

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10135 OF 2023

Jayeshree Gajanan Waghmare & Anr.	... Petitioners
<i>Versus</i>	
Divisional Commissioner, Konkan Division, Navi Mumbai & Ors.	...Respondents

WITH

WRIT PETITION NO.10139 OF 2023

Ramdas P. Shelar	... Petitioner
<i>Versus</i>	
Monika Sameer Salokhe & Ors.	...Respondents

WITH

WRIT PETITION NO.8802 OF 2023

Sunil Raghunath Mahajan	... Petitioner
<i>Versus</i>	
State of Maharashtra, through its Minister for Gram Vikas Department, Mantralaya, Mumbai & Ors.	...Respondents

WITH

WRIT PETITION NO.8972 OF 2023

Rajendra Yeshwant Shinde	... Petitioner
<i>Versus</i>	
Divisional Commissioner, Konkan Division, Navi Mumbai & Ors.	...Respondents

WITH

WRIT PETITION NO.9544 OF 2023

Somnath Dattatraya Kanse ... Petitioner

Versus

Hon'ble Minister of the Rural Development, ... Respondents
Government of Maharashtra, Mantralaya,
Mumbai & Ors.

WITH

WRIT PETITION NO.11445 OF 2023

Prakash Dinkar Jadhav ... Petitioner

Versus

The State of Maharashtra ... Respondents
Hon'ble Minister, Rural Development Department
& Ors.

WITH

WRIT PETITION NO.5660 OF 2023

Sunil Ahantaram Pingle ... Petitioner

Versus

Divisional Commissioner, ... Respondents
Konkan Division, Navi Mumbai & Ors.

Mr. Prashant P. Raul, Advocate for the Petitioners in W.P. Nos.10135/2023, 10139/2023 and 8972/2023.

Mr. Anil V. Anturkar, Senior Advocate a/w. Mr. Abhay A. Antrurkar and Mr. Tanaji Mhatugade, Advocates for the Petitioner in W.P. No.9544/2023.

Mr. Anil Sakhare, Senior Advocate a/w. Mr. Mohan Tekavde, Ms. Swati Tekavde, Ms. Sanjana Shivkar, Ms. Kajol Mhatre, Ms. Tejal Shinde, Ms. Mrudula Kadam and Mr. Shubham Chaturvedi, Advocates i/b. A.D.I. Legal, for the Respondent Nos.4 in W.P. No.9544/2023.

Mr. Prasad S. Dani, Senior Advocate a/w. Mr. Abhijit Kadam and Mr. Satish Rane, Advocates, for the Respondent Nos.5 to 7 in W.P. No. 9544/2023.

Dr. Birendra Saraf, Advocate General a/w. Mr. P. P. Kakade, G.P., Ms. V. S. Nimbalkar, AGP and Ms. Kavita N. Solunke, AGP for the

Respondents-State in all Writ Petitions.

Mr. C. G. Gavnekar i/b. Mr. Prashant Raul, Advocates for the Petitioner in W.P No.5660/2023.

Mr. Nitin Gaware Patil a/w. Mr. Sahil Choudhari, Advocates i/b. Mr. Abhishek D. Nagode, for the Respondent No.2 in W.P No.5660/2023.

Mr. Pradeep Gole a/w. Mr. Suraj Shejwal, Advocates for the Petitioner in W.P No.11445/2023.

Mr. Prashant D. Jadhav a/w. Ms. Madhusmita Sahoo, for the Petitioner in W.P No.8802/2023.

Mr. Ajit M. Savagave a/w. Ms. Prachi Umap, Advocates for the Respondent No.2 in W.P No.8802/2023.

Ms. Ashwini Jadhav a/w. Ms. Pooja Patil, Advocates for the Respondent No.3 in W.P No.8802/2023.

Mr. Dhananjay B. Thoke, Advocates for the Respondent No.4 in W.P No.8802/2023.

Mr. Rahul More, Advocate for the Respondent No.2 in W.P No.10135/2023.

Mr. Dileep Satale i/b. Ms. Shagufa Patel, for the Respondent No.2 in W.P No.8972/2023.

CORAM: MADHAV J. JAMDAR, J.

DATED: 11th MARCH 2024

JUDGMENT:

1. Heard the learned Counsel for the respective parties.
2. This is a group of 7 Writ Petitions. The challenge in these Writ Petitions is to the legality and validity of the Orders passed by the Hon'ble Minister of Rural Development, Government of Maharashtra. In all these Writ Petitions, although the factual matrix is different but as

issues involved are common, all the Writ Petitions were heard together. The details of the challenge in respective Writ Petitions are as follows.

WRIT PETITION NO.10135 OF 2023

3. The challenge in this Writ Petition is to the Order dated 29th March 2023 passed by the Hon'ble Minister of Rural Development in Appeal No. व्हीपीएम—२०२२/प्र.क्र.२०२/पंरा—६. In this Writ Petition, the Petitioners had preferred an Application under Section 39(1)(i) of the *Maharashtra Village Panchayats Act, (Act No.III of 1959)* (“MVP Act”). The Divisional Commissioner, Konkan Division, Navi Mumbai by Order dated 19th October 2022 allowed the said Application preferred under Section 39(1)(i) of the MVP Act and directed removal of Respondent No.2 from the post of Sarpanch, Gram Panchayat, Varedi, Taluka-Pen, District-Raigad as well as removal of Respondent No.2 as Member of the said Gram Panchayat. The Hon'ble Minister, by the impugned Order dated 29th March 2023, has set aside the Order dated 19th October 2022 passed by the Divisional Commissioner, Konkan Division, Navi Mumbai. Consequently, the Application preferred by the Petitioners under Section 39(1)(i) of the MVP Act has been rejected.

WRIT PETITION NO.10139 OF 2023

4. The challenge in this Writ Petition is to the Order of the Hon'ble Minister of Rural Development dated 14th July 2021 passed in Appeal No. व्हीपीएम-२०१९/प्र.क्र.५५/पंरा-६. The Petitioner has filed a complaint with the Divisional Commissioner, Konkan Division, Navi Mumbai under Section 39(1)(i) of the MVP Act. The Divisional Commissioner, Konkan Division, Navi Mumbai by Order dated 16th April 2019 passed in Appeal No. विशा/कार्या-३/ग्रा. पं.३/उमरोली/प्र.क्र.१९/१८ १४७७ directed removal of Respondent No.1, who was earlier holding the post of Sarpanch, as Member of Gram Panchayat Umroli, Taluka-Karjat, District-Raigad. The Hon'ble Minister, by the impugned Order dated 14th July 2021, allowed the Appeal bearing No. व्हीपीएम-२०१९/प्र.क्र.५५/पंरा-६ and set aside the said Order dated 16th April 2019 passed by the Divisional Commissioner, Konkan Division, Navi Mumbai. Resultantly, the Application preferred by the Petitioner under Section 39(1)(i) of the MVP Act has been dismissed.

