

THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 899 OF 2023

PETITIONER: Rupali Dinesh Kale,
aged about 32 years, Occ. Housewife,
R/o. Besakheda, Tq. Chandur Bazar,
District Amravati.

...VERSUS...

RESPONDENTS: 1] The State of Maharashtra,
through the Minister of Rural
Development (Gram Vikas),
Mantralaya, Mumbai-32

2] The Divisional Commissioner,
Amravati Division, Amravati.

3] The Chief Executive Officer,
Zilla Parishad, Amravati.

4] Dheeraj Subhashrao Bhonde,
aged about 27 years, Occ. Agriculture,
R/o. Parsoda, Tq. Chandur Bazar,
District Amravati.

5] The Secretary, Gram Panchayat
Besakheda, Tq. Chandur Bazar,
District Amravati.

6] Priyanka Amol Kakade,
aged about 35 years, Occ. Household,
R/o. Beskheda, Tq. Chandur Bazar,
District Amravati.

Mr. Vinay Dahat, Advocate for petitioner.
Mrs. M.A.Barabde, AGP for respondent Nos. 1 & 2
Mr. S.A.Mohta, Advocate for respondent no.3
Mr. N.A.Gawande, Advocate for respondent no.4
None for respondent no.5
Mr. Tushar Tathod, Advocate for respondent no.6

CORAM : AVINASH G. GHAROTE, J.
DATE : 27/07/2023.

1] **Rule.** Rule made returnable forthwith. Heard finally with the consent of Mr. Dahat, learned counsel for the petitioner and learned counsels for the respective respondents. None for the respondent no.5, though served.

2] The petition questions the order dated 28.10.2022 passed by the learned Divisional Commissioner, Amravati under Section 39(1)(i) of the Maharashtra Village Panchayat Act (for short "the MVP Act), disqualifying the petitioner who was elected as Sarpanch, on account of disgraceful conduct, as, on a complaint by the respondent no.4 alleging that a demand for illegal gratification was made by the petitioner in respect of certain works to be done for the Panchayat, though the trap laid by the Anti Corruption Bureau had failed, that indicated a

satisfaction of the requirement of Section 39(1)(i) of the MVP Act. This order has been confirmed by the respondent no.1 in appeal by his order dated 30.12.2022 (pg. 63) confirming the findings rendered by the learned Divisional Commissioner.

3] Mr. Dahat, learned counsel for the petitioner submits that since the trap by the Anti Corruption Bureau had failed, on account of the admitted position that the petitioner never turned up to receive the alleged demand, which indicated that the complaint was false, and though on such a false complaint, the petitioner was put behind the bars for the period of 14 days, that cannot be a ground to disqualify the petitioner, as nothing could be attributed to the petitioner in the matter on account of the failure of the trap. In respect of plea regarding demand being made, for which reliance is placed upon the first Panchnama by the Anti Corruption Bureau for verifying the demand, the Panchnama itself is relied upon to contend that even the Anti Corruption Bureau was not clear about any demand being made by the petitioner. It is also

contended that the G.R. dated 18.6.2011 was in respect of persons who had been caught red handed and therefore same was clearly not applicable to the petitioner. It is therefore contended that on basis of such allegations, the disqualification cannot be sustained.

4] Learned AGP appearing for respondent nos. 1 & 2 supports the impugned orders.

5] Mr. Mohta, learned counsel appearing for respondent no.3 also supports the impugned order.

6] Mr. Gawande, learned counsel for respondent no.4/ complainant before the Commissioner, submits that a demand was indeed made, as a result of which one Kamlesh Rohote had lodged the complaint with the Anti Corruption Bureau, resulting into a trap being laid and even if the trap had failed, the demand was demonstrated by the panchnama, considering which a prima facie case was demonstrated to be made out,

which was more than enough for the petitioner to incur disqualification.

7] Mr. Tathod, learned counsel appearing for respondent no.6, the subsequently elected Sarpanch on 25.11.2022, in the place of the petitioner for the remaining period, supports the impugned orders and contends that the very fact that the petitioner was required to suffer incarceration for a period of 14 days in pursuance to the FIR lodged against the petitioner in conjunction with the Panchnama, demonstrates the demand being made and the fact that resolutions dated 27.10.2021 and 26.4.2022 which were passed under the helm of the petitioner would indicate that the plea which is being sought to be raised by the petitioner that the work in respect of which demand was alleged was not of the Gram Panchayat is clearly without any merit and therefore, the defence raised by the petitioner fell through, considering which also the impugned orders are required to be sustained.

8] A perusal of the GR dated 18.6.2011 (pg.68) would indicate that, it is in cases where any elected representative has been caught red handed, that an action under Section 39 of the MVP Act is directed to be initiated as early as possible.

