

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR
WRIT PETITION NO. 3192 OF 2020

Sau. Aparna w/o Sanjay Barabde
Aged about 40 years, occupation :
agriculturist, r/o Chincholi Khurd,
Taq. Anjangaon Surji, Dist. Amravati

Petitioner

Versus

- 1) Divisional Commissioner,
Amravati Division Amravati.
- 2) Arun Tulsiram Mankar, aged - adult
- 3) Shrihari Ramdas Kakad, aged – adult
- 4) Smt. Rajkanya Ramdas Kakad,
2-3, occupation agriculturist,
r/o. Chincholi Khurd, Taq. Anjangaon
Surji, Dist. Amravati
- 5) Secretary, Gram Panchayat
Chincholi Khurd, Taq. Anjangaon Surji,
Dist. Amravati

Respondent

Mr. J. B. Kasat, Advocate for petitioner.

Mr. K. L. Dharmadhikari, AGP for respondent No.1.

Mr. S. I. Gatte, Advocate for respondent Nos. 2, 3 and 4.

CORAM : MANISH PITALE, J.

DATED : 22nd June, 2021

ORAL JUDGMENT

Hearing was conducted through Video Conferencing and
the learned counsel agreed that the audio and visual quality was proper.

(2) **Rule.** Rule made returnable forthwith. The Writ Petition is heard finally with the consent of learned counsel for the rival parties.

(3) The petitioner herein is a directly elected Sarpanch of Gram Panchayat Chincholi Khurd, Taq. AnjangaonSurji, Dist. Amravati. She was elected on 16/10/2017 and since then she has been holding the said elected post.

(4) The respondent Nos.2 to 4 had approached the respondent No.1 Divisional Commissioner under Section 39 of the Maharashtra Village Panchayats Act, 1959, for removal of the petitioner from the post of Sarpanch claiming that she had indulged in misconduct in as much as she was responsible for construction of a wall around a temple which had resulted in blocking a particular road.

(5) The respondent No.1 Divisional Commissioner called for a report from Chief Executive Officer (CEO) of Zilla Parishad in terms of first proviso to Section 39(1) of the aforesaid Act. It appears that report dated 31/03/2020, was prepared by the CEO of the Zilla Parishad and it was submitted before the respondent No.1 Divisional Commissioner on

01/06/2020.

(6) At this stage, the petitioner filed an application praying for calling the record of the inquiry undertaken by the CEO for inspection. She also filed an application for quashing the said report and for a direction to be given by the respondent No.1 Divisional Commissioner for fresh inquiry by the Chief Executive Officer. In these applications, the petitioner alleged that the report submitted by the CEO and the conclusions rendered therein adverse to the interest of the petitioner were contradictory to the material that had come on record and that it was also contrary to the reports given by the Block Development Officer to the CEO.

(7) By the impugned order 15/09/2020, the respondent No.1 Divisional Commissioner in a very cryptic manner, simply recorded that applications have been filed by the petitioner and that the same were being rejected. It was also recorded that inquiry report had been submitted by the CEO. Thereafter, it was recorded that the arguments were completed and the matter was closed for orders.

(8) Mr. Kasat, learned counsel for the petitioner, submits that the power exercised by the respondent No.1 Divisional Commissioner under Section 39 of the aforesaid Act, has the drastic consequence of removing an

elected person like the petitioner who has been directly elected as Sarpanch of the Gram Panchayat. It is submitted that the first and second proviso to Section 39 of the said Act are mandatory in nature, encapsulating the concept of principles of natural justice to be followed by the respondent No.1 Divisional Commissioner before passing any order in the matter. It is submitted that unless the procedure contemplated under the aforesaid provision is followed to the hilt, it could not be ensured that a proper reasoned order is passed by the respondent No.1 Divisional Commissioner.

(9) By inviting attention to the manner in which the impugned order was passed on 15/09/2020, respondent No.1 Divisional Commissioner, it was submitted by the learned counsel for the petitioner that the principles of natural justice were violated and there was a clear violation of second proviso to Section 39(1) of the aforesaid Act. On this basis it was submitted that the impugned order deserved to be set aside and that a direction ought to be given to the respondent No.1 Divisional Commissioner to consider the aforesaid two applications filed by the petitioner afresh and to pass a reasoned order. It was submitted that the respondent No.1 Divisional Commissioner would have to follow the mandate of the second proviso to Section 39(1) of the said Act by giving reasonable opportunity of being heard to the petitioner before taking any decision on the report submitted by the

CEO.