WRIT PETITION NO.8802 OF 2023

5. The challenge in this Writ Petition is to the Order of the Hon'ble Minister of Rural Development dated 19th June 2023 passed in Appeal No.व्हीपीएम-२०२३/प्र.क्र.०३/पंरा-६. The Petitioner has filed a complaint with the Divisional Commissioner, Konkan Division, Navi Mumbai under Section 39(1)(i) of the MVP Act bearing Gram Panchayat Disqualification Appeal No.7 of 2022. By Order dated 29th December 2022 passed by the Divisional Commissioner, Nashik Division, Nashik, the said Application was allowed and the Respondent No.4-Dhananjay Ananda Pawar has been held to be disqualified from holding the post of Sarpanch. The Hon'ble Minister, by the impugned Order dated 19th June 2023, allowed the Appeal and set aside the said Order dated 29th December 2022 passed by the Divisional Commissioner, Nashik Division, Nashik. Resultantly, the Application/proceeding preferred by the Petitioner under Section 39(1)(i) of the MVP Act has been dismissed.

WRIT PETITION NO.8972 OF 2023

6. The challenge in this Writ Petition is to the Order of the Hon'ble Minister of Rural Development dated 19th June 2023 passed in Appeal No.व्हीपीएम-२०२२/प्र.क्र.५१/पंरा-६. The Respondent No.2 has filed a

complaint with the Divisional Commissioner, Konkan Division, Navi Mumbai under Section 39(1)(i) of the MVP Act. The Divisional Commissioner, Konkan Division, Navi Mumbai by Order dated 19th April 2022 removed the Petitioner from the post of Sarpanch, Grampanchayat Kadsure, Taluka-Roha, District-Raigad. The Hon'ble Minister dismissed the Appeal preferred by the Petitioner under Section 39(3) of the MVP Act and resultantly confirmed the Order dated 19th April 2022 passed by the Divisional Commissioner, Konkan Division, Navi Mumbai. Thus, resultantly, the complaint filed by Respondent No.2 has been allowed and the Petitioner has been removed from the post of Sarpanch and also as Member of Gram Panchayat Kadsore, Taluka-Roha, District-Raigad.

WRIT PETITION NO.9544 OF 2023

7. The challenge in this Writ Petition is to the Order of Hon'ble Minister of Rural Development dated 17th July 2023 passed in Appeal No.व्हीपीएम-२०२३/प्र.क्र.०५/पंरा-६. In this Writ Petition, the Respondent Nos.4 to 7 preferred an Application under Section 39(1)(i) of the MVP Act. The Divisional Commissioner, Pune Division, Pune by Order dated 13th January 2023 partly allowed the said Application and removed the Petitioner from the post of Sarpanch and also as Member of Gram

Panchayat Javalarjun, Taluka-Purandar, District-Pune. The Hon'ble Minister, by the impugned Order dated 17th July 2023, has dismissed the Appeal preferred by the Petitioner and confirmed the Order dated 13th January 2023 passed by the Divisional Commissioner, Pune Division, Pune. Resultantly, the Application preferred under Section 39(1)(i) of the MVP Act by Respondent Nos.4 to 7 has been allowed and the Petitioner has been removed from the post of Sarpanch and also as Member of the said Gram Panchayat.

WRIT PETITION NO.11445 OF 2023

8. The challenge in this Writ Petition is to the Order of the Hon'ble Minister of Rural Development dated 14th August 2023 passed in Appeal No.व्हीपीएम-२०२३/प्र.क्र.१०२/पंरा-६. Respondent Nos.5 to 14 in this Writ Petition, have preferred an Application under Section 39(1)(i) of the MVP Act. The Divisional Commissioner, Pune Division, Pune by Order dated 16th June 2023 has directed removal of the Petitioner from the post of Sarpanch and also as a Member of Gram Panchayat Tarale, Taluka-Patan, District-Satara. By the impugned Order dated 14th August 2023, the Hon'ble Minister has dismissed the Appeal preferred by the Petitioner and confirmed the Order dated 16th June 2023 passed by the

Divisional Commissioner, Pune Division, Pune. Resultantly, the Application preferred under Section 39(1)(i) of the MVP Act by Respondent Nos.5 to 14 has been allowed and the Petitioner has been removed from the post of Sarpanch and also as a Member of the said Gram Panchayat.

WRIT PETITION NO.5660 OF 2023

9. The challenge in this Writ Petition is to the Order of the Hon'ble Minister of Rural Development dated 14th October 2022 passed in Appeal No.व्हीपीएम—२०२२/प्र.क्र.११४/पंरा—६. In this Writ Petition, the Petitioner has preferred an Application under Section 39(1)(i) of the MVP Act before the Divisional Commissioner, Konkan Division, Navi Mumbai. By Order dated 30th June 2022, the Divisional Commissioner, Konkan Division, Navi Mumbai has directed removal of Respondent No.2-Anant Soma Patil from the post of Sarpanch, Gram Panchayat Kurdus, Taluka-Alibag, District-Raigad by exercising power under Section 39(1)(i) of the MVP Act. By the impugned Order, the Hon'ble Minister has allowed the said Appeal preferred by the Respondent No.2 and has set aside the Order dated 30th June 2022 passed by the Divisional Commissioner, Konkan Division, Navi Mumbai. Resultantly,

the Application preferred by the Petitioner under Section 39(1)(i) of the MVP Act has been dismissed.

10. In all these Writ Petitions, although the factual matrix is different, however learned Counsel for respective parties have raised a few common questions of law concerning the interpretation of Section 39(1)(i) of the MVP Act and therefore all the matters were heard together.

11. Before considering the issues concerning the interpretation of Section 39(1)(i) of the MVP Act, it is convenient to set out the factual aspects in the Writ Petition No.5660 of 2023, which are as follows:

- (i) On 27th January 2021, the Petitioner filed a Complaint with the Divisional Commissioner under Section 39(1)(i) of the MVP Act.
- (ii) On 11th February 2021, the Deputy Commissioner, Konkan Division, Navi Mumbai directed the Deputy Chief Executive Officer to conduct inquiry and submit a Report.
- (iii) By letter dated 30th March 2021, the Deputy Chief Executive Officer, Raigad directed the Block Development Officer to conduct detail inquiry and submit report.
- (iv) On 26th August 2021, the Block Development Officer, Panchayat Samiti, Alibag submitted the report to the Deputy Chief Executive

Officer by recording specific finding that the Sarpanch and Village Development Officer have committed misconduct.

