

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1246 OF 2021

Sau. Dwarkabai W/o. Prabhakar
Sangle Aged 46 yes, Sarpanch Gram
Panchayat Jevulka, At Post Dusarbid,
Tah. Sindkhedraja, Dist. Buldhana

}

.. Petitioner

Versus

- 1) The State of Maharashtra, through its
Secretary, Department of Rural
Development, Mantralaya,
Mumbai – 032
- 2) The Commissioner, Amravati
Division, Amravati
- 3) Namdeo Masaji Budhwat
Aged Major, Up-Sarpanch Gram
Panchayat Javulka, Post Dusarbid,
Tahsil Sindkhedraja, Dist.Buldhana
- 4) The Secretary, Gram Panchayat,
Javluka, Dusarbid, Tah.Sindkhedraja,
Dist. Buldana
- 5) Chief Executive Officer, Zilla
Parishad, Buldana

}

.. Respondents

Mr. P. B. Patil, Advocate for petitioner.

Mr. D. P. Thakare, Addl.G.P. for respondent Nos.1 & 2.

Mr. S. S. Dhengale, Advocate for respondent No.3.

CORAM : MANISH PITALE, J.

RESERVED ON : 16/03/2022

PRONOUNCED ON : 06/04/2022

JUDGMENT

Heard finally with the consent of the learned counsel
for the rival parties.

(2) By this writ petition, the petitioner has challenged orders passed by respondent Nos. 1 and 2, under the provisions of the Maharashtra Village Panchayat Act, 1959, whereby she stood removed from the position of Sarpanch and Member of Gram Panchayat, Javluka, Tahsil Sindkhedraja, District Buldhana.

(3) The petitioner was elected as Sarpanch of the said Gram Panchayat in November, 2017. In January, 2019 respondent No.3, also a Member and Upsarpanch of the said Gram Panchayat, filed a complaint against the petitioner. It was alleged that the petitioner as Sarpanch had illegally spent amounts of the Gram Panchayat, without seeking requisite permission and that there were discrepancies in the records of the Gram Panchayat. It was also alleged that the petitioner had withdrawn amount of Rs.17,000/- in the name of her husband from the funds made available to the Gram Panchayat, thereby attracting Section 39 of the aforesaid Act, which pertains to removal of a Sarpanch or Member of the Gram Panchayat who has indulged in misconduct in discharge of duty or has indulged in any disgraceful conduct or is found to be persistently remiss in the discharge of duty. As contemplated under Section 39 of the said Act,

the respondent No.2 Commissioner called for a report from the respondent No.5 Chief Executive Officer in respect of the allegations made against the petitioner. On 11/04/2019, the Chief Executive Officer submitted a report to the Commissioner making adverse observations against the petitioner.

(4) Upon receipt of the aforesaid report, the respondent No.2 Commissioner issued notice to the petitioner, in response to which she filed detailed reply on 25/06/2019 and refuted the allegations levelled against her. The petitioner claimed that the complaint was politically motivated and that there was no substance in the findings given by the Chief Executive Officer in the report. In fact, it was claimed that the Chief Executive Officer had failed to inquire into the matter himself and that the report was actually prepared by an Extension Officer.

(5) After hearing the parties, the respondent No.2 Commissioner passed order dated 03/09/2019, holding that the allegations levelled against the petitioner were proved and that she had attracted removal from office under Section 39(1) of the said Act. Accordingly, the respondent No.2 Commissioner passed the order

removing the petitioner as Sarpanch and Member of the Gram Panchayat.

(6) Aggrieved by the said order, the petitioner filed appeal before the respondent No.1 State, under Section 39(3) of the said Act, along with an application for grant of interim stay. Since the Minister of the concerned department was unable to take the appeal and the application for interim relief for consideration urgently, the petitioner was constrained to file Writ Petition No.6747 of 2019, before this Court, wherein notice was issued and interim relief was granted in favour of the petitioner. Thereafter, on 05/02/2020, the writ petition was disposed of with a direction that the interim order granted by this Court would continue to operate for a period of three weeks and that the petitioner would be at liberty to pursue the appeal and the stay application before the appellate authority i.e. the State Government.

(7) By the impugned order dated 22/02/2021, the Minister of the concerned department dismissed the appeal and thereby confirmed the order passed by the respondent No.2 Commissioner.

