

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

Writ Petition No.30 of 2018

Vinod Ramlu Nimmalwar and Another

Vs

Hon'ble State Minister, Rural Development, Mumbai And Others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri N.A. Gawande, Advocate for the Petitioner/s
Ms Shamsi Haidar, AGP for the Respondent Nos.1 and 2/State
Shri A.J. Mirza, Advocate for the respondent No.4

CORAM : ANIL S. KILOR, J.

DATED : 26.06.2023

1. Heard.

2. The present writ petition pertains to disqualification of the petitioners as Sarpanch and Upa-Sarpanch of Village Panchayat, Patanbori, Taluka : Kelapur, District : Yavatmal, under Section 39(3) of the Maharashtra Village Panchayats Act (in short the Village Panchayat Act”).

3. The Divisional Commissioner, Amravati has rejected the application moved by the respondent No.4 under Section 39(1) of the Village Panchayat Act, for disqualification of the petitioners vide order dated 17.06.2017. The respondent No.4 feeling aggrieved by the same, carried an appeal before the Hon'ble Minister/respondent No.1, who has disqualified the petitioners vide impugned order dated 20.12.2017.

4. Admittedly, the order of the Hon'ble Minister is based on the subsequent report submitted by the Chief Executive Officer (CEO) on 15.09.2017 i.e. after the rejection of the application under Section 39(1) of the Village Panchayat Act by the Divisional Commissioner. The said report was not before the Divisional Commissioner.

5. Section 39(1)(i) of the Village Panchayat Act says that, "the Commissioner may remove from office any member or any Sarpanch or Upa-Sarpanch who has been guilty of misconduct in the discharge of his duty, or is persistently remiss in the discharge thereof".

6. The First Proviso to Section 39(1)(ii) says that, 'no person shall be removed from office unless, in case clause (i), the Chief Executive Officer, under the orders of the Commissioners, holds an inquiry after giving due notice to the Panchayat and the concerned person'.

7. The Second Proviso to 39(1)(ii) says 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, within a period of one month from the date of receipt thereof, in the case of clause (i) of sub section (1) of Section 39'.

8. In the present matter, if the Hon'ble Minister was of the view that further inquiry by the CEO was needed, he ought to have remanded the matter back to the Divisional Commissioner

for calling fresh report and deciding the same after giving sufficient opportunity to the parties.

9. Admittedly, the Hon'ble Minister has not called the report from the CEO under Section 31(A) of the Village Panchayat Act, which is a separate power than the power as appellate authority, vested in the Hon'ble Minister under Section 39(3) of the Village Panchayat Act.

10. Even under Section 39(A), after calling a report from CEO, the State Government has to send the matter to the Divisional Commissioner to decide it on the basis of the such report.

11. In the present matter, the Hon'ble Minister has exceeded his jurisdiction in calling report from the CEO Zilla Parishad and deciding the application under Section 39(1) for disqualification, while exercising the power under Section 39(3) of the Village Panchayat Act.

12. In the circumstances, I have no hesitation to hold that the order impugned dated 20.12.2017 passed by the Hon'ble Minister is liable to be quashed and set aside. The matter needs to be remanded back to Divisional Commissioner, Amravati to decide afresh. Accordingly, I pass the following order:

- (i) The writ petition is **partly allowed**.
- (ii) The order dated 20.12.2017 passed by Hon'ble Minister, is hereby quashed and set aside.
- (iii) The matter is remanded back to the Divisional Commissioner to decide the matter afresh on the basis of

report submitted by CEO, Zilla Parishad, Yavatmal dated 15.09.2017, after hearing both the parties.

iv) The Divisional Commissioner, Amravati shall take decision within three months from today.

v) Parties shall appear before the Divisional Commissioner, Amravati Division, Amravati on **06.07.2023** at 11.00 am.

[ANIL S. KILOR, J.]