

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 5168 OF 2021

Atul s/o Prakashrao Deshmukh,
aged about 41 years, Occupation : Agriculturist,
R/o Parsoda, Post Mahalungi, Tal. Arni,
District Yavatmal.

PETITIONER

.....VERSUS.....

1. The Deputy Collector (MGNREGA),
Civil Lines, Yavatmal.
2. The Zilla Parishad, Civil Lines, Yavatmal,
through its Chief Executive Officer.
3. The Deputy Chief Executive Officer (MGNREGA),
Zilla Parishad, Yavatmal.
4. Bhagwat s/o Rangrao Ade,
aged about 38 years, Occupation : Agriculturist,
R/o Parsoda, Post Mahalungi, Tal. Arni,
District Yavatmal.
5. Dyaneshwar S/o Nursing Rathod,
aged about 48 years, Occupation : Agriculturist,
R/o Parsoda, Post Mahalungi, Tal. Arni,
District Yavatmal.

RESPONDENTS

Shri N.B. Kalwaghe, Advocate for the petitioner.
Shri D.P. Thakare, A.G.P. for respondent No.1/ State.
Shri R.D. Bhuibhar, Advocate for respondent Nos. 2 and 3.
Shri S.U. Nemade, Advocate for respondent Nos. 4 and 5.

CORAM : A.S. CHANDURKAR AND URMILA JOSHI - PHALKE, JJ.

DATE : 19TH JULY, 2022.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned
Counsel for the parties.

2. The challenge raised in this Writ Petition filed under Article 226 of the Constitution of India is to the communication dated 26/11/2021 issued by the Chief Executive Officer, Zilla Parishad, Yavatmal thereby directing the petitioner to pay an amount of Rs.1,12,662/- with interest @ 18% per annum pursuant to the alleged irregularities committed in the Scheme implemented under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (for short “Act of 2005”).

3. The facts relevant for considering the challenge as raised are that the petitioner was elected as a Sarpanch of Village - Parsoda, Taluka - Arni, District – Yavatmal for the period from 2015 to 2021. In the said Village, a Scheme was implemented under the provisions of the Act of 2005. A complaint was made by respondent No.4 alleging misappropriation while undertaking that Scheme. On receiving such complaint, the Chief Executive Officer on 5/7/2021 directed an enquiry to be held by an Enquiry Committee of eight members. The said Enquiry Committee submitted its report to the Chief Executive Officer. After considering the same, the Chief Executive Officer on 20/8/2021 issued a show cause notice to the petitioner seeking his response to the findings recorded by the Enquiry Officer. Since the nature of charges against the petitioner were not clear, he demanded a copy of the enquiry report by his communication dated 2/9/2021. A reminder was again issued on

13/9/2021 and after receiving copy of that report, the petitioner submitted his reply to the same.

4. Thereafter, on 4/10/2021, hearing was conducted before the Chief Executive Officer as regards the action to be taken pursuant to the said enquiry report. It was observed in those proceedings that an amount of Rs.5,63,308/- had been misappropriated by four persons named in the report and it was recommended that an amount of Rs.1,40,827/- should be recovered from each of the said four persons. As regards the petitioner, it was recommended that a fine of Rs.1,000/- should be imposed on him.

5. Pursuant to the aforesaid, the Chief Executive Officer on 25/10/2021 issued another notice to the petitioner calling upon him to explain as to why action under Section 25 of the Act of 2005 should not be taken. The petitioner's response was called for within a period of ten days. By a similar notice issued on the same day, the other four persons named in the report were also issued a show cause notice as to why the amounts mentioned therein should not be recovered.

6. The petitioner replied to the aforesaid notice and on 26/11/2021, the Chief Executive Officer issued the impugned communication calling upon the petitioner to deposit an amount of Rs.1,12,662/- with 18%

interest with the State.

Being aggrieved, the aforesaid communication is under challenge.

7. Shri N.B. Kalwage, learned Counsel for the petitioner submitted that as per the recommendations of the Committee constituted by the Chief Executive Officer, it was purposed to recover the amount in question from the four persons named therein excluding the petitioner. Insofar as the petitioner was concerned, it was recommended that a fine of Rs.1,000/- should be imposed. Based on such recommendations, the notice issued to the petitioner on 25/10/2021 merely referred to taking action under Section 25 of the Act of 2005. Hence issuance of the impugned communication seeking to recover the amount of Rs.1,12,662/- with interest @ 18% per annum was contrary to the recommendations of the said Committee and beyond the show cause notice issued to him. Placing reliance on the decision in *2004(3) Mh.L.J. 151 (Diwakar Pundlikrao Satpute Vs. Zilla Parishad, Wardha and others)*, it was submitted that by seeking to recover the aforesaid amount which was not referred to in the show cause notice the impugned communication was illegal and thus liable to be set aside. Insofar as the payment of penalty of Rs.1,000/- was concerned, the petitioner was willing to pay the same in terms of Section 25 of the Act of 2005. It was thus prayed that the prayers

made in the Writ Petition were liable to be granted.

8. Shri R.D. Bhuihar, learned Counsel for respondent Nos. 2 and 3 supported the impugned communication. According to him, since it was found that there was misappropriation of certain amounts and the Committee had proposed recovery of the same from the persons against whom the enquiry was held, no fault could be found with the action of the Chief Executive Officer calling upon the petitioner to deposit the amount of Rs.1,12,662/-. After giving show cause notice to the petitioner, such action had been taken. The same therefore did not call for any interference.