(8) Aggrieved by the same, the petitioner filed the present writ petition on 08/03/2021. While issuing notice, this Court granted interim stay in favour of the petitioner, as a consequence of which she has continued to function as Sarpanch of the said Gram Panchayat. Upon the respondents entering appearance, this petition was taken up for final disposal.

(9) Mr. P. B. Patil, learned counsel appearing for the petitioner submitted that in the present case drastic action of removal of the petitioner as Sarpanch and Member of Gram Panchayat was unsustainable, for the reason that mandatory requirements of Section 39(1) of the said Act were not satisfied. It was submitted that the report of the respondent No.5, Chief Executive Officer, could not have been relied upon by the respondent No.2 Commissioner while passing the impugned order dated 03/09/2019. It was submitted that a perusal of the report dated 11/04/2019, submitted by the respondent No.5 Chief Executive Officer would show that it entirely relied upon an enquiry actually conducted by the Extension Officer. Since the enquiry was not conducted by respondent No.5-Chief Executive Officer, the report was vitiated and it could not have been considered by the

respondent No.2 Commissioner while exercising power under Section 39(1) of the said Act. It was further submitted that even otherwise, the allegations levelled against the petitioner were not proved by the material brought on record. It was submitted that the amounts spent by the Gram Panchayat for development works were all accounted for and that there was not even an allegation that the funds for development works were either misused or diverted by the petitioner.

(10) It is submitted that there is no substance in the allegation that the petitioner had failed to take approval from the Gram Sabha with regard to the expenses for development work funds made available as per the 14th Finance Commission, because the respondent No.3 i.e. complainant himself had proposed the resolution in the meeting of the Gram Panchayat, whereby decisions were taken for utilization of such funds for development work. It was further submitted that even if the amount of Rs.17000/- was withdrawn in the name of the husband of the petitioner, there was nothing on record to show that the said amount was misused by her and her husband or that it was not spent for the purpose for which it was withdrawn.

(11) The learned counsel for the petitioner emphasized

that material was placed on record to show that utensils etc. were purchased from the said amount of Rs.17000/- and such material was in fact produced during the course of the enquiry itself. On this basis, it was submitted that the allegations levelled against the petitioner were baseless, which the authorities failed to appreciate while holding that the petitioner was liable to be removed as Sarpanch and Member of Gram Panchayat.

(12) The learned counsel for the petitioner submitted that the petitioner could not be found guilty for abuse of powers and that since she was holding an elected office in a democratic institution, she could not have been removed from the office in such a casual manner. The learned counsel placed reliance on judgment of this Court in the case of *Sou. Alka w/o Manoj Kakde vs. The State of Maharashtra and others decided on 21/10/2013 bearing Writ Petition No.1199 of 2013* and judgment of the Hon'ble Supreme Court in the case of *Tarlochan Dev Sharma vs. State of Punjab and others (2001) 6 SCC 260*.

(13) On the other hand, Mr. S. S. Dhengale, learned counsel appearing for the contesting respondent No.3 submitted that

in the present case, the report submitted by the Chief Executive Officer recorded in detail the financial bungling done by the petitioner. It was submitted that withdrawal of amount from the funds of the Gram Panchayat in the name of the husband of the petitioner clearly indicated that she was correctly removed from office by exercising power under Section 39(1) of the aforesaid Act, as she was guilty of misconduct and disgraceful conduct.

(14) It was further submitted that the Chief Executive Officer in the report may have referred to certain materials gathered by the Extension Officer. Though the enquiry was conducted with the assistance of the Extension Officer, it could not be said that the process of enquiry was delegated to the Extension Officer. It was further submitted that the material on record clearly proved the misconduct on the part of the petitioner and therefore, the impugned orders did not deserve interference. The learned counsel placed reliance on judgment of this Court in the case of *Sou. Priya Alkesh Kalbande and others vs. State of Maharashtra, Writ Petition No.1244 of 2018, decided on 08/01/2019*.

