matter.” The Sarpanch has also clarified that they “charged the fees on a provisional basis, and they did not have any ulterior motive. Their only motive was “to make a financial profit to the Panchayat.”

21. Then, the Sarpanch provided the breakup of the fees collected and the money spent on executing the scheme. At this point, some ward members suggested that the Sarpanch apologise for she had overseen the collection without prior sanction from the Government. Once apology tendered, the Gram Sabha wanted to close the issue; so the Sarpanch apologised: “I am apologising to the villagers about this.” She further said that all the money was accounted for and would be deposited in the Panchayat fund once they got the Director’s permission.

(e) *Complaints to Police and to the Director:*

22. A month later, on 31st August, Rakhi Naik lodged a police complaint against the Sarpanch, Dy. Sarpanch, Panch Member Prakash

Bhagat, and two others, who actually collected the parking and garbage fees. The complaint resulted in FIR No.35 of 2017, before Sanguem PS, for the offences under Sections 467, 468, 471, 472, 420 read with 34 IPC.

23. Later, on 6th September 2017, Rakhi Naik also complained to the Director against the Sarpanch, Dy. Sarpanch, and Prakash Bhagat and wanted her to disqualify them from holding office. It was on the grounds of misappropriation and forgery and corruption and abuse of power. The next day, the Director required the Deputy Director of Panchayat, South Goa, to inquire into the complaint and submit a detailed report. Pending that inquiry, the Panchayat Secretary was transferred.

24. Further, on 25th September, the Sarpanch complained to the Block Development Officer (BDO) that the outgoing Panchayat Secretary did not write the resolution, dt.13.07.2017, “fully.” Nor had he rectified the mistake despite repeated requests from the elected body of the Panchayat. In fact, through that resolution, the Panchayat had resolved to collect the parking and garbage fees. To the BDO, the Sarpanch has sent what she called the missing portion of the resolution. The alleged missing-portion referred to how the receipt books and the rubber stamp should be prepared, besides the names of the persons who should be engaged to collect the fees.

The Report:

25. On 16th November 2017, the Deputy Director submitted her report to the Director. The report, an elaborate one, concludes that the decision was collective, the Secretary did not guide the newly elected body, and that lack of prior permission from Government rendered the collection illegal, though.

26. In the end, the report requires the Government “to decide and to direct the Body of Village Panchayat ... regarding measures to be adopted” about the money collected and other materials. “The Government may also decide on what action is to be taken on the body this being their first reported irregularity” after their assuming office.

(f) *Adjudication under Section 50 of the Act:*

27. After receiving the Deputy Director’s report, the Director adjudicated the matter. She heard all persons concerned. In that process, on 6th February 2018, the Officeholders applied to the Director for leave to cross-examine Rakhi Naik. But on 21st, the Director dismissed their application. On the same day, invoking Section 50(4) of the Goa Panchayat Raj Act, the Director disqualified the Officeholders from holding their respective offices. Besides, she disqualified them for five years from being the members of the Panchayat.

(g) *Statutory Revision:*

28. On 28th February 2018, the Officeholders filed a statutory Civil Revision Application before the Ad-Hoc District Judge I, FTC I, South Goa at Margao. It was under Section 201-B of the Act. Initially, in March, the learned Judge stayed the Director’s order and, later, in June 2019, allowed the Revision.

(h) *Writ Petition:*

29. Aggrieved, Rakhi Naik has filed this Writ Petition under Article 227 of the Constitution.

The Adjudicatory Ambit of this Writ Petition:

30. First, there was the Primary Order by the Director of Panchayats; that was under Section 50 (4) & (5) of the Act. Then, came the Revisional Order from the Ad hoc District Judge-1, FTC-I, South

Goa. That was under Section 201B of the Act. As sub-section (1) of Section 201B mandates, save as otherwise provided in the Act, a revision shall lie to the jurisdictional District Court against any order passed by any authority under the Act. “The decision of the District Court shall be final and binding on the parties to the revision.” And it is summary in its adjudicatory scope because the District Court should decide the revision in three months.

31. Against the Director’s order under Section 50 of the Act, the Legislature has consciously not provided for any appeal; instead, it has provided for a revision under Section 201B and no further adjudicatory mechanism. In the absence of appeal provision, revision assumes importance. But, here, the Act has not delineated the powers of the revisional court.

32. In this context, let us see how the Constitutional Courts have consistently fixed the adjudicatory bounds of the revisional court—in the face of statutory silence. Illustratively, we may follow, on this point, the Supreme Court’s recent decision in *Mohd. Inam v. Sanjay Kumar Singhal*¹⁸. Per Bhushan Gavai J, the Supreme Court has culled out the jurisdictional scope of revision from various decisions that hold the field to this day:

(a) While exercising its jurisdiction, a revisional court can reappraise evidence, but that should be for the limited purpose of its ascertaining whether the fact-finding court’s conclusion is wholly unreasonable.

