

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

WRIT PETITION NO. 13349 OF 2021

Ankush s/o Pandurang Shinde
Age : 46 years, Occu. Agri. & Sarpanch,
Village Panchayat, Warapgaon,
R/o. Warapgaon, Tq. Ambajogai,
Dist. Beed.

...Petitioner

Versus

1. The State of Maharashtra,
Through the Minister,
Rural Development Department,
Mantralaya, Mumbai.
2. The Additional Commissioner,
Aurangabad.
3. The Chief Executive Officer,
Zilla Parishad, Beed.
4. Tanba s/o Baburao Landge,
Age : Major, Occu. Agri.,
R/o. Warapgaon, Tq. Ambajogai,
Dist. Beed.
5. Mrs. Rekha Vishnu Kale,
Age : Major, Occu. Member, Gram Panchayat,
R/o. Warapgaon, Tq. Ambajogai, Dist. Beed.
6. Mamuni Janak Kasbe,
Age : Major, Occu. Member, Gram Panchayat,
R/o. Warapgaon, Tq. Ambajogai,
Dist. Beed.
7. Suresh Venkati Jadhav,
Age : Major, Occu. Member, Gram Panchayat,
R/o. Warapgaon, Tq. Ambajogai,
Dist. Beed.

8. Sumitra Sharad Chavan,
Age : Major, Occu. Household,
R/o. Warapgaon, Tq. Ambajogai,
Dist. Beed.

...Respondents

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Mr. Mayur Salunke h/f Mr. V. D. Salunke, Advocate for the petitioner
Mr. A. A. Jagatkar, AGP for respondent / State
Mr. P. D. Suryawanshi, Advocate for respondent no. 3
Mr. A. A. Khande, Advocate for respondent no. 4, 5, 6 & 8
Mr. R. T. Deshmukh, Advocate for respondent no. 7

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CORAM : BHARATI H. DANGRE, J.

DATE : FEBRUARY 07TH, 2022

ORAL JUDGMENT : -

1. The petitioner, who is a Sarpanch of Village Panchayat, Warapgaon, Tq. Ambajogai, Dist. Beed, is aggrieved by an order passed by the Divisional Commissioner, Aurangabad, thereby removing him from the said post under Section 39(1) of the Maharashtra Village Panchayats Act (herein after referred to as “said Act”) and further by the order passed by the Hon’ble Minister (Rural Development), upholding the said order in an Appeal instituted by him under Section 39(3) of the said Act.

2. Heard learned Counsel Shri. Mayur V. Salunke for the petitioner, learned AGP for respondent/State, learned Counsel Shri. P. D. Suryawanshi for respondent no. 3, learned Advocate

Shri.A. A. Khande for respondent no. 4, 5, 6 & 8 and learned Counsel
Shri. R. T. Deshmukh for respondent no. 7.

. Rule. Rule is made returnable forthwith and the petition is
taken up for final hearing by consent of parties.

3. A cursory look at the facts involved would reveal that the
petitioner was directly elected as a Sarpanch, since the majority of
the villagers voted in his favour, when the election to the post of
Sarpanch of village Warapgaon was held in October-2017. On his
election, he assumed the charge and he continued to discharge his
functions as Sarpanch of the village and the contention of the
petitioner is that he is made a fall guy in the political tussle of the
village panchayat, which comprised of nine members.

. The background in which the allegations are faced by the
petitioner is in respect of a decision taken by the Gram Panchayat in
its meeting to reconstruct two rooms of the Zilla Parishad Primary
School in the village, since it was in dilapidated condition. The
Village Panchayat obtained necessary permission from the Zilla
Parishad to demolish the rooms and reconstruct them. Accordingly,
the rooms came to be demolished and the rubble of the demolished
rooms were kept in the custody of the Headmaster of the School, who
acknowledged the receipt of the possession of certain material

including tin sheets, iron angles, broken tiles etc.

