



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11638 OF 2022

Sadhuram Jivan Kamble,
Age 30 yrs., Occ. Social work,
R/o Loni, Tq. Udgir,
Dist. Latur.

... Petitioner

... Versus ...

- 1 The State of Maharashtra
Through the Secretary for
Rural Development Department,
Mantralaya, Mumbai.
- 2 The Additional Commissioner,
Aurangabad Division, Aurangabad.
- 3 The Tahsildar, Udgir,
Tq. Udgir, Dist. Latur.
- 4 The Block Development Officer,
Panchayat Samiti, Udgir,
Tq. Udgir, Dist. Latur.
- 5 Gramsevak,
Gram Panchayat, Loni,
Tq. Udgir, Dist. Latur.
- 6 Smt. Usha Yamunaji Bhujbale,
Age 35 yrs., Occ. Social work,
R/o Loni, Tq. Udgir,
Dist. Latur.
- 7 Vaijinath Ramrao Biradar,
Age 40 yrs., Occ. Social work,
R/o Loni, Tq. Udgir,

Dist. Latur.

... **Respondents**

...

Mr. V.D. Hon, Senior Counsel i/b Mr. A.V. Hon, Advocate for petitioner

Mr. P.D. Patil, AGP for respondent Nos.1 to 3

Respondent No.4 - served

Mr. N.D. Kendre, Advocate for respondent No.5

Mr. K.P. Dodge, Advocate for respondent No.6

Mr. M.P. Tripathi, Advocate h/f Mr. U.I. Momale, Advocate for respondent

No.7

...

CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 20th JUNE, 2024

PRONOUNCED ON : 08th JULY, 2024

JUDGMENT :

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 By this writ petition, original complainant raises challenge to the order dated 14.10.2022 passed by Hon'ble Minister, Rural Development Department, Government of Maharashtra in Appeal No.VPM-2022/PK

139/PR-6, thereby upsetting order dated 22.08.2022 passed by Divisional Commissioner, Aurangabad in case No.PK 2021/ZPVP/Appeal/Cell/CR 76.

3 The petitioner claims to be active social worker of village Loni, Tq. Udgir, Dist. Latur. Respondent Nos.6 and 7 are elected as Sarpanch and Upsarpanch of said village. The petitioner filed complaint to Divisional Commissioner, Aurangabad under Section 39(1) of the Maharashtra Village Panchayat Act, 1958 alleging various irregularities and illegalities in the conduct of respondent Nos.6 and 7, particularly alleging that respondents are guilty of destruction of public Well of drinking water used by villagers. In pursuance of complaint, Extension Officer, Panchayat Samiti, Udgir drawn a panchnama, recorded statements of villagers and submitted his report to Block Development Officer, Panchayat Samiti. The report suggests that during the monthly meeting of panchayat dated 25.06.2021, a resolution has been passed to remove the water tank. However, existence of the well or water tank owned by Grampanchayat is not traceable in record. In pursuance of the report, the Chief Executive Officer of Zilla Parishad conducted inquiry and recommended disqualification of respondent Nos.6 and 7 under Section 39(1) of the Act of 1958.

4 The Divisional Commissioner, Aurangabad took up proceedings in pursuance of recommendation and after hearing all concerned,

disqualified respondent Nos.6 and 7 as Sarpanch and Upsarpanch of village Panchayat. Respondent Nos.6 and 7 assailed said order before the Hon'ble Minister in File No.VPM 22/Case No.139/Village Panchayat – 6, under Section 13(3) of the Maharashtra Village Panchayats Act, 1959. The Hon'ble Minister allowed the appeal and set aside the order of the Divisional Commissioner vide order dated 14.10.2022, which is impugned in this petition.

5 Mr. V.D. Hon, learned Senior Advocate, appearing for the petitioner vehemently submits that the Hon'ble Minister erroneously interfered in reasoned order passed by the Divisional Commissioner. He would submit that Section 45 of the Maharashtra Village Panchayats Act mandates the Sarpanch and Upsarpanch of village to protect the public water sources including well and storage tanks. However, the respondents without taking recourse of the legal procedure destroyed public Well and water tank. There is serious departure from statutory obligation by respondent Nos.6 and 7. Mr. V.D. Hon, submits that Learned Divisional commissioner has rightly concluded that respondent Nos.6 and 7 were guilty of misconduct, as they acted contrary to their obligation and incurred disqualification. However, Hon'ble Minister erroneously observed that it was failure of Secretary of Village Panchayat, for which respondent Nos.6 and 7 could not have been

held responsible and consequently allowed the appeal.