(b) The revisional court could examine the facts available in order, to discover whether the court or tribunal below had “correctly or on a firm legal basis” approached the matters on record to decide the

¹⁸[] JT 2020 (6) SC

case.

(c) Though finding of facts may not be open to being interfered with, in a given case if the finding of fact is given on a wrong premise of the law, the revisional court could interfere.

33. To sum up, in examining the legality and the propriety of the order under challenge, the revisional court can ascertain these: Has the impugned order violated any statutory provision or a binding precedent? Has it suffered from a misreading of the evidence? Has it omitted to consider any relevant, clinching evidence? Does any reasonable person approve of the inference drawn from the facts proved? And if the finding is allowed to prevail, does it cause any gross miscarriage of justice?

34. Then, *Mohd. Inam* has also elaborated on High Court's supervisory jurisdiction under Article 227 of the Constitution. It is a well-settled principle of law, that in the guise of exercising jurisdiction under Article 227 of the Constitution of India, the High Court, *Mohd. Inam* stresses, cannot convert itself into a court of appeal. It is equally well settled that the supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and seeing that they obey the law. Though the powers under Article 227 are wide, they must be exercised sparingly and only to keep subordinate courts and tribunals within the bounds of their authority and not to correct mere errors. In fact, *Mohd. Inam* has enlisted a profusion of precedents supporting that proposition.

35. True, the High Court's supervisory jurisdiction is often equated with its revisional jurisdiction, say, under Section 115 of CPC. But, in this case, the statute itself has conferred revisional powers on the District Judge. So this Court will not entertain a revision against a

revision; it is at best a review, a judicial review at that—only to ascertain whether the revisional court has acted within its jurisdictional bounds while rendering the impugned decision. Then, I must say it is not within this Court’s remit under Article 227 to declare whether the impugned conclusion is right or wrong. The only question is whether the Revisional Court was right or wrong in its reaching whatever conclusion it had reached.

36. To use a cliché, I may say, it is not the decision *per se* but the decision-making process that falls for scrutiny in this Court’s adjudication under Article 227 of the Constitution against a revisional decision of a court or tribunal below.

The Resolution, dt.13.07.2017:

37. The elected members of the Panchayat have resolved unanimously to charge the tourists “garbage and parking” fees. They have also resolved to send the resolution to the “District Officer, Directorate of Panchayat”, for approval.

The Receipts & the Rubber Stamp:

38. They both bear the Panchayat’s name. On the reverse of the receipts found the names of the Dy. Sarpanch and member with their cell-phone numbers. The tourists that did not litter the place and show proof to that effect while leaving the sanctuary would get 50% fee refunded.

The Complaints:

39. The complaint, dt.21.07.2017, Rakhi Naik addressed as the spokesperson and vice-president of a political party to the Director, alleges only against the Panchayat—not individuals.

40. Rakhi Naik’s letter to the Sarpanch about the issue to be discussed in the Gram Sabha, too, raises queries about the Panchayat’s

modus operandi in levying and collecting the fees. No individual allegations.

41. Only the complaint Rakhi Naik addressed to the Director on 6th September 2017 contained allegations against the Officeholders: “Mrs. Rajani Gaonkar, Mr. Abhijit Dessai, and Mr. Prakash Bhagat in connivance with some other persons are clandestinely collecting huge sums of money from unsuspecting tourists visiting Netravali as parking and garbage collection fee. In the name of the Village Panchayat and are issuing fake receipts . . . a forged seal, purportedly of the village Panchayat Netravali.”

The Deputy Director’s Report, dt.16.11.2017:

(a) The fee collection by the Panchayat body without the Government’s prior approval is illegal and amounts “to lapse of duties” on the elected representatives’ part. (b) The elected representatives pleaded ignorance of the procedure. (c) The Panchayat body has, however, taken charge only recently. (d) The Secretary ought to have guided the newly elected representatives about the legal procedure and also facilitated in its execution. (e) The Panchayat body is empowered under Section 153 (d) and (g) of the Act to do what it did but must have done it only after obtaining the Government’s approval. (f) The fees collected could not form a part of the Panchayat fund as it was collected without the Government’s approval. Yet, the Sarpanch did place on record the resolution passed on 10.10.2017 about printing books and stamps. (g) The Government may suitably direct the body of the Village Panchayat about the measures to be adopted over the money collected and other materials. (h) The Government may also decide on the action to be taken against the Panchayat body, this being “their first reported irregularity”.