4. To utter dismay of the petitioner, this became a ground for a complaint being lodged against him seeking his removal at the hands of one Tanba Baburao Landge and four others. This complaint dated 12.06.2019 came to be filed by invoking Section 39 of the Maharashtra Village Panchayat Act and was addressed to the Divisional Commissioner, Aurangabad Division, Aurangabad seeking removal of the petitioner from the post of Sarpanch. Gist of the allegations in the complaint is to the effect that the Gram Panchayat, Warapgaon had passed a resolution for reconstruction of two rooms of the Zilla Parishad Primary School in the village and when the existing structure was demolished with the permission of the Zilla Parishad, the Sarpanch i.e. the petitioner, without intimating to the Gram Panchayat disposed of its ruins in form of stones in the wall, tin sheds, tiles and iron angles to one Mahadev Kundlik Shinde. This act was alleged as amounting to misappropriation and, therefore, a prayer was made to disqualify the petitioner. The copy of the complaint is placed on record as an accompaniment to the petition.

. The complaint thus alleged misappropriation of the debris and it is stated that whatever material became available on demolition of the rooms, it ought to have been made over to the

Gram Panchayat and after carrying an auction of the said material, the amount ought to have been encashed in the account of the Panchayat but by not doing so and by adopting his own discretion by misusing the position as Sarpanch, the petitioner was accused of disposing of the same at his own level.

5. Careful reading of the petition, along with its annexures reveal that in furtherance of the allegation so made, the Divisional Commissioner, Aurangabad, authorized the Chief Executive Officer to conduct an inquiry. As a sequel thereof, a fact finding report was called from the Panchayat Samittee, Ambajogai and this report dated 27.01.2020, refer to the permission to demolish two rooms for the specifications mentioned in the report and though the permission was granted for demolition of two rooms, the report reveal that one room *ad measuring* 11.40 meter in length and 5.85 meter in width was demolished but, one room was still standing. The report further reveal that the repairs to the said room was carried out in the year 2017-18 from the fund received under the 14th Finance and one room came to be repaired from the local fund of Zilla Parishad, Beed and the factual inspection reveal that 11 tin sheets on the building were replaced and as far as Anganwadi is concerned, all its tin roofs were replaced by new one. In the Gram Panchayat Stock Register, there is

a reference of 25 tin sheets (School and Anganwadi) and the letter dated 20.12.2017 referred to the said material being made over to the Headmaster of the School and the School Management Committee and an acknowledgment to that effect was also obtained. However, there is no reference to the angle and channel in the register.

. The report further clarify that on the date, the Headmaster of the Zilla Parishad Primary School, Warapgaon granted inspection of the material lying which included various tin roofs, channels and the pieces of broken slabs. In paragraph no. 5 of the said report, it is mentioned that the room which was demolished was constructed in stone with the walls *ad measuring* approximately 02.00 ft and on its demolition, approximately 10 to 12 brass of stone became be available but when it was not to be found in the school premises, the Sarpanch informed that since there was shortage of space in the school, it was moved and stacked in a nearby locality in the village. The complainant however insisted that this debris was sold by the Sarpanch to his relative. The report further reveal that the room had three windows and one door and the Sarpanch informed that it was in a very bad shape and it had decayed, therefore it could not be extracted in entirety. The iron bars fitted to the window were not found, is the finding in the report of the inquiry.

6. The Chief Executive Officer issued a show-cause notice to the Petitioner/Sarpanch on 05.03.2020 and he responded to the said notice by denying the allegations levelled against him. He specifically pleaded that only one room came to be demolished after following the proper procedure but he has not disposed off the debris but the valuable material was handed over to the Headmaster and he also submitted the photographs to that effect and the acknowledgment of receipt of the said material by the Headmaster of the School.

7. The Chief Executive Officer after conducting an inquiry forwarded his report to the Divisional Commissioner, Aurangabad Division, Aurangabad by reporting that on 02.06.2020, he had conducted an enquiry and on hearing being conducted, which was attended by the Sarpanch / Gram Sevak / Extension Officer and the complainant.

. In the said Report, the Chief Executive Officer highlighted, that while disposing off the material in the form of three wooden windows and one door as well as the iron bars of the window, the Sarpanch has not followed the procedure prescribed and when show-cause notice was issued to him, he had not responded to. A reference

has also been made to an offence being registered with the Rural Police Station, Ambajogai alleging that the Sarpanch was arrested in the said offence. However, pertinent to note that the Chief Executive Officer has recorded that during the hearing the Sarpanch was present.

