

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

WRIT PETITION NO.11717 OF 2021

Rajendra s/o Radhakisan Raut,
Age : 48 years, Occupation : Advocate,
R/o Nalwandi, Tq. & Dist.Beed.

...PETITIONER

-VERSUS-

1. The State of Maharashtra.
Through it's Secretary,
Rural Development Department,
Mantralaya, Mumbai.
2. Additional Divisional Commissioner,
Aurangabad Rregion, Aurangabad.
3. Chief Executive Officer,
Zilla Parishad, Beed.
4. Radhakisan Laxman Mhetre,
Age : 41 years, Occupation : Agril,
R/o Nalwandi, Tq. & Dist.Beed.

...RESPONDENTS

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Shri Ankush N. Nagargoje, Advocate for the petitioner.
Shri Kiran B. Jadhavar, AGP for the respondent Nos.1 and 2.
Shri P.D. Suryawanshi, Advocate for respondent No.3.
Shri S.T. Yaseen, Advocate for respondent No.4.

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CORAM : SMT. BHARATI H. DANGRE, J.

**Reserved on :- 02nd February, 2022
Pronounced on :- 10th February, 2022**

JUDGMENT :

1. Democracy can be described as “Power of People”, a way of governing, which depends upon the will of the people. For the essence of democracy is the decentralization of power and allowing governance to reach at the grass root level for welfare of people. The local government elected by people imbibes democratic functioning of the society involving people in the area. The local bodies having administrative, legislative and financial autonomy with dedicated bureaucracy at local level, has helped this country realize its dream.

In the words of the father of nation Mahatma Gandhi, “*In this structure composed of innumerable villages, there will be ever-widening, never-ascending circles. Life will not be a pyramid with the apex sustained by the bottom. But it will be an oceanic circle whose centre will be the individual always ready to perish for the village, the latter ready to perish for the circle of villages, till at last the whole becomes one life composed of individuals, never aggressive in their arrogance, but ever humble, sharing the majesty of the oceanic circle of which they are integral units.*”

2. The aforesaid may not be true for the village Nalwandi located in Taluka and District Beed, when a move was initiated for removal of its Sarpanch by alleging corruption, gross negligence and misconduct in discharge of his duties and his removal was sought by one of the villager/voter, who succeeded in his venture, but in an appeal proceedings, when the Sarpanch is restored to his office, he has approached this Court by filing the present Writ Petition.

3. The election to the post of the Sarpanch of Village Panchayat Nalwandi, Taluka and District Beed, was held in December, 2017 and Respondent No.4 (Shri Radhakisan Laxman Mhetre) came to be directly

elected as a Sarpanch of village Nalwandi, which comprises of 13 members and he assumed charge of the said post in January, 2018.

4. In the year 2020 and to be precise on 05.02.2020, the petitioner in this petition, filed a complaint with the Divisional Commissioner, Aurangabad, under Section 39(1) of the Maharashtra Village Panchayats Act (for short, "the VP Act"), seeking an inquiry into the alleged corruption committed by the Sarpanch and the then Village Development Officer and this relief was sought in the backdrop of the allegations made in paragraphs 1 to 8 of the complaint.

Upon the complaint being preferred, respondent No.4/ Sarpanch filed his detailed reply denying the allegations levelled against him, on 28.04.2021.

5. The Additional Divisional Commissioner i.e. Respondent No.2, addressed a communication to the Chief Executive Officer, Zilla Parishad, Beed, on 15.02.2020 to conduct an inquiry. Pursuant thereto, the fact finding report was called from the office of the Block Development Officer, Panchayat Samiti, Dharur and on receipt of the report dated 29.05.2020, the Chief Executive Officer issued a show cause notice to respondent No.4 on 04.11.2020, as to why action should not be taken against him in the wake of the report submitted by the Block Development Officer. Respondent No.4/ Sarpanch submitted his reply on 17.11.2020 and the Chief Executive Officer conducted an inquiry on

17.12.2020 and 30.12.2020.

Upon following the principles of natural justice and recording the prima facie opinion that respondent No.4/ Sarpanch is found to be guilty of the alleged charges levelled at Point Nos.1 to 5, which warranted an action under Section 39(1) of the VP Act, the Chief Executive Officer, Zilla Parishad, forwarded his inquiry report along with the reply filed by the Sarpanch, to respondent No.2/ Divisional Commissioner.

6. On 06.07.2021, by making reference to the report of the Chief Executive Officer and also to the reply submitted by respondent No.4/ Sarpanch and upon hearing the parties, the Divisional Commissioner made an attempt to discern the factual aspects and on perusal of the material placed before him, arrived at the conclusion that respondent No.4/Sarpanch has committed misconduct while discharging his duties as Sarpanch and therefore, by exercising the power vested in him under Section 39(1) of the VP Act, the complaint filed by the petitioner was granted and the report of the Chief Executive Officer dated 09.03.2021 was accepted and respondent No.4/ Sarpanch came to be removed from the post of Sarpanch of village Nalwandi.

7. Being aggrieved by the order of the Divisional Commissioner dated 06.07.2021, respondent No.4/ Sarpanch preferred an appeal under Section 39(3) of the VP Act, before the Honourable Minister, Rural Development Department, being GP Appeal No.19/2021, which was

allowed on 06.10.2021 after hearing respondent No.4 as well as the petitioner. On due deliberation upon the order passed by the Additional Divisional Commissioner on 06.07.2021, the Honourable Minister returned a finding that respondent No.4/ Sarpanch is not engaged in any act for his own benefit and since his personal interest is not involved into the alleged acts of misconduct, merely because there are some administrative lapses, the removal of a duly elected Sarpanch through the democratic process, was found to be improper. By exercising the power conferred by Section 39(3) of the VP Act, the Honourable Minister set aside the impugned order passed by the Additional Divisional Commissioner, removing the Sarpanch.

It is this order which is assailed in this Writ Petition.

