

Sayali Upasani

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION**

WRIT PETITION NO.11964 OF 2022

Sandip Ramesh Khidbide

Age- 41 Years, Occ.- Service

R/o- Village Ambivali (Bu)

Tal. Mahad, Dist. Raigad

.... Petitioner.

VERSUS

1. Pratima Prakash Gaikar

Age-51 Years, Occ. Houswife

R/o- Village Ambivali (Bu)

Tal. Mahad, Dist. Raigad.

2. State of Maharashtra

Through Secretary, Department of Rural Development

Mumbai Dist. Mumbai

3. Division Commissioner,

Kokan Division, Navi Mumbai.

....Respondents.

Mr. Shashank Mangle a/w Adv. Bhagyashri Ranade, for
Petitioner.

Mr. Harshad Inamdar, for Respondent No. 1.

Mrs. V.S. Nimbalkar, AGP for State, Respondent Nos. 2 and
3.

CORAM:- N. J. JAMADAR, J.

RESERVED ON:- 16th MARCH, 2023

PRONOUNCED ON:- 6th APRIL, 2023

JUDGMENT:-

- 1) Rule. Rule made returnable forthwith and heard finally.
- 2) This Petition under Article 227 of the Constitution of India assails a judgment and order dated 26th May, 2022, passed by the learned Minister (Rural Development) in VPM/2022/SR 52/PR6, whereby and whereunder the Appeal preferred by the respondent No. 1 against an order of removal from the office of Sarpanch of Village Panchayat, Ambivali, Tal. Mahad, Dist. Raigad, came to be allowed by setting aside the order dated 19th April, 2022, passed by the Divisional Commissioner, Kokan division, under Section 39(1) of the Maharashtra Village Panchayats Act, 1959 ("the Act, 1959").

3) The Petition arises in the backdrop of the following facts:-

(a) Petitioner is a member of Village Panchayat, Ambivali. Respondent No. 1 was directly elected as Sarpanch of the Village Panchayat, Ambivali in the election held in the year 2019.

(b) The petitioner had filed an application being application number Karya3/GP 3/Ambivali/2021/1259, seeking the removal of the respondent No. 1 from the office of *Sarpanch* alleging misconduct. The substance of the application was that according to the provisions contained in Section 49 of the Bombay Village Panchayat Act, 1959 and the Government Resolution dated 6th December, 2006, Village Water Supply and Sanitation Committee ("Committee") was established at Ambivali. A separate account was opened in the name of the said Committee. The said account was to be jointly operated by the *Sarpanch* of Village Panchayat in the capacity as the Chairperson and *Anganwadi Sevika* appointed for the particular village. Mrs. Vaishali Dasgaonkar was the *Anganwadi Sevika* and the Secretary of the said Committee for the year 2014 to 2018.

(c) Government Resolution dated 30th June, 2018, mandated change in operation of the account maintained in the name of the Committee. Instead of *Anganwadi Sevika*, *Asha Sevika* came to

be authorized to jointly operate the account with the *Sarpanch* of the village. Mrs. Ashwini Rajmane came to be appointed as the *Asha Sevika* for Ambivali village vide order dated 7th September, 2018. In conformity with the Government Resolution, the Village Panchayat Ambivali also passed a resolution changing the mandate to operate the account maintained in the name of the Committee.

(d) The petitioner alleged, despite the respondent No. 1 being fully aware of the change in the mandate to operate the account, the respondent No. 1 withdrew a sum of Rs.15,549/-, vide Cheque No.04834 dated 1st January, 2020, jointly drawn by respondent No.1 and Ms. Dasgaonkar, *Anganwadi Sevika*. The respondent No.1 thus misappropriated the amount of Rs.15,549/-. In the process, the respondent No.1 allegedly violated the provisions of Rule 44, 54 and 56 as well as Rule 15 of Schedule 3 of Maharashtra Village Panchayat Accounts Code, 2011. To facilitate the misappropriation, the respondent No. 1 in a meeting of the Committee dated 11th December, 2019, got approved a resolution to change the mandate to operate the bank account contrary to the Government Resolution. Instead of *Asha Sevika*, the *Anganwadi Sevika* was authorized to operate the

bank account jointly and thereby the amount was drawn by a self cheque. The petitioner thus alleged that the respondent No. 1 was guilty of gross misconduct.

