

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

WRIT PETITION NO. 2831 OF 2022

Chhayatai W/o. Nandkishor Wasade,
Aged about 42 years, Occ.: Sarpanch,
R/o. Dhanora, Tahsil and District :
Chandrapur.

.... **PETITIONER.**

// VERSUS //

1. The Additional Commissioner,
Commissioner Office Compound,
Civil Lines, Nagpur.
2. Chief Executive Officer,
The Zilla Parishad, Chandrapur,
Zilla Parishad Compound, Civil
Lines, Chandrapur.
3. The Block Development Officer,
Panchayat Samiti Compound,
Panchayat Samiti, Chandrapur.
4. Minister of Rural Development,
State of Maharashtra, Mantralaya,
Mumbai – 400 032.

.... **RESPONDENTS.**

Shri Madhur Deo, Advocate for Petitioner.

Shri K.L.Dharmadhikari, A.G.P. for Respondent No.1 & 4.

Shri Akshay Darunde, Adv. h/f. Shri B.N.Jaipurkar, Adv. for Resp. Nos. 2 & 3.

CORAM : **ANIL S. KILOR, J.**

DATED : **FEBRUARY 24, 2023**

ORAL JUDGMENT :

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent for the respective parties.

3. In this petition order dated 23/05/2022 passed by the Hon'ble Minister, upholding the disqualification of the petitioner as Sarpanch, Village Panchayat, Dhanora, Tahsil and District : Chandrapur by Divisional Commissioner vide order dated 29/09/2021 is under challenge in this writ petition.

4. The facts in brief are as under:

One Vinod Baburao Yeole made a complaint on 15/06/2018 alleging misconduct on the part of the petitioner. The allegation against the petitioner is that a meeting was held on 16/05/2018 in which a resolution No.8/4 was moved that the members of Gram Panchayat shall not sit in the office without any purpose. It is alleged that the said resolution was passed unanimously, despite this after 5 days on 21/05/2018 the petitioner went to the Secretary of Gram Panchayat and sought for the book in which the minutes of the meeting

were recorded and wrote that she does not agree with the resolution, committing thereby misconduct.

5. Thereupon, the respondent No.2-Chief Executive Officer conducted inquiry. The respondent No.1 thereafter passed the order dated 17/09/2021 disqualifying the petitioner as Sarpanch. Feeling aggrieved by the same, the petitioner carried an appeal before the Hon'ble Minister, which came to be rejected vide impugned order. Hence, this writ petition.

6. The learned counsel for the petitioner submits that the only allegation against the petitioner is that after five days of passing of the resolution to the effect that, the members of the Gram Panchayat shall not sit in the office without any purpose, the petitioner wrote in it that, she does not agree with the resolution and as such she has committed misconduct.

7. It is submitted that except this isolated incident there are no allegation of any misconduct. It is submitted that even otherwise considering the nature of subject of the resolution it cannot be said that opposing the said resolution subsequently by putting a contrary note, amounts to any misconduct which would attract disqualification. The

learned counsel for the petitioner in support of his submission, has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Ravi Yashwant Bhoir ..vs.. Collector*, reported in **(2012) 4 SCC 407**.

8. It is further submitted that the Chief Executive Officer has not conducted the inquiry, but, he directed the respondent No.3 to conduct the enquiry. It is submitted that on obtaining copy of the report under the Right to Information Act, 2005, it was revealed that the report was prepared by Extension Officer, Panchayat Samiti and it was signed by the respondent No.3. It is therefore, submitted that neither the respondent No.3 nor the Extension Officer has any authority to make inquiry as regards misconduct under Section 39 of the Act of 1958. For this purpose, he has placed reliance on the judgment of the Coordinate Bench of this Court in the case of *Jagdish Mannalalji Sancheriya ..vs.. The State of Maharashtra and others*, dated 24/06/2022 in **W.P. No. 4805 of 2021**.

9. The learned counsel for the petitioner points out that initially a complaint was made to the Chief Executive Officer on 15/06/2018. Thereupon, the Chief Executive Officer conducted inquiry

through Block Development Officer and on receipt of report, the Chief Executive Officer issued show cause notice to the petitioner, as to why action under Section 39 of the Act of 1958 shall not be taken and thereafter the Chief Executive Officer sought permission from the Divisional Commissioner to initiate proceedings under Section 39 of the Act of 1958 and accordingly the permission was granted. He, therefore, submits that the whole proceedings was initiated on the basis of the report of the Block Development Officer which, in fact, though signed by the Block Development Officer, it was prepared by the Extension Officer, Panchayat Samiti. It is therefore, submitted that no report prepared by the Chief Executive Officer was before the respondent No.1 or it was never the basis for disqualification of the petitioner.

10. On the other hand, the learned A.G.P. supports the impugned orders passed by both the authorities below, disqualifying the petitioner as Sarpanch.

