

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

WRIT PETITION NO. 7169 OF 2022

Sau. Archana W/o Dilip Khokle
Age : 39 Years, Occ. Household
(Sarpanch, Grampanchayat Sangvi
Waghjali) R/o Sangvi Post : Durgwada,
Tq. Murtizapur, Dist. Akola

...Petitioner

// VERSUS //

1. Hon'ble Minister for Rural
Development, State of Maharashtra,
Mantralaya, Mumbai
2. Divisional Commissioner, Amravati,
Tq. & Dist. Amravati
3. Zilla Parishad, Akola,
Through its Chief Executive Office,
Tq. & Dist. Akola
4. Block Development Officer,
Panchayat Samiti Murtizapur,
Tq. Murtizapur, Dist. Akola
5. Gat Gram Panchayat Sangvi Waghjali,
through its Secretary, Tq. Murtizapur,
Dist. Akola
6. Sau. Suwarna Ritesh Tidke
Age : Adult, Occupation Household
7. Sri Nivrutti Ramesh Khokle
Age : Adult, Occupation : Agriculture
8. Sau. Bhagyashri Ganesh Parise
Age : Adult, Occupation: Household
9. Sau. Sangita Prakash Khokle
Age : Adult, Occupation : Household
Respondent nos. 6 to 9 are Members of
Gat Gram Panchayat, Sagvi Waghajali

and R/o Sangvi, Post Durgwada, Tq.
Murtizapur, Dist. Akola

... Respondents

Shri Devdutt Gawande Advocate for the petitioner.
Ms. H.N.Jaipurkar, AGP for the respondent nos. 1 to
Shri S.R.Charpe, Advocate for the respondent nos. 6 to 9

CORAM : ANIL S. KILOR, J.
DATED : 7th FEBRUARY, 2023.

ORAL JUDGMENT :

Heard. **Rule.** Rule made returnable forthwith by consent of the parties.

2. Shri Tiwari, learned counsel is discharge as Shri Charpe, learned counsel has filed vakalatnama on behalf of the respondent nos. 6 to 9.

3. The disqualification of the Petitioner as Sarpanch of Gat Gram panchayat Sangvi Waghajali, Tq. Murtizapur, District Akola by the Divisional Commissioner, Amravati, vide order dated 10th May, 2022 and upholding the same by the Hon'ble Minister vide impugned order dated 20th October, 2022, is under challenge in the present writ petition.

4. The brief facts of the present case are that the application under Section 39 of Maharashtra Village Panchayat Act, 1959 (in short referred as "Act, 1959) was moved by the respondent nos. 6 to 9 against the petitioner for disqualification as Sarpanch. The allegations were made was in respect of construction carried out at Village Sangli, removal of Secretary Mangesh Bunde and the payments of materials suppliers and of

daily wages of labourers in respect of work of cement concrete road at village Sangvi Waghajali.

5. The Chief Executive Officer, thereupon conducted an inquiry and in the said inquiry, he hold the Secretary of the Gram Panchayat responsible and not the petitioner.

6. Thereafter, the Commissioner passed the order dated 10th May, 2022 and disqualified the petitioner.

7. The petitioner feeling aggrieved by the same, preferred an appeal before the Hon'ble Minister who has upheld the order of disqualification, vide impugned order dated 20th October, 2022.

8. Learned counsel for the petitioner submits that the powers under Section 39 of the Act, 1959 can be exercised for removal of Sarpanch or Upa-Sarpanch only in a case where the Sarpanch or Upa-Sarpanch as the case may be is guilty of misconduct in the discharge of his duties, or of any disgraceful conduct or of neglect of or incapacity to perform his duty or is persistently remiss in the discharge thereof. It is further submitted that there is no findings recorded by the Commissioner or the Hon'ble Minister fulfilling the above referred pre-requisites.

9. It is further submits that once the Chief Executive Officer has recorded its findings after conducting an inquiry, the Commissioner ought to have recorded the reasons for differing from the findings

recorded by the Chief Executive Officer, which he has not recorded. He therefore submits that, the disqualification of the petitioner is illegal.

