

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

Writ Petition No. 4920 / 2021

1. Ankush Achutrao Raut
Age : 28 years, Occu.: Agri.,
2. Sk. Yusuf Sk. Rustum,
Age : 33 years, Occu.: Agri,
3. Sayyad Bismilla Mahemood,
Age : 46 years, Occu.: Agri,
4. Uttam Bhagaji Bansode,
Age : 40 years, Occu.: Agri,
5. Sk. Mainubi Hasan,
Age : 35 years, Occu.: Agri,
6. Devidas Onkar Gawande,
Age : 32 years, Occu.: Agri,
7. Parvatibai Namdeo Navale,
Age : 34 years, Occu.: Agri,
8. Bhivsan Kadubal Jadhav,
Age : 34 years, Occu.: Agri,
9. Varsha Annasaheb Jadhav,
Age : 28 years, Occu.: Agri,

All above R/o : Karodi Sajapur,
Taluka and District Aurangabad.

.. Petitioners

Versus.

1. The State of Maharashtra
Through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai - 32.
2. The Divisional Commissioner,
Aurangabad.
3. The Chief Executive Officer,
Zilla Parishad, Aurangabad.
4. The Block Development Officer,
Panchayat Samiti, Aurangabad.
5. The Gram Panchayat,
Karodi Sajapur, Taluka and Dist. Aurangabad.
Through : Gram Sevak.
6. Sk. Ismaile Sk. Ibrahim
Age : 34 years, Occu.: Agri,
R/o: Karodi Sajapur,
Taluka and Dist. Aurangabad.

.. Respondents

Mr. R.V. Gore, Advocate for the Petitioners.

Mr. S.P. Tiwari, AGP for State.

Mr. A.D. Sugdare, Advocate for Respondent No.6.

CORAM : SANDEEP K. SHINDE J.
RESERVED ON : 1st JULY, 2021.
PRONOUNCED ON : 14th JULY, 2021

Judgment : -

1. This petition challenges the orders dated 6th February, 2020 passed by the Additional Divisional Commissioner, Aurangabad under Section 39(2) and order dated 10th February, 2021 passed by the Hon'ble State Minister, Rural Development under Section 39(3), both in exercise of powers, under the Maharashtra Village Panchayats Act, 1959; whereby the Petitioners were removed from the office of Group of Gram Panchayat, Karodi Sajapur, for their remaining term as a members of Panchayat.

2. Briefly, stated facts of the case are that, the Petitioner Nos. 1 and 2 were Sarpanch and Up-Sarpanch of the Group of Gram Panchayat, Karodi Sajapur (Panchayat for short). In the year 2017, Petitioner No.1 was directly elected as Sarpanch. Petitioner Nos. 3 to

9 were elected as members of the Panchayat. It may be stated the Respondent No.6 is one of the elected members of the Panchayat. In the meeting of the Panchayat held on 30th January, 2018, Petitioners and Respondent No.6 unanimously resolved to grant development permission to six persons to develop their respective plots. Whereafter Respondent No.6 complained to the Additional Divisional Commissioner, that the resolution dated 30th January, 2018 moved by the Petitioner No.1, was in utter disregard to provision of Section 52 of the Maharashtra Village Panchayats Act, 1959 and it amounts to “misconduct in discharge of his duties”. An application under Section 39-A of the Act was moved. Whereafter on 3rd December, 2018, Additional Divisional Commissioner directed Chief Executive Officer, Zilla Parishad, to hold an enquiry against the Sarpanch and submit the report within a month. In pursuance thereto, Block Development Officer held an enquiry and submitted a report dated 7th May, 2019 to Chief Executive Officer, Zilla Parishad, Aurangabad. On 19th June, 2019, Chief Executive Officer issued a show cause notice to the

Petitioners as to why they should not be removed from the office of Panchayat in term of Section 39(1) (i) of the said Act. The Chief Executive Officer, after hearing the Petitioners, recorded a finding that, the resolution passed by the Gram Panchayat, granting development permission, was contrary to provisions of Section 52 of the Maharashtra Village Panchayats Act, 1959 and forwarded his report to Addl. Divisional Commissioner. The Add. Divisional Commissioner, after hearing the Petitioners, held them guilty of misconduct for granting illegal development permissions and removed them from the Panchayat and further disqualified Sarpanch and Up-Sarpanch for remainder of the term of office of Panchayat. Feeling aggrieved by the order passed by the Add. Divisional Commissioner, an appeal was preferred before the State, but it was dismissed by the Hon'ble State Minister for village development by order dated 10th February, 2021. These two orders are impugned in this petition.