II. The Primary and the Revisional Orders:

(i) *Director's Decision under Section 50 (4) of the Act:*

The Primary Order:

42. The Director of Panchayats acted on Rakhi Naik's complaint.

She called for the response from those that had been complained against, heard them extensively, and finally passed the order, ~~dt.07.06.2019~~ ^{21.02.2019}. Of course, in this Writ Petition the Officeholders contended that they had not been given an opportunity to cross-examine the complainant. Keeping that aside, we may conclude that the Director did follow the principles of natural justice.

43. The Director has ruled thus: (a) There is no provision under the Act for the Panchayat to collect an entry fee from vehicles entering the Panchayat territorial limits; so the Panchayat Officeholders ought to have taken the Government's 'prior approval'. (b) The 'Respondents' collected a large sum of money but neither handed it over to the Secretary nor credited it in the Panchayat fund, despite resolution to that effect. (c) Ignorance of the law is no excuse.

44. So, in the end, the Director invoked Section 50 (5) and removed the Officeholders from their offices. Besides, she disqualified them "to be members for a period of five years".

(ii) *Revisional Court Decision:*

45. The Revisional Court has framed these two issues:

(1) Have the Sarpanch and Dy. Sarpanch been persistently remiss in discharging their duties, or have they persistently misconducted themselves or abused their powers or exercised powers not vested in them under the Act? (No)

(2) Has the Director of Panchayat acted with material irregularity in exercising her jurisdiction in removing the Sarpanch and

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Dy. Sarpanch and terminating their membership for five years? (Yes)

46. The Revisional Court has ruled thus: (a) The alleged act of levying fees was not persistent; it lasted only one week. So it did not attract Section 50 (4) of the Act. (b) The collection of fees was the Panchayat's collective decision, as attested to by the Secretary and Deputy Director. Even the complainant initially found fault with the elected members of Panchayat as a whole. (c) Only the Sarpanch and Dy. Sarpanch were singled out; others were left out. (d) The receipt books bore the description "Village Panchayat Netravali, Sanguem, Goa parking and garbage collection fees". So, the collection was not for personal gain.

Law applied to the Facts:

47. Let us see whether the Revisional Court's judgments suffers from any incurable legal lacunae warranting this Court's interference under Article 227 of the Constitution.

48. To begin with, the Officeholders have not questioned the Director's jurisdiction, but they did question the correctness of the Director's order under Section 50 (4) and (5) of the Act. So they invoked Section 103A and filed a revision application and had that order set aside. Now, that revisional order is under challenge. For our discussion, Section 50, especially sub-sections (4) and (5) of that Section will form the fulcrum. The provision, to the extent relevant, reads thus:

50. Resignation or Removal of Sarpanch or Deputy Sarpanch.

— (1) The Sarpanch of the Panchayat may resign his office by writing under his hand addressed to the Director and the Deputy Sarpanch of the Panchayat may resign his office by writing under his hand addressed to the Sarpanch and in the absence of the Sarpanch to the Director.

(2) . . .

(3) . . .

(4) Every Sarpanch or Deputy Sarpanch of a Panchayat shall, after an opportunity is afforded for hearing him, be removable

from his office as Sarpanch or Deputy Sarpanch by the Director *for being persistently remiss in the discharge of his duties or misconducting himself or misuses or abuses the powers or exercising the powers not expressly vested in him by or under the Act or the rules framed thereunder and the Sarpanch or Deputy Sarpanch so removed who does not cease to be a member under sub-section (2) shall not be eligible for re-election as Sarpanch or Deputy Sarpanch for such period not exceeding five years as the Director may specify* in his order.

(5) A Sarpanch or Deputy Sarpanch removed from his office under sub-section (4) *may also be removed by the Director from the membership of the Panchayat for such period not exceeding five years as the Director may specify* in his order.

(italics supplied)

Analyses of Section 50 (4) and (5) of the Act:

(a) Is cross-examination an essential part of the inquiry under Section 50?

49. The Officeholders have cited many decisions and argued that without the opportunity of cross-examination to them, the Director's order stood vitiated. But a Division Bench judgment of this Court in *Agnelor Alexinho Lobo* squarely answers that issue.

50. In *Agnelor Alexinho Lobo*, the petitioner was the sarpanch of a village panchayat. He faced disqualification and was subjected to the proceedings under Section 50 (4) and (5) of the Act. Before the Director could rule on his disqualification, the petitioner came up with three applications: (a) that he should be allowed to cross examine the respondents; (b) that the Director should recuse himself from the matter because he had made up his mind; and (c) that the matter should be adjourned until the other two applications were decided.