(10) On the other hand, Mr. Gatte, learned counsel appearing for respondent Nos.2 to 4 submitted that the petitioner had adopted delaying tactics before the respondent No.1 Divisional Commissioner by filing the aforesaid applications. It was submitted that a perusal of the Roznama did indicate brief reasons for rejecting the applications of the petitioner and that the parties had been heard when the matter was closed for orders. On this basis, it was submitted that the mandate of Section 39(1) of the said Act was followed and that the present writ petition deserved to be dismissed.

(11) Mr.K.L.Dharmadhikari, learned AGP appeared on behalf of respondent No.1 and submitted that the matter could be remanded to the respondent No.1 Divisional Commissioner for proper hearing in the interest of justice.

(12) Having heard the learned counsel for the rival parties, it is necessary to look at the scheme contemplated under Section 39 of the said Act. The aforesaid provision reads as follows :-

“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.]”

(13) There can be no doubt about the fact that when the respondent No.1 Divisional Commissioner exercises his power under the above quoted provision, it has the potential of removing a person from an elected post, in this case the post of directly elected Sarpanch. Since the consequences are drastic it is obvious that the procedure contemplated under the above quoted provision needs to be followed scrupulously. The first and second provisos to Section 39(1) of the said Act incorporate principles of natural justice, inasmuch as a report is called from a responsible Officer i.e. CEO on the allegations made against the elected person and the said person is to be granted a reasonable opportunity of being heard before taking a decision on the report submitted by the CEO.

(14) In view of the aforesaid procedure contemplated under Section 39(1) of the said Act, in the present case, the respondent No.1 Divisional Commissioner was expected to give a proper opportunity of hearing to the petitioner on the report submitted by the CEO. Since the petitioner claimed that the report of the CEO deserved to be set aside and fresh inquiry was necessary as there were allegedly contradictory reports of the Block Development Officer and that the conclusion of the report of the CEO appeared to be contrary to the record, it was all the more necessary for respondent No.1 Divisional Commissioner to have properly considered the two applications filed on behalf of the petitioner. As noted above, the

applications were for calling for the record of the CEO pertaining to the aforesaid report and for directing a fresh inquiry to be conducted by the CEO. These applications ought to have been considered and proper reasoned orders ought to have been passed by the Commissioner. This is expected in terms of the procedure prescribed under the above quoted provision of law. Apart from this, the second proviso to Section 39(1) of the said Act specifically requires that a reasonable opportunity of being heard is given to the petitioner before taking a decision on the report of the CEO. This would include proper consideration and disposal of the aforesaid two applications filed on behalf of the petitioner.

(15) A perusal of the impugned order shows that it is cryptic and there is no reasoning given by the respondent No.1 Divisional Commissioner, while simply rejecting the applications filed by the petitioner. It is evident from the record that the applications were rejected on the very day on which they were filed and it was recorded that arguments were completed and the matter was closed for orders. The approach adopted by the respondent No.1 Divisional Commissioner as manifested in the impugned order, is not in consonance with the procedure contemplated under Section 39(1) of the aforesaid Act.

(16) In view of the above, the impugned order is

unsustainable and the present writ petition deserves to be partly allowed.

(17) Accordingly, the writ petition is partly allowed. The impugned order is quashed and set aside. The respondent No.1 Divisional Commissioner is directed to consider the two applications filed by the petitioner i.e. one application for calling for the record of the CEO pertaining to the report submitted by the said Officer and the other application for calling a fresh report from the CEO, by granting proper opportunity of hearing to the petitioner, as well as the respondent Nos.2 to 4. The respondent No.1 Divisional Commissioner will also grant proper opportunity to the rival parties to make submissions on the report already submitted by the CEO in terms of second proviso to Section 39(1) of the aforesaid Act. Thereupon, the respondent No.1 Divisional Commissioner is expected to pass reasoned orders in the matter.

(18) The respondent No.1 Divisional Commissioner is expected to complete the hearing and pass appropriate orders in the matter as expeditiously as possible.

(19) Rule is made absolute in above terms. No order as to costs.

[MANISH PITALE J.]