8. The aforesaid report of the Chief Executive Officer dated 13.07.2020 was forwarded to the Divisional Commissioner, Aurangabad, who exhaustively relied on the report of the Chief Executive Officer dated 13.07.2020 and in pursuance of the said report, he conducted hearing of the proceedings on 05.08.2020, 02.09.2020, 29.03.2020, 30.09.2020, 14.10.2020, 04.11.2020, 11.11.2020 and 09.12.2020 and thereafter, the proceedings were closed for orders on 06.01.2021.

. The Divisional Commissioner referred to the accusations faced by the Sarpanch and also considered his say refuting the allegations. The Sarpanch relied upon the report of the Block Development Officer and pleaded that since he has offered the proof of material being handed over to the Headmaster and the stones were relocated to a place near the river, as it would have created obstacle to the movement of children in the school, he prayed for dismissal of the complaint.

. The Commissioner referred to the detailed report of the Chief Executive Officer dated 13.07.2020 and in the backdrop of the aforesaid material, after giving adequate opportunity to the complainant and the Sarpanch to advance submissions in the backdrop of the reports, the learned Commissioner arrived at a conclusion that the petitioner/Sarpanch is guilty of not abiding with Section 56 of the Maharashtra Gram Panchayat Act, 1958 which provide for disposal of the property of the Panchayat.

. A finding is recorded to the effect that while disposing of the waste material of the demolished structure, the decision had to be taken in the meeting of the School Committee and thereafter the Gram Panchayat ought to have obtained permission from the Chief Executive Officer, Zilla Parishad, but there is a failure to adhere to the said procedure. The conclusion derived is while disposing of the material belonging to the Government, there is an irregularity and though a response was sought from the Sarpanch, he has failed to do so and even during the course of the arguments, he had not afforded any explanation about how he has disposed of the government property.

. This conduct of the petitioner is construed as “misconduct” and the complaint lodged against him came to be granted by the Additional Commissioner, Aurangabad on 18.01.2021 and the

petitioner stood removed from the post of Sarpanch of Warapgaon for the remaining period.

9. Being aggrieved, the petitioner had approached the appellate authority i.e. the Minister of Rural Development Department, who concurred with the finding of the Divisional Commissioner, Aurangabad. By referring to the report of the Chief Executive Officer made available on record, it is reiterated that on physical inspection of the waste material lying with the Headmaster of Zilla Parishad Primary School, which includes some tin sheets of different description which include 61 in number, four channels and 10 angles with length of 10.00 ft. Further, it also make reference to the broken pieces of slab, 62 in number. However, the allegation that the debris of the demolished structure which was constructed in stones was not found on the spot but it was deposited in nearby field. The Hon'ble Minister recorded that the complainant has alleged that the stones have been sold out by the Sarpanch to his relative and the three wooden windows and one door as well as the bars of the window are not available. Based on this, it is reiterated that there is non-adherence to the procedure prescribed under Section 56 of the Maharashtra Village Panchayat Act, 1958 and he upheld the finding, to the effect that the petitioner has indulged in misconduct and,

therefore, his removal in exercise of powers under Section 39(1) of the said Act is just and proper.

10. Pertinent to note that, on the petitioner being removed from the said post, the election to the post of Sarpanch was conducted and it is informed that for village Warapgaon, the new Sarpanch has been elected.

11. I have perused the proceedings in the background of the statutory scheme contained in Maharashtra Village Panchayats Act, 1959 and in particular, Section 39 of the Act, which provide for removal of Sarpanch from the office in the contingencies stipulated in the said Section. Section 39(1) of the Maharashtra Village Panchayats Act read as under :

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

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, though 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.]

. In the light of the said provision, the Commissioner may remove from office any member or 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.

. The removal from the post of Sarpanch/member contemplate a procedure prescribed by the proviso appended to the said Section and in respect of clause (i) where the removal is on the ground of misconduct in discharge of duties, unless the CEO, 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 CEO submits his report to the Commissioner

within a period of one month. Before taking a final action, the second proviso appended to the said Section contemplate that the Commissioner shall, after giving the person concerned a reasonable opportunity of being heard, take a decision on the report submitted by the CEO within a period of one month from the date of receipt thereof.

. Upon removal from the office of Sarpanch/Up-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.

. A person aggrieved by an order of Commissioner may, within a period of 15 days from the receipt of the order, appeal to the State Government and the State Government shall decide the appeal within a period of one months from the date of it's receipt.

