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

WRIT PETITION NO. 13348 OF 2021

Vilas s/o Bhagwat Jagtap,
Age : 43 years, Occu. Agri & Sarpanch of
Village Panchayat Mudegaon,
R/o. Mudegaon, 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. Pravin s/o Shesherao Jagtap,
Age : Major, Occu. Agri.,
R/o. Mudegaon, Tq. Ambajogai,
Dist. Beed.

5. Mahesh s/o Govindrao Jagtap,
Occu. Sarpanch, R/o. Mudegaon,
Tq. Ambejogai, 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
Mr. R. T. Deshmukh, Advocate for respondent no. 5

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CORAM : BHARATI H. DANGRE, J.
DATE : FEBRUARY 07TH, 2022

ORAL JUDGMENT : -

1. The petitioner, an elected Sarpanch of Village Panchayat Mudegaon, Tq. Ambajogai, Dist. Beed, is aggrieved by two orders; the first order dated 04.11.2020 passed by the Additional Divisional Commissioner, Aurangabad, removing him from the post of Sarpanch for his remaining term and the second order being the order dated 01.11.2021, passed by the State Minister (Rural Development) in an Appeal under Section 39(3) of the Maharashtra Village Panchayats Act, when the order of removal is upheld.

2. Heard learned Counsel Shri. Mayur V. Salunke holding for Shri. V. D. Salunke for the petitioner, the learned AGP for respondent/State, learned Advocate Shri. P. D. Suryawanshi for respondent no. 3, learned Advocate Shri. A. A. Khande for respondent no. 4 and learned Counsel Shri. R. T. Deshmukh for respondent no.5.

. Considering the subject matter of the writ petition, it is heard finally by consent of the parties. Rule. Rule made returnable forthwith.

3. The petitioner came to be elected as Sarpanch of Village Panchayat, Mudegaon since he secured the maximum number of votes on being directly voted by the residents of the Village Panchayat, Mudegaon. The election came to be conducted in the month of October-2017 and on his election, the petitioner started functioning as Sarpanch of the said Village Panchayat, which comprised of nine members.

. The contention of the petitioner is, on account of the political rivalry in the village, one Pravin Shesherao Jagtap, the respondent no. 4, instituted a complaint with the Divisional Commissioner, Aurangabad, alleging irregularity in the functioning of the petitioner as Sarpanch and seeking his removal from the said post on the allegations of corruption and misappropriation in discharge of his duties.

. The respondent no.4 in his complaint dated 30.01.2020 alleged that in the term of Gram Panchayat for the year 2012-17, the wife of the petitioner, Smt. Pratiksha Vilas Jagtap was the Sarpanch and while he was a member, he had received a bill of Rs. 2,61,800/- in the name of Mudeshwar Stone Crusher by depicting that the work of construction of road between Mudegaon to Wangdari in Gram Panchayat under the MREGS was carried out by Mudeshwar Stone Crusher. It was alleged in the complaint that this entity, is not in existence but by fraudulently depicting that the work is carried out by the said entity, false bills were raised and the amount came to be disbursed and this act resulted in misappropriation of amount of Rs.2,61,888/-, to the benefit of the Petitioner. The complainant further alleged that a complaint dated 06.01.2018 was lodged with the Block Development Officer, Ambajogai about the alleged misappropriation and a committee comprised of the Extension Officer, Block Development Officer and the Tahsildar had conducted an inquiry, which confirmed the accusations levelled by the complainant, by recording that the petitioner has misappropriated the amount and orders came to be issued by the Chief Executive Officer, Zilla Parishad, Beed to register an offence against the petitioner and other concerned persons, responsible for misappropriation.

. The complaint therefore accused the petitioner of misusing his office of Sarpanch and for misappropriating the amount of the Gram Panchayat, apart from he being involved in various irregularities when he was discharging his duties as Sarpanch.

. A request was made to the authority to remove him from the post of Sarpanch and to recover the misappropriated amount from him, by registering an offence.

