

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8832 OF 2023

1. Smt. Rani w/o Shahaji Shinde
Age 42 years, Occ : Sarpanch of
Gram Panchayat, Loni, Taluka Paranda,
District : Osmanabad.
2. Vinod s/o Pandurang Shinde
Age 33 years, Occ : Up-Sarpanch of
Gram Panchayat, Loni, at post
Loni, Taluka Paranda,
District : Osmanabad.
3. Smt. Priyanka w/o Jayram Mali,
Age 33 years, Occ : Member of
Gram Panchayat, Loni, at post
Loni, Taluka Paranda,
District : Osmanabad.

..Petitioners

Versus

1. The State of Maharashtra
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
2. Additional Divisional Commissioner,
Divisional Commissioner Office,
Aurangabad.
3. Chief Executive Officer,
Zilla Parishad, Osmanabad
District : Osmanabad.
4. Block Development Officer
Panchayat Samiti, Paranda
Tq. Paranda Dist. Osmanabad.
5. The Extension Officer,
Panchayat Samiti, Paranda
Tq. Paranda, Dist. Osmanabad.
6. (Deleted)

7. Vitthal s/o Sarjerao Shinde,
Age 55 years, Occ : Agriculture,
R/o : Loni, Taluka Paranda
District : Osmanabad. ..Respondents

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Advocate for the Petitioners : Mr. S.G. Kawade
AGP for Respondent/State : Mrs. M.L. Sangit
Advocate for Respondent Nos.3 to 5 : Mr. D.K. Chavan
Advocate for Respondent No.6 : Mr. B.B. Bhise
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CORAM : S.G. MEHARE, J.

RESERVED ON : JANUARY 25, 2024

PRONOUNCED ON : APRIL 04, 2024

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.
2. The petitioners were the duly elected members of the Village Panchayat. They were elected in the month of January 2021. Petitioner no.1 was elected as Sarpanch. Respondent no.7 is the husband of the contested candidate against the panel of petitioners. He had a political rivalry; hence, he made the false complaints against them. On his complaint, an inquiry under Section 39(3) of the Maharashtra Village Panchayat Act, 1959 ('Act of 1959' for short) was initiated. Respondent no.7 alleged against the petitioners that they by misusing the powers prepared a bogus and duplicate Resolution No.5 dated 18.11.2021. They have forged the proceeding book and passed the illegal resolution that complainant obstructed way to the field of

villagers and referred it to the Tahasildar. However, the said subject was not in Resolution No.5. The Gram Sevak informed him by letter dated 28.03.2022 that the Village Panchayat has not passed a resolution about road Kapilapuri to Ainapurwadi or of Gut No.21 and 22. The Village Panchayat had no right pass such resolution. Respondent no.4 in complaint was the husband of petitioner no.1. He interfered with the administration of the Village Panchayat. He puts the bogus signature of petitioner no.1. Petitioner no.1 did not attend the Village Panchayat meetings. All petitioners in conspiracy were preparing the false and bogus record of the Village Panchayat. He prayed to remove the petitioners under Section 39 of the Act of 1959.

3. The Additional Commissioner followed the procedure of law and called for the report of the Chief Executive Officer. The Chief Executive Officer submitted a detailed report holding that under the Act of 1959, the Sarpanch is not responsible to maintain the proceeding book. The Sarpanch and Village Panchayat members could not be held responsible for not maintaining the Village Panchayat record particularly the proceeding book. Considering the report of the Chief Executive Officer, the Additional Commissioner dismissed the complaint of respondent no.7. Aggrieved by the judgment of the Additional Commissioner, Aurangabad, respondent no.7 preferred an appeal before the Hon'ble Minister. The Hon'ble Minister re-appreciating the fact and the evidence, allowed the

complaint of respondent no.7 and set aside the order of the Additional Commissioner. He further removed all petitioners from the office of Village Panchayat as well as from the post of Sarpanch.

4. Learned counsel for the petitioners has vehemently argued that the Hon'ble Minister has passed the arbitrary order ignoring the relevant provisions of the Act of 1959. Writing and maintaining the Village Panchayat meeting proceeding is the responsibility of the Gram Sevak (Secretary) and not the Sarpanch and the members. The members of the Village Panchayat in any event should not be held responsible for maintaining the proceeding book. Therefore, no misconduct has been proved against them. If the resolution is passed for removal of obstruction of the road, at the most it may be irregularity but cannot be a misconduct in discharge of the duties. It is a statutory duty of the members of the Village Panchayat to resolve the problems of the villagers. A complaint signed by the villagers including Vasant Sarjerao Shinde about obstructing the way to their field was received to the Village Panchayat. It was forwarded to the Tahasildar for taking appropriate action. For that purpose, the resolution was passed. Respondent No.7 was aggrieved by the said decision of the Village Panchayat. Beside it he already had the grievance of losing his wife in the elections against the petitioner's panel. In the application of Vasant Sarjerao Shinde, no gut number or name of Village Ainapurwadi was

