

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

**WRIT PETITION NO. 6976/2022**

*SAU. MALA RAJESH CHAUHAN*

VS

*THE 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

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Mr. S.M. Vaishnav, Advocate for the petitioner  
Mr. D.P. Thakare, Additional Government Pleader for the  
respondent nos. 1 and 2  
Mr. P.R. Agrawal, Advocate for respondent no. 3  
Mr. Yash P. Bhelande, Advocate for respondent no. 4  
Mr. M.R. Rath, Advocate for respondent nos. 6 and 7  
Ms. V.A. Warade, Advocate for respondent no. 8

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

**DATED : 15/06/2023**

Heard.

2. This matter pertains to disqualification of the petitioner as a Sarpanch, Gram Panchayat, Chirodi. The petitioner was disqualified by the Divisional Commissioner, Amravati vide order dated 20.05.2022 and the said order of disqualification was confirmed by the Hon'ble Minister vide order dated 20.10.2022. Thus, the above referred orders are subject matter of the present writ petition.

3. Since, in this matter the disqualification of the petitioner was sought under Section 39(1) of the Maharashtra Village Panchayat Act, 1959. The enquiry was

conducted by the Chief Executive Officer, Zilla Parishad, Amravati and submitted his report dated 11.01.2022 to the Divisional Commissioner. The findings recorded by the Chief Executive Officer are as below:-

*“1] According to paper roster when it was necessary to give advertisement relating to work ‘one in daily news-paper’ and in the ‘weekly’, however in the complaint filed under 15th Finance Commission at Gram Panchayat Chirodi, advertisement relating to work was published only in one weekly. As a result it revealed that publicity of work has not been done as per the rules.*

*2] By deciding to pay fees of Rs.200/- for the tender as published in the advertisement in ‘Weekly’, dates for lifting and receiving tenders was indicated as 19/04/2021 to 26/04/2021. Accordingly neither anybody deposited fees for tender nor lifted the tender. No fees of anyone for the tender is deposited in the account. As a result it revealed that the Sarpanch and the Secretary in collusion with each other have received all the tenders.*

*3] Advertisement published by the Gram Panchayat did not mention providing the facility of drinking water to Z.P Schools with ‘Sintex Tank’. It revealed that the Sarpanch and the Secretary have not only accepted the tenders but have approved the same. No publicity was given for the said work.*

*4] It is necessary for the Gram Panchayat to take administrative approval of the members, by holding monthly meeting in respect of the work of 15th Finance Commission. But it is seen that no such administrative approval has been sought.*

5] *Under Resolution No.5 of the monthly meeting held on 27/04/2021, total tenders of Rs. 1,50,000/- ie. Rs.1,00,000/- for providing drinking water facility with 'Sintex' tank to Z.P. School and Rs. 50,000/- for providing drinking water facility with the tank to Anganwadi, has been approved from 15th Finance Commission Funds. But, the tender submitted by Raj Infratech, Amravati, for the said work has been received by Gram Panchayat on 7th July, 2021(07/07/2021). Thus, when the Gram-Panchayat was not in receipt of the tender, on what basis it was approved?*

*From this, it appears that the Sarpanch and the Secretary, by misleading the Panchayat, passed the resolution. Date of receipt of tenders is not mentioned on other tenders. It is seen that irregularity up to a great extent has been committed in the said matter.*

6] *It is seen that the Sarpanch and the Secretary, while preparing technical estimate of the work viz: 1) Providing drinking water facility to Z.P. School with fitting of 'Sintex' tank – Rs. 1,00,000/-, 2) drinking water facility to Anganwadi, with tap connection and fitting of the tank – Rs. 50,000/- 3) Electric connection and electric fitting to Anganwadi – Rs. 50,000/-, prepared the estimate and took action with regard to complete the work, without obtaining any technical guidance and technical approval what-so-ever for it.*

7] *It was shown that the Gram-Panchayat has approved the tenders for providing drinking water facility with 'Sintex' tank to Zilla Parishad School and drinking water facility with the tank, to Anganwadi, in its monthly meeting held on 27/04/2021. But, It is seen that the Administrative Sanction Order was issued in favour of Raj Infratech, Amravati on 23/03/2021 itself. It was*

*also seen that the tender of electric fitting to Anganwadi was approved in the monthly meeting held on 30/08/2021 and the Supply Order was issued prior to it on 23/02/2021. On what basis was the Approval Order issued to the concerned firm before approval of tender? Thus, in the said matter, it is seen that the Sarpanch and the Secretary have prepared documents with an intention to commit malpractice.*