51. After considering a plethora of precedents on "reasonable opportunity", a Division Bench of this Court, per F.I. Rebello, J., has held that the expression "opportunity" would mean "reasonable opportunity" in tune with the principles of natural justice and depending on the facts and circumstances of the case and the nature of

the material being considered by the authority in the Show Cause Notice. All that was being considered was the documentary evidence on record and the Act, Rules, Instructions, and so on. Thus, *Agnelor Alexinho Lobo* has concluded that “in these circumstances, the question of requiring the complainant to be made available for cross-examination would not have arisen.”

52. Because of *Agnelor Alexinho Lobo*’s declaration of law on cross-examination under Section 50 of the Act, we need not refer to the respondents’ reliance on *Biecco Lawrie Ltd.*, and *Ayaaubkhan Noorkhan Pathan*, both of which deal with the issue under different enactments.

(b) *Persistently remiss in the discharge of their duties; misconducted themselves; misused or abused the powers; exercised the powers not expressly vested in them: Should all these omissions or commissions be “persistent”?*

53. The Revisional Court was inclined to view the Officeholders’ conduct as falling short of statutory standards prescribed for them. It has felt that the Officeholders’ unauthorised fees collection lasted only one week, so it cannot be treated as ‘persistent’. That is, the Revisional Court has reckoned that under any of those statutory infractions specified in Section 50 (4) of the Act, the officeholder’s conduct or misconduct must be persistent. Is the Revisional Court correct?

54. Being remiss is a species of inaction, dereliction; it can last over a stretch of time. Thus, if every time an authority is expected to act but fails to act, that repeated failure reflects the authority’s remissness. It is recurring and persists until that authority acts. So an authority can be persistently remiss. On the other hand, misconduct, misuse, and abuse are instances of misfeasance. Every instance of misconduct, misuse, or abuse is one complete act. In other words, as to remissness, its length determines its gravity to be an actionable wrong, but other instances of active misfeasance do not depend on duration. So,

to my mind, misconduct, misuse, or abuse need not be persistent. It is on the contrary. It is illogical for us to think the Legislation insisted on repeated wrongdoing to apply the disqualification. Suppose a public representative indulgence in corrupt practice, it is preposterous to expect the Legislature to punish only his repeated acts of corruption—not a singular instance. So, I conclude that the Revisional Court has erred in applying the qualifier “persistently” to all instances of misfeasance.

55. That said, we should still examine whether the Officeholders are guilty of any misconduct. And, if so, have they deserved disqualification and banishment for five years—the maximum period? Let us examine the semantic significance of remissness, misconduct, misuse, abuse, and arrogation.

The Semantic Nuances:

The Dangers of Dictionary Definitions:

56. “[I]t is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary,” says Judge Learned Hand in *Cabell v. Markhan*¹⁹. After quoting one of the most formidable intellectuals of the American jurisprudence, Stephen C. Mouristen in his “The Dictionary is not a Fortress”²⁰, says that ‘vast fortunes or years of confinement may balance precariously on the interpretation of a single word. Here fall for our consideration a handful of words: remiss, misconduct, misuse, abuse, and arrogate, the last one being the one-word substitute for ‘exercising power not expressly vested in oneself.

57. As Thumma & Kirchmeier have said, words must receive

19[] 148 F.2d 737, 739 (2nd Cir. 1945)

20[] (2010) BYU L. Rev. 1915 (2010)

<<https://digitalcommons.law.byu.edu/lawreview/vol2010/iss5/10>>

their ordinary meaning. Of that meaning the court is bound to take judicial note, as it does regarding all words in English; “and upon such a question dictionaries are admitted, not as evidence, but only as aids to the memory and understanding of the court.”^[21]

The Definitions:

Remiss:

58. The Oxford Dictionary of English^[22] (ODE) defines ‘remiss’, a predicative adjective to mean “lacking care or attention to duty; negligent.” The American Heritage Dictionary of English Language^[23] (AHD), too, gives almost an identical definition. Both the dictionaries treat ‘remiss’ as a synonym for ‘negligent’. Both the expressions, I reckon, carry an element of ‘habitual conduct’. Besides, AHD says that as synonyms ‘negligent’, ‘derelict’, ‘lax’, ‘neglectful’ and ‘slack’ share a common meaning: guilty of a lack of due care or concern. But Section 50 (4) of the Act employs the expression ‘persistently remiss’. Facing a single allegation, the conduct of the Sarpanch and her Deputy lacks any persistence, though.

