

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

WRIT PETITION NO. 8353 OF 2018

Rama Vasant Thakare,
(Ex-Up-Sarpanch), Aged – Major,
Member, G.P. Chondhi, R/o Chondhi,
Tq. Patur, District Akola.

.... **PETITIONER**

VERSUS

- 1) The State of Maharashtra,
through Secretary, The Ministry of
Rural Development, Mantralaya,
Mumbai.
- 2) The Divisional Commissioner,
Amravati, Tq. & District Amravati.
- 3) Zilla Parishad, Akola,
The Chief Executive Officer,
Zilla Parishad, Akola.
- 4) The Block Development Officer,
Panchayat Samiti, Patur, Tq. Patur,
District Akola.
- 5) Balasaheb Balramsingh Adhe,
Gram Sevak/Secretary Gram
Panchayat, Chondhi, R/o Chondhi,
Tq. Patur, District Akola.
- 6) The Secretary, Gram Panchayat,
Chondhi, R/o Chondhi, Tq. Patur,
District Akola.
- 7) Shri Kamalkishor Kantilal Jain,
Aged 43 years, Occ. - Agriculturist,
R/o Chondhi, Tq. Patur, District Akola,
Presently at Tapdiya Nagar, Akola,
Tq. & District Akola.

.... **RESPONDENTS**

Mr. V.B. Bhise, Counsel for the petitioner,
Ms. T.H. Khan, AGP for respondents 1 and 2,
Mr. A.J. Thakkar, Counsel for respondent 7.

CORAM : **ROHIT B. DEO, J.**
DATED : **9th MARCH, 2022**

ORAL JUDGMENT :

Heard. **Rule.** With consent, the petition is heard finally.

2. The petitioner was elected as Member of Gram-Panchayat Chondhi in the elections held in the year 2017-18.

3. Respondent 7-Mr. Kamalkishor Jain preferred an application under Section 39(1) of the Maharashtra Village Panchayats Act, 1958 (Act) seeking removal of the Sarpanch. Mr. Kamalkishor Jain contended that in the earlier tenure, when the petitioner was holding the charge of the office of Sarpanch, the petitioner and others illegally excavated soil from the agricultural field of Mr. Kamalkishor Jain. Mr. Kamalkishor Jain contended that the illegal excavation was duly proved in the proceedings under Section 145 of the Maharashtra Land Revenue Code (Code) as is discernible from the order dated 10-4-2017 rendered by the Tahsildar, Patur whereby the petitioner-Sarpanch was penalised. The substratum of the application under Section 39(1) of the Act

appears to be that by illegally excavating soil from agricultural field of Mr. Kamalkishor Jain, without obtaining the permission of the appropriate authority, the petitioner indulged in disgraceful conduct.

4. The petitioner submitted response generally denying the allegations in the application under Section 39(1) & (2) of the Act and contended that there is an appeal preferred, which is pending, challenging the order of the Tahsildar, Patur which condemned the petitioner and imposes penalty for illegal excavation of soil.

5. The Deputy Chief Executive Officer directed the Block Development Officer to conduct an enquiry. Accordingly, the Block Development Officer submitted report confirming that the Tahsildar, Patur has held the excavation illegal.

6. The Divisional Commissioner, Amravati rendered order dated 13-11-2017 holding that the allegation that the petitioner is responsible for illegal excavation of soil, is proved in view of the findings recorded by the Tahsildar, Patur. The Divisional Commissioner reasoned that the petitioner was guilty of misconduct and disgraceful conduct. The petitioner preferred appeal which the State Government dismissed vide order dated 28-8-2018.

7. Having heard the learned Counsel for the parties, I am satisfied that the petition must be allowed.

8. The action of removal is predicated only on the findings recorded by the Tashildar, Patur which holds the petitioner responsible for illegal excavation of soil. A statement is made by the learned Counsel Mr. V.B. Bhise, which is not refuted, that the said order is set aside by the Additional Collector, Akola and the matter is remitted to the Tahsildar, Patur. Even *de hors* the said aspect, it is irrefutable that the alleged illegal excavation pertains not to the present tenure, but in the earlier tenure of the petitioner in which he was holding the charge of the office of Sarpanch. In view of the statutory scheme of Section 39(1) and (1-A) of the Act, it is clear that the petitioner could not have been removed from office for the alleged misconduct committed in the earlier tenure. The learned Counsel for respondent 7 Mr. A.J. Thakkar fairly invites my attention to the decision in the case of ***Narayan Atmaram Borase v. State of Maharashtra & Others, 2005(3) All MR 410*** which considers the provision of Section 39(1) of the Act and articulates that it is the misconduct during the tenure which can lead to removal and the consequences shall be that the office bearer loses his office for the remaining period of the term.

9. Viewed from any angle, the orders impugned are unsustainable in law and are quashed. The petition is allowed in terms of prayer clause (i) which reads thus :

“(i) Quash and set aside the order passed by the Minister of Rural Development, Mantralaya, Mumbai i.e. respondent No.1, under section 39(3) of M.V.P Act 1959, in Appeal No. VPM-2018/Case No.60/PR.-6 Gram Panchayat Chondhi, District Akola dated 28-8-2018 and the order dated 13-11-2017 passed by the Divisional Commissioner, Amravati-respondent No.1 in petition case No.3/MVP Act 1959/Section 39(1)/Chondhi, Tq. Patur, District Akola/2016-17 (Annexure ‘N’ & ‘L’ respectively.”

JUDGE

adgokar