mentioned. Therefore, the Gram Sevak correctly replied to the application of respondent no.7 that there is no resolution in proceeding book about the road running from Kapilapuri to Ainapurwadi or road in Gut Nos.21 and 22. This does not mean that the petitioners have forged the Village Panchayat record. The Extension Officer after taking inspection of the record available prepared a report that there was no substance in the complaint of respondent No.7. Then it was forwarded to the Deputy Chief Executive Officer, Zilla Parishad through Block Development Officer. There was no irregularity or any kind of dereliction of the duties of the petitioners as Village Panchayat members. The Chief Executive Officer, Zilla Parishad, Osmanabad made a detailed inquiry and submitted correct report to the Divisional Commissioner. It has been specifically observed that petitioner Nos.2 and 3 cannot be held responsible for the irregularity if any in writing the proceeding of Village Panchayat. However, the Hon'ble Minister failed to appreciate the scope of Section 39(1) of the Act of 1959. The allegations made in the complaint even if taken on the face of its record do not resonate with the aggravated punishment awarded to the petitioners. The locus of respondent No.7 is shrouded with doubt. His complaint is out of political rivalry. The Hon'ble Minister did not consider the antecedents to the discredit of respondent No.7. The Hon'ble Minister did not consider the object of solving the problems of the villagers.

Passing any resolution about the complaint of obstructing the road of the field of the villagers by another villager is not the misconduct or negligence in discharging the duties as the member or Sarpanch of the Village Panchayat. The Hon'ble Minister did not consider the explanation of Gram Sevak N.B. Nandanwar that when the so-called resolutions were passed, he was on leave and on resuming duties, he had inadvertently signed the proceeding book. Therefore, he scored his signature and obtained the signature of the Incharge Gram Sevak. The documents placed on record do not prove that those are forged and fabricated. The allegations about the interference at the hands of the husband are also unfounded and without verifying the facts from the Gram Sevak. There was no evidence of interference by the husband of petitioner No.1 in the activities of the Village Panchayat. The Hon'ble Minister considered the material one sided and did not appreciate the fact correctly. The report of Chief Executive Officer has been completely misinterpreted. There was no evidence of creating any false and fabricated Village Panchayat record. Section 7(11) of the Act of 1959 imposes the responsibility of writing the proceeding book upon the Gram Sevak and not the Sarpanch or the members of the Village Panchayat. The purport of the Village Panchayat meeting has not been considered while passing the impugned order. The Hon'ble Minister has incorrectly relied on the Government Resolution

dated 17.07.2007. He prayed to allow the petition and quash and set aside the order of the Hon'ble Minister.

5. Per contra, learned counsel for respondent No.7 has vehemently argued that the misconduct of the petitioners have been proved. All of them were indulged in creating the false and forged documents. The contents of the petition are misleading. The complaint of one Vasant Sarjerao Shinde was subsequent to the date of the alleged resolution dated 18.11.2021. The said resolution does not bear the signature of Gram Sevak. The resolution annexed with the petition is incomplete. There was overwriting on the Resolution dated 18.11.2021. He would further submit that the copy of the Resolution dated 18.11.2021 supplied to him bears an endorsement of the meeting dated 06.11.2021 and in subsequent copy supplied to him, the date is corrected as 08.11.2021. The first copy supplied to him does not bear the signature of the Gram Sevak. However the second copy bears his signature. The copy of the meeting dated 13.12.2021 shows that they were misusing their powers and were guilty of misconduct in discharge of their duties. There were two different resolutions on 13.12.2021. He would submit that the documents further established that the members of the Village Panchayat have two separate proceeding books. When respondent no.7 applied to the Gram Panchayat seeking copies of the resolution from November 2021 till March 2022, the Gram Sevak by his

communication dated 18.04.2022 communicated him that the husband of Sarpanch/petitioner No.1 took the proceeding book with him. Hence, he is unable to provide him the information. Passing the resolution of the way to the field is not within the jurisdiction of the Village Panchayat. Still they passed the resolution without any authority of law. Passing such illegal resolution amounts to disgraceful conduct of the Village Panchayat member. Forwarding such resolution to the Mamlatdar Court is also illegal and amounts to interference in the judicial proceedings.