Misconduct:

59. Now, let us look at ‘misconduct’. OED defines it to mean unacceptable or improper behaviour, especially by an employee or professional person. We find this word in law often collocating with ‘professional’: professional misconduct. OED also gives an alternative meaning; that is, mismanagement, especially culpable neglect of duties. AHD defines ‘misconduct’ as behaviour not conforming to prevailing

²¹ [] Samuel A. Thamma & Jeffrey L. Kirchmeier, *The Lexicon Has Become a Fortress: The United States Supreme Court’s Use of Dictionaries*, 47, *BUFF. L. REV.* 227 (1999), as quoted by Mouristen)

²² [] (2nd edn Oxford, London 2012)

²³ [] (5th edn @2013-15 Enfour Inc, USA)

standards or laws; impropriety.

Abuse and Misuse:

60. Section 50 (4) of the Act also enlists misuse and abuse in the alternative as two other instances that disqualify an elected representative. According to OED, ‘misuse’ is use of something in the wrong way or for the wrong purpose. For AHD, misuse is incorrect use. And the extended meaning of that expression is ‘mistreatment or abuse.’ So let us see what is ‘abuse’. OED defines ‘abuse’ as improper or excessive use; misuse. As for AHD, to use improperly or excessively; misuse. For example, abuse a privilege. It also means ‘to hurt or injure by maltreatment; ill-use: *animals that were abused by a negligent owner.*”

61. After listing both ‘abuse’ and ‘misuse’ as synonyms along with ‘mistreat, maltreat, ill-treat, and outrage’, Webster’s New Dictionary of Synonyms^[24], distinguishes these two seemingly cognate expressions thus: Abuse, however, commonly suggests perversion of the ends for which something was intended. Misuse, by contrast, emphasises the actual mistreatment or misapplication rather than its results. Abuse, to me, connotes bad or wrong usage; misuse unintended or improper usage.

Power Not Expressly Vested:

62. The last limb of disqualification under Section 50 (4) of the Act is “exercising the powers not expressly vested” in the elected representative. Without much ado, we may say that no ultra vires act attains legitimacy. Certain authorities—say adjudicators such as judges—do exercise inherent and, sometimes, residuary powers. On the other hand, certain other authorities—say administrators simpliciter—exercise only the statutorily conferred powers. The more the potential

²⁴[] @ 2020 Merriam-Webster, Incorporated

of an administrator's power to affect others' rights, the greater is this limiting presumption. Arrogating to himself power unavailable is an administrative anathema.

What are the Officeholders actually guilty of?

63. To drive home their point that allegations of forgery and fraud must be proved by evidence, the Officeholders have cited *Bibhishan Kanhar*. It is a well-accepted axiom that the requirement of proof is directly proportionate to the gravity of allegation. Thus, forgery and fraud are no mean allegations to be assumed or inferred; they do require unimpeachable proof. *Bibhishan Kanhar*, quoting Denning LJ with approval, has held that fraud unravels everything, yet court is careful not to find fraud unless it is distinctly pleaded and proved.

64. In *Narayandas JeskarANJI Rathi*, a Division Bench of this Court, per Palshikar J, has dealt with an issue of superseding a Municipal Corporation's elected body of representatives. In that context, this Court has held that the order of superseding a Municipal Corporation is to some extent penal because it casts a stigma on the Councillors as well as the statutory Corporation. It indirectly affects the electorate who have duly elected the Councillors.

65. It is inherent in this very process, according to *Narayandas JeskarANJI Rathi*, that elected representatives are entitled to take certain decisions obviously in good faith and in the public interest. Sometimes, their decisions may not meet government's approval or they may lend themselves two divergent opinions. But that alone should not be the ground for the Government to supersede the Corporation—in the absence of anything more. Unless from the material placed before the Government, it appears to the Government that such drastic and

extreme action is called for, merely based on some *ipse dixit* such an action cannot be initiated. The supersession cannot be a light-hearted method.

66. In *Shrikant Chahar*, one of the respondents who had been removed from being the Sarpanch under a motion of no confidence complained to the authorities about misconduct by the petitioners “in discharge of their duties, abuse of their powers, and obstruction in the work of Gram Panchayat.” On enquiry, the authorities unseated them from being the members of Gram Panchayat. The petitioners appealed.

67. When the matter reached this Court, R. C. Chavan J., has observed that a member has to be 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 of duties. 'Misconduct' has not been defined in the Act, though. The enquiry by this Court would have to be restricted to whether the petitioners' conduct amounted to neglect in performing their duties or whether they are persistently remiss in the discharge of their duties.