4. On the complaint being preferred to the Divisional Commissioner, Aurangabad, the Chief Executive Officer was authorized by him to submit a report by letter dated 01.02.2020 and show-cause notice came to be issued to the Petitioner on 11.03.2020 confronting him with the reports submitted by the Block Development Officer, Ambajogai on 25.02.2020. On receipt of his response vide letter dated 26.05.2020, the Chief Executive Officer forwarded his inquiry report to the Divisional Commissioner, Aurangabad on 22.06.2020.

. The Chief Executive Officer in his detailed report made reference to the report received from the Block Development Officer, Ambajogai, wherein it was recorded that the petitioner/non-applicant was elected as Sarpanch in October-2017 and the first meeting of the Gram Panchayat was conducted on 09.12.2017, in which he assumed the charge of the post of Sarpanch. During the term of Gram Panchayat from 2012-17, he was working as a Member and his wife was holding the post of Sarpanch. During the said period, the work of construction of road from Mudegaon to Wangdari was undertaken through MREGS and the administrative approval for the said work was accorded on 05.03.2015, which involved sum of Rs. 6,82,611/- for unskilled work and Rs. 5,12,162/- for skilled work. The technical approval was received for Rs.13,44,615/-. The measurement book estimated the work of Rs.8,15,004/- and the amount towards skilled work of Rs. 2,61,888/- was issued by cheque in the name of Shri. Vilas Jagtap and the amount was received in the name of Mudeshwar Stone Crusher but the said Mudeshwar Stone Crusher did not have it's presence in the village or in the area as per the report of the Tahsildar of Ambajogai. It was thus concluded that the amount was disbursed in favour of the Mudeshwar Stone Crusher, which was not in existence at all. The report of the Chief Executive Officer further recite, that the receipt which acknowledged the amount towards skilled work being paid to Mudeshwar Stone Crusher, had the name of Shri. Vilas Jagtap, on it as it's proprietor and at the relevant time he was a member of the Gram Panchayat, Mudegaon. On this revelation, correspondence was made for registering an offence against Mudeshwar Stone Crusher. The Report of the Chief Executive Officer, further narrate that on perusal of the record of Panchayat Samittee and on obtaining the necessary information from the Block Development Officer, Panchayat Samittee, Ambajogai, it is revealed that bogus receipts were prepared in the name of Mudeshwar Stone Crusher and the amount of Panchayat was misappropriated.

5. Apart from the aforesaid clarification about the accusations levelled against the petitioner, the Chief Executive Officer also brought to the notice of the Divisional Commissioner, Aurangabad, that on inspection of the register of the Gram Panchayat, the petitioner during his tenure as Sarpanch has recovered various amounts towards tax but instead of depositing the said amount in the village fund and without calling for the rate card, had expended the amount without issuing cheques. Inspection of the Proceedings Register (किर्द) from 29.12.2017 to 30.01.2020 of the Gram Panchayat, Mudegaon reflected, that the village fund of Rs.1,72,058/- was expended without depositing it in the village fund account and, hence, the amount has been misappropriated. It was also reported that while carrying out the functioning of Gram Panchayat and specifically the financial transactions, Section 58 of the Maharashtra Village Panchayat Act was not adhered to. By referring to the estimates and the accounts of the Gram Panchayat, there is violation of Rule 5(A) and while expending the money from the village fund, no approval of the Gram Panchayat was obtained, is the observation. Further, though it was mandatory to present the weekly statement of account to the Panchayat and monthly statement of account to the Block Development Officer, the same has been

given a complete go-bye and the amount has been expended without fixing the limits of expenditure, is also highlighted.

6. The Chief Executive Officer, Zilla Parishad, Beed, scheduled hearing of the proceedings/complaint filed against the Sarpanch on 02.06.2020, which was attended by him, Gram Sevak, Extension Officer and the complainant and he forwarded the report of inquiry to the Divisional Commissioner, Aurangabad, recommending action under Section 39(1) of the said Act, against the Petitioner.

7. The Divisional Commissioner on receipt of the said Report from the Chief Executive Officer, afforded an opportunity to the petitioner to submit his say and accordingly, a detailed response was filed by him on 05.08.2020 and he refuted the allegations, point-wise.

