

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10159 OF 2019
WITH
WRIT PETITION NO.7197 OF 2019

Vishnupant Motba Kesarkar ... Petitioner
Vs.
State of Maharashtra and others ... Respondents

Mr. Manoj A. Patil for Petitioner.
Mr. N. C. Walimbe, AGP for Respondents-State in W.P.No.10159 of 2019.
Mr. A. B. Kadam, AGP for Respondents-State in W.P.No.7197 of 2019.
Mr. S. C. Mangle for Respondent No.3.

CORAM : UJJAL BHUYAN, J.
Reserved on : JANUARY 15, 2020
Pronounced on : JUNE 09, 2020

P.C.:

1. This order will dispose of both the above mentioned writ petitions.
2. Parties and the issue involved in both the writ petitions being the same, those were heard together and are being disposed of by this common order.
3. Heard Mr. Manoj A. Patil, learned counsel for the petitioner; Mr. N. C. Walimbe, learned AGP for respondent Nos.1 and 2 in Writ Petition No.10159 of 2019 and Mr. A. B. Kadam, learned AGP for respondent Nos.1 and 2 in Writ Petition No.7197 of 2019; and Mr. S. C. Mangle, learned counsel for respondent No.3.
4. Both the petitions have been filed under Article 227 of the Constitution of India. In Writ Petition No.10159 of 2019 the prayer made is for quashing of the order dated 04.10.2018 passed by the Hon'ble Minister for Rural Development, Government of Maharashtra dismissing Appeal No.29 of 2018 filed by the

petitioner and upon restoration of the appealed order dated 25.01.2018 passed by the Divisional Commissioner of Pune Division, Pune, to modify the same by directing future disqualification of respondent No.3 under Section 39(2) of the Maharashtra Village Panchayats Act, 1958. In Writ Petition No.7197 of 2019, petitioner has sought for quashing of the same order dated 04.10.2018 passed by the Hon'ble Minister for Rural Development, Government of Maharashtra allowing Appeal No.22 of 2018 filed by respondent No.3 and thereby to restore the order dated 25.01.2018 passed by the Divisional Commissioner of Pune Division, Pune.

5. Facts leading to filing of the two writ petitions may be briefly narrated hereunder.

6. Respondent No.3 is the Sarpanch of Grampanchayat Kine, Taluka-Aajra in the district of Kolhapur, being an elected member of the said grampanchayat. As Sarpanch, he was the Chairman of Rashtriya Gramin Payjal Yojna as well as of Gram Pani Purvatha and Swachata Committee. The said scheme relating to rural drinking water was sanctioned in the year 2011-2012. However, the scheme was cancelled by the Chief Executive Officer, Kolhapur Zilla Parishad vide order dated 19.01.2015. By the said order the funds allotted for the scheme was directed to be refunded back with interest. It is alleged that respondent No.3 along with the Secretary of the said committee misappropriated an amount of Rs.10,03,000.00 from the account of Gram Pani Purvatha and Swachata Committee.

7. Petitioner filed complaint before the Divisional Commissioner of Pune Division, Pune i.e., respondent No.2 against respondent No.3 alleging that the latter had misappropriated government money of Rs.10,03,000.00. Petitioner sought for removal of respondent No.3 as a member of Grampanchayat Kine and for his future disqualification under Sections 39(1) and (2) of the Maharashtra Village Panchayats Act, 1958.

8. In this connection, Chief Executive Officer of Kolhapur Zilla Parishad carried out an enquiry and thereafter submitted report to respondent No.2. It is stated that the Chief Executive Officer in his report confirmed misappropriation of money by respondent No.3.

9. Respondent No.2 after hearing the petitioner and respondent No.3 and after perusing the report of the Chief Executive Officer passed order dated 25.01.2018 under Section 39(1) of the Maharashtra Village Panchayats Act, 1958. In his order, respondent No.2 held that respondent No.3 had committed misappropriation of government money amounting to Rs.10,03,000.00. Therefore, he removed respondent No.3 as a member of Grampanchayat Kine.

10. However, petitioner expressed the grievance that after holding that respondent No.3 had misappropriated government money, respondent No.2 ought not to have stopped at removing respondent No.3 from the membership of Grampanchayat Kine only but ought to have proceeded further and disqualified him under Section 39(2) of the said Act for a period not exceeding six years.

11. Be that as it may, being aggrieved by the order dated 25.01.2018, respondent No.3 preferred an appeal before the State Government in the Rural Development Department i.e. respondent No.1 under Section 39(3) of the Maharashtra Village Panchayats Act, 1958. The said appeal was registered as Appeal No.22 of 2018.

12. On the other hand, petitioner also filed an appeal before respondent No.1 against the order dated 25.01.2018 passed by respondent No.2 seeking disqualification of respondent No.3 under Section 39(2) of the aforesaid Act. The said appeal was registered as Appeal No.29 of 2018.

