



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1726 OF 2024

Salim Khan Mahemood Khan Pathan,
Age 57 years, Occu. Agril.,
R/o. At Post Ajintha, Tq. Sillod,
Dist. Aurangabad

.. Petitioner
(Original Applicant/Complainant)

Versus

1. The State of Maharashtra
Through its Hon'ble Minister,
Rural Development Department,
Mantralaya, Mumbai- 400 032
2. The Divisional Commissioner, Aurangabad
Taluka and District Aurangabad
3. The Additional Divisional Commissioner,
Aurangabad, Taluka and District Aurangabad
4. The Chief Executive Officer,
Zilla Parishad, Aurangabad
Taluka and District Aurangabad
5. The Block Development Officer,
Panchayat Samiti, Sillod,
Taluka and District Aurangabad
6. The Extension Officer,
Panchayat Samiti, Sillod,
Taluka Sillod, District Aurangabad
7. The Village Development Officer,
Grampanchayat Office, Ajintha,
Taluka Sillod, District Aurangabad
8. Shaikh Nazir Ahmed Shaikh Mohamad Ali,
Age 62 years, Occu. Sarpanch,
R/o. At Post Ajintha, Taluka Sillod,
District Aurangabad

.. Respondents
(Respondent No.8 is
original respondent No.1)

...

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Through its Hon'ble Minister,
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6. The Block Development Officer,
Panchat Samiti, Sillod,
Taluka Sillod, District Aurangabad
7. The Extension Officer,
Panchayat Samiti, Sillod,
Taluka Sillod, District Aurangabad
8. The Village Development Officer,
Grampanchayat Office, Ajintha,
Taluka Sillod, District Aurangabad

.. Respondents
(Original Respondents)

Mr. Ravindra Vitthal Gore, Advocate for Petition in both Petitions;

Mr. A. M. Inamdar, Advocate for Respondent No.8 in W.P.No.1726 of 2024 and Respondent No.1 in W.P.No.1727 of 2024;

Mr. S. C. Swami, Advocate holding for Mr. S. R. Erande, Advocate for Respondents No.4 to 6 in W.P.1726 of 2024 and Respondents No.5 to 7 in W.P.No. 1727 of 2024;

Mr. S. N. Kendre, A.G.P. for Respondent/State

CORAM : S. G. MEHARE, J.
Reserved On : 26.04.2024
Pronounced On : 02.05.2024

ORDER :-

1. The petitioner, in both petitions, has impugned the order of the Hon'ble Minister passed in case No. VPM-2023/Pan.Kra.10/PanRa-6, dated 23.01.2024.

2. The brief facts of the cases are that the petitioner is a voter of the village panchayat, and respondent No.1 is the elected member and Sarpanch of the Village Panchayat. He made a complaint against respondent No.1 under section 39(1) (i) of the Maharashtra Village Panchayats Act, 1959 ("Act, 1959", for short), alleging that respondent No.1, by misusing and exceeding his powers issued the death and birth certificates and succession certificates to the villagers. It is a misconduct in the discharge of his duties, his acts are disgraceful conduct and negligence.

3. On the complaint of the petitioner, respondent No.3, Divisional Commissioner, directed the Deputy Chief Executive Officer to hold an inquiry as contemplated in proviso to section 39 of the Act, 1959. He further directed to the Block Development Officer to hold inquiry. The Block Development Officer directed the

Extension Officer (Panchayat) to hold inquiry. He served a notice upon respondent No. 1, gave him hearing and recorded the statements of the concerned. He submitted his report dated 11.01.2022 and opined that respondent No. 1 is found guilty of issuing death certificates without having powers and entries in the original Birth and Death Register.

4. Respondent No. 2 issued a notice to respondent No 8/original respondent No.1. He appeared and filed his written statement denying the report and allegations. He had a case that the petitioner did not approach before the Court with clean hands. The petitioner lodged a false complaint for his personal gain. He was blackmailing them. He had no right to file petition. Except him, nobody complained. There were no complaints against him. One villager had requested to issue the certificate having no entry of death of his parents. However, inadvertently, the Clerk of the Village Panchayat instead of issuing a certificate of having no entry in the Birth and Death Register, issued him a death certificate. He obtained his signature hastily. After realizing the mistake, he cancelled the said certificates and the Secretary under Section 15 of the Registration of Births and Deaths Act, 1969 also cancelled those certificates. The Deputy Superintendent of Land Records was also informed, accordingly. The Villager to whom the death certificate was issued also sworn in an affidavit. Since the mistake was corrected, it could not be said that he has misused his powers

and it is a misconduct. The Chief Executive Officer did not give him an opportunity to explain during the inquiry and it was an *ex parte* report.