. As far as the first allegation is concerned, the charge was described as baseless and it was submitted that it cannot form the ground for his removal from the post of Sarpanch, since the allegations levelled are in respect of his earlier term as a member, when his wife was holding the post of Sarpanch and since the amount disbursed is prior to his assuming the office of Sarpanch which precisely happened in October-2017, the complaint pertaining to the year 2012-17 is insignificant and cannot be a ground for exercise of powers under Section 39(1) of the said Act of 1959. As far as the second allegation, which though not levelled by the complainant in detail, except briefly referring to the irregularities at the hands of the Sarpanch, the report submitted by the Block Development Officer, Ambajogai dated 25.02.2020 was claimed as perverse, since it record that, for the period commencing from 29.12.2017 to 30.01.2020, an amount of Rs.1,72,058/-, instead of depositing in the village fund was expended and for this expenditure no approval was sought in the monthly meeting and no vouchers for expending the sum have been produced. As per the said report, there is violation of Section 58 of the said Act and the defence put forth by the petitioner is in terms of Section 57 of the said Act. The responsibility of maintaining the village fund and expending the same as well as depositing the same in the bank for recovery of the said fund is the responsibility of the Secretary / Gram Sevak and the Sarpanch cannot be held responsible for the same, is his defence. In the wake of the said provision, the petitioner submitted his response to the show-cause notice to the Divisional Commissioner, that as a Sarpanch, he cannot be held responsible for the misappropriation or misconduct as alleged and reliance was placed on sub-section (3) of Section 57 of the said Act.

8. The Additional Commissioner, on considering the said response, afforded an opportunity of hearing to the Petitioner/Sarpanch and his legal representatives but since he failed to remain present for the hearing, the proceedings were required to be adjourned on 08.07.2020, 22.07.2020, 02.09.2020, 23.09.2020, 14.10.2020. In the absence of the Sarpanch, the Commissioner was compelled to reserve the order on the Complaint on 04.11.2020.

. Perusal of the impugned order, however, would reveal that the Commissioner has given due weightage to the stand of the Sarpanch as contained in his reply tendered on 05.08.2020 and the Authority also considered the report of the Chief Executive Officer, and decided the complaint on merits.

. On consideration of the two-fold allegations levelled against him, the first, in respect of the payment of Rs.2,61,887/- through a cheque being issued in favour of Mudeshwar Stone Crusher on 03.06.2017, by relying upon the report submitted by the BDO, Panchayat Samittee, Ambajogai and the report of the Chief Executive Officer, a finding is rendered by the Commissioner, to the effect that correspondence is being made with the CEO to register an offence against Mudeshwar Stone Crusher and a direction is issued by the CEO to the BDO, Panchayat Samittee, Ambajogai on 14.12.2019 for fixing of the responsibility for issuing bogus receipts by indulging in correspondence, ultimately resulting in misappropriation of the amount.

. As far as the second allegation faced by the petitioner, on perusal of the proceeding book (Kird) of the Gram Panchayat, which reflected various amounts being recovered towards taxes but expending the same without depositing it in the village fund and expending the same without calling for the rate card and without issuing cheques, the Commissioner record a finding that on inspection of the Proceeding Book (Namuna 5), an amount of Rs.1,72,058/- has been expended directly without depositing it in the village fund. This has been held to be violative of Section 176 of the said Act and Rule 5 of the Maharashtra Village Panchayats Lekha Sanhita Rules, 2011.

9. In the light of the aforesaid finding being recorded, the Sarpanch though was afforded adequate opportunity to present his case, failed to remain present for hearing, an order was passed removing him from the post of Sarpanch in exercise of powers under Section 39(1) of the said Act.

. The impugned order passed by Respondent No. 2 record that being a Sarpanch, the head of the village, the Petitioner ought to have supervised the works of the Gram Panchayat but instead by his utter failure to do so, he has misappropriated the village fund to the tune of Rs. 1,72,058/- and on the receipts there is interpolation about the date, where the year 2016 has been changed to 2017. Without calling for the rate card, money has been expended on the work of the development and since no material has been brought on record to disprove the said accusation, the application filed by the complainant came to be granted on 04.11.2020.