4) An inquiry was caused to be conducted. The respondent No. 1 gave her explanation. The Deputy Chief Executive Officer, Raigad directed the Block Development Officer, Panchayat Samiti, Mahad to submit a report. Based on report of the Block Development Officer and after providing an opportunity of hearing to the respondent No. 1, the Chief Executive Officer Raigad, Zilla Parishad submitted a report dated 13th December, 2021, to the Divisional Commissioner. An opportunity of hearing was again provided by the Divisional Commissioner. After appraisal of the report of the Chief Executive Officer and the material on record, the Divisional Commissioner was persuaded to pass an order of removal of Respondent No. 1 from the office of *Sarpanch* of Village Panchayat, Ambivali under Section 39 (1) of the Act, 1959,

5) The Divisional Commissioner was of the view that the respondent No. 1 had committed misconduct in changing the mandate to operate the bank account of Committee by getting a resolution passed in the meeting of the Committee in clear breach

of the Government Resolution and, on the strength of such changed mandate, withdrew a sum of Rs.15,549/-, by presenting a self cheque and thereby committed financial irregularity within the meaning of Rule 24(25) of Maharashtra Village Panchayat Accounts Code, 2011. Consequently, the respondent No. 1 was also removed from the post of the member of the Village Panchayat .

6) Being aggrieved, the respondent No. 1 preferred an Appeal before the State Government under Section 39 (3) of the Act, 1959. The Minister (Rural Development) was persuaded to allow the Appeal. In the view of the Minister though it was established that the respondent No. 1 had committed breach of the directives in the Government Resolution dated 30th June, 2018, by changing the mandate to operate the bank account of the Committee and also committed financial irregularity in withdrawing a sum of Rs.15,549/-, by presenting a self cheque, yet it would not be appropriate to unseat the respondent No. 1 from the post of Sarpanch for a technical breach. Under the provisions of the Act, 1959, *Sarpanch* and Secretary of the Village Panchayat were jointly liable for financial transactions of the Village Panchayat. Therefore, it may not be appropriate to hold *Sarpanch* alone liable

for the irregularity. Moreover, the respondent No. 1 being a woman and the policy of the State Government being that of woman empowerment, it would not be justifiable to unseat a democratically elected Sarpanch and deprive her of the constitutional rights for an irregularity in discharge of administrative duties. Holding thus, the Appeal came to be allowed by setting aside the order passed by the Divisional Commissioner.

7) Being aggrieved the petitioner has invoked the writ jurisdiction of this Court. The impugned order, according to the petitioner, is simply perverse and based on a completely extraneous consideration. The Minister (Rural Development) having recorded a finding that there was indeed misconduct and financial irregularity could not have upset the well reasoned order of the Divisional Commissioner for a strange reason that the respondent No. 1, being a woman, the misconduct was pardonable.

8) I have heard Mr. Shashank Mangle, the learned Counsel for the petitioner and Mr. Harshad Inamdar, the learned Counsel for the respondent No. 1 and Mrs. Nimbalkar, the learned AGP for the State - respondent Nos. 2 and 3, at some length. With the

assistance of the learned Counsel for the parties, I have perused the material on record including the orders passed by the Divisional Commissioner and Minister (Rural Development).

9) Before advertent to note the submissions on behalf of the parties, it may be apposite to note the provisions contained in Section 39 of the Act, 1959, which envisages the removal of any member, Sarpanch or Upa-Sarpanch of a Village Panchayat. The relevant part of Section 39 reads as under:-

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

.....

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.]

²²⁵[(1A) Where a person is removed from office of the *Sarpanch or Upa-Sarpanch*, he shall not be eligible for re-election as *Sarpanch or Upa-Sarpanch* during the remainder of the term of office of members of the *panchayat*.]

²²⁶[(2) The Commissioner may subject to like condition disqualify for a period of not exceeding ²²⁷[six years], any person who has resigned his office as a member, *Sarpanch or Upa-Sarpanch* and has been guilty of the acts and omissions specified in sub-section (1).

(3) Any person aggrieved by an order of the Commissioner under sub-section (1) or (2) may, within a period of fifteen days from the date of the receipt of such order, appeal to the State Government and the Government shall decide the appeal within a period of one month from the date of receipt thereof.]