11. The learned counsel for the Zilla Parishad strongly opposes the writ petition and submits that there is no irregularity committed by the Chief Executive Officer in submitting the report and it was in compliance with Section 39 of the Act of 1958.

12. In the light of the rival submissions of the respective parties, I have gone through the writ petition, documents filed along with the writ petition, reply and the impugned order.

13. From the record, it is evident that the complaint against the petitioner alleging misconduct was made by one Vinod Bhaurao Yeole on 15/06/2018 to the Chief Executive Officer. The Chief Executive Officer called a report from the Block Development Officer.

14. Accordingly, the Block Development Officer submitted report to the Chief Executive Officer. Thereupon, the Chief Executive Officer issued show cause notice and called explanation from the petitioner why the proceedings under Section 39 of the Act of 1958 shall not be initiated against the petitioner. The petitioner submitted the explanation and finding the same unsatisfactory, the Chief Executive Officer sought permission from the Divisional Commissioner to initiate proceedings under Section 39 of the Act of 1958 and accordingly the proceeding was initiated.

15. It is further evident that the basis for initiation of the proceedings under Section 39 of the Act of 1958 was the report prepared by the Block Development Officer. There is nothing to point out that at the time of preparation of the report, the petitioner was heard. Further, there is nothing to point out that any independent inquiry was conducted by the Chief Executive Officer.

16. In the case of *Jagdish Sancheriya* (supra) the Coordinate Bench of this Court has held thus :

“19. A bare reading of the above quoted provisions shows that the role of the CEO is specified in the proviso to Section 39(1) of the Act, which mandates that the CEO shall hold an enquiry under the orders of the respondent No.2–Additional Commissioner, when the Commissioner considers the question of removal of Sarpanch, Upa-Sarpanch or Member of the Gram Panchayat from the elected Office. The role of the CEO starts upon a specific order of the Commissioner, who intends to remove a Sarpanch, Upa-Sarpanch or Member from the elected Office. Thus, under the statutory scheme, the CEO is expected to act as an authority which conducts an independent enquiry into the matters that may be referred by the Commissioner in the context of the question of removal of a Sarpanch, Upa-Sarpanch or a Member of the Gram Panchayat.”

17. In the teeth of the above referred observations, I revert back to the facts of the present case. In this case, the report of the Chief

Executive Officer is not based on any inquiry made by him, but is the reproduction of the report of the Block Development Officer. Thus, there is a non-compliance of the procedure laid down under Section 39 of the Act of 1958.

18. Even on merit, if the matter is examined, it can be seen that the allegation of misconduct is based on an act committed by the petitioner by putting a note contrary to the resolution dated 16/05/2018, after five days of such resolution, saying that the petitioner is not agreeable with the resolution passed. Interestingly, it is to be noted that the said resolution says that “members of the Gram Panchayat shall not sit in the office without any purpose.” The resolution is not related to any important subject of development which would affect the development work of the Gram Panchayat because of subsequent change of opinion of the petitioner or it would not give any unlawful benefits to her.

19. In the case of *Ravi Bhoir* (supra) the Hon’ble Supreme Court of India has observed thus :

“34. In a democratic institution, like ours, the incumbent is entitled to hold the office for the term

for which he has been elected unless his election is set aside by a prescribed procedure known to law or he is removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office-bearer sought to be removed.

*35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (Vide: *Jyoti Basu v. Debi Ghosal*, *Mohan Lal Tripathi v. District Magistrate, Rai Bareilly*, and *Ram Beti v. District Panchayat Raj Adhikari*).*

36. In view of the above, the law on the issue stands crystallized to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency/electoral college is also deprived of representation by the person of their choice.

37. A duly elected person is entitled to hold office for the term for which he has been elected and he

can be removed only on a proved misconduct or any other procedure established under law like 'No Confidence Motion', etc. The elected official is accountable to its electorate as he has been elected by a large number of voters and it would have serious repercussions when he is removed from the office and further declared disqualified to contest the election for a further stipulated period."

20. The Hon'ble Supreme Court of India in clear terms has observed that in a democratic institution, like ours, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law or he is removed by the procedure established under law. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Hence, the elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving the incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right.

21. In the present matter, it can be seen that both the authorities below, before disqualifying the petitioner, have not considered the subject matter of the resolution, the fact that there is no report of the Chief Executive Officer and the alleged misconduct is an isolated incident.

22. In the circumstances, I have no hesitation to hold that both the authorities have committed grave error in disqualifying the petitioner. Accordingly I pass the following order :

- i) The writ petition is allowed.
- ii) The impugned order dated 17/09/2021 passed by respondent No.1 and impugned order dated 23/05/2022 passed by respondent No.4 are hereby quashed and set aside.

Rule is made absolute accordingly. No order as to costs.

(ANIL S. KILOR, J)