5. Thereafter, respondent No.2, by his order dated 07.05.2022 again called report of respondent No. 4. He hold a fresh inquiry. He heard the petitioner and respondent and submitted his report to respondent No.2 on 12.07.2022. He recorded the findings that there were no death entries of the villagers in death register. As per Rule 8 of the Maharashtra Registration of Births and Deaths Rules, 2000, Gramsevak is a Registrar for villages and he had the powers to issue such certificates. He opined that it is clear that the Sarpanch has misused his position by issuing the death certificates to the villagers under his signature and stamp, therefore for the above reasons the action should be taken against the Sarpanch under Section 39(1)(i) of the Act, 1959.

6. Respondent No. 2 found it necessary to have the statement of the Clerk of the village panchayat. Hence, by order dated 27.09.2022, respondent No.2 again directed respondent No.4 to hold a fresh inquiry.

7. Once again the Deputy Chief Executive Officer directed to the Block Development Officer and he directed the Extension Officer to hold an inquiry. The Extension Officer made inquiry for the third time. One more allegation of issuing the heirship certificate was

made at this time. He recorded the statements of the concerned persons and submitted his report dated 17.01.2023. On his report, the Block Development Officer opined that according to section 15 of the Registration of Birth and Deaths Act, 1969, if the entry is recorded in the register, then only such entry can be changed. The Sarpanch is found guilty of issuing the death certificates without having entries in the register and without authority.

8. Respondent No.4 again made a fresh inquiry on 24.04.2023 and heard the respective parties through their counsels. At this time, instead of recording the fact findings, he submitted a report with suggestions and a warning to the Sarpanch about the certificates he had issued that; henceforth, he should take care not to repeat the same mistake again in future. He stated in his report that he gave a different opinion in the form of suggestions without recording the findings. He submitted his report contending that the death certificates issued by the Sarpanch should be cancelled through the Village Panchayat. In addition to the warning to the Sarpanch, he opined that considering the above things, he thinks that no action under section 39(1) of the Act, 1959 is necessary against the Sarpanch. On his report, respondent No.1 passed an order on 05.01.2024, held respondent No.1 guilty of misconduct and declared him disqualified to hold the post of Sarpanch. However, by the impugned order, the Hon'ble Minister set aside the order of respondent No.2.

9. Respondent No.1, the Sarpanch, had come with a positive case that he had issued the death certificates and heirship certificate dated 26.04.21. However, instead of in form 10-B, form 6 was issued inadvertently due to the mistake of the Clerk of the Village Panchayat. Realizing the mistake, the death certificates dated 26.04. 21 were cancelled under section 15 of the Registration of Births and Deaths Act. The concerned Clerk also submitted supportive reply.

10. The learned counsel for the petitioner vehemently argued that respondent No.1 is a second time Sarpanch of Village Panchayat. He was well aware of his power and duties. He had faced the inquiry before the Chief Executive Officer. That time, he realized his mistake and rectified the same. However, thereafter also, he continued issuing the death/birth certificates and heirship certificates to the villagers. The villagers were using those certificates for recording their name in revenue record and other places. Therefore, it cannot be said that he acted inadvertently. On the contrary, after the inquiry was held against him, he and other members passed a resolution on 27.09.2022. The second report of the Chief Executive Officer was speaking. The specific observations were recorded that even having no power he had issued the death/birth certificates. Respondent No.4/ the Chief Executive Officer has to record the fact finding only. The law does

not provide that the Chief Executive Officer has to propose the action. Therefore, the findings of the Hon'ble Minister are perverse. He further argued that respondent No.1 is guilty of misconduct in discharge of duties and persistently remiss in discharge of his duties. Considering his misconduct, he ought to have been removed from the office of Village Panchayat as a Member and the Sarpanch. He also argued that Hon'ble Minister, on the identical facts, took a view that issuing such certificate is a misconduct. He placed the copy of the said order dated 29.03.2023. He relied on the cases of (i) ***Salimbi Mubarak Tamboli Versus State of Maharashtra through Secretary and Others, 2019(3) Bom. C.R. 572***, (ii) ***State of Punjab Versus Ram Singh Ex-constable, 1992 AIR (SC) 2188***, and prayed to allow both petitions.

11. Per contra, learned counsel for contesting respondent No.1 vehemently argued that the certificates were inadvertently issued due to the mistake of the Clerk. They were rectified and the necessary authorities were informed. The complainant has no locus to file the complaint. Though the resolution dated 27.07.2022 conferring powers to respondent to issue the birth/death certificates was passed, it was never implemented or effected. Thereafter, many villagers have obtained the orders from the Court. The acts of respondent No.1 were not deliberate, his object was to make the life of the villagers convenient and

comfort. He did not gain personally. His acts are not misconduct as required under Section 39(1) of the Act, 1959.

12. To bolster his arguments, he relied on the case of **Ankush Achyutrao Raut Versus State of Maharashtra, AIR OnLine 2021 Bombay 1963**, (ii) **Rajendra Radhakishan Raut Versus State of Maharashtra, AIR OnLine 2022 Bombay 1024** and (iii) **Dnyaneshwar Sudhir Mathkar vs. State of Maharashtra and others, AIR Online 2023 Bombay 569**.