8. I have heard the learned counsel appearing for the respective parties and with their assistance, perused the record.

On 26.10.2021, while issuing the notice, the following interim order was passed :-

“Till the next date, so far as handing over of the charge is concerned, there shall be status-quo as is operating today.”

The parties are contesting the effect of the said status-quo order, since, according to the petitioner, respondent No.4/ Sarpanch is relieved of his charge whereas, according to the learned counsel for respondent No.4, he is discharging his function as the Sarpanch and is

presiding over the meetings.

In any case, since both the contesting parties expressed their consensus to argue the writ petition finally and determine the rights of the parties, I deem it expedient to grant RULE and I heard the learned counsel by making the Rule returnable forthwith.

9. Shri Nagargoje, the learned counsel for the petitioner, would submit that the petitioner had levelled eight serious allegations against the Sarpanch and the Divisional Commissioner directed the Chief Executive Officer to make an inquiry and submit his report in respect of the allegations made in the complaint. Since the petitioner was apprehending that there is pressure of the local MLA and therefore, the inquiry officers from other talukas were sought to be appointed to conduct the process and his request was acceded to by the Chief Executive Officer and a inquiry committee consisting of the Block Development Officer, Panchayat Samiti, Dharur and the Assistant Block Development Officer, Panchayat Samiti, Kaij, was constituted.

10. Shri Nagargoje would submit that the said committee physically visited village Nalwandi and submitted it's report to the Chief Executive Officer, which clearly indicts the Sarpanch since the report indicates that there is misappropriation in respect of making payment to one Narayan Raut and there is also misappropriation in respect of installation of LED solar lamps. Misappropriation of village panchayat

funds received under the Swaccha Bharat Mission, is also established. The report further indicates that without constructing toilet blocks, the amount has been disbursed and that too in the names of persons belonging to one family. Apart from this, it is also revealed that the cash is not deposited in the account of the Village Panchayat and the same has been misappropriated. Heavily relying on this report, Shri Nagargoje submits that the report clearly held the respondent No.4 responsible for irregularity and misappropriation, which led to irresistible conclusion that he has committed misconduct, which deserves his removal from the post of the Sarpanch.

11. Shri Nagargoje would submit that the Chief Executive Officer followed the procedure of issuing notices to the parties including respondent No.4 and on verifying the record and by affording opportunity of hearing to the concerned parties, conducted an inquiry as contemplated under Section 39 of the VP Act and submitted his report to the Divisional Commissioner by making a positive recommendation to take an action under Section 39 for removal of the Sarpanch. Thereafter, the Commissioner conducted hearing and on perusal of the report received from the Chief Executive Officer, he was not convinced with the argument advanced, that the report did not disclose any misconduct and therefore, by recording that there is misappropriation of amounts in recovery of taxes, construction of toilet blocks, installation of solar lamps in Dalit Vasti

and payment of honorarium to Gram Rojgar Sevak, the Divisional Commissioner deemed it fit to exercise the power conferred on him, in removing the Sarpanch, who was found guilty of misconduct in discharge of his duties.

Shri Nagargoje would then submit that in the wake of the detailed inquiry conducted by the Chief Executive Officer, which formed the basis of action of the Divisional Commissioner, in an appeal being preferred to the Honourable Minister, though the scope for interference being very limited, the impugned order of the Honourable Minister allowing the appeal cannot be justified and by referring to the reasons recorded in the impugned order, the submission is, it cannot be permitted to be sustained.

12. In assailing the impugned order, the submission of learned counsel is, that the hearing was conducted by the Hon'ble Minister through video conferencing and though necessary arrangement for virtual hearing was made in the office of Collector at Beed, the petitioner was not allowed to argue the matter and without affording an opportunity of hearing to him, it was reserved for orders. As per the petitioner's knowledge, even the concerned officers, who conducted the inquiry and who passed the order of disqualification, were not heard and the matter came to be decided only on the basis of documents and the say submitted by the respondent No.4/Sarpanch. The submission is, the Honourable

Minister has decided the appeal in a very insouciant manner and on this count, the impugned order deserves to be set aside.

Another point pressed into service by the learned counsel Shri Nagargoje is that as per the conduct of business rules, it is only the Cabinet Minister for Rural Development, who is empowered to hear the appeal, but the appeal is heard by the State Minister and therefore, the order is in non-est, the power being exercised by authority who did not possess the same.

13. Per contra, the learned counsel Shri Yaseen, for Respondent No.4 Sarpanch, by inviting my attention to the impugned order, would submit that the Hon'ble Minister has figured nub of the allegations and he has rightly saved the Respondent No.4 from his removal, by holding that the administrative lapse or an error of judgment on his part, does not amount to misconduct and while dealing with the democratically elected Sarpanch and when serious action of removal is contemplated against him, the charges/accusations must be held to be proved and merely because the allegation is made, a duly elected representative does not deserve a removal. According the learned counsel, the Honourable Minister has rightly appreciated the merit of allegations and by referring to the reports relied upon by the Commissioner, arrived at a contrary finding since the charge of misconduct, which was faced by him could not be established.

In support, the learned counsel would rely upon the decision of the Honourable Supreme Court in the case of *Ravi Yashwant Bhoir vs. District Collector, Raigad and others, (2012) 4 SCC 407*, wherein, the Honourable Supreme Court has held that an action, which is detrimental to the prestige of the institution may amount to misconduct, but mere error of judgment resulting in doing of negligent act does not amount to misconduct, though in exceptional circumstances, not working diligently may be a misconduct and even in a particular case, negligence or carelessness may be also misconduct.

By referring to the authoritative pronouncement of the Honourable Supreme Court and being made applicable to the facts of the present case, the submission of the learned counsel for respondent No.4 is, that since the findings rendered by the Divisional Commissioner were falling short of holding the Sarpanch guilty of misconduct, the Honourable Minister has rightly intervened and set aside the impugned order.