68. *Shrikant Chahar* has further observed that an omission to do what is required by a person to do may constitute misconduct even though a person has not acted wilfully or maliciously. That is, the failure to do a thing itself may not be misconduct, but if the failure is deliberate or motivated, it may amount to misconduct. What matters is the seriousness of the acts of misconduct and not mere persistent or repeated defaults. To bolster its view, *Shrikant Chahar* follows this Court's Division Bench decision in *Baburao Vishwvanath Mathpati v. State of Maharashtra*^[25].

69. In *Baburao Vishwvanath Mathpati*, the Division Bench has

²⁵[] 1996 (1) Mh.L.J. 366

semantically analysed the word 'neglect', besides determining its connotation. According to it, the word "neglect", in the context of Section 55a of the Act, must be understood from the gravity of the charges. It concludes that the word "neglect" as used in the section means "gross neglect" which may be synonymous to the word "wilful, intentional or culpable as the case may be". That is, there should be a flagrant disregard of duties entailing the president's removal under Section 55A of the Act.

70. On the same lines as the above decisions goes *Ravi Yashwant Bhoir*. In that judgment, the Supreme Court, among other things, has taken lexical aid to define 'misconduct in office'. According to Black's Law Dictionary, Sixth Edition, 'misconduct in office' has been defined as any unlawful behaviour by a public officer in relation to the duties of his office, wilful in character. The term embraces acts which the officeholder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act. Then *Ravi Yashwant Bhoir* says that the word 'misconduct', though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, willful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character.

71. According to *Yashwant Bhoir*, a mere error of judgment resulting in doing of negligent act does not amount to misconduct. But, in exceptional circumstances, not working diligently may be

misconduct. An action detrimental to the prestige of the institution may also amount to misconduct. Acting beyond authority, too, may be misconduct. When the Officeholders is expected to act with absolute integrity and honesty in handling the work, any misappropriation, even temporary, of the funds etc., constitutes serious misconduct, inviting severe punishment.

72. That said, it is also a settled legal proposition that misconduct must necessarily be measured in terms of the nature of the misconduct. And the court must examine whether misconduct has been detrimental to the public interest.

73. As to the removal of an elected officeholders, *Ravi Yashwant Bhoir* asserts that undoubtedly, any elected official in local self-government has to be put on a higher pedestal as against a government servant. If a temporary government employee cannot be removed on the ground of misconduct without holding a full-fledged inquiry, it is difficult to imagine how an elected officeholder can be removed without the authorities' holding a full-fledged inquiry. The case of public representatives is to be understood in a different context from that of the government employees. For the removal of the elected officials, a more stringent procedure and a higher standard of proof are required.

74. In this context, *Ravi Yashwant Bhoir* accentuates that the elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period. And it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory, and no person can claim any absolute or vested right to the post. Still his

removal cannot be without strict adherence to the provisions provided by the Legislature.

75. Now let us examine the Officeholders' conduct in the light of the above propositions.

76. We have already extracted from the Rakhi Naik's initial complaint and the Dy. Director's inquiry report. Rakhi Naik has initially complained against the entire Panchayat; she singled out neither the Sarpanch nor the Deputy Sarpanch. In fact, the Deputy Director was asked to inquire into the allegations based only on that complaint. And the Deputy Director's inquiry report was unequivocal in fixing the blame, if it were to be called blame, on the entire Panchayat establishment. She has also, fairly, cited the exonerating circumstances: that the Secretary did not guide them properly and that they had committed the fault out of sheer inexperience and ignorance of rule position. Later, only in her complaint, dt.06.09.2017, did Rakhi Naik accuse the Sarpanch and Dy. Sarpanch of misconduct.

What has the Panchayat done?

77. New brooms sweep well; so should the newly elected public representatives administer admirably. At least, that is what the freshly inducted Officeholders of the Neturlim Panchayat have believed. In a week or so after their election, they wanted to generate more revenue for the Panchayat. It was a collective—and unanimous—decision. The Sarpanch and the Dy. Sarpanch have only been tasked with executing that resolution. The collection of some additional revenue was not the exclusive brainchild of those two persons.

78. So Panchayat wanted to collect parking fee and garbage fee. Let us check the statutory position. Under Chapter III of the Act, Section 153 deals with taxes and fees. Sub-section (3) (b) empowers the

Panchayat to collect tax on vehicles, other than motor vehicles; (g) fee on buses and taxies and auto-stands provided adequate facilities are provided for the travellers by the Panchayat; and (m) garbage disposal tax.

79. In this regard, the Director has held that under the Act there is no provision for the Panchayat to collect ‘entry fee’, but what it proposed to collect was ‘parking fee’. The Director has also felt that “Section only mentions of imposing taxes on buses, taxies, and auto stands after providing adequate facilities, and there is nowhere mention about two wheelers and others”.