10. On the other hand, Shri Charpe, learned counsel for the respondent nos. 6 to 9 supports the impugned order of the Commissioner as well as the Hon'ble Minister. He submits that in the operative part of the order there is a mention that the petitioner has misused his post and failed to discharge his duty and therefore the Commissioner has rightly disqualified, the petitioner under Section 39 of the Act, 1959.

11. Learned Assistant Government Pleader supports the impugned order passed by both the authorities below and prays for dismissal of the present writ petition.

12. In the light of the rival submission of the parties, I have perused the writ petition, the documents along with the writ petition, impugned orders passed by the Commissioner and the Hon'ble Minister.

13. After perusal of the order passed by the Commissioner, particularly in the findings recorded by him, it is evident that at no place he has observed that how the Section 39 of the Act, 1959 attracts in the case of the petitioner.

14. At this juncture, it would be appropriate to refer Section 39(1)(i) of the Act, 1959 which read thus:

(1) The Commissioner may-

(i) remove from office any member or any Sarpanch or Upa-Sarpanch who has been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct, or of neglect of or incapacity to perform his duty, or is persistently remiss in the discharge thereof. A Sarpanch or an Upa-Sarpanch so removed may at the discretion of the Commissioner also be removed from the panchayat.

15. From the above referred provisions, it is evident that to attract Section 39 of the Act, 1959 it is pre-requisite that the authority shall reach to a conclusion that any Sarpanch or Up-Sarpanch as the case may be has been guilty of

(i) misconduct of discharge of his duty or;

(ii) any disgraceful conduct or;

(iii) of neglect or incapacity to perform his duty or;

(iv) persistently remiss in the discharge of his duty.

16. In this case, admittedly, there are no findings recorded by the Commissioner in this regard to say that the alleged act of the petitioner falls in which out of the above referred category or categories and in absence of any such findings recorded Section 39 of the Act, 1959 would not attract.

17. The Hon'ble Supreme Court of India in the case of *Ravi Yashwant Bhoir Vs. District Collectors, Raigad and others*¹ 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 & Ors. v. Debi Ghosal & Ors.*, AIR 1982 SC 983; *Mohan Lal Tripathi v. District Magistrate, Rai Bareilly & Ors.*, AIR 1993 SC 2042; and *Ram Beti etc. etc. v. District Panchayat Rajadhikari & Ors.*, AIR 1998 SC 1222).*

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

¹ 2012(4) SCC 407

from the office and further declared disqualified to contest the election for a further stipulated period.

18. From the above referred observations of the Hon'ble Supreme Court of India, it is evident that no elected person can be removed from the post except as provided by the law. It is further held that in the matter of disqualification, the Court or the Authority shall not adopt a casual approach.

19. In the present matter, after going through the impugned order, I have no hesitation to hold that the petitioner has been removed in a casual manner without recording the findings as required under Section 39 of the Act, 1959. In the circumstances, I am of the opinion that the matter needs to be remanded back to the Commissioner for fresh decision. Accordingly, I pass the following order.

- i. Writ Petition is partly allowed;
- ii. Order dated 10th May, 2022 passed by the Divisional Commissioner, Amravati in Case No. 08/MVP Act/39(1)/Sangvi Waghajali-Murtizapur-Akola/2022 and order dated 20th October, 2022 in Appeal No. VPM-2022/Pra.Kra-75/Pan.Ra.6/Gat Gram Panchayat Sangvi Waghajali passed by the Hon'ble Minister, are hereby quashed and set aside.
- iii. The matter is remanded back to the Divisional Commissioner for fresh decision after hearing both the parties and after considering the observations made in the present petition.

iv. The Divisional Commissioner, Amravati shall decide the application afresh within a period of one month from the date of appearance of the parties.

v. The parties are directed to appear before the Divisional Commissioner, Amravati on 21st February, 2023.

[ANIL S. KILOR, J.]

SACHINDANAND
K NAIR

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