10. In the appeal filed before the Hon'ble Minister, the Minister confirmed the finding of the Additional Divisional Commissioner and held that the procedure adopted while removing the petitioner from the post of Sarpanch in exercise of power under Section 39(1) of the said Act is just and proper and do not warrant any interference.

11. The aforesaid prelude, would clarify that the removal of the petitioner as a Sarpanch is posed on two counts, the first, being receipt of amount by cheque in the name of Mudeshwar Stone Crusher by producing bogus receipts and the receipts issued by Mudeshwar Stone Crusher has his name on it and at the relevant time, he was a member of the Gram Panchayat.

. In my considered opinion, the said allegation for the period of 2012-2017 would not justify his disqualification for his present stint as Sarpanch, which commenced from October-2017.

12. Section 39 of the Maharashtra Village Panchayat Act which provide removal of a Sarpanch or Up-sarpanch or Member from his office contemplate the contingencies stipulated in sub-section (i) of Section 39(1) to have occurred during his tenure as Member/Sarpanch/Up-sarpanch.

. The provision for removal from office as contained in Section 39 of the said Act, reads thus :

> **39. Removal from office.-**[(1) The Commissioner may,--
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> (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 ………..
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> 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:
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> 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.]

13. The above provision, when read with the proviso appended thereto, prescribe the procedure to be followed before removing such person from office, make it abundantly clear that, removal from the office is contemplated when a person is guilty of misconduct in the discharge of his duties or of any disgraceful conduct or of neglect or incapacity to perform his duties or is persistently remiss in in discharge thereof, during his term of the office.

. The allegation levelled against the present petitioner in the complaint being pertaining to the period from 2012-17, when the petitioner was not holding the office of Sarpanch but he was a member of Gram Panchayat and during his present term commencing from October-2017, his removal is sought for from the post of Sarpanch and, therefore, his conduct in his previous term though alleged to be amounting to misconduct in the capacity as a member cannot justify invocation of power under sub-section (1) of Section 39 for his removal as Sarpanch, for his present term commencing from October-2017 and coming to an end in October-2022. The Additional Commissioner and the Hon'ble Minister have failed to note this crucial ingredient of sub-section (1) of Section 39 of the said Act and in it's absence, the impugned orders cannot be sustained.

14. While the second point which has been highlighted in the report of the Chief Executive Officer is focused upon, which pertain to expenditure of the amount recovered by way of tax but the same being expended without depositing it in the village fund and this is an amount of Rs.1,72,058/- which is alleged to have been misappropriated, the concurrent finding hold him guilty.

. In defence, the petitioner placed reliance upon the Section 57 as contained in Chapter IV of the said Act and the duties of the Secretary of the Panchayat as contained in Chapter V of the said Act.

. Chapter IV contemplate constitution of a village fund in terms of Section 57 of the Act and the proceeds of any tax or fee shall be paid into and form part of the village fund, apart from the proceeds of tax on professions, trades, callings and employments assigned to the *Panchayat*. Every sum contributed to the village fund by the State Government or Zilla Parishad or Panchayat Samittee is to be paid into, form a part of the village fund.

. Sub-section (3) of the Section 57 of the said Act prescribes that the Secretary and Sarpanch shall be jointly responsible for the safe custody of the village fund and the moneys received on behalf of the *Panchayat*, from time to time, and they shall jointly operate them for the purposes set out in the Act. The sub-section (4) of Section 57 of the said Act cast a duty upon the Secretary to submit a weekly statement of accounts to the *Panchayat* and a monthly statement of accounts to the Block Development Officer, giving in particular the details of the receipts into and payments from the balance in the funds.

15. Section 58(1) of the said Act is also of immense relevance, which relate to application of village fund and it read as under :

> **"58. Application of Village fund.-**[(1)] All property vested in the panchayat under this Act and all funds received by it in accordance with the provisions of this Act and all sums accruing to it under the provisions of any law for the time being in force shall be applied subject to the provisions and for the purposes of this Act and all such funds and sums shall be kept in such custody as may be prescribed."