80. In the light of Section 153 of the Act, and despite the Director’s observations, we cannot say that Panchayat entirely lacked power to collect fee or tax on parking and garbage disposal. The former stands partly covered and the latter fully. Providing facilities before collecting the tax or fee is a matter of interpretation. At any rate, the Panchayat has already written to the Government for permission.

81. So, to brand such as an act as an unpardonable statutory sin and to crucify two out of many officeholders of the Gram Panchayat with disqualification and banishment was shockingly disproportionate even if were to accept that the Panchayat had “exercised the powers not expressly vested” in it. I reckon the Gram Panchayat, not to speak of the Sarpanch and the Dy Sarpanch, has not misconducted itself, nor has it misused or abused its powers for any ulterior purpose. It has exercised powers vested in it, but that exercise was premature. Nothing more.

Proportionality:

82. In *Coimbatore District Central Coop. Bank*, the Supreme Court, per C. K. Thakker J., has acknowledged the holding and sway of the

doctrine of proportionality over the Indian administrative adjudication. To elaborate, *Coimbatore District Central Coop. Bank* has held that “Proportionality” is a principle where the court is concerned with the process, method, or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise—the elaboration of a rule of permissible priorities.

83. *Coimbatore District Central Coop. Bank* has quoted with approval *Halsbury's Laws of England*^[26]. According to the celebrated commentary, the court will quash exercise of discretionary powers in which there is no reasonable relationship between the objective sought to be achieved and the means used to that end, or where punishments imposed by administrative bodies or inferior courts are wholly out of proportion to the relevant misconduct. Then, *Coimbatore District Central Coop. Bank* has observed there can be no “pick and choose” or selective applicability of the government norms or unfairness, arbitrariness, or unreasonableness. It is not permissible to use a “sledgehammer to crack a nut”. As has been said many a time; “where paring knife suffices, battle axe is precluded”.

84. That said, the High Court of Andhra Pradesh in *Rasheed v. M.D., APSRTC*.^[27] per me, has dealt with the origins of proportionality principle in Indian classical jurisprudence. The AP High Court has held that the proportionality test, having its origin in *Droit Administratif*, for many years bypassed English shores but had its

²⁶[] (4th Edn.), Reissue, Vol. 1(1), pp. 144–45, para 78

²⁷[] 2014 (4) ALT 663, 2014 Lab IC 4523

echo found in a far distant land—India. When the English jurisprudence continued its dalliance with *Wednesbury*, the Indian Courts took recourse to Article 14 and gave the proposition of proportionality a constitutional status by interpreting that article expansively. At the risk of repetition, I may observe that in 1965, the Supreme Court accepted the principle of proportionality holding that any punishment shockingly disproportionate cannot be sustained. After many decades, in 1985, the House of Lords held that the proportionality might be one of the heads to be considered.

85. The English Courts had felt that any adjudication of proportionality would involve an appreciation of facts as if it were a primary authority and that such a primary review would be impermissible. So, for long, they did not travel beyond *Wednesbury*. In any event, with the advent of Human Rights Act 1998, the House of Lords has adopted a position between proportionality requiring primary review and *Wednesbury* requiring secondary review.

86. As for the Indian jurisprudence, beginning with *Hind Construction* in 1965, later affirming its stand further in another celebrated case—*E.P. Royappa v. State of Tamil Nadu*²⁸—the Supreme Court has continued to shape the doctrine further and further.

87. The administrative and quasi-judicial orders affecting the civil and constitutional rights of the citizen involve nothing but secondary review. But official acts affecting the fundamental rights or freedoms under Part-III of the Constitution have invited primary review: a straight and simple application of proportionality without the intensifier "shockingly," to quote as an example. About the secondary review, the Supreme Court has reiterated the principle time and again.

²⁸[1974] 4 SCC 3

Both the High Court have cited a handful of precedents on that count, and they bear no reproduction here.

88. Thus, the English jurisprudence was tentative in approach to include proportionality as one of the grounds of judicial review in 1984 and only hoped that in the course of time the scope of judicial review would be expanded by the addition of further grounds, particularly by the possible adoption of the principle of proportionality. On the other hand, the Indian jurisprudence as far back as in 1965 pragmatically acknowledged the potentiality of proportionality as a mitigating factor and put it on a firm pedestal of judicial approval.

89. We may think of proportionality once misconduct is established. Is there any misconduct, in the first place? Though I cannot entirely agree with the Revisional Court that every species of misconduct must have been ‘persistently’ practised, I still reckon Section 50 (4) and (5) of the Act finds no application here. Of remissness, misconduct, misuse, abuse, and arrogation (exercising power not vested), only the last one may remotely refer to the Officeholders’ actions. I reiterate ‘remotely’ for the Panchayat does have the power to impose the taxes or fees it proposed but its elected representatives acted a bit prematurely.