- (v) On 7th September 2021, the Chief Executive Officer on the basis of the report of the Block Development Officer, submitted his report to the Deputy Commissioner (Establishment), Konkan Division, recording *prima facie* that there is substance in the complaint.
- (vi) By letter/Order dated 22nd October 2021, the Divisional Commissioner, Konkan Division, Navi Mumbai on the basis of said *prima facie* finding recorded by the Chief Executive Officer (recorded on the basis of the report of the Block Development Officer) framed charges and directed the Chief Executive Officer, to conduct inquiry personally.
- (vii) The Chief Executive Officer, Raigad Zilla Parishad, Alibag after conducting inquiry submitted report dated 30th December 2021 to the Divisional Commissioner, Konkan Division, Navi Mumbai *inter alia* holding that the charges against the Respondent No.2 are proved. In the said report dated 30th December 2021, the Chief Executive Officer *inter alia* took into consideration the report of the Block Development Officer. The said report dated 30th December 2021 is also signed by the Deputy Chief Executive Officer.
- (viii) On 30th June 2022, the Divisional Commissioner, Konkan Division,

Navi Mumbai held Respondent No.2 - Anant Soma Patil guilty under Section 39(1) of the MVP Act and directed his removal from the post of Sarpanch.

- (ix) The Respondent No.2 preferred an Appeal under Sub-Section 3 of Section 39 of the MVP Act before the Hon'ble Minister of Rural Development.
- (x) By Order dated 14th October 2022, the Hon'ble Minister, Department of Rural Development, Government of Maharashtra, allowed the said Appeal and set aside the Order dated 30th June 2022 passed by the Divisional Commissioner holding Respondent No.2 guilty under Section 39(1)(i) of the MVP Act.
- (xi) In Writ Petition No.5660 of 2023 said Order dated 14th October 2022 passed by the Hon'ble Minister, Rural Development allowing the said Appeal preferred by Respondent No.2, is challenged.

12. Mr. Nitin Gaware Patil, learned Counsel for Respondent No.2 has raised the following two legal contentions/points *inter alia* concerning maintainability of the proceedings and therefore his submissions were heard at the beginning.

[a] The very initiation of disqualification proceedings by preferring an Application before the Commissioner under Section

39(1)(i) of the MVP Act by the Petitioner is wholly unjustified and illegal. Accordingly, the consequent proceedings undertaken by the Commissioner under Section 39(1)(i) of the MVP Act on an Application preferred by the Petitioner is not permissible and amounts to abdication of power by an Authority. Section 39A of the MVP Act would apply in a case where the disqualification is sought on an Application and the same has to be preferred to the State Government by an individual against any Member, Sarpanch or Upa-Sarpanch.

[b] The inquiry conducted by any officer other than the Chief Executive Officer under Section 39(1)(i) of the MVP Act would not amount to an inquiry as contemplated under the relevant provisions of law and therefore the entire proceedings are null and void.

Learned Counsel for Sarpanch/Member have supported the above contentions.

13. In support of above two legal contentions, Mr. Nitin Gaware Patil, learned Counsel made following submissions:

(i) He submitted that individuals resorting to the provisions of

Section 39(1)(i) of the MVP Act praying for removal of Sarpanch from the office on the ground of misconduct by preferring an Application before the Divisional Commissioner, is impermissible. Section 39 (1)(i) of the MVP Act does not contemplate preferring of any Application seeking removal from the office in context of a Member, Sarpanch or Upa-Sarpanch. No such Application is contemplated as per Section 39(1)(i) of the MVP Act. He thus submitted that the very initiation of proceedings on the basis of an Application under Section 39 of the MVP Act is contrary to the statutory scheme as laid down under the MVP Act. He submitted that therefore the Commissioner ought not to have entertained the Application/Complaints filed by the individuals seeking disqualifications. He submitted that it is a well settled principle of law that if a law/statute prescribes for a particular thing to be done in a particular manner then it has to be done in the said manner alone and not in any other way. Therefore, the exercise of powers under Section 39(1)(i) of the MVP Act to disqualify the Sarpanch on the basis of an Application preferred by certain Applicants would amount to usurpation and abdication of powers.

(ii) He submitted that Section 39A of the MVP Act provides that the State Government may, *suo motu* or on an Application made to it

against any Member, Sarpanch or Upa-Sarpanch regarding any act or omission specified in Sub-Section 1 of Section 39 of the MVP Act, direct the Chief Executive Officer concerned to hold an inquiry against such Member, Sarpanch or, as the case may be, Upa-Sarpanch, and submit its report within a period of one month to the Commissioner. Thereafter, the Commissioner has to give an opportunity to hear and make a decision on the inquiry report. He therefore submitted that the legislative scheme is very clear and if any Application can be preferred by an individual person then the same has to be to the State Government under Section 39A of the MVP Act and the same cannot be under Section 39(1)(i) of the MVP Act to the Commissioner. He submitted that therefore an Application ought to have been made to the State Government under Section 39A of the MVP Act and the recourse taken to the provisions of Section 39(1)(i) of the MVP Act is beyond the purview and realm of the legal provisions. He pointed out the difference between the language and phraseology used in Section 39 and Section 39A of the MVP Act and submitted that it is only the State Government which has been empowered to undertake further inquiry on the basis of an Application preferred by the individual. He submitted that the legislative scheme as contemplated under Section 39(1)(i) of the MVP Act does not contemplate any complaints/Applications made by any

person but Section 39 of the MVP Act is a power of the Commissioner to take action against Member, Sarpanch or Upa-Sarpanch if such Sarpanch or Upa-Sarpanch is guilty of misconduct in the discharge of his or her duties or of any disgraceful conduct or of neglect or of incapacity to perform his or her duty, or is persistently remiss in the discharge thereof.

(iii) He submitted that Section 39(1)(ii) of the MVP Act contemplates an Application/Complaint by not less than 20% of the total number of voters in the village who have paid all dues of the Panchayat regarding taxes on buildings and lands and water charges, make a complaint that the annual accounts and the report of the expenditure incurred by the Panchayat on the development activities are not placed before the Gram Sabha; and the information thereof is not displayed on the notice board as required by Sub-Section 1 or 1-A of Section 8 of the MVP Act. He submitted that Section 39(1)(i) and Section 39(1)(ii) of the MVP Act operate in different fields. Only Section 39(1)(ii) of the MVP Act contemplates the Complaint and said Complaint is also required to be filed by not less than 20% of the total number of voters and the said Complaint is only concerning the aspects which are specifically set out in Section 39(1)(ii) of the MVP Act. He submitted that Section 39(1)(i)

of the MVP Act nowhere contemplates a Complaint by a resident/s of the village and therefore the Commissioner has no power to proceed with a Complaint filed under Section 39(1)(i) of the MVP Act.