As regards the jurisdiction of the Honourable Minister of State, the submission advanced is that the conduct of business rules are merely directory in nature and there is no embargo imposed in the said Rules to conclusively declare that it is only the Cabinet Minister, who can exercise the power. It is also submitted that no such objection was raised by the petitioner when the appeal was heard, leading to an irresistible conclusion that he has surrendered to his jurisdiction and therefore, now

he cannot question the same.

14. In the wake of the rival claims being advanced by the contesting parties, to begin with, I must refer to the allegations levelled by the petitioner against respondent No.4/ Sarpanch in his complaint, which form the genesis of the order passed by the Divisional Commissioner as well as the Honourable Minister, as under:-

(A) The first allegation levelled is about illegal appointment of the Gram Rojgar Sevak, Shri Narayan Umakant Raut, in connivance with the officials of the Gram Panchayat and about which, a complaint was made by the contender of the post Shri Omprakash Uttareshwar Mhetre on 21.05.2018. On an inquiry being conducted by the Block Development Officer on 16.09.2019, the appointment of Shri Narayan Raut effected by respondent No.4/ Sarpanch is declared to be illegal and the appointment of Shri Omprakash Uttareshwar Mhetre as Gram Rojgar Sevak is confirmed. Illegality alleged is that despite this position, the cheque of Rs.26,000/- was given to Shri Narayan Raut and this amounts to misappropriation by the Sarpanch. In the complaint itself, it is stated that the inquiry committee was appointed by the Block Development Officer, NAREGA, Beed and the inquiry committee submitted its report on 13.12.2019, which, on account of political pressure, has only held the Block Development Officer guilty.

(B) The second accusation is that, from time to time, the villagers

have made enquiries with the Sarpanch about how much funds are received by the Gram Panchayat from December, 2017 to 2019 under the 14th Finance, but information was not supplied, nor the information about the works undertaken from the said funds, is supplied. From the year 2017 upto the date, details of disbursement of general funds are not prepared and no information is supplied by the Sarpanch and the other officials of the Gram Panchayat. Thus, it reflects misappropriation of funds received under the 14th Finance.

(C) Despite request being made for conduct of Gramsabha from the year 2017, the Sarpanch and the Gram Sevak have shown conduct of Gramsabhas only on paper and these documents are forged.

(D) Huge misappropriation is committed by the Sarpanch and the Village Development Officer in implementation of the Ramai Gharkul Awaas Yojana and the list of beneficiaries dated 31.08.2019 was consisting of 08 persons to be eligible, but with expectation of financial gain, the duo entered the names of other beneficiaries, who were not eligible and this amounts to corruption.

(E) The complaint was made to the District Social Welfare Officer, Beed on 16.12.2019 about corruption in the works of the Dalit Vasti for the years 2017-2018 and 2018-2019, but under political pressure, no inquiry is conducted.

(F) Corruption is committed in distribution of funds made

available to the Gram Panchayat under the Swachha Bharat Mission by disbursing the amount in the name of different members of the same family, by reflecting the construction of distinct toilet blocks. Factually speaking, though some persons have not yet constructed toilet blocks and which are not in existence, the cheques have been issued in their favour.

The allegations enumerated above were sought to be enquired.

15. Respondent No.4/ Sarpanch filed his detailed reply to the said complaint and denied the said accusations clause by clause and the gist of his explanation to the aforesaid accusations can be discerned to the following effect :-

(A) As regards the appointment of the Gram Rojgar Sevak on honorarium, the Sarpanch submitted that an amount of Rs.79,688/- was received by the Gram Panchayat, Nalwandi on 28.12.2018 for payment of his honorarium, but since it was not clear as to the amount received was for what period and who is entitled for how much amount, the Gram Panchayat sought guidance from the Panchayat Samiti by letters dated 12.06.2019 and 12.02.2020. But, since no guidance was received, the Gram Panchayat passed the resolution thereby, permitting disbursement of the amount of Rs.26,000/- in favour of the Gram Rojgar Sevak Shri Narayan Raut, subject to he submitting an undertaking that on the

direction to contrary issued from the superior officers, he shall repay the said amount. But the said amount has been deposited in the bank on receipt of the complaint and pending the inquiry.

The clarification is offered by respondent No.4/ Sarpanch to the effect that he assumed charge of the post of Sarpanch on 05.01.2018 and the charge of the Block Development Officer was received by Shri B.N. Misal on 09.03.2018. Before his appointment as the Sarpanch i.e. 01.01.2018, the then Gram Rojgar Sevak Shri Uttareshwar Mhetre died and the post became vacant and by inviting applications, in the meeting of the Gramsabha held on 16.01.2018, Shri Narayan Raut came to be selected for the post of the Gram Rojgar Sevak. Thereafter, on 28.12.2018, the amount of Rs.79688/- came to be deposited in the account of the Gram Panchayat.

At that time, the son of the deceased Uttareshwar Mhetre filed a complaint alleging that his father resigned from the post on 14.08.2017 and he came to be selected on the post on 15.08.2017 and therefore, the honorarium should be paid to him. It is submitted that there are no proof with the Gram Panchayat office about his appointment or that he has assumed the charge. Further, the deceased Uttareshwar Mhetre had signed the attendance register till December, 2017 reflecting that till his death on 01.01.2018, he was holding the post.

In the wake of the aforesaid dispute, since there was no

clarity from the superior about whom the amount shall be disbursed, by passing resolution No.7 on 20.05.2019, where it was resolved that an undertaking be taken from Shri Narayan Raut to repay the amount of Rs.26,000/-, the salary due to the deceased Uttareshwar Mhetre was disbursed in favour of his wife through the cheque of Rs.39,500/- whereas, the remaining amount of Rs.14,188/- was kept pending in the account of the Gram Panchayat.