(15) Having heard the learned counsel for the rival

parties, it would be necessary to refer to the relevant provision pertaining to removal of a Sarpanch or a Member or Up-Sarpanch under the provisions of the aforesaid Act. Section 39 of the Act pertains to removal from office. A perusal of the same shows that the petitioner as Sarpanch and Member of the Gram Panchayat could be removed from office for indulging in misconduct in discharge of duties or for disgraceful conduct or showing incapacity to perform her duty or being persistently remiss in discharge thereof. Since the person is sought to be removed from an elected office, the aforesaid provision lays down a procedural safeguard in the form of a mandate that such person shall not be removed from office, unless a report is called from the Chief Executive Officer in respect of the allegations levelled against such a person holding an elected office.

(16) In the present case, there is no dispute about the fact that the respondent No.2 Commissioner did call for a report from the respondent No.5 i.e. the Chief Executive Officer in the context of the allegations levelled against the petitioner. A report dated 11/04/2019 was submitted by the Chief Executive Officer wherein reference was made to the allegations as also the material gathered

during the course of enquiry and conclusions were specifically recorded in the context of the two main allegations levelled against the petitioner.

(17) The report concluded that insofar as allegations pertaining to failure to prepare and maintain accounts regarding the amounts spent by the Gram Panchayat for development activities was concerned, it was found that technical permissions for the works, estimates and valuation and other such details were not available on record and it was found that the petitioner as the Sarpanch along with the Secretary of the Gram Panchayat were responsible for amount of at least Rs.1,24,600/-. It was also recorded that approval of the Gram Sabha was not obtained for such works carried out at the behest of the Gram Panchayat. On the other allegation, it was found that a cheque for an amount of Rs.17000/- was issued in favour of the husband of the petitioner and this was in the teeth of Government Circular dated 17/07/2007, that close relatives of elected Members shall not interfere with the working of the office of the Gram Panchayat.

(18) The principal attack on the aforesaid report launched on behalf of the petitioner was that the enquiry was actually

conducted by the Extension Officer and not the Chief Executive Officer, thereby violating the mandatory requirement under proviso to Section 39(1) of the said Act. In order to examine the said contention raised on behalf of the petitioner, this Court considered the report dated 11/04/2019 in detail. It was found that although reference has been made to assistance provided by the Extension Officer in the process of the enquiry, it cannot be said that the entire enquiry was conducted and the report was prepared by the Extension Officer rather than the Chief Executive Officer. The tenor of the report substantially complied with the mandatory requirement, under proviso to Section 39(1) of the aforesaid Act. Thus, there is no substance in the said contention raised on behalf of the petitioner.

(19) As regards the order passed by the respondent Commissioner, which was confirmed by the Minister, whereby the petitioner stood removed from the elected position of Sarpanch and Member of Gram Panchayat, it was submitted that the findings did not indicate either that the petitioner had indulged in misconduct or that her conduct could be said to be disgraceful or indicating negligence in performance of duties or being persistently remiss in performing her

duties. According to the petitioner the findings did not indicate misuse of funds of the Gram Panchayat or that the petitioner had illegally gained any financial benefit because of such activities. Much emphasis was placed on the fact that failure to seek approval of Gram Sabha was a collective failure of the Members of the Gram Panchayat along with the petitioner and this was evident from the fact that the proposal pertaining to such development activities was moved by the contesting respondent No.3 i.e. the original complainant himself. As regards the amount of Rs.17000/- disbursed in favour of the husband of the petitioner, it was submitted that as long as the said amount was utilized for the benefit of the Gram Panchayat, the grounds for removal under Section 39(1) of the Act, were not attracted.

(20) This Court has perused the impugned orders passed by the Commissioner as well as the Minister. The findings reveal that what was held against the petitioner was not only failure to seek approval of the Gram Sabha, but the fact that requisite technical approvals were not obtained and the estimates and valuation of the works done were not found in order, in the record of the Gram Panchayat. The petitioner cannot escape liability by contending that

the Secretary of the Gram Panchayat was responsible for such deficiencies and that therefore, the grounds for removal under Section 39(1) of the said Act were not made out. As the elected Sarpanch and Member of the Gram Panchayat, the petitioner was required to ensure necessary compliance of the requirements, particularly in the context of development works and the utilization and accounting of finance in that context. Even if it was to be said that failure to seek approval in the Gram Sabha would not amount to misconduct, the failure on the part of the petitioner to effectively ensure proper accounting and utilization of funds pertaining to development work was an indicator of misconduct and negligence as well as being remiss towards performance of her duties.