(iv) He further submitted that assuming that the Commissioner has power to proceed under Section 39(1)(i) of the MVP Act on the basis of the Complaint filed by the individual, the inquiry undertaken by any officer other than the Chief Executive Officer would not amount to an inquiry as contemplated under the provisions of law. He pointed out the first proviso to Section 39(1) of the MVP Act. He submitted that the inquiry contemplated is only by the Chief Executive Officer in the context of Section 39 (1)(i) of the MVP Act. He submitted that in the present case, the Respondent No.1 i.e. the Divisional Commissioner directed the Chief Executive Officer to submit the report as contemplated under Section 39(1)(i) of the MVP Act. He submitted that the inquiry is made by the Block Development Officer, Panchayat Samiti, Alibag who submitted a report to the Chief Executive Officer on 26th August 2021 and thereafter the Chief Executive Officer submitted report to the Divisional Commissioner. He therefore submitted that even the said action of conducting the inquiry by the Block Development Officer is beyond the purview of Section 39 (1)(i) of the MVP Act. He

submitted that the action of the Chief Executive Officer calling for the report from Block Development Officer from the concerned Panchayat Samitis was unwarranted and without any legal basis and hence the inquiry which has been undertaken against the Sarpanch by the Block Development Officer and the further action taken pursuant to the same is entirely illegal and is not in conformity with the statutory provisions of Section 39(1)(i) read with the proviso. He submitted that as per the settled law, disqualifying statutes are to be considered strictly. He submitted that as per the settled law, if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner alone and not in any other manner. He therefore submitted that the entire action taken on the basis of the report by the Block Development Officer is entirely illegal, null, and void and *dehors* the provision of Section 39(1)(i) read with proviso to the same of the MVP Act.

(v) Mr. Gaware Patil, learned Counsel for the Applicant pointed out various documents produced by the Respondent No.1-State of Maharashtra on 21st February 2024. He pointed out the letter dated 11th February 2021 issued by the Deputy Commissioner, Konkan Division, Navi Mumbai to the Deputy Chief Officer, Zilla Parishad, Raigad, and the letter issued by the Deputy Chief Executive Officer, Raigad to the

Block Development Officer. Further, he pointed out the Inquiry Report submitted by the Block Development Officer to the Deputy Chief Officer dated 26th August 2021 and the report submitted by the Chief Executive Officer dated 7th September 2021 to the Deputy Commissioner, Konkan Bhawan, Navi Mumbai. He submitted that the inquiry as contemplated under Section 39(1)(i) read with proviso has to be undertaken by the Chief Executive Officer himself and said powers cannot be delegated to the subordinate officer, and the inquiry undertaken by any Officer other than the Chief Executive Officer would not amount to an inquiry as contemplated under the said provisions of law.

(vi) He also submitted that the disqualifying statutes are to be construed strictly as the same have a drastic effect of unseating a democratically elected office bearer and that the same would amount to disrespecting the will of the public reposed in him or her through the mechanism of elections.

(vii) Mr. Gaware Patil, learned Counsel has relied on several decisions. Reference to relevant decisions shall be made as and when necessary.

14. Mr. Abhay Anturkar, learned Counsel for the Petitioner in Writ Petition No.9544 of 2023 also pointed out the legislative scheme under

Section 39(1)(i) and Section 39(1)(ii) as well as Section 39A of the MVP Act. He submitted that Section 39(1)(ii) of the MVP Act categorically provides for a Complaint being made to the Commissioner and that such a reference to a Complaint/Application is absent from the provisions of Sub-Clause i of Section 39A(1) of the MVP Act. He submitted Section 39A of the MVP Act contemplates that the State Government may, *suo motu* or on an Application made to it against any Member, Sarpanch or Upa-Sarpanch regarding any act or omission specified in Sub-Section 1 of Section 39 of the MVP Act, direct the Chief Executive Officer concerned to hold an inquiry against such Member, Sarpanch or, as the case may be, Upa-Sarpanch, and submit its report within a period of one month to the Commissioner. Thereafter, the Commissioner has to give an opportunity of hearing and make a decision on the inquiry report. Therefore, he submitted that by no stretch of imagination can the Complaint be filed before the Commissioner under Section 39(1) of the MVP Act and that the Commissioner has no power to act on the basis of such Complaint. He submitted that the legislative intent is very clear. In paragraph No.4 of his written submissions, he has elaborated this point in the following manner:

“4. The legislative intent is clear from a juxtaposition of Section 39 and Section 39A. The scheme as provided by the statute is as under:

- i. A complaint/application against any member, Sarpanch, or Upa-Sarpanch is to be made to the State Government under Section 39A;*
- ii. Such application will be considered by the State Government as its level at the first instance, and subject to a prima facie case being made out, the same will be referred to the Chief Executive Officer concerned with a direction to hold an enquiry. The discretionary power of the State Government to filter out false, frivolous and vexatious applications is clear from Section 39A inter alia providing that the it may on an application made direct the Chief Executive Officer to hold an enquiry. As such whether an enquiry is to be directed is within the discretion of the State Government.*
- iii. If the State Government directs an enquiry, then the report of the same is to be placed before the Commissioner. It is at this point that the provisions of Section 39(1)(i) come into the picture and the Commissioner assumed jurisdiction. It is reiterated that such a statutory scheme is to ensure that no false, frivolous and vexatious complaints are entertained for removing a person who is elected to a democratic office to a Member, Sarpanch, or Upa-Sarpanch.*
- iv. In case of Section 39(1)(ii), the complaint can be made to the Commissioner under the circumstances which require no detailed enquiry to determine whether the allegations made thereunder or the facts mentioned in the aforesaid provision are made out or not. In other words, the scope of the allegations and the fact finding exercise in case of 39(1)(ii) is limited and straightforward; whereas in sub-clause (i) it is substantial and comprehensive.”*

He submitted that the Complaint as contemplated under Section 39(1) (ii) of the MVP Act is by not less than 20% of the voters and the said Complaint operates in a very limited sphere. He also relied on certain

decisions of this Court and of the Supreme Court, reference to which shall be made at an appropriate stage.

15. Mr. Anil Anturkar, learned Senior Counsel, Mr. Pradeep Gole, learned Counsel and Mr. Rahul More, learned Counsel also raised same contentions and also raised some additional contentions.

16. Mr. Pradeep Gole, learned Counsel for the Petitioner in Writ Petition No.11445 of 2023 raised several contentions on merits including that the impugned order passed is a stereotype order, no reasons are given, there are no allegations of financial fraud against the Petitioner, the allegations are generic in nature and no specific allegations are levelled. He submitted that the order passed by the Hon'ble Minister is *mala fide* exercise of power and the order was passed to achieve a political purpose. He submitted that the inquiry was conducted by the committee which is impermissible as Section 31(1)(i) of the MVP Act contemplates that the inquiry should be conducted by the Chief Executive Officer. He relied on the decision of the Supreme Court in *Ravi Yashwant Bhoir v. Collector*¹ to buttress his contentions.

