



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

Writ Petition No.5879 of 2023

With

Writ Petition No.1277 of 2023

Writ Petition No.5879 of 2023

Rahul S/o Vasantrao Arkhaarao,

Aged about 39 years,

Occu.: Agriculturist,

R/o At Po Rajanda,

Tq. Barshitakli, Dist. Akola,

Presently at Nagpur.

... Petitioner

Versus

1. The Divisional Commissioner,
Amravati Division, Amravati.

2. Zilla Parishad, Akola,
through its Chief Executive Officer,
District Akola.

3. Block Development Officer,
Panchayat Samiti Barshitakli,
Dist. Akola.

4. Village Development Officer,
Gram Panchayat Rajanda,
Tah. Barshitakli, Dist. Akola.

5. Shrikrishna Sukhdev Solanke,
Aged 64 years,
Occ.: Agriculturist/Up-Sarpanch,
Gram Panchayat Rajanda.

6. Raju S/o Uttamrao Solanke,

Aged about 47 years,

Occu.: Ex-Sarpanch,

Gram Panchayat Rajanda.

7. Vijay S/o Kisan Bhagewar,

Aged about 33 years,

Occ.: Member,

Gram Panchayat Rajanda.

8. Jaya Prabhakar Kale,

Aged about 40 years,

Occ.: Member,

Gram Panchayat Rajanda.

9. Karuna Dhyandepo Arkharao,

Aged about 51 years,

Occ.: Member,

Gram Panchayat Rajanda.

10. Varsha Ramdas Solanke,

Aged about 45 years,

Occ.: Member,

Gram Panchayat Rajanda.

All Nos.1 to 6 R/o Rajanda,

Tah. Barshitakli, Dist. Akola.

... Respondents

Shri S.D. Chopde, Counsel for Petitioner.

Shri A.S. Fulzele, Additional Government Pleader for Respondent No.1.

Shri N.M. Kolhe, Counsel for Respondent Nos.2 to 4.

WithWrit Petition No.1277 of 2023

1. **Shrikrishna Sukhdev Solanke,**
Aged about 64 years,
Occ.: Agriculturist/Upsarpanch,
Gram Panchayat Rajanda.
2. **Raju S/o Uttamrao Solanke,**
Aged about 47 years,
Occ.: Ex-Sarpanch,
Gram Panchayat Rajanda.
3. **Vijay S/o Kisan Bhagewar,**
Aged about 33 years,
Occ.: Member,
Gram Panchayat Rajanda.
4. **Jaya Prabhakar Kale,**
Aged about 40 years,
Occ.: Member,
Gram Panchayat Rajanda.
5. **Karuna Dhyandeo Arakharao,**
Aged about 51 years,
Occ.: Member,
Gram Panchayat Rajanda.
6. **Varsha Ramdas Solanke,**
Aged about 45 years,
Occ.: Member,
Gram Panchayat Rajanda.

All Nos.1 to 6 R/o Rajanda,
Tah. Barshitakli, District Akola.

... Petitioners

Versus

1. **The Divisional Commissioner,**
Amravati Division, Amravati.
2. **Zilla Parishad, Akola,**
through its Chief Executive Officer,
District Akola.
3. **Block Development Officer,**
Panchayat Samiti Barshitakli,
District Akola.
4. **Village Development Officer,**
Gram Panchayat Rajanda,
Tah. Barshitakli, Distt. Akola.
5. **Rahul Vasantrao Arakharao,**
Aged Major, Occu. Sarpanch,
Gram Panchayat Rajanda,
Tah. Barshitakli, Distt. Akola.
6. **State of Maharashtra,**
through its Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.

... Respondents

Shri Ram Karode, Counsel for Petitioners.

Shri A.S. Fulzele, Additional Government Pleader for Respondent Nos.1 and 6.

Shri N.M. Kolhe, Counsel for Respondent Nos.2 to 4.

Shri S.D. Chopde, Counsel for Respondent No.5.

CORAM : A.S. CHANDURKAR & MRS. VRUSHALI V. JOSHI, JJ.

Date when arguments were heard : 6th September, 2023.

Date when the order was pronounced : 11th September, 2023.

ORDER (PER A.S. CHANDURKAR, J.) :

1. Both the writ petitions have been heard together considering the nature of challenge as raised therein.

2. The petitioner in Writ Petition No.5879 of 2023 has been elected as Sarpanch of Gram Panchayat Rajanda, Taluka Barshitakli, District Akola. The respondent Nos.5 to 10 in the said writ petition who are the petitioners in Writ Petition No.1277 of 2023 filed proceedings under Section 39 of the Maharashtra Village Panchayats Act, 1959 (for short, 'the Act of 1959') on 3-1-2023 seeking disqualification of the Sarpanch. On such proceedings being filed before the Divisional Commissioner, Amravati a communication dated 10-1-2023 was issued by the Divisional Commissioner to the Chief Executive Officer, Zilla Parishad, Akola to conduct an enquiry as contemplated by Section 39(1) of the Act of 1959 and submit a report in that regard. On receiving this communication, the Chief Executive Officer on 20-1-2023 issued a communication to the Block Development Officer, Panchayat Samiti, Barshitakli to obtain all relevant information from the concerned parties and after making an enquiry submit a report in that regard. It was further stated that such report/say was directed to be filed on 3-2-2023. Acting on the aforesaid communication, the Block Development Officer called upon

the Sarpanch to submit his say in the said matter with a view to conduct necessary enquiry.