(21) Reliance placed on the judgment of the Hon'ble Supreme Court in the case of *Tarlochan Dev Sharma* (supra) cannot take the case of the petitioner any further, for the reason that in the said judgment it is laid down as to what could be said to be abuse of power and it is stated that an elected person ought not to be removed from such office in a casual manner. Even if the ratio of the said Judgment is to be applied to the facts and circumstances of the present

case, it is seen that the material on record was considered by the Commissioner as well as the Minister to render specific findings against the petitioner regarding misconduct and negligence in performance of duties as Sarpanch and Member of the Gram Panchayat.

(22) The second allegation levelled against the petitioner is even more serious, for the reason that it is an admitted position that a cheque of Rs.17000/- from the funds of the Gram Panchayat was issued to the husband of the petitioner. The report submitted by the Chief Executive Officer does show that during the course of enquiry some receipts were relied upon by the petitioner to contend that the said amount was utilized for buying certain utensils and other things for the Gram Panchayat. As a person holding an elected office, the petitioner was expected to ensure that funds of the Gram Panchayat were accounted for and disbursal of funds in the name of her husband goes against the very principle of ensuring that there is no conflict of interest or that there is no misuse of the office by the elected person. In the present case, cheque for an amount of Rs.17000/- from the funds of the Gram Panchayat was issued in the name of the husband of

the petitioner. No material has been placed on record to indicate as to what was the urgency or emergency for issuance of cheque in the name of the husband of the petitioner. This clearly indicates not only misuse of office, but it also amounts to disgraceful conduct on the part of the petitioner while holding the elected office of Sarpanch and Member of Gram Panchayat.

(23) The judgment in the case of *Alka Kakde* (supra) upon which reliance is placed on behalf of the petitioner is clearly distinguishable on facts. In the said case, the allegation was that the petitioner therein was held guilty and removed from office under Section 39(1) of the aforesaid Act for the reason that in the absence of proper resolutions of the Gram Panchayat, the petitioner therein had temporarily withdrawn amounts from the account of Indira Awas Yojna for disbursing salary of the Gram Panchayat staff. It was alleged against the petitioner therein that such act without proper resolutions of the Gram Panchayat amounted to misconduct, inviting order of removal from office under Section 39(1) of the said Act. It was in such facts that this Court held in favour of the petitioner, on the basis that undisputedly the amount in question was never personally retained by

the petitioner therein. Instead it was disbursed to the employees towards arrears of their salary and that subsequently the amount was redeposited in the account.

(24) In the present case, the petitioner did indulge in misconduct and disgraceful conduct when cheque for an amount of Rs.17000/- was issued in the name of her husband. Although it was claimed that the said amount was utilized for buying certain utensils and other items for the Gram Panchayat and certain receipts issued by a shop were sought to be relied upon, there was no explanation forthcoming as to why the Gram Panchayat could not make payment directly to the shop from which such items were allegedly purchased. Issuance of the cheque and disbursement of the amount of Rs.17000/- directly in the name of husband of the petitioner, clearly amounted to misconduct and disgraceful conduct on the part of the petitioner as elected Sarpanch and Member of the Gram Panchayat.

(25) In the facts of the present case, this court, while exercising jurisdiction under Article 227 of the Constitution of India, is not convinced that interference is warranted in the concurrent orders passed against the petitioner by the Commissioner as well as the

Minister. The material on record has been appreciated in a reasonable manner and the findings rendered by the Commissioner as well as the Minister cannot be said to be perverse or against the material available on record. Hence, the petitioner has failed to make out a case for interference in the impugned orders.

(26) Accordingly, writ petition is dismissed.

[MANISH PITALE J.]

After pronouncement of judgment, the learned counsel appearing for the petitioner sought stay of the judgment and order passed today by this Court. The learned counsel appearing for respondent No.3 opposed the aforesaid prayer.

(2) This Court is of the opinion that considering the findings rendered in the judgment pronounced today, the aforesaid prayer for stay cannot be granted. Accordingly, the prayer is rejected.

[MANISH PITALE J.]

KOLHE

Digitally signed by RAVIKANT
CHANDRAKANT KOLHE
Signing Date: 07.04.2022
14:45