13. Expressing the grievance that there was delay in deciding the appeals, petitioner had earlier approached this Court by filing Writ Petition No.9372 of 2018. This Court vide order dated 28.08.2018 disposed of the said writ petition by directing the appellate authority to hear and decide both the appeals expeditiously.

14. Thereafter, both the appeals were heard by the Hon'ble Minister, Rural Development Department, Government of Maharashtra as the appellate authority and by the common order dated 04.10.2018 allowed the appeal of respondent No.3 by setting aside the order dated 25.01.2018 passed by respondent No.2 while dismissing the appeal of the petitioner.

15. Hence the two writ petitions seeking the reliefs as indicated above.

16. Respondent No.3 has not filed affidavit in either case. State has also not filed any affidavit.

17. Learned counsel for the petitioner submits that when misappropriation of government money is established and respondent No.3 is responsible for that, there is no question of letting respondent No.3 go scot free. Hon'ble Minister by putting the entire blame on the Secretary and accepting his statement that the misappropriated amount would be repaid with interest has set aside the order of respondent No.2 removing respondent No.3 from being a member of the grampanchayat. This is factually and legally untenable. Impugned order is therefore liable to be set-aside. That apart, respondent No.3 is liable to be disqualified for such future term as may be deemed fit and proper under Section 39(2) of the Maharashtra Village Panchayats Act, 1958.

18. On the other hand, both learned State counsel and learned counsel for respondent No.3 have supported the order dated 04.10.2018 passed by respondent No.1 and contends that no interference is called for. In addition, learned counsel

for respondent No.3 submits that the term of the grampanchayat for which respondent No.3 was elected as a member has expired. Both the writ petitions should be dismissed.

19. Submissions made by learned counsel for the parties have been considered.

20. At the outset, it would be apposite to deal with Section 39 of the Maharashtra Village Panchayats Act, 1958. Section 39 reads thus:

"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 (1A) of section 8:

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.;

(1A) Where a person is removed from office of the Sarpanch or Upa-Sarpanch, he shall not be eligible for re-election as Sarpanch or Upa-Sarpanch during the remainder of the term of office of members of the panchayat.

(2) The Commissioner may subject to like condition disqualify for a period of not exceeding [six 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).

(3) Any person aggrieved by an order of the Commissioner under sub-section (1) or (2) may, within a period of fifteen days from the date of the receipt of such order, appeal to the State Government and the Government shall decide the appeal within a period of one month from the date of receipt thereof."

21. As would be evident from the above, sub-section (1) of Section 39 empowers the Commissioner to remove from office any member or any Sarpanch or Upa-Sarpanch. It provides for two situations. As per clause (i), he may remove such member, Sarpanch or Upa-Sarpanch for any misconduct or for neglect or for incapacity to perform duty or being persistently remiss in the discharge thereof. A Sarpanch or Upa-Sarpanch so removed may also be removed from the panchayat by the Commissioner. Clause (ii) together with the two provisos provide for lodging of complaint before the Commissioner in the case of misappropriation of public money by an elected member of grampanchayat, including Sarpanch and Upa-Sarpanch. It further provides for enquiry into such complaint and if the complaint is found to be true then to remove such member, Sarpanch or Upa-Sarpanch from the concerned grampanchayat.

21.1. Sub-section (1A) makes it clear that if a person is removed from the office of Sarpanch or Upa-Sarpanch, he would not be eligible for re-election as Sarpanch or Upa-Sarpanch for the remainder of the term of office of members of the panchayat.

21.2. Sub-section (2) of Section 39 says that the Commissioner may, subject to like condition, disqualify for a period not exceeding six years any person who has

resigned his office as member, Sarpanch or Upa-Sarpanch and has been guilty of the acts and omissions specified in sub-section (1).

21.3. Remedy of appeal is provided under sub-section (3) to a person who is aggrieved by an order passed under sub-section (1) or sub-section (2).

22. Having noticed and discussed the above, order dated 25.01.2018 passed by respondent No.2 may now be adverted to. From a perusal of the order dated 25.01.2018, it is seen that the Chief Executive Officer, Kolhapur Zilla Parishad had conducted a preliminary hearing under Section 39(1) of the Maharashtra Village Panchayats Act, 1958 and submitted reports dated 07.06.2017 and 09.11.2017 suggesting initiation of action against respondent No.3 for misappropriation of an amount of Rs.10,03,000.00 being part of the fund for the scheme relating to rural drinking water, thus misusing his office and intentionally failing to perform his duty. Both petitioner and respondent No.3 were heard. It was found by respondent No.2 that the rural water supply scheme was approved for village Kine under Taluka-Aajra in the year 2011-12. For this purpose, an account was opened in the Bank of India, Sirsangi Branch to be operated jointly by the Chairman and Secretary of the Committee dealing with the scheme. However, the owner of the well land raised certain objections regarding use of his land and alternate land could not be made available by the grampanchayat. Because of the above, the work was cancelled on 19.01.2015 by the Chief Executive Officer with further instructions to the Chairman of the Committee and the Village Development Officer to return back the funds which was given for execution of the scheme with interest. It was found that an amount of Rs.13,30,944.00 was allotted for the scheme. Out of the aforesaid amount, an amount of Rs.10,03,000.00 was withdrawn in the name of the Committee by the Secretary and one private person. In this regard, a police complaint was made on 10.09.2016 before the Aajra Police Station against respondent No.3 and the Secretary. Such withdrawal of government money is impermissible. Thus, respondent No.2 came to the