90. I see no *mala fides* in the Officeholders’ conduct, nor any attempts on their part to misappropriate, embezzle, or pilfer public fund. The Panchayat has tasked them with a scheme to be implemented; they faithfully wanted to discharge thier duty: implement that scheme. The only hurdle is prematurity. Thus, first, I see no drastic deviation from—much less deliberate disobedience to—the statutory command by the Panchayat in general and by the Officeholders in particular.

91. In this context, we may remind ourselves of numerous

precedents that in disqualifying duly elected public functionaries, that is people's representatives, we ought not to be trigger happy.

Fraud and Forgery:

92. One last thing we should be addressing is the allegations of fraud and forgery hurled at the Officeholders. Rakhi Naik persistently pleaded that the Officeholders had been guilty of forging the Panchayat seal and issuing fake receipts to the tourists who visited the sanctuary. She lodged a police complaint against the Sarpanch, Dy. Sarpanch, and others; the police, in turn, registered a crime. Besides, Rakhi Naik's press meet and her complaint to the authorities concerned engendered another criminal case. The Anti-Corruption Bureau registered a separate crime on the allegation that the Officeholders had indulged in corrupt practices.

93. Our adjudicating this issue—whether the Officeholders have indulged in fraud and forgery—will affect the very sustainability of the criminal cases. Unless a finding is necessary for an effectual adjudication of this writ petition, we should not rule on that. That is the quintessence of judicial propriety or discipline; in that context, the adjudicatory hierarchies hardly matter. Once a judicial forum is competent to try or decide a matter, another forum, even at higher echelons, should neither usurp nor pre-empt the other forum's legitimacy to decide on that issue as a primary adjudicatory forum. It has a caveat, however. That is, the issue in question must be a core issue before the former forum and a collateral one before the latter forum. On the contrary, if it is a core issue before the latter forum too, and that forum cannot decide the *lis* before it without resolving this core issue; then it can—and ought to—adjudicate. The higher the forum, the more expedient it is, for it cuts short the litigation's

adjudicatory journey.

94. Keeping that principle in mind, we should, first, ascertain whether the issue of fraud and forgery levelled against the Officeholders is a core issue in this writ petition. It is. The whole substratum of Rakhi Naik's allegations is the Officeholders' alleged fraud and forgery. So, despite the pending criminal cases and despite this adjudication impinging on the criminal court's jurisdiction to try the matter, we should decide the issue. So we will.

95. All along, Rakhi Naik had maintained her allegations against the entire Panchayat until 6th September ~~2019~~²⁰¹⁷. But on that day, for the first time, her complaint to the Director named the Officeholders. They are said to have "clandestinely collect[ed] huge sums of money from unsuspecting tourists visiting Netravali, as parking and garbage fee in the name of the Village Panchayat of Netravali, and are issuing fake receipts . . . having thereon a forged seal... ." In other words, they used "fake/forged receipt books" and "forged seal."

96. In the writ petition, the rhetorical tone has increased, and in the arguments it has reached a crescendo. The Officeholders were accused of fraud, forgery, fabrication, and misappropriation. And even the impugned revisional order has been termed, among other things, "absurd". The allegations, thus, are unrestrained and so are the pleadings.

97. As I have already set out, barring prematurity, the Panchayat's action suffers from no other malady. Panchayats are the constitutionally consecrated primary self-governing institutions. Popular will deserves deference at all levels—even at the lowest level—for Panchayats are no second-grade democratic institutions only deserving derision. Equally deferential are the democratically elected Panchayat's representatives. They are as much entitled to policy

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prerogatives and administrative experiments as any other public representatives at any level.

98. As explained by the Revisional Court, the Officeholders have not indulged in any fraud, forgery, fabrication, or misappropriation. As to the allegation of fraud, the decision to collect fees was the Panchayat's collective decision. As to forgery, say, of the receipts, I see nothing of that sort. As to fabrication, the Panchayat seal truly reflected the Panchayat's name and the purpose. As to misappropriation, even the Panchayat Secretary went on record that the money could not be deposited in the Panchayat account for there was no appropriate head created by then.

99. The allegations, I am afraid, are baseless. That suffices.

II Issue: Once disqualified, are the Officeholders disentitled to contesting the elections for Zilla Panchayat?

100. Given my answer to the first issue, this issue requires no answer.

Result:

Under the circumstances explained above, I see no judicially reviewable ground for this Court to interfere with the impugned judgment, dt.07.06.2019, by invoking Article 227 of Constitution of India.

DAMA SESHADRI NAIDU, J.

NH