9] In the instant case, it is an admitted position on record that the trap laid by the Anti Corruption Bureau did not fructify and had failed on account of the petitioner not having approached the complainant for receiving the alleged illegal gratification. The first panchanama has not been placed on record. A perusal of the document filed by the respondent no.6 on record indicates that the communication dated 20.6.2013 issued by the concerned Police Inspector of the Anti Corruption Bureau, Amravati itself indicates that there was no direct communication between the Panchas and the petitioner at the time when the panchas had been to the residence of the petitioner to verify the demand. Though it is claimed that it is the husband of the petitioner who had made the demand at the residence of the petitioner, where the petitioner is claimed to

have been present, the communication itself indicates that there was no clarity regarding any amount being demanded and therefore, a further verification was agreed to be conducted thereupon by the Anti Corruption Bureau. The communication does not indicate that this was ever done. It is therefore apparent that the position at present, is merely at a stage of an allegation having been made, which prima facie has not fructified into a trap. **Dr.Narendra Purushottam Ingole vrs. Hon'ble State Minister, Village Development Department and ors, 2019(3) Mh.L.J.368** relied upon by Mr. Tathod, learned counsel for respondent no.6 was a case in which the trap was successful and the petitioner therein was caught red handed, which was held to amount to disgraceful conduct. The Court therein has succinctly defined what would be disgraceful conduct for the purpose of Section 39 of the MVP Act which is reflected from the perusal of paras 9, 10 and 11, which are quoted as under :

“10. The expression "disgraceful conduct" as employed in Section 39(1) of the said Act has to be

construed keeping in mind the object sought to be achieved by said provision. The removal of an elected member or Sarpanch or Upa-Sarpanch from office is a drastic action and the exercise of such power is based on the subjective satisfaction of the Commissioner in the light of any disgraceful conduct of the concerned member, Sarpanch or Upa- Sarpanch. In a way, the power of removal has been conferred on the Commissioner for being exercised in a situation which otherwise is not a disqualification prescribed under the said Act. For example, a member who is being proceeded against in a Court of law as an accused for a serious or heinous crime would not be disqualified until he is so convicted for being disqualified under Section 14(1) of the said Act. But if the alleged offence is committed during the term as member, Sarpanch or Upa-Sarpanch and in the opinion of the Commissioner, such act amounts to disgraceful conduct on his part, then to meet such situation which though does not become a disqualification till conviction could still be a reason to remove such member, Sarpanch or Upa-Sarpanch from the post held by him which would make him ineligible to contest for such post for the remainder of the term.

In other words, a situation has been contemplated which empowers the Commissioner to remove a member or a Sarpanch or Upa-Sarpanch from the post held by him if it is found that such elected member is guilty of either misconduct in the discharge of his duties or of any disgraceful conduct for the remainder of his term.

11. The expression "disgraceful conduct" in the context of an elected representative of a local body has been considered in *Ravi Yashwant Bhoir Vs. District Collector, Raigad & Ors. AIR 2012 SC 1339*. In paragraph 15, it has been observed thus:

"15. The expression 'disgraceful conduct' is not defined in the statute. Therefore, the same has to be understood in given dictionary meaning. The term 'disgrace' signifies loss of honour, respect, or reputation, shame or bring disfavour or discredit. Disgraceful means giving offence to moral sensibilities and injurious to reputation or conduct or character deserving or bringing disgrace or shame. Disgraceful conduct is also to be examined from the context in which the term has been employed under the statute. Disgraceful conduct need not necessarily be connected with the official duty of the office- bearer. Therefore, it may be outside the ambit of discharge of his official duty."

In the Concise Oxford English Dictionary, the expression "disgrace" is shown to mean loss of reputation as a result of a dishonourable action and "disgraceful" is shown to mean shockingly unacceptable.

12. In the present case the report of the Chief Executive Officer indicates that pursuant to a complaint lodged by one Narayan Gaikwad, the petitioner is alleged to have demanded an amount of Rs.2500/- by way of illegal gratification for issuing a notice to one Shri Lohakare on account of the construction erected by him. The said amount was demanded for taking action in that matter by the petitioner in his capacity as the Sarpanch. The petitioner was trapped red-handed in that process after which an offence under Sections 7 and 13 of the Prevention of Corruption Act, 1988 came to be registered against him. The petitioner was arrested in that process and the Chief Executive Officer in that background sought permission to make an enquiry

under Section 39(1) of the said Act against the petitioner. The action in question is based on the arrest of the petitioner pursuant to a trap led by the Anti-Corruption Bureau on the basis of a complaint received by it. The act of demanding illegal gratification and subsequent arrest by the Anti-Corruption Bureau has been treated as an act amount to disgraceful conduct on the part of the petitioner warranting his removal.”

10] It is thus apparent that on the mere allegation of demand of illegal gratification, which demand is not apparent from any action or document produced on record or from the first panchnama conducted by the Anti Corruption Bureau as is indicated by the communication dated 20.6.2023, the petitioner who was a duly elected Sarpanch could not have been visited with such drastic action. The impugned order of the Divisional Commissioner dated 28.10.2022 (pg.48) merely disqualifies the petitioner on account of the FIR being registered against her on the demand being verified, which, as indicated above, even according to the Anti Corruption Bureau, was not so and also on account of the incarceration of the petitioner for 14 days in pursuance to the complaint, which has

been upheld by the respondent no.1 on the same ground (pg.66). That being the position, the impugned orders which disqualify the petitioner merely on the basis of an allegation, as indicated above, cannot be sustained and are hereby quashed and set aside.

11] Rule is made absolute in above terms. No costs.

12] At this juncture, Mr. Tathod, learned counsel for respondent no.6 seeks a stay of this order for a period of 4 weeks.

13] Though the same is opposed by Mr. Dahat, learned counsel for the petitioner, however considering that the respondent no.6 is already occupying the post of Sarpanch, this order shall stand stayed for a period of 4 weeks from today.

JUDGE