3. Before adverting to the arguments of the respective counsel for the parties, it would be advantageous to reproduce the relevant

provision of the Maharashtra Village Panchayats Act, 1959;

Section 39. Removal from office :

¹⁹⁹[(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 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:

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 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.]

²⁰⁰[(1-A) 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].

²⁰¹[(2) The Commissioner may subject to like condition disqualify for a period of not exceeding five years, any person who has re-signed his office as a member, Sarpanch or Upa-Sarpanch and has been guilty of the acts and omission 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.]

²⁰²[**39A. Power of Government to direct inquiry :**

(1) Notwithstanding anything contained in section 39, the State Government may, suo motu or on an application made to it against any member, Sarpanch or Upa-Sarpanch

regarding any act or omission specified in against such member, Sarpanch or as the case may be Upa-Sarpanch, and submit its report, within a period of one month, to the Commissioner.

(2) The Commissioner shall, after giving a reasonable opportunity of being heard to the Panchayat and the person concerned, take a decision, within a period of one month, on the inquiry report.

(3) Any person aggrieved by an order of the Commissioner under sub-section (2), may, within a period of fifteen days from the date of receipt of such order, appeal to the State Government and the decision of the Government thereon shall be final.]

Section 14 (d) : Disqualifications : No person shall be a member of a Panchayat continue as such, who has been removed from office under sub-section (1) of section 39 and a period of five years has not elapsed from the date of such removal, unless he has, by an order of the State Government notified in the Official Gazette, been relieved from the disqualification arising on account of such removal from office.

4. Learned Counsel for the Petitioners has made the following submissions;

(i) The resolution dated 30th January, 2018 granting development

permission to six villagers/ persons has been reversed/ cancelled by the Panchayat on 30th September, 2019. Yet this fact has not been adverted to either by the Add. Divisional Commissioner or by the Hon'ble State Minister.

(ii) The resolution dated 30th January, 2018 unanimously passed by the members of the Panchayat, may be illegal but that itself would not constitute, 'misconduct' in the discharge of Petitioners' duties, in terms of Section 39(1)(i) of the Act.

(iii) that the development permissions were not acted upon, except one.

(iv) that Panchayat had issued notices to the six persons to whom the development permissions were granted and informed that permissions were cancelled. They were also informed that, for development of their plots, they may have to obtain the permission from the Add. Divisional Commissioner, Aurangabad.

(v) That, since alleged permission have not been acted upon (except one), no loss was caused to the Panchayat.

(vi) Both, the Add. Divisional Commissioner and the Hon'ble State Minister, failed to make a distinction between 'illegality' and 'misconduct'.

(viii) That in appeal before the Hon'ble State Minister, Petitioners were not granted sufficient opportunity, to plead their case and therefore, the order of the Hon'ble State Minister was in breach of principles of natural justice.

