

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12205 OF 2021

NANDABAI PARASRAM KANHERE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. S.G. Kawade
AGP for Respondents-State: Mr. S.N. Kendre
Advocate for Respondents No. 4 and 5: Mr. S.W. Munde
Advocate for Respondent No. 6: Mr. P.B. Paithankar
Advocate for Respondents No. 7 and 8: Mr. R.V. Gore

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 11th JULY, 2022

ORDER :

1. This petition filed under Article 226 and 227 of Constitution of India is directed against the order dated 12.01.2021 passed by the Divisional Commissioner, Aurangabad, thereby disqualifying the petitioner from the post of Sarpanch under section 39(1) of the Maharashtra Gram Panchayat Act, 1958 (for short 'said Act'). This order is confirmed in appeal by the Hon'ble Minister.

2. The petitioner was elected as sarpanch of village Sharnapur, District- Aurangabad, in the year 2017. Respondents No. 7 and 8 complained to Chief Executive Officer/respondent No. 4 alleging that:

- a) The petitioner had illegally spent Rs. 2,98,000/- on RO plant, which was not included in GPDC.
- b) The petitioner had spent Rs. 53,571/- more than e-tender amount on paver blocks work.
- c) The petitioner has not conducted gramsabha on 29.12.2018.
- d) The petitioner has illegally mutated 173 plots in Gut No. 5 and 6, on namuna 8 of gram panchayat, though no 'NA' order of those lands is issued by the District Collector.
- e) The petitioner has misappropriated amount of Rs. 35,733/- from the gram panchayat funds, in collusion with gramsevak.

3. Pursuant to the complaint, preliminary inquiry was conducted by respondent No. 5 and he submitted his report to respondent No. 4 that:

- 1) When RO plant was not sanctioned in GPDP, the petitioner has spent Rs. 2,98,000/- on RO plant which is contrary to the rules.
- 2) In the year 2018-19 e-tender of amount of Rs. 4,46,393/- was sanctioned for fixing paver blocks, however, on the said work, excess amount of Rs. 53,571/- is spent by the petitioner and the petitioner and gramsevak both are equally responsible for the same.
- 3) Gramsabha dated 31.08.2018 was held without coram.

Meeting dated 29.12.2018 was postponed, however, postponed meeting was not conducted later.

4) Entries of 173 plots situated in gut no. 5 and 6 of village Shekhapur were illegally taken in new namuna No. 8, though the Collector has not given NA permission and the lay out was not sanctioned by Town Planning Department.

5) Amount of Rs. Rs. 35,783/- is misappropriated by the petitioner and gramsevak. There are no vouchers of the said amount. The amounts recovered on behalf of gram panchayat were not deposited in the bank account of gram panchayat and those amounts were spent illegally.

4. After receipt of above report, respondent No. 4 conducted inquiry by giving opportunity of hearing to the petitioner and all concerned. The respondent No. 4 found that the misconduct and irregularities alleged by respondents No. 7 and 8 in the complaint, are committed by the petitioner and gramsevak, the report of respondent No. 5 also confirms the same. Respondent No. 4, therefore, recommended disqualification of the petitioner to respondent No. 3.

5. On receipt of recommendation, respondent No. 3 gave opportunity of hearing to all the parties and held the petitioner guilty of irregularities and misappropriation and disqualified the petitioner under section 39(1) of the said Act, for her remainder term. The appeal filed by the petitioner is rejected by the Hon'ble Minister. Hence, the present petition.

6. Heard the learned advocate for the petitioner, learned advocate for respondents and learned Assistant Government Pleader for State. Perused the record.

7. The learned advocate for the petitioner assailed the impugned disqualification order contending that no opportunity was given to the petitioner to defend her case. He submits that documents placed on record by the petitioner are not properly considered by the Divisional Commissioner and by the Hon'ble Minister. The petitioner has given valid explanation to all the charges levelled against her, however, same is not considered in proper perspective by the authorities. He therefore, submits that the impugned disqualification of the petitioner is liable to be quashed and set aside.

8. Per contra, the learned advocate for respondents No. 7 and 8 submits that sufficient opportunity was given to the petitioner and misconduct on the part of the petitioner is proved on record. Both the authorities have recorded concurrent finding of fact which may not be interfered in extra ordinary writ jurisdiction.

9. The learned Assistant Government Pleader also supports the impugned order of disqualification and order passed by the Hon'ble Minister, contending that both the orders are passed on the basis of record available and they may not be interfered with.

10. Misconduct and irregularities committed by the petitioner are brought on record in the inquiry conducted by respondent No. 5. Thereafter, respondent No. 4 has conducted inquiry wherein opportunity of hearing was given to the petitioner. Respondent No. 4 has also held that the petitioner has committed illegalities, misconduct and misappropriation. Respondent No. 4 has held that the petitioner is guilty on all five counts and therefore has rightly recommended disqualification of the petitioner.

11. It is a matter of record that respondent No. 4 has conducted inquiry on 13.03.2020, 23.03.2020, 03.08.2020 and 07.09.2020. It is clear from the recommendation forwarded by respondent No. 4 that on the last date of hearing i.e. on 07.09.2020, petitioner sought time for engaging advocate and to go through the documents. Said request was rejected on the ground that the petitioner had thorough knowledge of the matter and all the documents filed against the petitioner are from the record of village panchayat. After rejection of request, petitioner requested to consider her written say. The written say of the petitioner is considered by respondent No. 4. In this view of the matter, it not possible to accept contention of the petitioner that opportunity of hearing was not given to her.

12. All the allegations leveled against the petitioner are proved by documents on record. Respondent No. 4, therefore, was justified in recommending disqualification of the petitioner.

13. The Divisional Commissioner after hearing the petitioner and concerned parties has come to a conclusion that all the five allegations levelled against the petitioner are proved and the petitioner is guilty of misconduct. The Divisional

Commissioner therefore disqualified the petitioner for remainder term.

14. The findings recorded by the Divisional Commissioner are based on preliminary inquiry report of respondent No. 5 and the recommendation forwarded by respondent No. 4, after holding inquiry. From the documents placed on record, Divisional Commissioner was right in holding that all the allegations leveled against the petitioner are proved and the petitioner is guilty of misconduct. The petitioner has failed to prove her case. In that view of the matter, there is no illegality or perversity in the order passed by the Divisional Commissioner. The Hon'ble Minister has rightly dismissed the appeal filed by the petitioner.

15. Since, misconduct alleged against the petitioner is proved on the basis of documents on record and concurrent finding of fact are recorded by the Divisional Commissioner and Hon'ble Minister, no case is made out by the petitioner to warrant interference in extra ordinary writ jurisdiction. The writ petition being devoid of merit, is dismissed. No costs.

[NITIN B. SURYAWANSHI, J.]