On the complaint being made by the complainant, the inquiry report was submitted on 20.09.2019 on the inquiry conducted by the Block Development Officer, Panchayat Samiti, as well as the report was submitted by the Technical Assistant Shri Vishal Tandale and Shri G.P. Rasal, on 13.12.2019 and in terms of the said report, the show cause notice has been issued to the Block Development Officer on 16.04.2020 and further report is directed to be submitted. The report dated 29.12.2020 submitted by the Block Development Officer, Panchayat Samiti, Beed, is self explanatory, wherein, it was specifically stated that Shri Omprakash Uttareshwar Mhetre was never selected on the post of the Gram Rojgar Sevgak and his selection process in the Gramsabha on 15.08.2017 is not valid. Since his selection and appointment is not valid and there is no proof about he rendering services as Gram Rojgar Sevak, no honorarium is due and payable to him. Honorarium is payable in terms of the resolution of the Gram Panchayat and the amount of Rs.47,970/- is

due to the deceased Uttareshwar Mhetre, out of which, the amount of Rs.39,500/- is disbursed to his legal heirs whereas, the amount of Rs.8470/- is yet to be disbursed. Selection of Shri Narayan Raut as the Gram Rojgar Sevak is valid and as per the rules.

The copy of the said report is placed on record along with the affidavit of respondent No.4.

(B) As far as the allegation about receipt Nos.5 to 13 and in respect of the amount of Rs.9000/-, of which entry has not been taken in the cash book and the amount is not deposited in the Bank and therefore, it is liable to be recovered, the response of respondent No.4 is to the effect that the said receipts are not authorized receipts of the Gram Panchayat, but the Recovery Clerk Shri Mukesh Jadhav had distributed the receipts on his own and for which, the Sarpanch cannot be held responsible and in any case, this amount cannot be deposited in the account of the Gram Panchayat since the said receipt book is unauthorized.

For the said purpose, the show cause notice has been issued to the Recovery Clerk Shri Mukesh Jadhav on 09.11.2020 and he has been directed to deposit the amount in the bank. Copies of the receipt book and the communication issued to Shri Mukesh Jadhav are placed on record.

(C) About the corruption in development work in Dalit Vasti, the explanation offered is that if the measurement book No.00207 is carefully perused, it is seen that the amount of Rs.1 lac is sanctioned to the Gram

Panchayat for the purpose of installation of solar street lamps in the Dalit Vasti and they came to be installed near the house of Shri Gokul Sonwane and Shri Jadhav, who belong to the Scheduled Category (Navbuddha). According to the author of the measurement book, the work has been undertaken in Dalit Vasti itself. The names of Bhima Mhetre and Vijaymala Mhetre have been recorded in the measurement book, but no funds for installation of the said lamps were paid by the Gram Panchayat and the names have been included inadvertently by the Sectional Engineer and his statement to that effect in his report dated 27.12.2020, has been referred to.

(D) About recovery of taxes for the year 2018-2019 and 2019-2020 and the expenditure of the said years, the allegation is that the taxes are not deposited in the bank, but the amount has been directly expended. The explanation has been offered to the following effect:-

(a) For the year 2018-2019, the recovery of tax is Rs.1,02,761/-, out of which, Rs.14,800/- is deposited in the bank. Actual expenditure is Rs.87,911/-.

(b) For the year 2019-2020, the tax recovery is Rs.33260/-, out of which, Rs.12,000/- is deposited in the bank and actual expenditure is Rs.21,260/-.

(c) The amount recovered towards development funds and rent of tower was directly deposited in the bank and expended.

(d) The allegation about the amount of Rs.87911/- and Rs.21260/- being not deposited in the bank and expended directly, is met by stating that the Gramnidhi account of the Gram Panchayat is at Beed, which is approximately 20 kilometers away and on account of corona lock-down, it was not possible to deposit the amount in the Bank and to meet necessary expenditure, the decision was taken in the monthly meeting of the Gramsabha and the Gram Panchayat and the approval was obtained for expending the amount.

(E) Dealing with the construction of toilet blocks and effecting double payment, the allegation is denied by stating that in the year 2013-2014 and 2014-2015, the Gram Panchayat without verifying details had resubmitted the proposal of three beneficiaries, namely, Shrihari Raut, Rukmini Raut and Chandrakala Raut, which resulted into irregularity of Rs.36,000/-.

The charge is defended by stating that in the year 2013-2014 and 2014-2015, one Mrs.Archana Ashok Jadhav was working as the Sarpanch and since respondent No.4 was not the Sarpanch, he is not responsible for the said lapse, since he assumed the charge on 05.01.2018. On assuming the charge, the list of beneficiaries was received and these three names were included. It is further stated that there is no evidence with the Gram Panchayat to demonstrate that these three beneficiaries had availed the grants for construction of toilet blocks at an earlier point

of time. They had not constructed the toilet blocks and after constructing it, now they have started its use and accordingly, preferred the applications to the Panchayat Samiti. Pursuant thereto, the Coordinator under the Swachha Bharat Mission actually visited the spot and confirmed that these beneficiaries had not availed the benefits at an earlier point of time and thereafter, the cheques were issued to the said beneficiaries.

By submitting the aforesaid explanation, the charges levelled against respondent No.4/ Sarpanch were denied and necessary documents were also filed supporting the said explanation.

16. The Additional Divisional Commissioner adjudicated the complaint filed by the petitioner and in great detail, deliberated into its contents as well as the response filed by the Sarpanch against whom the allegations were levelled. The Commissioner considered the explanation offered in writing by the Sarpanch and recorded his findings after hearing the contesting parties. He relied upon the report forwarded by the Chief Executive Officer, Beed and as regards the amount deposited in the financial years 2018-2019 and 2019-2020, arrived at the conclusion that without depositing the amount of Rs.1121487/- and Rs.931239/- for two years, the amount was expended directly. The explanation that the tax amount recovered for the said years has been expended and some amount has been deposited in the bank, did not find favour with the Commissioner and the conclusion was drawn to the effect that without

depositing the amount of tax recovered in the bank, it has been directly expended and this amounts to illegality.