1 (2012) 4 SCC 407

17. Mr. Rahul More, learned Counsel appearing for the Respondent No.2 in Writ Petition No. 10135 of 2023 pointed out the decision of a learned Single Judge in *Rajendra v. State of Maharashtra*² and relied on paragraph Nos.28, 39 and 40 of the same and submitted that error of judgment resulting in negligence will not amount to misconduct.

18. Mr. C. G. Gavnekar, learned Counsel for the Petitioner in W. P. No.5660 of 2020 in support of the contention that complaint can be filed by any person to the commission under Section 39(1)(i) of the MVP Act raised the following contentions:

(i) He pointed out the provisions of Section 39 of the MVP Act prior to its substitution on 21.12.2006. As per the said earlier provision, the power under Section 39 of the MVP Act was vested in the Standing Committee of the Zilla Parishad. As per the earlier Section 39 of the MVP Act before substitution, the Chief Executive Officer was required to conduct an inquiry under the order of the President of the Zilla Parishad and an Appeal to the aggrieved person was provided to lie before the Commissioner.

(ii) He pointed out the substituted Section 39 of the MVP Act as

² 2002 (3) Mh.LJ 154

substituted on 21.12.2006 which confers the power on the Commissioner. He pointed out the present scheme of Section 39 of the MVP Act which is in operation since 21.12.2006. He pointed out that the power of removal of a Member can be exercised by the Commissioner on his own i.e. information received by the Commissioner on a complaint lodged by any person residing in the said Gram Panchayat in the context of Section 39(1)(i). He pointed out that Section 39 of the MVP Act is a self-contained code in the matter of removal of a Member or Sarpanch or Upa-Sarpanch of a Village Panchayat and relied on the decision of a learned Single Judge in *Sandip Ramesh Khidbide V. Pratima Prakash Gaikar* ³ and more particularly on paragraph No.13 of the same.

(iii) He also pointed out Section 39A of the MVP Act as inserted on 21.12.2006 and submitted that the power conferred on the Government under Section 39A of the MVP Act is in addition to power of removal conferred on the Commissioner under Section 39 of the MVP Act. He pointed out Chapter 11 of the MVP Act under the heading 'Control' and submitted that under Section 145 of the MVP Act, the State Government has the power to dissolve a Panchayat. However, there is no provision in

3 2023 SCC OnLine Bom 772

the said Chapter for removal of Sarpanch or Upa-Sarpanch or a Member of the Panchayat. Therefore, Section 39A of the MVP Act was added to confer such powers on the Government. He submitted that Section 39A of the MVP Act starts with a non-obstante clause and therefore submitted that although under Section 39 of the MVP Act, power is with the Commissioner, notwithstanding anything contained in Section 39 of the MVP Act, under the same provision, a complaint/Application can be filed with the State Government.

(iv) He pointed out Section 14 of the MVP Act and submitted that Sections 14 and 39(1)(i) of the MVP Act operate in different spheres. He submitted that Section 14 of the MVP Act is regarding individual disqualification while Section 39 of the MVP Act deals with removal of a person from office who has incurred dis-qualification due to misconduct etc. He submitted that the purpose of Section 39(1)(i) of the MVP Act is to maintain high probity in the life of an elected representative and the purpose of Section 14 of the MVP Act is to prevent a dis-qualified person to be an elected representative. He submitted that in order to maintain high probity in the life of elected representative, Section 39 of the MVP Act has to be interpreted widely and particularly insofar as conferring the power on the Divisional Commissioner. He submitted

that if the submission that the Divisional Commissioner cannot exercise his power on the complaint Application of resident/voter of Gram Panchayat is accepted then the same would amount to reading into Section 39 something which is not incorporated therein as Section 39 of the MVP Act is a self-contained code in the matter of removal of a person. He therefore submitted that the interpretation sought to be given while interpreting Section 39 and Section 39A of the MVP Act is that the Divisional Commissioner has to exercise power *suo motu* i.e. on his own and not on the basis of complaint/Application received, is contrary to the Scheme of Section 39 of the MVP Act.

(v) He also pointed out the Government Circulars dated 12.06.2013 amended on 04.06.2016 and 18.09.2019 which provide that relevant complaint be lodged against such persons who are responsible for financial irregularities and misleading of the Panchayat by forging the documents, by initiating criminal prosecution. Thus, he submitted that the Commissioner has power to entertain the complaint Application from the residents/voters of a particular Gram Panchayat. Thereafter, the Commissioner can take an action by following the provisions of Section 39 of the MVP Act which is a self-contained Code. He also pointed out certain paragraphs from the third edition of 'Principles of

Statutory Interpretation’ by Justice G. P. Singh. He pointed out the discussion with respect to the non-obstante clause in the said commentary on the principles of statutory interpretation.

(vi) As far as the submissions of Mr. Gaware-Patil, learned Counsel for Respondent No.2 that the inquiry contemplated under Section 39(1)(i) of the MVP Act has to be undertaken by the Chief Executive Officer himself and the said powers cannot be delegated to any subordinate officer and therefore the contention that the entire action taken pursuant to the report of the Block Development Officer is *de hors* of mandatory requirement of Section 39(1)(i), Mr. Gawanekar, learned Counsel submitted that the said ground is not raised in the Appeal preferred by the Respondent No.2 before the Minister challenging the Order of the Commissioner. He submitted that under Section 39 of the MVP Act, no rules are framed and therefore, what is necessary is only to follow the principles of natural justice. He submitted that the inquiry conducted by the Block Development Officer is only a preliminary inquiry and in fact a full-fledged inquiry is conducted by the Chief Executive Officer as per the requirement of Section 39(1)(i) read with proviso to the same. He therefore submitted that as the inquiry conducted by the Chief Executive Officer and as the action is taken

pursuant to the inquiry conducted by the Chief Executive Officer, the requirement of Section 39(1)(i) read with proviso of the MVP Act is complied with. He submitted that the action is not taken on the basis of the report of the Block Development Officer and the Block Development Officer has only conducted preliminary inquiry to find out whether *prima facie*, there is any substance in the complaint. He submitted that on the basis of the report of the Block Development Officer, only *prima facie* satisfaction recorded by the Deputy Chief Executive Officer and accordingly report dated 7th September 2021 is submitted to the Deputy Commissioner. He submitted that thereafter by following requirements of Section 39(1)(i), the Chief Executive Officer has conducted the inquiry and on the basis of the inquiry report of the Chief Executive Officer, the Divisional Commissioner has passed the Order. Therefore, he submitted that the provisions of Section 39(1)(i) of the MVP Act are complied with. He submitted that the inquiry conducted by the Block Development Officer and his report is an additional material taken into consideration while conducting the inquiry by the Chief Executive Officer and therefore it cannot be said that the procedure followed is contrary to Section 39(1) (i) of the MVP Act.