13. The question is, whether the acts of respondent No.2 are misconduct in discharge of his duties, therefore, he is liable to be removed from the office as a Member and the Sarpanch of the Village Panchayat.

14. In the case of **Salimbi** (supra), the action was initiated for failing to hold the monthly meetings of the Village Panchayat. The case of **State of Punjab** (supra) was for the misconduct against the public servant.

15. In the case of **Ankush** (supra), the facts were that the petitioner had granted development permission of the plots by a resolution. However, he and the members of the Panchayat had rectified the mistakes committed by them. Under these premise, the Court has discussed the term 'misconduct' and held that neither the Sarpanch nor the Village Panchayat was guilty of misconduct.

16. In the case of **Rajendra** (supra), the allegations were levelled about the illegality in the appointment of Gram Rozgar Sevak. He did not supply the information to the villagers how much funds are received from the Grampanchayat under 14th Finance Commission and about the works undertaken from the said funds, the details of disbursement of general funds were not prepared and the Sarpanch and other Officials did not supply the information. He has committed a huge misappropriation with Village Development Officer in implementing Ramai Gharkul Aawas Yojana and other similar allegations about the misappropriation of the funds.

17. In the case of **Dnyaneshwar** (supra), the allegations were that he was issuing the succession certificate beyond authority vested in him. In the said case, the same Hon'ble Minister took a view that it is a misconduct. However, the High Court set aside that order holding that a notice to Panchayat as contemplated under Section 39 of the Act was not issued. However, liberty was granted to the respondents to initiate fresh proceedings under Section 39(1) of the Act.

18. In the case laws relied upon by both sides, the term 'misconduct' has been elaborately discussed. In the case of **Rajendra** (supra), the Co-ordinate Bench of this Court, in paragraph No.27, has discussed the term 'misconduct'. The word

“misconduct” has to be understood as transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior. The word “misconduct” in normal parlance is understood as unacceptable and improper behavior or mismanagement, especially culpable neglect of duties.

19. The Webster’s dictionary defines the word “misconduct” as deliberate violation of law or standard, especially by the government official, willful in character.

Misconduct in office has been defined as: “Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.”

20. In the case of **Ankush** (supra), the Co-ordinate Bench of this Court reiterated the definition of term “misconduct” from Black’s Law dictionary, 6th Edition and “misconduct in office”. However, in paragraph No.11, it has been observed that the definition of “misconduct” reproduced above, sounds and implies a wrongful intention and it being, relative term, it is to be construed with reference to the subject matter. It literally means, wrong conduct or improper conduct or transgression of some established and definite rule of action. Thus, expression “misconduct” being used

in Section 39(1)(i) of the Act is to be understood to mean an act which must be willful in character and not a negligence or carelessness. In the facts of the case, it has been observed that at the most the act of Panchayat would be an act, “forbidden by law” or “irregular exercise” of powers.

21. Section 39(1)(i) and Sub-section (2) of the Act should be interpreted or constitute with reference to the subject matter and in the context of the facts.

22. The observations of above case were clear that there should be a wrongful intention in discharging the duties. In the case at hand, when the death certificates were issued to the villagers, those were rectified. Respondent No.2 must have felt that it is not appropriate to issue certificates without resolution, so it seems likely that the panchayat may have passed such resolution. Respondent No.2 has the case that the Panchayat was acting in the interest of the villagers and making their life convenient. There is no evidence on record to believe that the certificates were issued for otherwise gain from the villagers. The heirship certificate allegedly issued by respondent No.2, in fact, is not a heirship certificate, it is just giving information who are the legal heirs of the villager whom it was issued. It had no binding force of law.

23. Reading the term “misconduct” in the context of the case, it could be said that it was not an intentional act of respondent No.2. At the most, it could be an act “forbidden by law” or “irregular exercise of powers”. Respondent No.2 has made a statement that though the resolution has been passed conferring him the power, he never exercised it. The petitioner has no any contra evidence. Considering the facts, at the most, it is a case of overenthusiasm of respondent No.2.

24. In view of the above discussion, the Court is of the view that the act of respondent No.1 considered with reference to the subject matter, it was not done with wrongful intention and for any personal gain. Therefore, he cannot be held guilty of misconduct prescribed under Section 39(1)(i) of the Act, 1959.

25. The submissions of the learned counsel for the petitioner are correct that the Chief Executive Officer is not supposed to suggest the penalty. He has to barely make inquiry and submit the fact finding report. The reasons for conclusion in the impugned order are not legally correct. However, the decision in favour of respondent No.1 holding him not liable to be disqualified is to be accepted.

26. The aforesaid discussion leads this Court to conclude that there is no substance in the writ petitions. Hence, the following

order:-

ORDER

- i) Both Writ Petitions stand dismissed.
- ii) No order as to costs.

(S. G. MEHARE)
JUDGE

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