17. As far as the allegation levelled in respect of availing benefits by three beneficiaries for the construction of toilet blocks in the years 2013-2014 and 2014-2015 wherein, irregularity of Rs.36,000/- has been alleged, the explanation offered by the Sarpanch to the effect that he is not concerned with the said amount as he was not holding the post of Sarpanch during the said period, has been rejected by the Commissioner since in the audit report, the respondent No.4's period as Sarpanch is described as 01.04.2012 to 12.12.2012. The question that is posed, if the respondent No.4/ Sarpanch was not contacted, then, why the notarized undertaking was accepted by him in writing since the beneficiaries had given an undertaking on Rs.100 stamp paper that they are ready to pay the amount and that too after a period of 7 years and therefore, the explanation offered by the Sarpanch came to be rejected by the Commissioner.

18. As far as the point of payment of honorarium to the Gram Rojgar Sevak to the tune of Rs.26,000/-, it is contended that the amount was deposited in the Bank after the complaint was received and the inquiry was in progress, which leads to an inference that the Sarpanch has misused his post and has misappropriated the amount since he has failed to offer an explanation as to why the said amount was not deposited in

the Bank initially. Further recording that the proceedings are pending before the Chief Magistrate, Beed, the conclusion is arrived that an irregularity has been committed in the payment of honorarium to the Gram Rojgar Sevak.

19. On the point about receipt Nos.5 to 13 where the amount received to the tune of Rs.9000/-, do not find an entry in the cash book and even it is not deposited in the Bank, though the explanation offered is that the show cause notice has been issued to the Recovery Clerk Shri Mukesh Jadhav for recovering the amounts by forging receipts and the amount would be recovered from him, the impugned order fixed the responsibility upon respondent No.4/ Sarpanch by recording that what action has been taken against Shri Mukesh Jadhav is not clarified by the Sarpanch by producing proper material on record.

20. As regards the ultimate charge about the work to be undertaken in Dalit Vasti for which the fund was made available, the Commissioner has drawn an inference, that out of four street lamps, two have been installed in Dalit Vasti whereas, two have been installed in the locality belonging to Other Backward Category (OBC), when it was imperative to get the work done only in Dalit Vasti. Since respondent No.4/ Sarpanch has offered the explanation that by mistake, two street lamps have been installed near the residences of Vijaymala and Bhimai, it can be clearly discerned that the amount received for the Dalit Vasti has

been expended somewhere else.

21. Based on the aforesaid conclusions derived, the Commissioner deemed it fit to exercise the power conferred upon him under Section 39(1), on arriving at a conclusion that respondent No.4/ Sarpanch has committed misconduct while discharging his duties as Sarpanch and therefore, the complaint accused him of such misconduct, came to be accepted and respondent No.4 is declared to have been removed from the post of the Sarpanch.

22. It is against this order dated 06.07.2021, respondent No.4/ Sarpanch preferred an appeal to the Honourable Minister, who reversed the findings of the Commissioner on all five points and resultantly, set aside the order passed by the Divisional Commissioner by allowing the appeal vide the impugned order 06.10.2021.

23. When the reasoning of the Honourable Minister is carefully perused, it is apparent that on perusal of the actual complaint, the report of the Chief Executive Officer, Zilla Parishad, Beed, the impugned order passed by the Divisional Commissioner and on hearing the respective parties and on perusal of necessary documents placed before him, the Honourable Minister found substance in the explanation offered by the respondent No.4/ Sarpanch, who was removed by the Commissioner.

As regards the charge of recovery of taxes and expenditure incurred in the financial years 2018-2019 and 2019-2020, the explanation

offered by respondent No.4/ Sarpanch to the effect that the account of the Gram Panchayat is in the Bank located at a distance of 20 kilometers at Beed and on account of the lock-down imposed in the pandemic, it was not possible to deposit the said amount in the bank and therefore, expending the amount by passing appropriate resolutions in the monthly meeting of the Gramsabha and the Gram Panchayat, was found to be acceptable explanation. Moreover, the Honourable Minister recorded that it is not the allegation levelled against respondent No.4/ Sarpanch that there is any excess expenditure or the amount spent was not permissible to be spent under the said head.

24. As regards the charge about construction of toilet blocks, the Appellate Authority was convinced with the submission of respondent No.4/ Sarpanch, that during the financial years 2013-2014 and 2014-2015, one Mrs.Archana Ashok Jadhav was holding the post of the Sarpanch and respondent No.4 assumed the charge of the Sarpanch on 05.01.2018 and the explanation offered that when he accepted the charge, the baseline list was received, which included names of three persons for disbursement of grants for construction of toilet blocks and as such, no fault can be attributed to respondent No.4/ Sarpanch, came to be accepted.

As regards the allegation of the amount of Rs.26,000/- being deposited in the bank towards honorarium payable to the Gram Rojgar

Sevak, the conclusion is derived that the amount was to be disbursed to Shri Narayan Raut towards his honorarium as per the resolution passed by the Gram Panchayat and no illegality can be attributed to respondent No.4/ Sarpanch or the Gramsevak. A detailed reference is made by the Honourable Minister to the report submitted by the Police Station, Pimpalner before the Court in the proceedings No.17/2021, which clearly reflected that the Sarpanch has not committed any offence, as alleged.

About the charge that the amount of Rs.9000/- was not being recorded in the cash book or not deposited in the bank, the Appellate Authority is satisfied that the respondent No.4/ Sarpanch is not responsible for the said act and in any case, an inquiry has been initiated against the Recovery Clerk of the Gram Panchayat, from whom the amount is liable to be recovered.

In respect of the allegation about installation of lamps other than Dalit Vasti, the Honourable Minister recorded that the lamps were installed near the residences of two persons Gokul Sonwane and Jadhav, who belong to the Scheduled Caste (Navbuddha) category and this conclusion is drawn on the basis of the report given by one, who has made entry into the measurement book to the effect that two lamps have been installed in Dalit Vasti and in terms of Section 57(3) of the VP Act, the Sarpanch cannot be held responsible for the alleged act, since that Section fixes the responsibility of the village funds on the Secretary.