5. Learned Counsel for the Petitioners would also contend that the provision of Section 39(1) read with Sub-Section 2, are to be strictly construed inasmuch as elected person in a democracy should not be easily removed by the order of an executive authority and it is only in clear cases of flagrant and gross misconduct that such removal should be resorted to. In support of this contention, he relied on the judgment of the Division Bench, in the case of **Surinder Prakash Goel Vs. The State of Allahabad** AIR 1993 Allahabad 50. It is argued although the provisions of Section 39 (1) (a) empower Commissioner to remove

any member or Sarpanch or Up-Sarpanch who has been guilty of misconduct in discharge of his duties, but expression 'misconduct', encompasses more than one 'act' or omission in discharge of the duties and therefore 'solitary' or singular act, cannot be construed as misconduct. Learned Counsel would rely on provision of Sub-Section 2 of Section 39, wherein expression 'has been guilty of acts (as against 'act') and omission', is used. It is strenuously submitted that granting development permission in breach of Section 52 of the Act, would be 'illegality' and not 'misconduct' in discharge of the duties. Learned Counsel for the Petitioners would also rely on, to show cause notice issued by the Add. Divisional Commissioner, which makes reference to illegal development permission and not the misconduct. On these grounds, learned Counsel for the Petitioners seeks to quash the impugned orders.

6. On the other hand, learned AGP has supported impugned orders passed by the Add. Divisional Commissioner and the Hon'ble State Minister.

7. **Reasons** : Undoubtedly, the resolution dated 30th January, 2018 of the Panchayat, granting development permission was contrary to the provisions of Section 52 of the Maharashtra Village Panchayats Act, 1959 and Maharashtra Regional and Town Planning (Amendment) Act, 2014 which mandate, that in the village, for which a draft Regional plan or final Regional plan has been published under the provisions of the Maharashtra Regional and Town Planning Act, 1966, no person shall erect or re-erect or commence to erect or re-erect any building, in other areas of village (except *gaathan* area of village), without obtaining the previous permission of the Collector or any other officer, not below the rank of Tahsildar to whom the powers of the Collector, are delegated. Indisputably, in the case in hand, development permission was granted not in respect of the land, falling in the, *gaathan* area and therefore members of the Panchayat had no authority to grant development permission. Be that as it may, a copy of a permission dated 9th March, 2018 is on record at Page No. 35 of the paper book. It is in the form of 'No Objection Certificate', It reads

that Mr. Khadak Harka Bahaddur is granted a permission to develop a plot no. 42 (A), after taking necessary construction permission. Thus it was not a blanket permission, but was subject to such other necessary permissions. Therefore, the permission dated 9th March, 2018 was not a development permission but a No Objection for obtaining such other permissions. This fact has been overlooked by both the authorities.

8. Be that as it may, even assuming the Petitioners had granted development permission, yet, resolution which accorded permission was cancelled by the Panchayat by subsequent resolution dated 30th September, 2019. Even this fact has been completely overlooked by the Add. Divisional Commissioner, as well as by Hon'ble State Minister. The subsequent resolution suggests that the members of Panchayat have rectified the mistake committed by them. As stated above, although the permission was granted to six persons except one, other permissions were not acted upon. The material on record shows the Panchayat had informed all six persons that the permission granted to them, were cancelled, in the monthly meeting held on 30th

September, 2019. Insofar as one permission is concerned; the Petitioner No.1 in affidavit sworn on 1st July, 2021 has assured this Court, that construction made if any by Pandurang Sarjerao Tupe, shall be removed within four weeks, after assuming charge of office.

9. Moot question is; Whether resolution of Panchayat, granting development permission in breach of the provisions of Section 52 was an 'act' to mean to hold the Petitioners guilty of, "misconduct in discharge of their duties within the meaning of Section 39(1) of the said Act or was it a sheer illegal or irregular act and/ or omission in discharge of duties" ?

. Misconduct means any behaviour which conflicts with express, rules or implied rules. As understood, in Labour Law misconduct may be defined as any action or behaviour which conflicts with interest of the employer. However here expression 'misconduct' is to be understood with reference to subject matter and scope of the Act and object, it seeks to serve.

. Expression (misconduct) is a generic term. It is defined in

Black's Law Dictionary, Sixth Edition, as under:

“A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanour, mis-deed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness.”

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 office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.”

10. In the case of **State of Punjab Vs. Ram Singh** AIR 1992 SC 2188, the Hon'ble Apex Court in Paragraph No.5 has held:

“Thus, it could be seen that the word ‘misconduct’ though not capable of precise definition, its reflection receive 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, wilful 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. Its

ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order.”