19. Mr. Anil Sakhare, learned Senior Counsel, Mr. Prasad Dani, learned Senior Counsel along with Mr. Abhijit Kadam and Mr. Prashant Jadhav, learned Counsel also raised contention raised by Mr. C. G. Gavnekar, learned Counsel and also submitted that the inquiry conducted by the Block Development Officer is only a preliminary inquiry and action under Section 39 of the MVP Act is taken on the basis of inquiry conducted by the Chief Executive Officer and therefore they submitted that the requirements of Section 39(1)(i) of the MVP Act are complied with.

20. Mr. Jadhav, learned Counsel has pointed out decision of a learned Single Judge (Coram: R.C. Chavan, J.) dated 8th April 2010 passed in Writ Petition No.3263 of 2009 in *Shrikant Chahakar v. State of Maharashtra*⁴. Mr. Jadhav pointed out paragraph Nos. 8, 10, and 12 thereof and submitted that the Chief Executive Officer could always use his machinery for collecting the material.

21. Dr. Birendra Saraf, learned Advocate General also assisted the Court on the said legal issues involved in all these matters. He pointed out the relevant provisions namely Sections 2(17) of the MVP Act which

4 2010 SCC OnLine Bom 543

define Sarpanch or Upa-Sarpanch. He submitted that under Section 39(1)(i) of the MVP Act, the Commissioner can exercise his power against any Member or any Sarpanch or Upa-Sarpanch who has been found guilty of misconduct in the discharge of his or her duty or any act or incapacity to perform his or her duty or persistently remiss in the discharge thereof. He submitted that there is nothing which has circumscribed the power of the Commissioner except the procedure provided. He submitted that there is nothing in Section 39(1)(i) of the MVP Act which indicates that the Commissioner cannot exercise his power on the complaint/Application received by him. Any such reading that the power of the Commissioner under Section 39(1)(i) of the MVP Act cannot be exercised on a complaint/Application made by anyone would lead to absurd results. In the eventuality, if someone brings to the notice of the Commissioner by way of complainat/Application, a gross act of misconduct or any other circumstances under Section 39(1)(i), the Commissioner would have to turn a blind eye and would be rendered powerless. He submitted that Section 39(1)(ii) of the MVP Act empowers the Commissioner to remove a Member or Sarpanch or Upa-Sarpanch on the ground that annual accounts and reports of the expenditure incurred by the Panchayat on the development activities are not placed before the Gram Sabha. He submitted that however, this

power of the Commissioner can be exercised only on receipt of the complaint Application from not less than 20% of the voters in the village who have paid all dues of the village regarding building, land, and water charges. Thus, Section 39(1)(ii) of the MVP Act circumscribes the power of the Commissioner and empowers him to exercise the powers of removal on the ground set out therein only on receipt of a complaint being received by the requisite number of voters as set out therein. He submitted that Section 39(1)(ii) of the MVP Act contemplates removal on certain technicalities/procedural non-compliance. It is therefore expected that the power should be exercised only on the grievance made by a certain number of voters who complains about the same. He submitted that however, the circumstances set out in section 39(1)(i) being far more serious, the commissioner has been given full authority to exercise his power of removal. He submitted that Section 39(1)(ii) of the MVP Act contemplates the filing of a complaint/Application by at least 20% of the total number of voters means that Section 39(1)(i) of the MVP Act cannot be exercised on the basis of complaint/Application is misreading of the said provision. He submitted that in fact, a holistic reading of the provision indicates that while power under Section 39(1)(ii) of the MVP Act can be exercised only on receipt of a complaint from the requisite

number of voters i.e. atleast 20%, and that there is no such restriction or bar under Section 39(1)(i) in exercising power of the Commissioner. He submitted that under Section 39(1)(i), the Commissioner can exercise power either on his own or *suo motu* or upon receipt of a complaint/Application. He also relied on certain decisions of this Court and of the Gujarat High Court, a reference to which will be made when necessary.

22. Dr. Saraf, learned Advocate General in the light of contention raised that in view of Section 39A of the MVP Act, it is the State Government only who can entertain a complaint/Application made by any person against any Member, Sarpanch or Upa-Sarpanch regarding any act or omission specified in Section 39(1)(i) of the MVP Act, submitted that Section 39A of the MVP Act contemplates initiation of an inquiry *suo motu* or an Application to the State Government. The State Government thereafter refers the matter to the Chief Executive Officer for holding an inquiry and submitting the report to the Commissioner. The Commissioner, thereafter, based on the report, holds an inquiry and renders the decision. He submitted that the procedure, as contemplated under Section 39A of the MVP Act is the same, as contemplated under Section 39 of the MVP Act. The only difference is that in Section 39 of

the MVP Act, the Commissioner initiates the procedure wherein under Section 39A of the MVP Act, the State Government initiates the procedure. He submitted that in both the provisions, the Commissioner is the authority which renders decision of removal of the Sarpanch or Upa-sarpanch. Thus, Section 39A of the MVP Act is only an additional power conferred on the State Government to refer any Application/Complaint made against Member or Sarpanch or Upa-Sarpanch and direct an inquiry by the Chief Executive Officer. He submitted that this does not in any manner affect the power of the Commissioner to act directly under Section 39(1)(i) of the MVP Act. He submitted that the objective of Sections 39 and 39A of the MVP Act is to provide a remedy to citizens to approach the Commissioner or the State Government with their grievance regarding functioning of the office of the Sarpanch or Upa-Sarpanch. He submitted that Section 39 and Section 39A of the MVP Act are independent remedies provided by the legislature to the citizens and that one does not override the other. He submitted that Section 39A of the MVP Act begins with the word “notwithstanding anything contained in Section 39” and therefore, it is clearly provided that the power of the State Government under Section 39A of the MVP Act is notwithstanding the power of the Commissioner under Section 39(1) of the MVP Act. He pointed out the decision of the

Supreme Court in *Iridium India Telecom Ltd. v. Motorola Inc.*⁵. The said decision is regarding the term ‘notwithstanding’. He submitted that the word ‘notwithstanding’ in Section 39A of the MVP Act does not circumscribe the power of the Commissioner under Section 39 of the MVP Act. He submitted that such a power of the State Government under Section 39A of the MVP Act is in addition to the power of the Commissioner under Section 39(1)(i) of the MVP Act.

23. In view of above submissions, two points are raised by learned Counsel appearing for the respective Sarpanchs for consideration as set out in paragraph no.12. At this stage only it is to be noted that dictation of this judgment was started in the Court on 17th February 2024. However, as learned Counsels raised some additional submissions and on the basis of the same, the State Government filed additional documents on 21st February 2024 after hearing the additional submissions, the further judgment is thereafter dictated on 2nd March 2024 and 11th March 2024.

