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

WRIT PETITION NO. 5073/2017

(RAMRAJ GULABRAO KHADSE **VERSUS** CHIEF EXECUTIVE OFFICER, ZILLA PARISHAD, NAGPUR & OTHERS)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders.	*Court's or Judge's order*

Shri N.B. Bargat, counsel for the petitioner.
Shri Shaikh Majid, counsel for the respondent nos.1 and 2.
Shri A.A. Madiwale, Assistant Government Pleader for the respondent nos.3 to 5.

CORAM : A. S. CHANDURKAR AND MRS.VRUSHALI V. JOSHI, JJ.
DATE : SEPTEMBER 04, 2023.

Heard.

2. The challenge raised in this writ petition is to various communications that have been issued to the petitioner in the matter of implementation of recovery of an amount of Rs.9,10,895/- that is found due and payable by the petitioner being the amount of recovery pursuant to the enquiry report that was submitted with regard to the period when the petitioner was functioning as the Sarpanch of Gram Panchayat Besa-Beltarodi.

3. On the directions of the Chief Executive Officer, Zilla Parishad, Nagpur a Committee of seven members was constituted to undertake an enquiry into various complaints received pertaining to functioning of Gram Panchayat Besa-Beltarodi. Pursuant thereto such enquiry was held and enquiry report was submitted by the Committee comprising of five members. In the said enquiry report various irregularities in the functioning of the Gram Panchayat were noticed. On that basis, it was recommended that action of recovery be undertaken from those found responsible. In the proceedings in Public Interest Litigation No. 38 of 2013 yet another enquiry report was submitted and insofar as the petitioner who was the former Sarpanch of Gram Panchayat Besa-Beltarodi was concerned, a recommendation for recovery of an amount of

Rs.9,10,895/- was proposed. Based on the aforesaid reports, the Chief Executive Officer on 01.07.2015 forwarded the necessary proposal for recovery of the aforesaid amount to the Office of the Collector, Nagpur on 01.07.2015. Acting on the aforesaid communication, the Office of the Collector, Nagpur through its Revenue Department issued notices to the petitioner to deposit the aforesaid amount failing which it was stated that the same would be recovered by adopting the course prescribed by the Maharashtra Land Revenue Code, 1966. Being aggrieved by the aforesaid steps taken by the respondents, the petitioner has sought to challenge the said action.

4. Shri N.B. Bargat, learned counsel for the petitioner submitted that the recovery sought to be undertaken by the Office of the Collector, Nagpur was without any legal basis and without granting any fair opportunity to the petitioner. In the initial enquiry that was held in the year 2009, the Chief Executive Officer, Zilla Parishad, Nagpur had found that neither the petitioner nor other members of the Gram Panchayat were liable for action under Section 39(1) of the Maharashtra Village Panchayats Act, 1958 (for short, 'the Act of 1959'). Ignoring the aforesaid, further steps came to be taken pursuant to the proceedings in Public Interest Litigation No. 38 of 2013. In the subsequent proceedings proper opportunity was not granted to the petitioner and on the basis of audit objections for the period from 2006-07 to 2007-08 the liability was fixed on the petitioner. It was submitted that since the Chief Executive Officer, Zilla Parishad, Nagpur in proceedings under Section 39(1) of the Act of 1958 had found that there were no irregularities committed by the petitioner and other members of the Gram Panchayat, there was no reason whatsoever to again proceed against the petitioner and seek the aforesaid recovery. On this count, it was submitted that the impugned notices seeking to recover the amounts in question were liable to be set aside.

5. Shri Shaikh Majid, learned counsel for the respondent nos.1 and 2 opposed the aforesaid submissions. It was submitted that the proceedings initiated under Section 39 of the Act of 1958 were distinct in nature while the present proceedings arose in view of the directions issued and action taken under Section 140(5) of the Act of 1958. The enquiry report was received in the said proceedings under Section 140(5) of the Act of 1958. The said report was prepared after giving due opportunity to the petitioner. Since the explanation of the petitioner was not found satisfactory, the recommendations in the audit report and the enquiry report were accepted. After issuing the show cause notice to the petitioner on 16.07.2014 and after considering the petitioners explanation dated 10.11.2014 the recovery of the outstanding amount as determined in the Audit Inspection Report had been initiated. Since the entire action was taken in accordance with law there was no case made out to interfere in writ jurisdiction.

Shri A.A. Madiwale, learned Assistant Government Pleader for the respondent nos.3 to 5 also opposed the writ petition. He referred to the affidavit-in-reply and submitted that after following the prescribed procedure, proceedings for recovery of the amounts adjudicated had been undertaken.

6. On hearing the learned counsel for the parties and after perusing the documents on record we do not find that there is any case made out to interfere in writ jurisdiction. The earlier proceedings pertaining to enquiry under Section 39(1) of the Act of 1958 and the enquiry report submitted by the Block Development Officer, Panchayat Samiti, Nagpur pertains to the activities of the petitioner and other members of the Gram Panchayat for seeking their disqualification under Section 39(1) of the Act of 1958. The said enquiry report does not find the petitioner and other members liable for action of disqualification under Section 39(1) of the Act of 1958. It is however seen that the action of recovery now initiated is pursuant to the constitution of an enquiry committee by the Chief Executive Officer, Zilla Parishad, Nagpur and the report of such Committee noting various deficiencies and financial irregularities in the affairs of the Gram Panchayat.

As per the said report, the amounts found due pertained to the period from 2002-03 to 2005-06 and thereafter from 2006-07 to 2007-08. The recoveries are on account of audit objections raised. The amounts to be recovered are from the Secretary of the Gram Panchayat as well as the petitioner who was the Sarpanch of the Gram Panchayat at the relevant time. It is after receiving this enquiry report that the Chief Executive Officer, Zilla Parishad, Nagpur has forwarded the said report to the Divisional Commissioner for action to be taken. It is seen that the enquiry report is thereafter considered by the Chief Auditor of the Zilla Parishad, Nagpur alongwith two other Officers who had certified the findings as recorded. The action in question has been taken under Section 140(5) of the Act of 1958. We find that this action under Section 140(5) of the Act of 1958 is distinct from the enquiry that was held under Section 39(1) of the Act of 1958.

7. Since the entire action has been taken on the basis of the audit objections and after giving the show cause notice to the petitioner on 16.07.2014 that was replied to by the petitioner on 10.11.2014, we do not find that there is any case made out to intervene in extraordinary writ jurisdiction. The reply of the petitioner to the show cause notice appears to be in general terms and does not raise any specific defence. Even before this Court, the conclusions recorded by the enquiry committee are not shown to be perverse.

8. For aforesaid reasons, we do not find any case made out to interfere in writ jurisdiction. The writ petition is thus dismissed with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.) **(A. S. CHANDURKAR, J.)**

APTE