6. Learned counsel for respondent No.7 further argued that the Divisional Commissioner did not understand the provisions of law in proper perspective. It is a joint responsibility of the Sarpanch and the Secretary of the Village Panchayat to maintain secured custody and safety of proceeding register and other documents of Gram Sabha. Both of them are responsible for tampering, alteration, manipulation of entries or contents or loss or mutilation of such records. The Gram Sevak was on leave; therefore, the Sarpanch and members were responsible to maintain the record and its custody. Respondent No.6, Gram Sevak not only made the misleading statement on oath but also made a false statement on oath stating that the letter dated 18.04.2022 issued by him was under the threats of respondent No.7. He never raised such plea before any of the authority. His submission is afterthought. His statement that he

informed about the letter dated 18.04.2022 is also incorrect. Therefore, his affidavit does not support the petitioners. Perhaps, he made such a statement to save him from the departmental inquiry initiated against him. He supports the impugned judgment and order and prayed to dismiss the petition.

7. Respondent No.6 in his affidavit in reply stated that Vasant Sarjerao Shinde and other villagers had made a complaint on 24.10.2023 against respondent No.7. He placed its copy on record. It was a complaint before the resolution dated 18.11.2021. He further submitted that the notices of agenda of all the meetings were issued to all the members of the Village Panchayat. He was on leave from 08.11.2021 to 21.11.2021. He resumed duties on 22.11.2021. During his leave, one M.H. Choudhary was the Incharge. The meeting dated 18.11.2021 took place in the presence of Shri M.H. Choudhary. Respondent No.7 applied to him on 17.03.2022 for supplying copy of the resolution about the road going through Gut Nos.21 and 22 of Village Ainapurwadi. He incorrectly informed him that no resolution about the said field number and the village road was passed. He was ready to supply him the copies of the resolution from November 2021 to March 2022. However, he refused to accept the proceeding and under pressure of the local leaders, they compelled him to issue a letter that the proceeding book was lying with the husband of Sarpanch/petitioner No.1. Respondent No.7 also made a complaint

to the Chief Executive Officer, Zilla Parishad for taking action against him under Section 39 of the Act of 1959. After making inquiry, the Chief Executive Officer discarded the complaint of respondent No.7. He was never made the party to any of the proceedings before any authority. The resolution dated 18.11.2021 was rightly passed. The Chief Executive Officer has considered their submissions in the inquiry done by him on the orders of the Divisional Commissioner. Respondent No.7 never complaint against them. Respondent No.6 has filed two affidavit in reply.

8. The primary complaint of respondent no.7 was that before the complaint of Vasant Sarjerao Shinde and others about obstruction of road, the resolution dated 18.11.2021 was passed. Its contents show that the Sarpanch tried to convince respondent no.7; however, he threatened her to do something wrong to himself. Therefore, the resolution was unanimously passed to sent the said complaint of Vasant Sarjerao Shinde to the Tahasildar. It also bears the date of the complaint of Vasant Sarjerao Shinde in a proceeding book. The contention of respondent No.7 is that such a resolution is without jurisdiction and interference in the judicial process. Therefore, it is a misconduct of the Sarpanch and the Village Panchayat members. The certified copies placed on record are consistent about Resolution No.5 in the meeting dated 18.11.2021. The said resolution was passed on the complaint of Vasant Sarjerao

Shinde. The contents of the said resolution appears that the Sarpanch and Village Panchayat members tried to give understanding to respondent No.7 and they have simply passed a resolution to forward their application to Mamlatdar. The Chief Executive Officer in his report addressed to the Additional Divisional Commissioner had opined that barely passing the resolution forwarding the complaint of the villager to the Mamlatdar is not a illegality. The Additional Divisional Commissioner also accepted his report. Bare forwarding the complaint of the villager about obstruction of the way to their field by passing resolution does not amount to misconduct in discharge of the duties of the Village Panchayat members or Sarpanch or Up-Sarpanch. Therefore, the findings of the Hon'ble Minister that it is an illegal act is without any legal foundation. It appears that while passing the impugned order, the record has not been correctly verified. There appears no substance in the submission of the learned counsel for respondent No.7 that passing such resolution amounts to disgraceful conduct of the member of the Village Panchayat.

9. As far as the allegations of preparing the bogus record is concerned, the explanation from the concerned Gram Sevak is coming forward that the regular Gram Sevak was on leave on the day of the meeting dated 18.11.2021 and another Gram Sevak was Incharge. His explanation was available before the Chief Executive Officer that on resuming duties, he inadvertently put signature on the proceeding

book. Therefore, he scored his signature and obtained the signature of the then Incharge Gram Sevak. However, comparing the contents of the two copies which respondent No.7 obtained by bare eyes show that there was no tampering of the Resolution No.5. However, it appears that in the first copy, the date of meeting in the resolution in column was mentioned 06.11.2021 and in another copy, it was scored out and corrected as 08.11.2021.