10) Phraseology of aforesaid Section indicates that the Commissioner is empowered to remove from office a member or *Sarpanch or Upa-Sarpanch*, who has been found 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. After specifying the grounds on which a member, *Sarpanch or Upa-Sarpanch* can be removed from the office the first and second proviso to sub-Section (1) envisage a two-stage inquiry. Under the first proviso, the Chief Executive Officer or the Deputy Chief Executive Officer, as the case may be, has to hold an inquiry after giving due notice to the Panchayat and the person concerned; the latter is entitled

to a reasonable opportunity of hearing. Post such inquiry, the Chief Executive Officer has to submit a report to the Divisional Commissioner.

11) Under the second proviso, the Divisional Commissioner, in turn, is enjoined to again afford a reasonable opportunity of hearing to the person to whom the notice of removal was given and against whom a report has been submitted by the Chief Executive Officer. Only after such inquiry, the Divisional Commissioner is empowered to take a decision on the report submitted by the Chief Executive Officer.

12) Sub Section (1-A) prescribes the disqualifications which the order of removal may entail. Sub Section (2) empowers the commissioner to disqualify the person who has resigned from the office as a member, *Sarpanch or Upa-Sarpanch* for a period not exceeding six years if such person has been found guilty of acts and omissions specified in Sub Section (1). Under sub Section (3) of Section 39, any person aggrieved by an order passed by Commissioner under Sub Sections (1) and (2) may prefer an Appeal to the State Government.

13) In a sense, Section 39 of the Act, 1959 is a self contained Code in the matter of removal of a person from the office of

member, *Sarpanch* or *Upa-Sarpanch* of Village Panchayat. Grounds on which a person can be removed from those offices have been specified. A mechanism of holding an inquiry after affording a reasonable opportunity of hearing has been prescribed. Decision of the Divisional Commissioner is amenable to an Appeal before the State Government.

14) The Act, however, does not define the terms, “misconduct”, “disgraceful conduct”, or “neglect”, which are used in Clause (i) of Sub Section (1) of Section 39 of the Act, 1959. These expressions take color from the context of the duties which a member, *Sarpanch* or *Upa-Sarpanch* has to perform under the provisions of the Act, 1959. Whether a particular act or omission would amount to misconduct, disgraceful conduct or neglect would turn upon the facts of a given case.

15) In the light of the aforesaid nature of the statutory provisions, now the submissions canvassed on behalf of the parties deserve to be noted.

16) Mr. Mangle would strenuously urge that the Minister (Rural Development) was clearly in error in setting aside the order of removal of respondent No. 1 from the post of *Sarpanch* by ascribing a wholly irrelevant reason that the respondent No. 1

being a woman could not have been visited with action of removal. Such a view is *ex facie* perverse, urged Mr. Mangle. According to Mr. Mangle what exacerbates the situation is the fact that the Minister (Revenue) upholds the finding of fact that the respondent No. 1 was guilty of the acting contrary to the Government Resolution and also financial irregularity and, yet, proceeded to exonerate the respondent No. 1 on a flimsy ground. The impugned order, therefore, deserves to be quashed and set aside, urged Mr. Mangle.

17) In opposition to this, Mr. Inamdar would urge that there is no material on record to show that the respondent No. 1 was the beneficiary of the act of withdrawal of the amount. In fact, petitioner's father, who was the *Sarpanch* of the Village Panchayat for the term 2014 to 2019, had committed gross irregularity in unjustifiably withholding the payment of the Anganwadi Sevika, Mrs. Dasgaonkar. On the contrary, respondent No. 1, had, after satisfying herself that Mrs. Dasgaonkar had indeed incurred the expenses for discharge of the duties of the Committee, decided to reimburse those expenses with the approval of the Committee. Thus the act of changing the mandate to operate the bank account was not actuated with any

dishonest intention. Therefore, there was no misappropriation as alleged by the petitioner. Nor it could be established that the respondent No. 1 was the beneficiary of the amount which was allegedly misappropriated, urged Mr. Inamdar.

18) Mr. Inamdar further urged with a degree of vehemence that a democratically elected *Sarpanch* can not be unseated for a mere administrative lapse . It is only when the person is guilty of misconduct the extreme measure of removal from office is justifiable.

19) To lend support to his submission, Mr. Inamdar placed reliance on a judgment of this Court in the Case of **Shri. Shrikant Chahakar and Others Vs. State of Maharashtra and Others**¹, wherein after referring to the provisions contained in Section 39 of the Act, 1959, it was enunciated that the person has to be guilty of misconduct in discharge of his duties, or of any disgraceful conduct, or of neglect of or incapacity to perform his duty, or is persistently remiss in discharge on his duties before he is removed from office.