conclusion that respondent No.3 being a member of the grampanchayat and as Sarpanch failed to discharge his duty and acted in a manner unbecoming of a grampanchayat member. Therefore, respondent No.2 removed respondent No.3 as member of the grampanchayat, thus from the office of Sarpanch.

23. When this order was carried forward in appeal by both the petitioner and respondent No.3, the Hon'ble Minister as the appellate authority took a different view altogether. From the impugned order dated 04.10.2018, it is seen that the Hon'ble Minister had relied entirely on the statement of Shri Krishna Ningu Tupat, Secretary of the Committee. The Secretary stated that Committee had entrusted him the responsibility of returning the amount allotted for the scheme. Accordingly, he obtained cheques having the signature of the Chairman in advance and started making repayments. But because of problems, he withdrew some amounts. He however stated that out of the withdrawn amount, he had re-deposited an amount of Rs.4,50,000.00 and that he would refund the balance amount with interest. While admitting his fault, he stated that the fault was entirely his and that he was solely responsible. Neither the Chairman nor any member of the Committee were responsible. On the other hand, respondent No.3 stated that due to work he was continuously outside and for that he had given signed cheques to the Secretary in advance who made withdrawal from the bank account. According to him, the Secretary was solely responsible for such withdrawal. On the above basis, the Hon'ble Minister came to the conclusion that there was no fault on the part of respondent No.3 in the misappropriation. Therefore, allowing the appeal of respondent No.3, the Hon'ble Minister acting as the appellate authority set-aside the order of respondent No.2 dated 25.01.2018 while rejecting the appeal of the petitioner.

24. From the above, it is evident that the appellate authority gave a clean chit to respondent No.3 on the strength of the statement of the Secretary. Even if the statement of the Secretary is accepted at its face value, then also there is no escape from the

fact that there is misappropriation of public fund; even if a most lenient view is taken then also it is a case of temporary misappropriation. Though the Secretary takes the blame entirely on himself saying that he and he alone is responsible for such misappropriation, but the fact remains that the bank account was in the joint name of the Chairman and Secretary. Being the Chairman, respondent No.3 had signed the cheques and handed over the same to the Secretary. This, respondent No.3 admits but clarifies that because he was busy elsewhere he had handed over the cheques to the Secretary for withdrawal. Though such an explanation is highly questionable, even if the same is accepted then also it was the duty of respondent No.3 as the Chairman of the Committee and as Sarpanch of the grampanchayat to ensure that the money withdrawn by the Secretary was paid back to the parties concerned. This he failed to do. Therefore, respondent No.2 was justified in coming to the conclusion that respondent No.3 had failed to perform / discharge his duty and behaved in an unbecoming manner. Hon'ble Minister i.e., the appellate authority completely overlooked this aspect of the matter which clearly vitiated her impugned appellate order rendering it untenable on facts as well as in law.

25. In so far grievance expressed by the petitioner regarding non-disqualification of respondent No.3 for a future period is concerned, such a power is traceable to sub-section (2) of Section 39 which has already been extracted and discussed above. Power to disqualify any member, Sarpanch and Upa-Sarpanch is vested in the Commissioner. The use of the expression 'may' in sub-section (2) is indicative of the discretionary nature of such power. Therefore, once a finding of wrong-doing is rendered in sub-section (1), disqualification under sub-section (2) is not automatic. That apart, for such a person to be disqualified, he has to resign from his office and he must also be guilty of the acts and omissions specified in sub-section (1). These two conditions i.e., resignation from office and finding of guilt are twin conditions both of which have to be satisfied before exercising the discretionary power of disqualification.

26. Viewed in the above context, the order passed by respondent No.2 is fully justified and the appellate authority committed a manifest error in interfering with the said order.

27. Consequently, the impugned order dated 04.10.2018 cannot be sustained and is accordingly set aside. Resultantly, the order dated 25.01.2018 passed by respondent No.2 is restored without any modification.

28. Both the writ petitions are accordingly allowed, but only to the above extent.

29. However, there shall be no order as to cost.

(UJJAL BHUYAN, J.)

Minal Parab