10. As per Section 7(11) of the Act of 1959, the proceedings of every meeting of the Gram Sabha shall be prepared and maintained [in a separate register] by the concerned Secretary of the Panchayat and in his absence, the proceedings shall be prepared by any Government, Semi-Government or Panchayat employee. It has been provided that it is a joint responsibility of the Sarpanch and Secretary of the concerned Panchayat to maintain, secure custody and proper safety of proceeding register, attendance register and other relevant records of the Gram Sabha, and they shall be primarily held responsible for any tampering, alteration, manipulation of entries or contents or loss of mutilation of such record unless proved otherwise and shall be liable to be prosecuted under relevant provisions of the Indian Penal Code. This provision is about maintaining the record of Gram Sabha. The Secretary/Gram Panchayat has to maintain the records at the Gram Panchayat level and he is responsible for calling the meeting of the Gram Sabha and keeping a record of the

proceedings. The resolution impugned in this matter was passed in a monthly meeting. The Additional Commissioner has considered these provisions and held that the petitioners are not responsible for maintaining the Village Panchayat record. There was no material as argued before the Hon'ble Minister that the petitioners have scored the proceeding book. Bare statement of the Gram Sevak/Secretary that the proceeding book of the Village Panchayat is lying with the husband of petitioner No.1 is insufficient to believe the allegations that he interfered with the activities of the Village Panchayat.

11. Learned counsel for respondent no.7 relied on the case of Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others, (2012) 4 SCC 407. The Hon'ble Supreme Court in this case in para 13 has observed that mere error of judgment resulting in doing of negligent act does not amount to misconduct. However, in exceptional circumstances, not working diligently may be a misconduct. An action which is detrimental to the prestige of the institution may also amount to misconduct. Acting beyond authority may be a misconduct. When the office-bearer is expected to act with absolute integrity and honesty in handling the work, any misappropriation, even temporary, of the funds etc. constitutes a serious misconduct, inviting severe punishment. It is also observed that any kind of embarrassment may amount to misconduct. In para 18, it has been observed that the expression 'misconduct' has to be understood as a transgression of

some established and definite rule of action, a forbidden act, unlawful behaviour, willful in character. It may be synonymous as misdemeanour in propriety and mismanagement. In a particular case, negligence or carelessness may also be a misconduct for example, when a watchman leaves his duty and goes to watch cinema, though there may be no theft or loss to the institution but leaving the place of duty itself amounts to misconduct. It may be more serious in case of disciplinary forces.

12. On the basis of above observations about the act amounting to misconduct, passing the resolutions forwarding a complaint to the competent authority was not detrimental to the prestige nor it does an act beyond the authority. Supporting the villagers to resolve with difficulties would definitely not amount to misconduct.

13. On examining the orders of the Additional Commissioner, Aurangabad as well as the Hon'ble Minister, the Court is of the view that the petitioners should not be punished for the allegations levelled against them. Putting signature by Gram Sevak subsequently and erasing it knowing it as a mistake also does not appear to be intentional to create a false and bogus proceeding. Since the petitioners are not responsible for writing the resolutions and custody of the village record, they should not be held responsible for the so-called fabrication. They are the persons elected by the public. There

appears substance in the submissions of the learned counsel for the petitioners that main grievance of respondent No.7 is losing of his wife in the elections contested against the petitioner's panel. The foremost important thing to be considered is that removing any member or Sarpanch or Up-Sarpanch of Village Panchayat is a discretion of the Commissioner under Section 39(1) of the Act of 1959. The rule applied to discretion is that it may be judicious and within four corners of law. Unless the discretion exercised shows favours to either person, the Authority should not be doubted. Unless the situation and the law warrant the decision of the Commissioner should not be disturbed. However, the Appellate Authority did not observe anything about exercising the discretion by the Commissioner about removal of the petitioners from their office for a misconduct or any disgraceful conduct.

14. For the above reasons, the Court concludes that the impugned order of the Hon'ble Minister is liable to be quashed and set aside. Hence, the following order :

ORDER

- (i) The petition is allowed.
- (ii) The impugned judgment and order of the Hon'ble Minister, Rural Development, Department, Mantralaya, Mumbai dated 07.07.2023 in Case No.VPM-2023/PK-21/PR-6 is quashed and set aside.

- (iii) No order as to costs.
- (iv) Rule is made absolute in above terms.

(S.G. MEHARE, J.)