6 Per contra, Mr. K.P. Rodge, learned Advocate appearing for respondent No.6 and Mr. M.P. Tripathi, learned Advocate appearing for respondent No.7 supported the order passed by the Hon'ble Minister. They points out that inquiry as to misconduct of Sarpanch and Upsarpanch has necessarily to be conducted by the Chief Executive Officer and none else. In present case the Chief Executive Officer authorized Extension Officer, Panchayat Samiti to conduct the inquiry into the matter. Accordingly, he reported Block Development Officer. On the basis of such report Chief Executive Officer, Zilla Parishad, Latur recommended disqualification of respondent Nos.6 and 7, which was eventually accepted by Additional Divisional Commissioner, Aurangabad while declaring disqualification of respondent Nos.6 and 7. It is, therefore, submitted that the procedure followed by the respondent authorities is contrary to mandate under Section 39 of Maharashtra Village Panchayats Act, hence order of Divisional Commissioner, Aurangabad cannot be justified. The Hon'ble Minister has rightly exercised his appellate jurisdiction and set aside the order of disqualification passed by the Divisional Commissioner.

7 Having considered the submissions advanced and after going through the record tendered into the service, apparently petitioner

complained misconduct on the part of respondent Nos.6 and 7. Consequently, respondent No.2 – Divisional Commissioner directed inquiry into the allegations vide his communication dated 03.12.2021. Eventually the Chief Executive Officer, Zilla Parishad, Latur issued a communication dated 05.04.2022 to the Block Development Officer, Panchayat Samiti, Udgir, who further delegated the inquiry to Extension Officer. Consequently, Extension Officer conducted inquiry into the matter, caused panchnama to find out the correctness of allegations as regards to destruction of well and water tank and submitted his report dated 29.04.2022 to Block Development Officer, Panchayat Samiti, Udgir. On the basis of said report the Chief Executive Officer, Zilla Parishad, Latur made his recommendation for disqualification of respondent Nos.6 and 7 in terms of Section 39(1) of the Maharashtra Village Panchayats Act. The aforesaid sequence of events clearly depicts that the Chief Executive Officer himself has not conducted any inquiry but relied upon the report of inquiry conducted by Extension Officer of Panchayat Samiti, Udgir. Section 39(1) of the Maharashtra Village Panchayats Act states as under :

“39. Removal from office. -

(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', or

(ii).....

Provided that, no such person shall be removed from office unless, **in case of clause (i), the Chief Executive Officer** or in case of clause (ii), the Deputy Chief Executive Officer as directed by the Chief Executive Officer; under the orders of the Commissioner, **holds an inquiry after giving due notice to the *panchayat* and the person concerned**; and the person concerned has been given a reasonable opportunity of being heard and thereafter the Chief Executive Officer or, as the case may- be, the Deputy Chief Executive Officer concerned, through the Chief Executive Officer, submits his report to the Commissioner. The inquiry officer shall submit his report within a period of one month.”

It is, therefore, imperative that the Chief Executive Officer of Zilla Parishad conducts the inquiry into the allegations and reports to the Commissioner which can be relied upon for taking ultimate decision either accepting or by rejecting the proposal for disqualification. This Court in case of **Nimba Yadav Bhoi vs. President, Standing Committee, Zilla Parishad, Jalgaon and others** [2002(3) Mh.L.J. 466] while interpreting aforesaid provisions held that -

“The requirements under Section 39(1) are mandatory in nature and on failure in that regard on the part of the authorities, the proceedings under Section 39(1) would be vitiated and any

order passed on the basis of such proceedings would be rendered null and void. The powers under Section 39(1) cannot be delegated.”

In present case the record indicates that the Chief Executive Officer caused inquiry through the Extension Officer, Panchayat Samiti and such report is the foundation for the recommendation made by him to the Divisional Commissioner, leading to removal of respondent Nos.6 and 7 from the office of Sarpanch and Upsarpanch. It is, therefore, apparent that the basic foundation of the order passed by the Divisional Commissioner was felicitous.

8 It is true that the Hon’ble Minister set aside the order passed by learned Divisional Commissioner, observing that for failure of duty on part of Secretary of Village Panchayat, respondent Nos.6 and 7 cannot be unseated. However, the perusal of the report submitted by the Extension Officer along with panchnama depicts that so called Well and water tank was never in use. There is no record to indicate that it was a public well or maintained by the Village Panchayat. Panchnama depicts that Well along with the water tank was used for the purpose of dumping garbage. It was surrounded by two Anganwadi’s and also creating obstruction for the public functions. Report also indicates that since last 15 to 20 years the well was never used. In this

scenario, no case is made out for interference in exercise of jurisdiction under Article 227 of the Constitution of India.

9 Hence, the writ petition stands dismissed.

10 Rule is discharged.

(S.G. CHAPALGAONKAR)
JUDGE

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