8] *Tender for supply of drinking water with Sintex tank to Zilla Parishad School was received on 7th July 2021. Prior to receiving the tender, the approval of the monthly meeting was obtained on 27/04/2021. And it was seen that prior to that, the Sarpanch and Secretary had entered into a work agreement with Raj Infratech, Amravati on 24/04/2021. From this, it revealed that the Sarpanch and Secretary have prepared forged documents.*

9] *Instead of taking entries of deposit and expenses on the same day in the cash book, the entries were taken from date: 01/09/2021 to 07/09/2021 and entry of Rs. 2,00,000/- towards Finance Commission Fund was shown as online mistake on the credit side of cash book. But from the entries in the passbook, it is seen that the said amount was not credited online and the said amount was seen deposited on 07/09/2021 by way of cheque No. 042967. Earlier on 01/09/2021, entries regarding expenditure showed an expenditure of Rs. 2,00,000/- from Finance Commission Fund /entry by mistake against the debit side. From the passbook, it was seen that the said transaction was done online by pfms and the amount shown as deposit was credited through cheque.*

10] *In the 15th finance commission, the completion of works and entries are done online in e-gram swaraj portal through Plan Plus, Action soft and payment of work is done online through pfms. Accordingly, when the proceedings of the said works were checked online, it revealed that the Gram Panchayat has uploaded wrong records regarding the administrative approvals of providing Drinking water supply with Sintex tank to Zilla Parishad School, drinking water supply with tank to Anganwadi and electricity connection and fitting in Anganwadi. It revealed that fake technical approval orders were uploaded online when no technical approval was taken for the works.*

11] *On checking the uploaded photographs of the work online, it was seen that the photographs have been uploaded regarding the completion of all the work. When the work was not actually done, on what basis photographs of completed work were uploaded ? All the photographs turned out to be false and fake.*

12] *On inspecting bills of work online, it revealed that the Gram Panchayat Sarpanch and Secretary prepared online bill on 01/09/2021 in favour of Raj Infratech Amravati through pfms as 1)Zilla Parishad School drinking water facility including fitting of 'Sintex' tank- Rs. 1,00,000/-, 2) Anganwadi drinking water facility with tank and water tap connection- Rs. 50,000/- , 3) Anganwadi electrical connection and electrical fittings- Rs. 50,000/-. It is seen that a total of Rs. 2,00,000/- has been paid. Since, the works have not been done but the amount of Rs. 2,00,000/- towards the works has been disbursed by the Sarpanch and the Secretary and it reveals that there has been a malpractice in this. The Sarpanch and the Secretary, Gram*

*Panchayat, Chirodi are responsible for the said malpractice.*

13] *At present, as it is shown online that the aforesaid works at Gram Panchayat Chirodi were started and have been completed and as the expenditure of amount is shown, the bill payment for the aforesaid works cannot be given again. It is seen online that all these three works have been removed. Therefore, it is revealed that the village has been deprived of the development works of 1) Zilla Parishad School drinking water facility including fitting of 'Sintex' tank- Rs.1,00,000/-, 2) Anganwadi drinking water facility with tank and water tap connection- Rs. 50,000/-, 3) Anganwadi electrical connection and electrical fittings- Rs. 50,000/- and that the Sarpanch and the Secretary are responsible for it.*

14] *On inspecting the cash book of the Finance Commission Fund, it revealed that on 1/05/2021, the Sarpanch and the Secretary borrowed Rs. 13,000/- by way of cheque (for the purpose of advertisement for work to be done.) No transaction can be made by cheque from Finance Commission. Similarly, when no amount of money can be borrowed, it is observed that the Sarpanch and Secretary have committed malpractice by borrowing money using cheque.*

15] *As per the application of the applicant in the subject matter, no report or documents have been called through the Block Development officer, Panchayat Samiti Chandur Railway. In this case, when some villagers submitted complaints against the existing non-applicants regarding other matters, the report prepared on the complaint has been submitted only by the applicant. There is a no similarity between the earlier complaint and the present complaint submitted by the applicant.*

*Therefore, the non-applicant Nos. 2 to 5 raised objection that the said report can not be used in the present case.*

*Accordingly, it is mentioned that on 09/09/2021, Mrs. Archana Darasingh Rathod, Member of Gram Panchayat Chirodi and four others had filed a complaint before the Block Development Officer, Panchayat Samiti, Chandur Railway. Accordingly, The Block Development Officer, Panchayat Samiti Chandur Railway conducted inquiry and submitted the Inquiry Report vide letter No. 5415 dated 28/09/2021 to this office. The issues of the said complaint and the issues of the complaint mentioned in the subject are one and the same. As per the provision of section 39 (1) of the Maharashtra Village Panchayat Act 1959, investigation of the case must be conducted by the Chief Executive Officer of the Zilla Parishad personally. Accordingly, the applicant, non-applicant and the concerned employees have been heard personally and the documents of the Gram Panchayat have been examined and investigated. In this, it is not mandatory for the Chief Executive Officer, Zilla Parishad to ask for an Inquiry Report from the Block Development Officer. Therefore, the objection/ grievance raised by the non-applicants is dismissed.*

