

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7812 OF 2022

Archana Santosh Neharkar

... Petitioner

Versus

The State of Maharashtra & Ors.

... Respondents

...

Mr. N. P. Bangar, Advocate for the Petitioner

Mr. S. B. Pulkundwar, AGP for Respondent Nos.1 & 2

Mr. P. D. Suryawanshi, Advocate for Respondent Nos.3 & 4

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 26th September, 2022

PER COURT :-

1. The petitioner is aggrieved by disqualification order dated 09/12/2021, passed by Additional Commissioner/respondent no.2, Aurangabad in Proceeding No.2021/Grampanchayat/Appeal-2/CR-1, which is confirmed in Proceeding No.VPM-2022/Pra.Kra.24/panra-6 by respondent no.1.

2. The petitioner is elected as Sarpanch of Village Parner, Taluka Patoda, District Beed in December-2017. The respondents no.5 to 7 filed proceeding under Section 39(1) of the Maharashtra Village Panchayat Act, 1958 (for short 'the said Act') before respondent no.2. In the proceedings, respondent No.3 was instructed to

forward report after conducting inquiry. Accordingly, respondent No.4 conducted the inquiry on 17/11/2020. The respondent no.3 forwarded the report to respondent No.2. After receipt of the said report, respondent no.2 gave an opportunity of hearing to the petitioner and recommended disqualification of petitioner. The Commissioner disqualified the petitioner and his disqualification is confirmed by respondent no.1. Hence, the present petition.

3. The learned Advocate for respondent nos.3 & 4 and learned Assistant Government Pleader supported the impugned orders, stating that misconduct of the petitioner is clearly established on record. Therefore, this Court may not entertain the writ petition.

4. I have duly considered the rival submissions of learned Advocates representing the respective parties. Perused the grounds raised in the writ petition, impugned orders and annexures thereto.

5. Section 39 of the said Act provides that, any Member, any Sarpanch or Up-Sarpanch who is guilty of misconduct in the discharge of his duties, or of any disgraceful conduct etc. can be removed from the said office. Proviso to the said section stipulates that, no such person shall be removed from office unless, Chief Executive Officer, under orders of Commissioner holds an inquiry after giving due notice to the Panchayat and the person concerned

and reasonable opportunity of being heard is given to the said person and submit his report to the Commissioner.

6. On going through the report/recommendation submitted by respondent no.3, it is clear that, he has not applied his mind and has not conducted proper inquiry in terms of proviso to Section 39 of the said Act and he has based his recommendation on the report of respondent no.4.

7. The learned Advocate for the petitioner is right in placing reliance in unreported decision of learned Single Judge of this Court in Writ Petition No.4074/2021 (*Sau. Sunita Pruthaviraj Meshram Vs. State of Maharashtra & Ors.*), wherein, in similar facts, this Court held;

"10] A perusal of the enquiry report submitted by Respondent No.3 – C.E.O. clearly indicates that he had not conducted an independent enquiry as envisaged by Section 39(1) of the said Act. On the contrary, the report reveals that Respondent No.3 – C.E.O. had only endorsed the findings recorded in the fact finding enquiry, without affording opportunity of fair hearing and without recording subjective satisfaction with independent application of mind. The decision in the case of Damayanti w/o Omprakash Tapadiya (supra), is distinguishable and is of no assistance to the Respondents as in the said case, the fact finding was followed by another enquiry by C.E.O. as required by the provisions of Section 39(1) of the said Act. In the instant case, as noted above, there is no independent application of

mind and the findings are based on the preliminary report. There has been flagrant violation of the mandatory provision of Section 39(1) of the said Act.

11] It has to be borne in mind that removal from office curtails the term of democratically elected member. Moreover, the removal renders such person ineligible for re-election for the remainder of the term with further disqualification for six years to be elected under the said Act. Therefore, the action of removal of elected member should be viewed seriously followed by strict compliance of mandatory provisions. In the instant case, the order has been passed in flagrant violation of the mandatory provision and this vitiates the proceedings under Section 39(1) and renders the order null and void.”

8. The above observations are squarely applicable to the facts of the present case. Since the impugned order is passed in flagrant violation of statutory provisions, the same cannot be sustained.

9. As the petition deserves to be allowed for violation of statutory provisions, this Court is not going into the merits of the matter.

11. In the result, following order is passed:

ORDER

(i) The writ petition is allowed.

(ii) The impugned disqualification order dated 09/12/2021, passed by respondent no.2 in Proceeding

No.2021/Grampanchayat/Appeal-2/CR-1, so also the impugned order dated 16/06/2022, passed by respondent no.1 in Proceeding No.VPM-2022/Pra.Kra.24/panra-6, are hereby quashed and set aside.

(iii) The matter is remanded back to respondent no.2. The respondent no.3 shall hold an inquiry by giving opportunity of hearing to the concerned and submit his report to respondent no.2, within a period of four weeks from the receipt of writ of this order.

(iv) After the inquiry report is received, respondent no.2 shall take decision within two weeks thereafter.

[NITIN B. SURYAWANSHI, J.]

Sameer