24. The first point for consideration is as follows:

⁵ (2005) 2 SCC 145

FIRST POINT:

The very initiation of disqualification proceedings by preferring an Application before the Commissioner under Section 39(1)(i) of the MVP Act by the Petitioner is wholly unjustified and illegal. Accordingly, the consequent proceedings undertaken by the Commissioner under Section 39(1)(i) of the MVP Act on an Application preferred by the Petitioner is not permissible and amounts to abdication of power by an Authority. The Section 39A of the MVP Act would apply in a case where the disqualification is sought on an Application made to the State Government against any Member, Sarpanch or Upa-Sarpanch.

25. As set out earlier, Mr. Nitin Gaware Patil, learned Counsel, Mr. Anil Anturkar, learned Senior Counsel, Mr. Abhay Anturkar, learned Counsel, Mr. Pradeep Gole, learned Counsel and Mr. Rahul More, learned Counsel contended that Section 39(1)(i) of the MVP Act is the power of the Commissioner to remove any Sarpanch, Up-Sarpanch or Member of the Village Panchayat from office and the said power has to be exercised by the Commissioner on his own motion and no Application or complaint can be filed by anyone with the Commissioner for the same.

26. On the other hand, Dr. Birendra Saraf, learned Advocate General, Mr. C.G. Gavnekar, learned Counsel, Mr. A.Y. Sakhare, learned Senior Counsel, Mr. Prasad Dani, learned Senior Counsel, Mr. Tekavde, learned Counsel, Ms. Ashwini Jadhav, learned Counsel, Mr. Abhijit Kadam, learned Counsel, Mr. Prashant Raul, learned Counsel, Mr. Prashant Jadhav, learned Counsel and Mr. Dileep Satale, learned Counsel submitted that under Section 39(1)(i) of the MVP Act, the Commissioner on his own motion can initiate action for removal or the said action can be initiated also on the complaint/Application filed by the voter or resident of the said village or any person.

27. Thus, the question which arises for consideration by the Court is as follows:

“Whether power under Section 39(1)(i) of the MVP Act read with the proviso to the same can be exercised by the Commissioner on his own motion only or any person including voter of said Grampanchayat can file Application/ complaint with the Commissioner to take action for removal of any member or any Sarpanch or Upa-Sarpanch of the Village Panchayat on the grounds contemplated under Section 39(1) (i) of the MVP Act?”

28. Before appreciating the rival contentions on the said point of law, it is necessary to set out Section 39 of the MVP Act as it existed before its substitution, upto 21st December 2006. The said Section 39 of the MVP Act reads as under:

“39. (1) The Standing Committee may 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 Standing Committee also be removed from the Panchayat:

Provided that, no such person shall be removed from office unless the Chief Executive Officer under the orders of the President of the Zilla Parishad concerned 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 submits his report to the Standing Committee.

1A] Where a person is removed from office of the Sarpanch or Upa-Sarpanch, he shall not be eligible for re-election as Sarpanch or Upa-Sarpanch during the remainder of the term of office of members of the panchayat.

(2) The Standing Committee may subject to like condition disqualify for a period not exceeding five years, any person who has resigned his office as a member, Sarpanch or Upa-Sarpanch and has been guilty of the acts and omissions specified in sub-section (1):

Provided that such action is taken within a reasonable time after such resignation.

(3) Any person aggrieved by an order of the [Standing Committee] under sub-section (1) or (2) may, within a period of thirty days from the date of the communication of such order, appeal to the Commissioner.”

(Emphasis added)

29. Mr. Gavnekar, learned Counsel submitted that under Section 39 of the MVP Act before its substitution in the year 2006, the power was with the Zilla Parishad/Standing Committee. The resident of village or voter of the said Gram Panchayat used to file Applications/complaints with the Standing Committee. It is significant to note that before 21st December 2006, old Section 39 of the MVP Act was in operation which was amended by the *Maharashtra Act No.43 of 1962, Maharashtra Act No.36 of 1965, and Maharashtra Act No.34 of 1970*. Thus, the old Section 39 of the MVP Act was in operation since the year 1959 till 21st December 2006. Last amendment of said Section was in the year 1970. Substitution of the same was on 21st December 2006. From 1970 to 21st December 2006, the said provision as it stood before substitution on 21st December 2006 was in operation and Mr. Gavnekar, learned Counsel submitted that even then also the Application/complaint used to be filed with Zilla Parishad/ Standing Committee of Zilla Parishad by the

citizens of the particular Village Panchayat, voters or any other persons and action used to be taken against the concerned person. Thus, he submitted that the submission that action can be taken only *suo moto* and not on the Application/Complaint, is not a correct reading of the substituted Section 39.

30. Present Section 39 of the MVP Act was substituted by the *Maharashtra Act No.38 of 2006*. By the very Act, Section 39A was inserted in the MVP Act. The said Section 39 as substituted on 21st December 2006 and new Section 39A of the MVP Act read 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) remove from office the member, Sarpanch or, as the case may be, Upa-Sarpanch, if not less than twenty per cent. of the total number of voters in the village who have paid all dues of the panchayat regarding taxes on buildings and lands and water charges, make a complaint that the annual accounts and the report of the expenditure incurred by the panchayat on the development activities are not placed before the Gram Sabha; and the information thereof is not displayed on the

notice board as required by sub-section (1) or (1-A) of section 8:

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, though the Chief Executive Officer, submits his report to the Commissioner. The inquiry officer shall submit his report within a period of one month:

Provided further that, the Commissioner shall, after giving the person concerned a reasonable opportunity of being heard, take a decision on the report submitted by the Chief Executive Officer or, as the case may be, the Deputy Chief Executive Officer, within a period of one month from the date of receipt thereof.]

(1-A) Where a person is removed from office of the Sarpanch or Upa-Sarpanch, he shall not be eligible for re-election as Sarpanch or Upa-Sarpanch during the remainder of the term of office of members of the Panchayat.

(2) The Commissioner may subject to like condition disqualify for a period of not exceeding six years, any person who has re-signed his office as a member, Sarpanch or Up-Sarpanch and has been guilty of the acts and omission specified in sub-section (1).

(3) Any person aggrieved by an order of the Commissioner under sub-section (1) or (2) may, within a period of fifteen days from the date of the receipt of such order, appeal to the State Government and the Government shall decide the

appeal within a period of one month from the date of receipt thereof.

(Emphasis added)

39A. Power of Government to direct inquiry.-(1) Notwithstanding anything contained in section 39, the State Government may, suo motu or on an application made to it against any member, Sarpanch or Upa-Sarpanch regarding any act or omission specified in sub-section (1) of section 39, direct the Chief Executive Officer concerned to hold an inquiry against such member, Sarpanch or, as the case may be, Upa-Sarpanch, and submit its report, within a period of one month, to the Commissioner.