*According to the applicants, after the complaint was filed by the supplier, amount of Rs. 2 Lakhs has been credited in the account of the Gram Panchayat. On inspecting the documents of Gram Panchayat in this regard, it is observed that on 9/9/2021 Mrs. Archana Darasingh Rathod filed a complaint before the Block Development Officer, Panchayat Samiti Chandur Railway. Prior to that on 07/09/2021, it is seen that amount of Rs.2 Lakhs has been credited in the account of Gram Panchayat*

*by way of Cheque. According to Non-applicant Nos. 2 to 5, due to a technical error by the Panchayat Samiti, the DSC of Sarpancha and Secretary was given directly to supplier and the Gram Panchayat had no idea about it. Accordingly, under Government Circular No. PES- 2320/Q No. 22/ASAK/ Bandhkam Bhavan Mumbai 16th June 2020 of Department of Rural Development, it is mentioned that Gram Panchayat has fixed the entire responsibility on Gram Sevak and Sarpancha for making Digital Payment to appropriate vendor. Therefore, it is not correct to say that non-applicant Sarpancha and Secretary, Gram Panchayat Chirodi were not aware about the payment made to the supplier. Even though the supplier has credited the amount in the account of Gram Panchayat before filing of the complaint, he has uploaded the Photos online of completion of work without doing work. Therefore non-applicant Sarpancha and Secretary Gram Panchayat can not deny their responsibility. Discrepancy is found when documents submitted by Shri. Tulshiram Baliram Jadhav, Secretary Gram Panchayat Chirodi in connection with the earlier complaint and documents submitted before the Block Development Officer, Panchayat Samiti Chandur Railway for inquiry and the documents submitted for inquiry in the present subject matter are perused and it is also observed that Secretary of Gram Panchayat has unlawfully carried out corrections in the original record. Departmental Enquiry has been proposed against the Sarpancha of Gram Panchayat for dereliction of his duties and vide letter No. 12235 dated 30/11/2021, enclosures 1 to 4 have been sought. Decision regarding recovery of amount in the present case will be taken during Departmental Enquiry.*

*Remark :- As it has become clear that Sau. Mala Rajesh Chauvan, Sarpancha, Gram Panchayat*

*Chirodi has committed financial fraud. Therefore she is liable for action under section 39 (1) of Maharashtra Village Panchayat Act, 1959.”*

From the report of the Chief Executive Officer, it is evident that he has given about fifteen findings as regards misuse of power and various irregularities committed by the petitioner. The same are very serious. Despite the same, all of these have not been considered by the Divisional Commissioner while passing the order of disqualification dated 20.05.2022. He has restricted the disqualification only on two grounds, namely, misuse of DSC to help the contractor to withdraw the amount even before completion of the work and another ground taken into consideration by the Divisional Commissioner was in respect of uploading photographs online of the work done and completed by the contractor even before the work was not done.

4. The Divisional Commissioner while doing so has not referred to other findings of the Chief Executive Officer recorded in his report which depicts that the Divisional Commissioner has not taken into consideration the said report as a whole.

5. It is significant for the reason that when the other findings recorded by the Chief Executive Officer are equally or more serious in nature.

6. There is no justification provided by not considering those findings which may attract further action other than disqualification against the petitioner.

7. Similar mistake has been committed by the Hon'ble Minister in ignoring the report of the Chief Executive Officer .

8. In the circumstances, I am of the opinion that the matter needs to be remanded back to the Divisional Commissioner to decide the same afresh after hearing both the parties. Accordingly, I pass the following order:-

(a) The writ petition is **partly allowed**.

(b) The order dated 20.05.2022 passed by the Divisional Commissioner and the order dated 20.10.2022 passed by the Hon'ble Minister are quashed and set aside.

(c) The matter is remanded back to the Divisional Commissioner to decide the same afresh **within seven days** from the date of the appearance of the parties.

(d) The parties shall appear before the Divisional Commissioner, Amravati on **22.06.2023 at 11.00 a.m..**

(e) It is made clear that even though, the orders of disqualification of the petitioner are set aside, the

Upa Sarpanch, who is holding the charge of the Sarpanch, shall continue to hold the same till the decision by the Divisional Commissioner.

**JUDGE**