12. This provision of removal of the Sarpanch as contained in Section 39 of the Maharashtra Village Panchayat Act thus contemplate an inquiry to be conducted by the CEO and forwarding of a report to the Commissioner, who shall after affording an opportunity of hearing to the party concerned and on perusal of the report from the CEO, pass an appropriate order.

. The term “inquiry” convey a systematic investigation or

examination into the facts or principles. In the wake of the accusations levelled against the present petitioner who was working as a Sarpanch on being elected by a democratic process to hold the said post, the Divisional Commissioner, Aurangabad, directed the CEO to conduct an inquiry into the allegations and forward a report before initiating any action of removal.

. The complaint of the complainant seeking removal of the petitioner was simple; the allegation is that two rooms in the Zilla Parishad Primary School had become dangerous and dilapidated, therefore the Gram Panchayat resolved to demolish the same. It is alleged that the Sarpanch without informing the Gram Panchayat had pulled down the two rooms and its debris which included the stones, floor, tin sheds and angles was disposed of without following the due procedure and that is how he misappropriated the said amount. The petitioner was specifically accused of selling the material to one Shri.Mahadev Kundlik Shinde, instead of auctioning the said rubble and depositing the proceeds therefrom in the account of Gram Panchayat.

13. In the wake of the said allegations, the CEO called for a fact finding report and on the basis of the report submitted by the BDO, Panchayat Samittee, Ambajogai, it is clear that 11 tin roofs were

replaced in the room of the School, whereas in the room used for Anganwadi, the entire roof was replaced. In the stock register of the Gram Sabha, there is a note of 25 tin roof sheets, which were handed over to the Headmaster of the school and the School Management, and an acknowledgment receipt to that effect was also produced. The report further indicate that there is no mention of angle and channels in the register but the possession receipt record that it was secured.

. On the date of inquiry when the material in possession of the Headmaster is perused, it revealed 14 pieces of 08.00 ft roofs of tin, 46 tin roofs with 11.00 ft and 61 tin roofs which were divided into two parts, channel 04 and angle 10 with 10.00 ft. length and 62 slab and broken pieces of flooring are found. What is absent is three windows, one door and some bars of the window.

14. However pertinent to note that, during entire enquiry, no material is brought on record, establishing that the windows were fitted with bars/rods and the petitioner as a Sarpanch, has offered an explanation that the 03 windows and 01 door were in extremely bad shape, could not be pulled in fact. In absence of any material brought on record by the complainant to prove that the door and windows were made of teak and they were intact and having a high

value and longer life or that it was in good condition, the Addl. Commissioner has arrived at a conclusion that the Sarpanch is responsible for not adhering to the procedure in disposal of the material on demolition of one of the rooms. The report has indicated that only one room was demolished, which was made of stones. The heap of stones was placed outside the school building and though the allegation made by the complainant is to the effect that the entire material has been sold to the named person in the complaint, none of the authorities have bothered to make inquiry on that aspect. The complainant has also failed to produce any evidence on record to establish his allegation that the material was sold to Shri. Mahadev Kundlik Shinde.

. In absence of any material to demonstrate that there were iron bars affixed to the windows of the room which came to be demolished, the finding of both the authorities to the effect that the windows were found without the bars cannot be sustained. Apart from this, the accusation that there were three windows and one door to the room which though not disputed, the Sarpanch has specifically pleaded that since the building was dilapidated even the door and windows were in a very bad shape. In absence of any material being brought to the contrary, the two authorities have erred in recording a finding against him that he is guilty of

misconduct. The findings rendered by the two authorities resulting into the removal from the post of Sarpanch, therefore, cannot be justified.

15. The term 'misconduct' applied in Section 39 of the Act must be construed as some unacceptable or improper behaviour and must necessarily involve mismanagement, especially culpable neglect of duties.

. In the background of a democratic set up where the elected office bearers are sought to be removed from office on the ground of misconduct, the Hon'ble Apex Court in the case of **Ravi Yashwant Bhoir Vs. District Collector, Raigad and others** [2012(4) SCC 407], has elaborated the scope of the term 'misconduct' which implies a wrongful intention and not a mere error of judgment. In paragraph no. 12, Their Lordships of the Apex Court has held as under :

“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....".

(See also: *State of Punjab & Ors. v. Ram Singh Ex. Constable*, AIR 1992 SC 2188).