16. Though the said Act contemplate appointment of one or more Secretaries for a Panchayat, who shall also function as Secretary to the Gram Sabha of the respective panchayat and certain duties are cast upon him, which include the duty to prepare the report of expenditure incurred by the Panchayat on the development activities to be placed before the Gram Sabha and if there is a failure to prepare the said report and display the information as required, he

is liable for disciplinary action, this does not exempt the Sarpanch, who is the head of the Village Panchayat to supervise the functioning of the Village Panchayat. The Panchayat constituted for the village is presided over by the Sarpanch and the Sarpanch along with the Secretary is jointly responsible for safe custody of village fund and they are empowered to jointly operate the said village fund for the assigned purposes, which would include the issue of receipts of all sums of moneys on behalf of the Panchayat and crediting them in the relevant fund and performing such other duties and exercise such other powers in regard to the fund as may be prescribed. Merely because it is the duty of the Secretary to submit a weekly statement of accounts to the Panchayat and, giving particulars of the details of the receipts into and the payments from the balance of the fund, the petitioner as a Sarpanch of the Village Panchayat is not absolved from his responsibility to supervise the working of the Village Panchayat and expending the village fund by following the appropriate procedure as prescribed in the Act and Rules. The accusation faced by the petitioner is serious one, which impute that from 29.12.2017 to 30.01.2020, when he was holding the charge of Sarpanch, Gram Panchayat, Mudegaon, a total amount of Rs.1,72,058/- was not deposited in the account of the village fund but was expended directly. There is no compliance of Section 58 of the said Act, which cast a duty to apply the fund for carrying out the purposes of the Act and the fund to be kept in safe custody. Since there is a clear cut violation of the said provision and as a head of the Village Panchayat, the Sarpanch has failed to account for the said sum and has not bothered to offer any explanation about a huge amount being expended for a span of around three years without entering the amount into the village fund, he is clearly guilty of 'misconduct' in discharge of his duties. He has spent the said amount without obtaining permission from the Gram Panchayat or seeking it's prior approval in the meetings of the Gram Panchayat and even the accounts have not been produced before the Gram Sabha. If the Secretary has failed to submit the weekly statement of accounts, it was the duty of the Sarpanch to initiate appropriate action but the fact that he kept mum for a period of three years established charge of misconduct against him, since it was his duty to ensure that the village fund is properly maintained and utilised and every penny received in form of tax, find an entry in the village fund and only with the permission of the Gram Panchayat / Gram Sabha, the money could have been spent for the purpose assigned in the Act.

. The petitioner unfortunately except stating that it was not his responsibility but the responsibility of the Gram Sevak / Secretary do not offer any defence. The report of the Panchayat Samittee, Ambajogai dated 20.02.2020 with all the details of the transactions reveal that the amount of Rs.1,72,058/- has been directly expended without obtaining the rate card and without vouchers. The details of the said transactions highlighted in the said report from 29.12.2017 to 30.01.2020, clearly lead to amounting to misappropriation of the amount and if as a Sarpanch, the petitioner has chosen to ignore it, he is surely guilty of the misconduct in discharge of his duties.

17. The aforesaid finding recorded by the Divisional Commissioner and which is upheld by the Hon'ble Minister is based on the fact finding report of the Panchayat Samitee and no fault can lie with the authorities who have arrived at a conclusion that as a Sarpanch, the petitioner has failed to discharge his duties and on the other hand he is guilty of an unacceptable or improper behaviour, amounting to misconduct, which deserve his removal from the post of Sarpanch, by following procedure set out in Section 39 of the Maharashtra Village Panchayat Act. The authorities have followed the prescribed procedure and initiated an action thereafter which justify the removal of the petitioner.

. It is to be noted that after the petitioner is removed from the post of Sarpanch, the process to fill up the said post was initiated and the respondent no. 5 came to be elected as Sarpanch of Village

Panchayat, Mudegaon in the Special Meeting dated 02.08.2021 and since then he is holding the post of Sarpanch. This fact is mentioned, just to be noted.

. Since I am convinced that there is no merit in the contention raised by the petitioner, the writ petition is dismissed. Rule is discharged. No order as to costs.

[BHARATI H. DANGRE]
JUDGE