Shri S.U. Nemade, learned Counsel for respondent Nos. 4 and 5 at the outset raised a preliminary objection to the maintainability of the Writ Petition by relying upon the provisions of Section 14 of the Act of 2005 read with Clause 29(i) of Schedule I to the Act of 2005. He submitted that remedy of preferring an Appeal before the Divisional Commissioner against the order passed by the Chief Executive Officer who had acted as District Programme Coordinator was available. The Writ Petition therefore did not deserve to be entertained in view of said statutory remedy. Without prejudice to the said objection, it was submitted that after following the due procedure and on finding the petitioner guilty, the

Chief Executive Officer had directed recovery of the aforesaid amount. Since such recovery was preceded by a show cause notice, it could not be said that the principles of natural justice had been violated. He too submitted that the Writ Petition was liable to be dismissed.

9. We have heard the learned Counsel for the parties and we have perused the documents on record.

10. After giving thoughtful consideration to the rival submissions, we find that the preliminary objection as raised does not warrant acceptance and the impugned communication is liable to be set aside since the same is not in accordance with law.

11. As regards the submission of availability of an alternate remedy, it is found that under Section 14(1) of the Act of 2005, the Chief Executive Officer of the District Panchayat or the Collector of the district or any other district level officer of an appropriate rank as decided by the State Government can be designated as the District Programme Coordinator for implementation of the Scheme in the District. Section 2(e) of the Act of 2005 defines “District Programme Coordinator” to mean an officer of the State Government as designated under Section 14(1) of the said Act. The State Government has issued a resolution on 19/10/2006 with a view to

implement the provisions of the Act of 2005. As per Clause 2 thereof, the State Government has nominated the Collector as the District Programme Coordinator while the Chief Executive Officer has been designated as Joint District Programme Coordinator. It can thus be said that under Section 14(1) of the Act of 2005, the Collector of the District has been designated as the District Programme Coordinator by the State Government. The impugned communication has been issued by the Chief Executive Officer who has been designated as Joint District Programme Coordinator. The remedy of Appeal prescribed by Clause 29(i) of Schedule I to the Act of 2005 is available only when an order is passed by the District Programme Coordinator or the Programme Officer. There is no Appeal provided against an order passed by the Joint District Programme Coordinator. In other words, the impugned order having been passed by the Chief Executive Officer in his capacity as Joint Programme Coordinator, the same is not appealable under Clause 29(i) of Schedule I to the Act of 2005.

For the aforesaid reason, it cannot be said that remedy of a statutory appeal is available to the petitioner for challenging the impugned communication issued by the Joint District Coordination Officer. The Writ Petition is therefore maintainable.

12. The documents on record indicate that pursuant to the enquiry directed by the Chief Executive Officer, the Deputy Chief Executive Officer conducted such enquiry and noted certain irregularities in the work undertaken in the Scheme under the Act of 2005. After supplying copy of the enquiry report to the petitioner, his say thereon was called for. Thereafter, the Chief Executive Officer on 4/10/2021 heard five persons who were involved in the said alleged misappropriation including the petitioner. In those proceedings, it was decided to recover an amount of Rs.5,63,308/- from the Sectional Engineer, the then Gram Rojgar Sevak, the Technical Assistant and the Gram Sevak. Insofar as the petitioner who was the Sarpanch was concerned, there was a proposal to impose penalty of Rs.1,000/-. In the light of these recommendations, a show cause notice dated 25/10/2021 was issued to the petitioner proposing action under Section 25 of the Act of 2005. Insofar as the other four persons are concerned, they were issued a show cause notice proposing recovery of the amounts mentioned therein from them. It is thus clear that the Chief Executive Officer accepted the recommendations made in the meeting that was held on 4/10/2021. The only action proposed against the petitioner as per the show cause notice was imposition of penalty under Section 25 of the Act of 2005. Perusal of Section 25 indicates that on contravention of the provisions of the Act of 2005, a person on conviction is liable to a fine which may extend to one thousand rupees. It is thus

clear that the show cause notice dated 25/10/2021 is in accordance with Section 25 of the Act of 2005. The Chief Executive Officer, however, contrary to the said show cause notice has by the impugned communication directed recovery of amount of Rs.1,12,662/- from the petitioner. This direction of recovery is not in consonance with the recommendations accepted by the Chief Executive Officer himself nor is it preceded by any show cause notice to the petitioner proposing such recovery. As noted above, a separate show cause notice was issued to four other persons than the petitioner from whom the amounts were to be recovered. It is thus clear that recovery has been sought from the petitioner without there being any recommendation in that regard nor any show cause notice. In terms of notice issued to the petitioner on 25/10/2021, the petitioner has volunteered to pay the penalty of Rs.1,000/- in terms of Section 25 of the Act of 2005.

13. It is well settled that a penalty imposed pursuant to the show cause notice cannot be one that travels beyond such show cause notice. Imposition of a higher penalty than the one proposed in the show cause notice would be unsustainable in law as held by the Division Bench in *Diwakar Pundlikrao Satpute (supra)*. The ratio of the said decision squarely applies to the case in hand. It was thus not permissible for the Chief Executive Officer to ignore the recommendations made in the

meeting held on 4/10/2021 and seek to recover the aforesaid amount in the absence of any show cause notice. Admittedly, such show cause notice was issued to the other four persons from whom recovery was proposed which does not include the petitioner. Hence for these reasons, the impugned communication is liable to be set aside. Accordingly, the following order is passed :

ORDER

- i. The order dated 26/11/2021 seeking to recover an amount of Rs.1,12,662/- from the petitioner is set aside.
- ii. The statement made on behalf of the petitioner that he would deposit an amount of Rs.1,000/- in terms of the notice issued on 25/10/2021 proposing to impose such penalty under Section 25 of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 is accepted. Such amount shall be deposited with the office of the Zilla Parishad within a period of ten days from today.
- iii. Rule is made absolute in the aforesaid terms. No costs.

(URMILA JOSHI – PHALKE, J.)

(A.S. CHANDURKAR, J.)