

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

WRIT PETITION NO.4074 OF 2021

PETITIONER
(Ori. Applicant)

: Sau. Sunita Pruthaviraj Meshram,
Occ: Household, Aged: 52 yrs., Sarpanch of
Gram Panchayat Tekadi (Coal – Mine)
Tahsil: Parseoni, District: Nagpur.

//VERSUS//

RESPONDENTS
(Ori. Respondents)

- : 1. State of Maharashtra through its
Hon. Minister of Rural Development
Mantralaya, Mumbai.
2. Additional Commissioner,
Nagpur Division, Nagpur.
3. Chief Executive Officer,
Zilla Parishad Nagpur.
4. Block Development Officer,
Panchayat Samit Parseoni
Tahsil: Parseoni Dist: Nagpur.
5. Gram Panchayat Tekadi
(Coal Mine) Tahsil: Parseoni,
District: Nagpur through its Secretary.
6. Sau. Minkshi Surendra Budhe,
Aged: Major years, Upa-Sarpanch of
Gram Panchayat Tekadi (Coal-Mine)
Tahsil: Parseoni, District: Nagpur.

Shri S.P. Bhandarkar, Advocate with Shri Ganesh Mate, Advocate for the
Petitioner.

Shri A.M. Kadukar, AGP for Respondent Nos.1 & 2.

Shri I.S. Charlewar, Advocate for Respondent No.3

Shri P.J. Mehta, Advocate for Respondent No.5.

Shri A.A. Naik, Advocate for Respondent No.6.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 22nd FEBRUARY, 2022.

JUDGMENT

01] **Rule.** Rule made returnable forthwith. Heard finally with consent of learned counsel for the parties.

02] The Petitioner challenges the order dated 02.08.2021 passed by the Respondent No.2 - Additional Commissioner in exercise of powers conferred under Section 39(1) of the Maharashtra Village Panchayats Act, 1959 (hereinafter referred to as “the said Act”) and the order dated 5.10.2021 passed by the Respondent No.1 – Minister rejecting the appeal preferred by the Petitioner under Section 39(3) of the said Act.

03] The Petitioner is a duly elected Sarpanch of the Gram Panchayat Tekadi (Coal-Mine), Parseoni, Nagpur. She has been elected from Scheduled Caste category by direct election process for a term of five years, which is due to expire in the year 2022. In view of complaint received from some of the members, Respondent No.3 – C.E.O. directed the Respondent No.4 - B.D.O. to conduct an enquiry. Pursuant to the preliminary report submitted by the B.D.O., Respondent No.3 allegedly conducted an enquiry under Section 39(1) of the said Act with permission of Respondent No.2. The Respondent No.2 has removed the Petitioner from the office of Sarpanch acting upon the report submitted by Respondent No.3. The Respondent No.1 – Hon’ble Minister dismissed the appeal filed by the Petitioner under Section 39(3) of the said Act. Hence, the Petition.

04] Shri S.P. Bhandarkar, learned counsel for the Petitioner submits that Respondent No.3 had not conducted enquiry under Section 39(1) of the said Act. He submits that the C.E.O. has not applied his mind independently, but has based the findings on the preliminary enquiry report submitted by the Respondent No.4 - B.D.O. He submits that the impugned order is passed in contravention of the mandatory provision of Section 39(1) of the said Act. Reliance is placed on the decisions of this Court in Shalik s/o Bolan Dahiwale Vs. State of Maharashtra & Ors in Writ Petition No.7158/2017 and in Nimba Yadav Bhoi Vs. President, Standing Committee, Zilla Parishad, Jalgaon and Others reported in (2002) 3 Mh.L.J. 466. He therefore contends that the impugned order passed by the Respondent No.2 – Commissioner is patently illegal, and hence, liable to be quashed and set aside.