11. As against, the expression ‘illegality’ means an act that is not authorized by law. Expression illegal as defined in Black’s Law Dictionary, means forbidden by law; unlawful. The definition of ‘misconduct’ reproduced above; sounds and implies a wrongful intention and it being, relative term, it is to be construed with reference to the subject matter. It literally means wrong conduct or improper conduct or transgression of some established and definite rule of action. Thus expression, ‘misconduct’ being used in Section 39(1)(i) of the act, is to be understood to mean an act which must be wilful in character and not a negligence or carelessness.

. Herein, the Panchayat was not an authority under Section 52 of the Act to grant the development permission and therefore the

resolution was non-est and could have been acted upon. Expression, illegal, irregular and 'misconduct' being relative terms, are to be construed with reference to subject matter. In my view, a resolution dated 30th January, 2018 cannot be interpreted to mean, a wilful act in character or unlawful behaviour of the Petitioners to render them guilty of misconduct in discharge of official duties. At the most it would be an act, 'forbidden by law' or 'irregular exercise' of powers. There is no material on record to suggest that the resolution passed by the members of Panchayat, was with wrongful intention. Besides resolution has not been acted upon and rescinded by the Panchayat within eight months. Obviously it did not cause loss to Panchayat. Therefore in context of the facts of the case, in my view, a resolution passed by the Panchayat, granting development permission would not render Petitioners, a guilty of misconduct in discharge of their duties. Besides, one cannot overlook a fact, that the Petitioners are elected representatives and therefore the provision of Section 39(1)(i) and (d) were to be strictly construed. As such, the allegations against the

Petitioners were neither gross, nor were sufficient to hold them guilty of misconduct. Thus it is to be held, that the discretion exercised by the Commissioner to remove the Petitioners from the office of the Panchayat, was not well founded. Two authorities below, failed to notice, distinction between 'misconduct in discharge of duties' and 'irregularity' in exercise of powers. As a result, in my view, in consideration of the facts of the case and the provisions of law, the authorities below have erred in interpreting the provision of Section 39 (1)(i) and Sub-Section 2 of the Act, in the context of the facts of the case. Insofar as submission of the Petitioners that expression, 'acts' means series of acts, of misconduct and not singular act to remove members from office, in my view, deserves no consideration because series of acts also include singular act. The question is answered accordingly.

12. It may be stated that application (filed in October, 2018) seeking disqualification / removal from office of Panchayat, was filed only against the Petitioner No.1 and a Gram Sevak. Sub-Divisional Officer

submitted his report to the Chief Executive Officer in May, 2019. Interestingly, the members of the Panchayat, who are the Petitioner Nos. 2 to 9, were not the Respondents in an application filed in October, 2018. Nor the Petitioner Nos. 2 to 9 were heard by the Block Development Officer before submitting the report to the Chief Executive Officer. A right to be heard, before removing from office of Panchayat is mandatory in terms of proviso to Section 39 of the Act. Yet they were not heard by the Block Development Officer. It may also be stated the Respondent No.6 - Complainant, amended his complaint/ application under Section 39-A in January, 2020 and arraigned Petitioner Nos. 2 to 9 (members of Panchayat) as party Respondents in the application. As a result, it is to be held that the Respondent Nos. 2 to 9 were removed from the office of Panchayat, without following due procedure of law. On this count also the order of removal of the Petitioner Nos. 2 to 9 from the office of the Panchayat passed under Section 39 (1) was not sustainable.

13. For the reasons stated above, the impugned orders dated 6th

February, 2020 passed by the Additional Divisional Commissioner, Aurangabad in Appeal/CRA/119/2018 dated 6th February, 2020 and order dated 10th February, 2021 passed by the Hon'ble State Minister in Appeal VPM-2020/Pra.kra.27/pa-6, are quashed and set aside. In the result, the Petition is allowed in terms of prayer clause - B. The consequential orders shall follow forthwith.

(SANDEEP K. SHINDE, J.)

Najeeb...