25. In the wake of the aforesaid findings being rendered, the Honourable Minister has recorded that for the allegations levelled in the complaint, respondent No.4/ Sarpanch himself cannot be held responsible since whatever action is taken is with the approval of the Gramsabha and the Gram Panchayat and moreover, the Sarpanch has not availed any benefit for himself and no document has been brought on record to that effect and therefore, the Sarpanch cannot be said to be person guilty. If assuming, for a moment, that there are some administrative lapses, this is not the manner in which a representative elected by the people at large can be removed, is the observation in the impugned order passed by the Honourable Minister. With this conclusion reached at, the impugned order of the Divisional Commissioner is set aside by the Honourable Minister.

26. On perusal of the two impugned orders, the first one passed by the Commissioner and the second order passed by the Honourable Minister setting aside the order of the Commissioner and holding that respondent No.4/ Sarpanch cannot be held responsible for any financial irregularity since even if the charges are accepted as it is, it would only amount to an irregularity and no charge has led to any misappropriation, as what was alleged in the complaint, and on perusal of the proceedings conducted in the wake of Section 39 of the VP Act, the reasoning of the Appellate Authority is convincing and borne from the record.

27. It is apparent that Section 39 confers power on the

Commissioner to remove from office any Sarpanch on the grounds specified therein, being if he is found guilty of misconduct in discharge of his duties or of any disgraceful conduct or of neglect or incapacity to perform his duties or is persistently remiss in the discharge thereof. As far as respondent No.4/ Sarpanch in this case, who faced an action under Section 39, he is charged of misconduct in discharge of his duties.

The word “misconduct” has to be understood as a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behaviour, wilful in character, improper or wrong behaviour. The word “misconduct” in normal parlance is understood as unacceptable and improper behaviour or mismanagement, especially culpable neglect of duties.

The Webster’s dictionary defines the word “misconduct” as deliberate violation of law or standard especially by the government official, wilful in character.

In terms of the Honourable Apex Court as held in ***Ravi Yashwant Bhoir (supra)***, the word “misconduct” was focused upon in depth in the backdrop of the misconduct being alleged against an elected office bearer in the democratic process and who is sought to be removed in the wake of the statutory provision contemplating his removal on the ground of the misconduct. Their Lordships have elaborated the term in the following words :-

- “11. *Misconduct has been defined in Black's Law Dictionary, Sixth Edition as:*

"A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, wilful in character, improper or wrong behavior, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement offense, but not negligence or carelessness."

Misconduct in office has been defined as: "Any unlawful behavior by a public officer in relation to the duties of his office, wilful in character. 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."

12. *P. Ramanatha Aiyar's Law Lexicon, Reprint Edition 1987 at page 821 defines 'misconduct' thus:*

"The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskilfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected."

Thus it could be seen 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, 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.....”

28. An error of judgment would not amount to misconduct since it implies a wrongful intention and not a mere error of judgment. Mere error of judgment resulting in negligent act does not amount to misconduct, but the exceptions have been carved out in **Ravi Yashwant Bhoir (supra)** and mere error of judgment resulting in doing of negligent act does not amount to misconduct.

29. In **M.M. Malhotra vs. Union of India, 2005 (8) SCC 351**, the following observations of the Honourable Supreme Court are relevant :-

“17.It has, therefore, to be noted that the word 'misconduct' is not capable of precise definition. But at the same time though incapable of precise definition, the word 'misconduct' on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject-matter and the context wherein the terms occurs, having regard to the scope of the statute and the public purpose it seeks to serve.”

30. From the above discussion, it is clear that the expression “misconduct” has to be construed and understood in reference to the subject matter and context, wherein, the term occurs, taking into consideration the scope and object of the statute, which is being construed. The misconduct is to be measured in terms of the nature of the misconduct and should be viewed with consequence of misconduct as to whether, it is detrimental to public interest.

The VP Act, which is a Law enacted in furtherance of the 73rd amendment to the Constitution, for incorporating the Village Panchayats at the grass root level for every village or group of villages and investing them with such powers and authority, which would enable them to function as units of local self government and for development activities in the rural areas. The Village Panchayat comprises of the Sarpanch, who is elected in accordance with the procedure set out in the VP Act and who could be removed in the like manner as per the procedure prescribed in the VP Act, one of the mode of removal is bringing out the motion of no confidence by the prescribed number of members and on following the procedure prescribed in the VP Act.

The executive powers for the purposes of carrying out the provisions of the VP Act vest in the Sarpanch, who is directly responsible for due fulfillment of the duties imposed upon the Village Panchayat by or under the VP Act. Such a Sarpanch, who is elected under the provisions of

the VP Act, may also be removed by the mode prescribed under Section 39 of the VP Act, by the Commissioner, if he has been found guilty of misconduct in discharge of his duties or any disgraceful conduct or neglect or incapacity to perform his duties or is persistently remiss in the discharge his duties.

31. Since, on election of the Sarpanch to head the Village Panchayat, which is expected to work as a body of local self government, with complete autonomy, he is removable only on the grounds provided by the statute and since he heads the Village Panchayat, he can only be removed by following the procedure prescribed by law and therefore, when the VP Act contemplates his removal on the ground of misconduct in discharge of his duties, such misconduct will have to be specifically proved.

32. On perusal of the allegations levelled by the petitioner against respondent No.4/ Sarpanch, which are found to have been substantially proved by the Commissioner, the Honourable Minister has rendered the finding that the grounds alleged and material relied upon fell short of establishing “misconduct” on the part of the Sarpanch in discharge of his official duties.