3. The communication dated 20-1-2023 issued by the Chief Executive Officer to the Block Development Officer as well as the subsequent communication dated 20-2-2023 issued by the Block Development Officer have been challenged by the complainants on the ground that the enquiry contemplated under Section 39(1) of the Act of 1959 is to be conducted by the Chief Executive Officer himself and the power in that regard cannot be delegated to any other officer below the rank of Chief Executive Officer. While issuing notice in Writ Petition No.1277 of 2023, the communications dated 20-1-2023 as well as 20-2-2023 came to be stayed. Thereafter on 13-6-2023, the Block Development Officer submitted his report to the Deputy Chief Executive Officer with regard to the aforesaid proceedings under Section 39(1) of the Act of 1959. On receiving the said report, the Chief Executive Officer forwarded the entire record to the Divisional Commissioner by his communication dated 26-6-2023.

4. In the aforesaid factual backdrop, Shri S.D. Chopde, learned counsel for the Sarpanch, submitted that the enquiry report dated 26-6-2023 as submitted by the Chief Executive Officer was liable to be set aside since such enquiry had been conducted by an officer who was not empowered to do so. The enquiry in question having been conducted by the Block Development Officer and the same having been forwarded to the Chief Executive Officer, it was

clear that the Chief Executive Officer himself did not conduct the enquiry as required by Section 39(1) of the Act of 1959. The Divisional Commissioner was therefore not entitled to consider the enquiry report dated 26-6-2023 in the proceedings under Section 39(1) of the Act of 1959 and such report was liable to be set aside. In that regard, the learned counsel placed reliance on the decisions of this Court in Writ Petition No.5609 of 2022 (*Sau. Aarti W/o Khushal Tavar Versus Chief Executive Officer, Zilla Parishad, Washim and others*) decided on 15-11-2022, Writ Petition No.7158 of 2017 (*Shalik S/o Bolan Dahiwalale Versus State of Maharashtra and others*) decided on 6-10-2018 as well as the decision in *Ankush s/o Pandurang Shinde Versus The State of Maharashtra and others* [2022(3) ALL MR 56]. It was thus submitted that after quashing the enquiry report dated 26-6-2023, a direction be issued to the Chief Executive Officer to himself conduct the enquiry as required by Section 39(1) of the Act of 1959.

5. Shri Ram Karode, learned counsel for the complainants, opposed the aforesaid submissions. According to him, after the communications dated 20-1-2023 and 20-2-2023 were challenged by the complainants and the said communications were stayed, the Chief Executive Officer had himself conducted such enquiry and had submitted his report to the Divisional Commissioner. The enquiry report dated 26-6-2023 could not be said to be vitiated on the ground that the enquiry was conducted by the Block Development Officer.

The Block Development Officer had merely collected the basic material to enable the Chief Executive Officer to conduct his enquiry. He further submitted that this position was clear from the affidavit-in-reply filed by the Chief Executive Officer in Writ Petition No.1277 of 2023. It was then submitted that the challenge raised by the Sarpanch to the enquiry report dated 26-6-2023 was premature for the reason that the Divisional Commissioner was empowered to consider the validity of the enquiry report. The Sarpanch could challenge the enquiry report before the Divisional Commissioner and raise these contentions while defending the proceedings under Section 39(1) of the Act of 1959. There was no reason to entertain such challenge at this stage since the proceedings under Section 39(1) of the Act of 1959 were pending before the Divisional Commissioner. In that regard, the learned counsel sought to rely upon the judgment of the Hon'ble Supreme Court in *Indermani Kirtipal Versus Union of India and others* (AIR 1996 SC 1567) as well as the order passed by this Bench in Writ Petition No.3857 of 2023 (*Dipak Ambadas Gavai and others Versus The Divisional Commissioner, Amravati Division, Amravati and others*) dated 6-7-2023. He further submitted that the writ petition filed by the Sarpanch was liable to be dismissed.

6. Having heard the learned counsel for the parties and having perused the documents on record, we are not inclined to examine the challenge raised to the enquiry report dated 26-6-2023 at this stage for the following reasons :-

(a) The proceedings under Section 39(1) of the Act of 1959 seeking disqualification of the Sarpanch are pending before the Divisional Commissioner.

(b) Under Section 39(1) of the Act of 1959, the Divisional Commissioner is empowered to consider as to whether the enquiry as contemplated by the said provisions has been conducted by the Chief Executive Officer as required. If it is demonstrated by the party challenging such enquiry report that the enquiry is not conducted in accordance with the said provisions, the Divisional Commissioner has the necessary jurisdiction to take a decision in that regard. If he is satisfied that such enquiry is not conducted in accordance with the statutory requirements, he has the jurisdiction to ignore or refuse to rely upon such enquiry report. This exercise is not yet undertaken by the Divisional Commissioner.

(c) Since the right of the party facing proceedings under Section 39(1) of the Act of 1959 is not taken away and as all possible defences are available for being raised in the said proceedings, the challenge to the enquiry report at this stage would be premature. This aspect has been considered in *Dipak Ambadas Gavai and others* (supra) decided by this Bench.

7. Since we find that it is permissible for the Sarpanch in the present case to raise an appropriate challenge to the enquiry report dated 26-6-2023 in the proceedings that are pending before the Divisional Commissioner under Section 39(1) of the Act of 1959, we are not inclined to entertain the said challenge on merits. Keeping all points raised in Writ Petition No.5879 of 2023 open for being raised

before the Divisional Commissioner, the said writ petition stands dismissed.

8. Since the purpose of filing Writ Petition No.1277 of 2023 stands served in the light of the stand of the complainants that a fresh enquiry report has been now submitted by the Chief Executive Officer on 26-6-2023, it is not necessary to keep the present writ petition pending. It is also disposed of.

9. It is clarified that it would be open for the complainants to defend the proceedings filed by them under Section 39(1) of the Act of 1959 on all permissible grounds.

10. Both the writ petitions are disposed of with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)