20) In the circumstances, according to Mr. Inamdar, the Minister (Rural Development) was justified in overturning the

1 2010 (4) ALL MR 752

order passed by the Divisional Commissioner as there was no misconduct on the part of the respondent No. 1.

21) The aforesaid submissions now fall for consideration. To start with it is imperative to note that there is not much controversy on facts. Firstly, it is incontestible that till the year 2018, the account maintained in the name of the Committee was to be jointly operated by *Sarpanch* of the Village Panchayat and *Anganwadi Sevika*. Secondly, it is indisputable that in view of the Government Resolution dated 30th June, 2018, the mandate to operate the said bank account was changed and *Sarpanch* of the Village Panchayat and *Asha Sevika* instead of *Anganwadi Sevika*, were entrusted responsibility to operate the joint account. Thirdly, there is no qualm over the fact that the Committee also passed a resolution and changed the mandate to operate the said bank account in conformity with the Government Resolution dated 30th June, 2018. Fourthly, the respondent No. 1 concedes that after she assumed the office of *Sarpanch* of Village Panchayat, Ambivali, the mandate to operate the said bank account was again changed and instead of *Asha Sevika*, *Anganwadi Sevika* was authorized to operate the said bank account with her, pursuant to a resolution passed in the meeting

of the Committee held on 29th March, 2019. Fifthly, it is incontrovertible that by presenting a self cheque a sum of Rs.15,549/- was withdrawn from the said bank account.

22) At this juncture, it would be necessary to note the thrust of the defence of respondent No. 1. An endeavor was made to demonstrate that Mrs. Dasgaonkar the then *Anganwadi Sevika* had incurred the expenses in connection with the woman and child development programmes and the repairs of the *Anganwadi* out of her pocket. However, the then *Sarpanch* of the Village Panchayat had not approved the said expenditure and released the payment. Therefore, after the respondent No. 1 assumed the office of *Sarpanch*, Mrs. Dasgaonkar again presented her case before respondent No.1 and after satisfying herself that Mrs. Dasgaonkar had incurred the expenditure, respondent No. 1 requested Mrs. Rajmane, *Asha Sevika* to sign the cheques to withdraw the amount. However, Mrs. Rajmane refused and, therefore, the mandate was changed and eventually the amount was withdrawn and paid to Mrs. Dasgaonkar. It would be contextually relevant to note that Mrs. Dasgaonkar has given a statement on the aforesaid lines before the Block Development Officer.

23) Placing a strong reliance on the statement of Mrs. Dasgaonkar in support of the aforesaid explanation of respondent No. 1, Mr. Inamdar urged with tenacity that there is no misappropriation as such and in effect the respondent No. 1 had discharged the duty which her predecessor in office had derelicted.

24) In the backdrop of the aforesaid rather uncontroverted facts and tenor of justification sought to be offered on behalf of the respondent No. 1, a pivotal question which wrenches to the fore is whether the aforesaid acts of the respondent No. 1 constituted misconduct within the meaning of Section 39(1)(i) of the Act, 1959.

25) A profitable reference in this context can be made to a Three Judge Bench Judgment of the Supreme Court in the case of **State of Panjab and Others Vs. Ram Singh Ex. Constable²**, wherein the import of the term, “Misconduct” was expounded with reference to the definitions in Black’s Law Dictionary and P. Ramanatha Aiyar’s Law Lexi-con. The observations in paragraph Nos. 5 and 6 are material and hence extracted below:-

5. Misconduct has been defined in Black's Law Dictionary, Sixth Edition at page 999 thus :-

2 JT 1992 (4) S.C. 253

“ "A transgression of some established an definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offence but not negligence or care-lessness."

Misconduct in office has been defined as :

"Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. The term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

P. Ramanatha Aiyar's the Law Lexicon, Reprint Edition 1987 at p.821 'misconduct' defines thus:-

"The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskilfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected."

6. Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour.

willful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve.....”

(emphasis supplied)

26) As noted above, the respondent No. 1 concedes both the facts. One, change of the mandate to operate the bank account despite being fully cognizant of Government Resolution dated 30th June, 2018, mandating it to be operated under the joint signature of the *Sarpanch* and *Aasha Sevika*. Two, withdrawal of the amount of Rs.15,549/- by presenting a self cheque under her signature and that of Mrs. Dasgaonkar.