On minute reading of the accusations faced by respondent No.4/ Sarpanch and material brought on record, at the most, it can be said to be amounting to some illegality or irregularity, but since the terms

“misconduct” contemplates something more than this, the Commissioner exercising the power under Section 39(1) should have satisfied himself about the act alleged to be misconduct in reference to the subject matter and context in which, the term is used in Section 39, since he can only be removed on a proved misconduct.

33. Looking into the charges/ accusations justifying the removal of the Sarpanch, as far as the appointment of the Gram Rojgar Sevak Shri Narayan Raut is concerned, the report by the Block Development Officer, Panchayat Samiti, Beed, submitted to the Chief Executive officer on 29.12.2020, expressly deals with the issue in question and declares that Shri Narayan Raut, has been validly selected to hold the said post on 26.10.2018 and on the contrary, the person who lodged the complaint Shri Omprakash Uttareshwar Mhetre is found to be not validly appointed. If this is so, the grant which has been received for honorarium to be paid to the Gram Rojgar Sevak, was disbursed in favour of the legal heirs of Uttareshwar, who discharged his duties on the said post and the report records a finding that the amount of Rs.47970/- was due to him, out of which, Rs.39500/- has been disbursed. The report, on perusal of the record of the Village Panchayat, records that on 26.10.2018, Shri Narayan Raut has been duly selected in the Gram Panchayat meeting and as per the resolution passed by the Gram Panchayat, subject to further direction being issued, the amount of Rs.40188/- is lying in the account of the

Gram Panchayat. Therefore, there is no scope for alleging any misappropriation or irregularity. In the wake of this, the Sarpanch is clearly absolved and the Honourable Minister has even referred to the report submitted by the Police Station, Pimpalner in the proceedings filed before the Magistrate by Shri Shri Omprakash Uttareshwar Mhetre by way of private complaint under Section 156(3) of the Code of Criminal Procedure and the report has been forwarded to the learned Magistrate to that effect.

On a mere assumption that the summary is not yet accepted, can be no ground to attribute the charge of misconduct to respondent No.4/ Sarpanch and leaving aside the criminal proceedings, the report dated 29.12.2020 by the Block Development Officer, Panchayat Samiti, Beed, does not establish the said charge against respondent No.4/ Sarpanch.

34. As far as the charge about the amount being disbursed on multiple occasions to the members of the same family under the Swachha Bharat Mission, the Honourable Minister found the explanation submitted by the Sarpanch to be satisfactory as the stand of the Sarpanch is that there is no material to show that three beneficiaries were already disbursed the said amount and therefore, there is duplication in the names of beneficiaries.

35. About the allegation of misappropriation of the funds

available for carrying out the work in the Dalit Vasti, there is report submitted by the Assistant Block Development Officer, Panchayat Samiti, Kaij, to the Chief Executive Officer on 01.03.2021 and perusal of the said report and measurement book, it is manifest that the amount, which was sanctioned to the tune of Rs.1 lac for Bhimnagar, was intended for installation of two LED lamps and two lamps have been installed accordingly in Dalit Vasti, one near the house of Mr.Gokul Sonwane and another near the house of Mr.Jadhav. As far as Bhima Mhetre is concerned, the inspection report reveals that there was no such lamp installed, but wrongly an entry is taken in the measurement book and therefore, the Engineer, who recorded the entry is proceeded against departmentally. As far as Vijaymala Mhetre is concerned, though the lamp is installed near her house, it was not from the funds of Rs.1 lac received by the Gram Panchayat for the said purpose and therefore, this lamp is not installed from the said funds.

The concerned Engineer in his letter addressed to the Chief Executive Officer on 27.12.2020 clarified that as per the estimate submitted for installation of LED lamps, the amount of Rs.1 lac was received, which was meant for installation of lamps near the houses of Gokul Sonwane and Jadhav. He has clarified that inadvertently, the names of Vijaymala and Bhima have been included in the measurement book and he has also clarified that no amount has been disbursed for the lamps

installed at these places and the work of installation of two lamps has been completed in the Dalit Vasti.

This, in any case, does not involve the Sarpanch at all and no misconduct can be attributed to him.

36. Similarly, for the other charges about the amount being received by issuing receipts without taking necessary entries in the cash book or accounts book, respondent No.4/ Sarpanch is not responsible since at the end of the report, it is revealed that it is the Recovery Officer Shri Mukesh Jadhav, who has forged the receipt books and he is proceeded against departmentally.

As far as irregularity of not depositing the amount in the Bank is concerned, respondent No.4/ Sarpanch cannot be held liable since it is the duty of the Village Development Officer to submit the weekly statement of accounts to the Village Panchayat and to the Block Development Officer, Panchayat Samiti, giving in particular the details of receipts and the payment of balance funds and accordingly, the action has been initiated against Shri B.N. Misal, Block Development Officer, Panchayat Samiti, Beed, by conducting an inquiry and penalty of withholding one increment has been imposed on him on 14.10.2021.

There is also no substance in the allegation about expending the amount of taxes recovered without depositing it in the bank, since on account of the lock-down the amount was not deposited in the bank, but it

was spent only after being approved by the Gram Panchayat in its monthly meetings for the valid and legal purposes.

37. When confronted with certain statements, which are placed on record, to the effect that the Sarpanch has accepted the amount of Rs.1000/- with a promise that the receipt will be issued at a later point of time, Shri Nagargoje, the learned counsel for the petitioner, fairly concedes that these are cyclostyle statements and the context in which these statements are made by the persons, who were already allotted the toilet blocks in the year 2012-2013, the respondent No.4/ Sarpanch was not holding the post of the Sarpanch and therefore, these statements do not lead to the allegation of misconduct, but as it can be seen that they are all recorded on the same date and verbatim make the same allegations without any basis.

38. In the wake of the aforesaid, the findings rendered against respondent No.4/ Sarpanch by the Divisional Commissioner are not based on valid material being brought on record and the Honourable Minister, while reversing the findings of the Commissioner, has rightly based his conclusions on the principle that in democratic process, when a duly elected office bearer is to be removed, the procedure must be strictly adhered to and the charges levelled resulting in removal, must be fully established.