05] *Per contra*, Shri A.A. Naik, learned counsel for the Respondent No.6 submits that the Respondent No.3 - C.E.O. has conducted an independent enquiry as contemplated under Section 39(1) of the said Act. The C.E.O. has considered all the documents and records while arriving at a finding that the Petitioner has committed illegalities, which have been more particularly specified in the report. He submits that the mere reference to the preliminary enquiry report would not vitiate the enquiry conducted by the Respondent No.3 – C.E.O. Reliance is placed on the decision of this Court in Damayanti w/o Omprakash Tapadiya Vs. Ashok s/o Dadarao Thakare and Others reported in 2020(1) Mh.L.J.531.

06] I have perused the records and considered the submissions advanced by learned counsel for the respective parties.

07] The controversy in the present Petition centres around the compliance of Section 39(1) of the said Act, which reads thus:

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 Upa-Sarpanch so removed may at the discretion of the Commissioner also be removed from the panchayat; or

(ii) ×××××

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, through 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.]

08] A plain reading of Section 39 indicates that direction by the President of Zilla Parishad to the C.E.O. to hold an enquiry and consequent enquiry by the C.E.O. after giving an opportunity of being heard are the essential pre-requisites of Section 39(1) of the said Act. In **Nimba Yadav Bhoi (supra)**, this Court has considered the scope and ambit of Section 39(1) of the said Act and has held that the provisions contained in Section 39 of the said Act are mandatory in nature. The same is in negative form, which specifically prohibits removal of a person from the office of Sarpanch unless certain pre-conditions are strictly complied with.

09] In the instant case, the Petitioner having been elected as a Sarpanch was entitled to hold office for a term for which she has been elected, unless disqualified and removed by following procedure prescribed under Section 39(1) of the said Act. The records reveal that the Respondent No.3 – C.E.O. had directed the Respondent No.4 – B.D.O. to conduct an enquiry into the allegations levelled against the Petitioner by some of the members of the Panchayat. The Extension Officer, Panchayat Samiti, deputed by the B.D.O., conducted the preliminary enquiry and submitted the report. Pursuant to which, Respondent No.3 - C.E.O. sought permission of

Respondent No.2 - Commissioner to conduct an enquiry against the Petitioner under Section 39(1) of the said Act. Pursuant to the permission, the Respondent No.3 – C.E.O. purportedly initiated an enquiry and submitted the report that the Petitioner is liable to be removed from the office. Acting upon the said report, Respondent No.2 - Commissioner has ordered removal of the Petitioner.

10] A perusal of the enquiry report submitted by Respondent No.3 – C.E.O. clearly indicates that he had not conducted an independent enquiry as envisaged by Section 39(1) of the said Act. On the contrary, the report reveals that Respondent No.3 – C.E.O. had only endorsed the findings recorded in the fact finding enquiry, without affording opportunity of fair hearing and without recording subjective satisfaction with independent application of mind. The decision in the case of Damayanti w/o Omprakash Tapadiya (supra), is distinguishable and is of no assistance to the Respondents as in the said case, the fact finding was followed by another enquiry by C.E.O. as required by the provisions of Section 39(1) of the said Act. In the instant case, as noted above, there is no independent application of mind and the findings are based on the preliminary report. There has been flagrant violation of the mandatory provision of Section 39(1) of the said Act.

11] It has to be borne in mind that removal from office curtails the terms of democratically elected member. Moreover, the removal renders such

person ineligible for re-election for the remainder of the term with further disqualification for six years to be elected under the said Act. Therefore, the action of removal of elected member should be viewed seriously followed by strict compliance of mandatory provisions. In the instant case, the order has been passed in flagrant violation of the mandatory provision and this vitiates the proceedings under Section 39(1) and renders the order *null and void*.

12] Hence, the following order is passed:-

(a) The Writ Petition is allowed.

(b) The impugned order dated 02.08.2021 passed by the Respondent No.2 - Additional Commissioner and the order dated 5.10.2021 passed by the Respondent No.1 – Minister are quashed and set aside.

Rule is made absolute in the above terms with no order as to costs.

(SMT. ANUJA PRABHUDESSAI, J.)

Vijay