27) The submission on behalf of the respondent No. 1 that aforesaid acts were not actuated by any design to have a wrongful gain is required to be appreciated in the light of the fact that the claim for payment of expenses allegedly incurred by Mrs. Dasgaonkar was contentious. The statement of Mrs. Rajmane, the *Asha Sevika*, to which reference is made in the report of Block Development Officer throws light on the circumstances in which the mandate was changed and the amount came to be withdrawn. Mrs. Rajmane informed that though a resolution was

passed in the meeting of the Committee on 19th October, 2018, to change the mandate to operate the bank account of the committee, yet, the cheque book, pass book, cash book and the charge was not handed over till 5th September, 2020. Mrs. Rajmane further informed that Mrs. Dasgaonkar had repeatedly approached her to put signatures on the cheques. She had declined to draw the cheques as Mrs. Dasgaonkar had no bills nor the resolutions passed to incur the expenditure. The aforesaid statement of Mrs. Rajmane seals the issue.

28) The situation which thus obtains is that the expenses which were allegedly incurred by Mrs. Dasgaonkar had neither any authorisation nor supported by vouchers. After the change in the mandate to operate the bank account of the committee, Mrs. Dasgaonkar allegedly made an endeavor to persuade Mrs. Rajmane to sign the cheque for withdrawal of the amount. Even respondent No. 1 in her statement concedes that she had requested Mrs. Rajmane to sign the cheque but the latter refused. The entitlement to payment of Mrs. Dasgaonkar was contentious, in the least.

29) In the aforesaid circumstances, the act of respondent No. 1 to change the mandate to operate the bank account contrary to

the Government Resolution can only be said to be driven by the desire to overcome the impediment in operating the bank account. Such maneuvering of the proceedings and accounts to cause benefit to a person to the detriment of the interest of the Village Panchayat can only be termed as misconduct. It could not have been explained away by asserting that respondent No. 1 was not the ultimate beneficiary. Even this submission is required to be accepted with a pinch of salt as the amount was withdrawn by presenting a self cheque. Therefore, it could not be urged that the respondent No. 1 was not the ultimate beneficiary.

30) The authorities below have recorded consistent findings that respondent No. 1 acted in breach of the Government Resolution and also indulged in financial irregularity. Such findings of fact are not amenable to correction in exercise of writ jurisdiction. The only issue which crops up for consideration is whether the Minister (Rural Development) was justified in insulating the respondent No. 1 from the consequences which entail the proved misconduct.

31) Empowerment of woman by providing political representation has been one of the main features of strengthening the democracy at the grass root level. Participation

of woman in local-self governance is considered a measure of ensuring a greater probity in public life. However, the very object of woman empowerment would be frustrated, if under the guise of advancing the interest of women a gross misconduct of a particular woman is condoned. The reason assigned by Minister (Rural Development) that unseating of a democratically elected woman *Sarpanch* would be contrary to the policy of woman empowerment is unworthy of acceptance. The Minister (Rural Development) lost sight of the fact that removal of an office bearer for proved misconduct also serves a larger public interest and strengthens democracy. In any event, where the post of *Sarpanch* is reserved for a woman, upon removal of respondent No. 1 from the said office, in the consequent election only a woman candidate could have been elected to the office of *Sarpanch* of village Ambivali.

32) For the foregoing reasons, I am impelled to hold that the Minister (Rural Development) was clearly in error in setting aside the well reasoned order of the Divisional Commissioner. Resultantly, the Petition deserves to be allowed.

33) Hence, the following order.

:-ORDER:-

- (i) The Petition stands allowed with costs.
- (ii) The impugned order passed by the Minister (Rural Development) dated 26th May, 2022 in Appeal No. VPM/2022/SR 52/PR6 stands quashed and set aside.
- (iii) The order passed by the Divisional Commissioner on 19th April, 2022 in Application No.Karya 3/GP3/ Ambivali/ 2021/1259 removing the respondent No. 1 from the post of *Sarpanch* and member of Village Panchayat Ambivali, Tal. Mahad, Dist. Raigad under Section 39 (1) of the Act, 1959, stands restored.

Rule made absolute in the aforesaid terms.

[N. J. JAMADAR, J.]