39. Though it is true that in democratic institution, the

confidence is the foundation on which the super structure of democracy is built and the democratic accountability rests on the confidence of the electorate and if the representative body does not have confidence in the head, whom they have elected, the democracy demands that he ought to be removed in a democratic manner. In ***Bhanumati vs. State of U.P., 2010 (12) SCC 1 : AIR 2010 SC 3796***, the Hon'ble Apex Court has observed that any head of the democratic institution must be prepared to face the test of confidence. Democracy demands accountability and transparency in the activity of the chairperson/ the head of the democratic institution. However, on the other hand, it is equally true that the exercise of any power having effect of destroying the democratic institution besides being outrageous, is also dangerous to the democratic set up of this country and the elected representative cannot be permitted to be removed unceremoniously, without following the procedure prescribed by law by adopting casual approach and by resorting to manipulations to achieve ulterior purpose.

40. In the ***State of Punjab vs. Baldev Singh, 1999 (6) SCC 172***, the Hon'ble Apex Court considered the issue of removal of an elected office bearer and held that where the statutory provision has very serious repercussions, it implicitly makes it imperative and obligatory on the part of the authority to have strict adherence to the statutory provisions. All safeguards and protections provided under the statute have to be kept in

mind while exercising such power and it was held as under :-

“28. It must be borne in mind that severe the punishment, greater has to be the care taken to see that all the safeguards provided in a statute are scrupulously followed.”

In the wake of the elected representatives who were to face an action of removal from their posts, the following observations of the Honourable Supreme Court in ***Ravi Bhoir (supra)***, are relevant :-

- “34. In a democratic institution, like ours, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law or he is removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office bearer sought to be removed.
35. 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, but 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, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (Vide: *Jyoti Basu v. Debi Ghosal*, , AIR 1982 SC 983; *Mohan Lal Tripathi v. District Magistrate, Rae Bareilly*, AIR 1993 SC 2042; and *Ram Beti v. District Panchayat Rajadhikari*, AIR 1998 SC 1222).
36. In view of the above, the law on the issue stands crystallized to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the

inquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office bearer but his constituency/electoral college is also deprived of representation by the person of his choice.

37. *A duly elected person is entitled to hold office for the term for which he has been elected and he can be removed only on a proved misconduct or any other procedure established under law like 'No Confidence Motion' etc. The elected official is accountable to its electorate as he has been elected by a large number of voters and it would have serious repercussions when he is removed from the office and further declared disqualified to contest the election for a further stipulated period."*

41. In the wake of the above, the impugned order of the Additional Divisional Commissioner when tested against the above yardstick, falls short of the requirement contemplated under Section 39(1) of the VP Act, authorizing removal of the Sarpanch on being found guilty of misconduct in discharge of his duties and the said loophole being clearly plucked by the Honourable Minister by his reasoned order, in the wake of the authoritative pronouncement of the Honourable Supreme Court in the case ***Ravi Bhoir (supra)***, the impugned order of the Honourable Minister does not warrant for any interference.

42. The learned counsel for the petitioner has also argued that the order impugned is passed by the State Minister of Rural Development Department and he is not the Minister in-charge competent to hear the

appeals in terms of the Maharashtra Government Rules of Business dated 26.06.1975 and therefore, the impugned order is without jurisdiction.

The said argument is mentioned, just to be rejected. Perusal of Section 39(3) of the VP provides that any person aggrieved by an order of the Commissioner under sub-section (1) or (2) of Section 39, 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.

The provision makes it imperative for the State Government to decide the appeal within one month. The conduct of business of the Government in its various departments is governed by the Maharashtra Government Rules of Business, which came into force on 01st July, 1975. The said Rules, being formulated by the Governor of Maharashtra in exercise of the powers conferred by clauses (2) and (3) of Article 166 of the Constitution of India, provide that the business of the Government shall be transacted in the departments specified in the First Schedule and shall be classified and distributed between those departments as laid down therein. Rule 5 of the said Rules empowers the Governor, on the advice of the Chief Minister, to allot among the Ministers the business of the Government by assigning one or more departments or part of departments to the charge of a Minister. Rule 10 prescribes that the Minister in-charge of the department shall be primarily responsible for the

disposal of the business appertaining to that department or a part of the department. Rule 14 contemplates that the Secretary of the department concerned is, in each case, responsible for the careful observance of these rules and when he considers that there has been any material departure from them, he shall personally bring the matter to the notice of the Minister in-charge and the Chief Secretary.

43. The Instructions regarding the business of the Government issued under Rule 15 of the Maharashtra Government Rules of Business, defines the term “Minister-in-charge” as the Minister appointed by the Governor to be in charge of the department of the Government to which a case belongs. The instructions permit the Minister in-charge to dispose of all the cases arising in the department, which he controls. Neither the Rules nor the Instructions provide that when the power to entertain the appeal as contemplated under Section 39(3) of the VP Act provides for an appeal to be decided by the State Government, it shall necessarily be decided by the Cabinet Minister.

When the learned counsel for the petitioner was asked, whether, there is any material to show that the Cabinet Minister has been assigned the power to decide the appeals pertaining to removal of the Sarpanch, he is unable to place on record any document to that effect.

In any case, the appeal has been decided by the State Minister and the petitioner has not raised any objection about his jurisdiction and

therefore, it is not now open for him to canvass the same. In any case, the instructions issued regarding the business of the Government, are merely meant for more convenient transaction of business of the Government of Maharashtra and will not affect the jurisdiction of the State Minister to decide the appeal.

The aforesaid objection is, therefore, without any merit and substance and does not warrant any consideration.

44. In the wake of the above, the impugned order passed by the Hon'ble Minister deserves to be upheld and is, accordingly, upheld. The Writ Petition assailing the said order must necessarily fail and is dismissed. Rule is discharged.

kps

(SMT. BHARATI H. DANGRE, J.)