13. Mere error of judgment resulting in doing of negligent act does not amount to misconduct. However, in exceptional circumstances, not working diligently may be a misconduct. An action which is detrimental to the prestige of the institution may also amount to misconduct. Acting beyond authority may be a misconduct. When the office bearer is expected to act with absolute integrity and honesty in handling the work, any misappropriation, even temporary, of the funds etc. constitutes a serious misconduct, inviting severe punishment. (Vide: *Disciplinary Authority-cum-Regional Manager & Ors. v. Nikunja Bihari Patnaik*, (1996) 9 SCC 69; *Government of Tamil Nadu v. K.N. Ramamurthy*, AIR 1997 SC 3571; *Inspector Prem Chand v. Govt. of NCT of Delhi & Ors.*, (2007) 4 SCC 566; and *State Bank of India & Ors. v. S.N. Goyal*, AIR 2008 SC 2594).

16. It is settled legal proposition that 'misconduct' must necessarily be measured in terms of the nature of the misconduct and the Court must examine whether the misconduct has been detrimental to the public interest. The expression 'misconduct' has to be understood as a transgression of some established and definite rule of action, a forbidden act, unlawful behaviour, willful in character. It has to be construed and understood in reference to the subject matter and context wherein the term occurs, were taking into consideration the scope and object of the statute which is being construed.

17. In the light of the aforesaid, if the term 'misconduct' which is set out as a ground for removal of a democratically elected Sarpanch in the manner set out in Section 39 is to be construed, it must depict 'misconduct' in discharge of his duties where an intention is apparent on the part of the wrongdoer. Mere error of judgment resulting in doing of a negligent act or any act which is unintentionally committed which happen to be in ignorance of a statutory requirement, without any corresponding loss being caused to the panchayat on account of such misconduct, in my considered opinion, would fall short of the requirement of 'misconduct' to be established under Section 39 of the Act. The complainant made a

vague complaint and the two authorities continued with such imprecise complaint. No details are brought on record by the complainant nor any attempt is made to establish through any fact finding report as to what is the estimation of the loss caused to the Panchayat on account of the alleged misconduct of the present petitioner. Whether any loss is caused or not is also not established, since what is alleged is only non-adherence of the procedure prescribed for disposal of the debris. The complaint lack foundation since it was based upon an allegation that two rooms came to be demolished but the report of the BDO, Panchayat Samittee, Ambajogai, which describe the factual scenario, reveal that though there was a permission granted by the Zilla Parishad to demolish two rooms, only one room was demolished and the second is standing as it is. The fact finding report reflect that the material of the demolished room was recorded in the Gram Panchayat Stock Register and some of the material was handed over to the Headmaster, who has acknowledged its receipt. On a trivial ground that some bars from the window and one door and two windows of the room are not accounted, for cannot be said to be amounting to misconduct to justify the removal of the elected office bearer through a democratic process. The power of removal vested in the authorities, which contemplate it's serious exercise, cannot be trivialized by such

allegations being made against a Sarpanch directly elected amongst the people at large in the village and merely because one disgruntled element in the whole village except suspicion over his behaviour and conduct and intend to bring his conduct within the purview of 'misconduct' seeking his removal from the said post, should not result in his removal. The casual manner in which his removal has been attempted is a serious matter which would amount to undermining the democratic functioning of the grass root institutions like the Village Panchayat which is definitely dangerous to the democratic set up of the country.

18. In the wake of the aforesaid reasons, the impugned orders cannot be sustained and deserve to be quashed and set aside. It is informed that the impugned orders have already been given effect to and though this Court on 20.12.2021 had granted interim relief to the extent of *status quo* to be maintained as far as handing over the charge is concerned, the situation that prevail as on date is, according to the petitioner, he continue to function as Sarpanch whereas, according to his rivals, he is already removed from his office.

. In any case, in the wake of the aforesaid judgment, the petitioner need to be restored as Sarpanch of Gram Panchayat, Warapgaon, Tq. Ambajogai, Dist. Beed, and shall continue to

discharge his duties as Sarpanch till the end of his term unless his term is intercepted by any event contemplated under the Village Panchayat Act which would result into his disqualification/removal, by following due process of law.

. Rule is made absolute in the aforesaid terms. Easy on costs.

[BHARATI H. DANGRE]
JUDGE