(2) The Commissioner shall, after giving a reasonable opportunity of being heard to the panchayat and the person concerned, take a decision, within a period of one month, on the inquiry report.

(3) Any person aggrieved by an order of the Commissioner under sub-section (2), may, within a period of fifteen days from the date of receipt of such order, appeal to the State Government and the decision of the Government thereon shall be final.]'

(Emphasis added)

31. In this background, it is necessary to examine the issue arising for consideration of this Court i.e. whether complaint/Application made by a person/voter for removal of Sarpanch, Upa-Sarpanch or Member, to the Commissioner under Section 39(1)(i) of the MVP Act is maintainable or whether said complaint/Application can only be made

to the State Government under Section 39A of the MVP Act. Thus, in the present case, interpretation of Section 39(1)(i) as well as Section 39A of the MVP Act falls for consideration of this Court.

32. The Constitution Bench of the Supreme Court in *Union of India v. Elphinstone Spg. & Wvg. Co. Ltd.*⁶ held that when the question arises as to the meaning of a certain provision in a statute, it is not only legitimate but proper to read that provision in its context. The context means the statute as a whole; the previous state of law; other statutes in *pari materia*; the general scope of the statute; and the mischief that it was intended to remedy. It is settled law that words of a statute, when there is a doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature had in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained. It is also a settled legal position that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the legislature.

⁶ (2001) 4 SCC 139

33. If interpretation which is sought to be advanced by Mr. Nitin Gaware Patil, learned Counsel, Mr. Anil Anturkar, learned Senior Counsel, Mr. Abhay Anturkar, learned Counsel, Mr. Pradeep Gole, learned Counsel and Mr. Rahul More, learned Counsel is accepted then, it is only the Commissioner who can take *suo moto* action and a person who is a resident of a village/voter in the election of Village Panchayat if he or she has a grievance regarding misconduct of any Member or Sarpanch, or Upa-Sarpanch as the case may be, 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, he has no other option but to approach the State Government as provided under Section 39A of the MVP Act. It is the submission of these Counsel that Section 39(1)(i) of the MVP Act is the power of the Commissioner and only the Commissioner can act *suo moto* under said provision. It is their submission that under Section 39(1)(i) of the MVP Act, no citizen of the said village or voter of the said Gram Panchayat or any other person can approach the Commissioner by filing Application/complaint, and the same can be done only under Section 39A of the MVP Act.

34. It is necessary to understand the scheme of the MVP Act for appreciating the above submissions. The scheme of the MVP Act is as follows:

- (a)** The MVP Act has been enacted to amend and consolidate the law relating to the constitution and administration of Village Panchayats with a view to establish a Village Panchayat for every village or group of villages and investing them with such powers and authority as may be necessary to enable them to function as units of local self-government and of development activities in rural areas, and for certain other matters. Thus, what is sought to be done by the MVP Act is establishing Village Panchayat for every village or group of villages and such village panchayat would be functioning as units of local self-Government and development activities in rural areas.
- (b)** Section 2(14) defines “Panchayat” as a Panchayat established or deemed to have been established under this Act. Section 4 is regarding declaration of village and

Section 5 provides that in every village there shall be a Panchayat.

- (c) Section 10 is regarding constitution of Panchayat and provides that a Panchayat shall consist of such number of members not being less than seven and not more than seventeen as the State Government may prescribe, who shall be elected in accordance with Section 22.
- (d) Section 10(b) provides that each village shall be divided into such number of wards, and the number of members of a Panchayat to be elected from each ward shall be such, as may be determined in the prescribed manner by the State Government or an officer authorised by it, with the approval of the State Election Commission. It is further provided that the Panchayat area shall be divided into wards in such manner that, the ratio between the population of each ward and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

- (e) Under Section 9 every Panchayat shall be a body corporate by the name of “the Village Panchayat of” having perpetual succession and a common seal, with power to acquire and hold property, both moveable and immoveable, whether within or without the limits of the village over which it has authority and may in its corporate name sue and be sued.
- (f) Section 12 provides for list of voters for Grampanchayat and provides that the electoral roll of the Maharashtra Legislative Assembly prepared under the provisions of the *Representation of the People Act, 1951*, and in force on such day as the the State Election Commissioner may by order notify in this behalf for such part of the constituency of the Assembly as is included in a ward or a village shall be the list of voters for such ward or village. An officer designated by the State Election Commission in this behalf shall maintain a list of voters for each such ward or village.
- (g) Section 13 provides that every person whose name is in the list of voters shall, unless disqualified under this Act, or any

other law for the time being in force, be qualified to vote at the election of a member for the ward to which such list pertains.

- (h) Section 45 provides for administrative powers and duties of Panchayat. Section 45 *inter alia* provides that subject to the general control of the Zilla Parishad and the Panchayat Samiti it shall be the duty of a Panchayat so far as the village fund at its disposal to make reasonable provision within the village with respect to all or any of the subjects enumerated in Schedule I as amended from time to time under sub-Section 2 of Section 45. The said Schedule I is referred as the village list in the MVP Act is set out herein below:

***“[SCHEDULE I
(VILLAGE LIST)
(SEE SECTION 45)***

Subjects of activities (including development activities)

AGRICULTURE

1. ***Making arrangement for co-operative management of lands and other resources in village, organisation of collective co-operative farming.***
2. ***Improvement of agriculture (including provision of implements and stores) and establishment of model agricultural farms.***

3. *Bringing under cultivation waste and fallow lands vested by Government in the Panchayats.*
4. *Reclamation of waste land and bringing waste land under cultivation with the previous permission of the State Government.*
5. *Establishment and maintenance of nurseries for production of improved seeds and encouraging their use.*
6. *Crop experiments.*
7. *Crop protection.*
8. *Ensuring conservation of manurial resources, preparing compost and sale of manure.*
9. *Securing minimum standards of cultivation in the village with a view to increasing agricultural production.*
10. *Assistance in the implementation of land reform schemes.*
11. *Establishment of granaries.*

ANIMAL HUSBANDRY

12. *Improvement of cattle and cattle breeding and general care of live-stock.*

FORESTS

13. *Raising, preservation, improvement and regulation of the use of village forests and grazing lands including lands assigned under section 28 of the Indian Forest Act, 1927.*

SOCIAL WELFARE

14. *Relief of the crippled, destitute and the sick.*
15. *Promotion of social and moral welfare of the village including promotion of prohibition, the removal of untouchability, amelioration of the condition of backward*

classes, eradication of corruption and the discouragement of gambling and useless litigation.

16. *Women's and Childrens' organisations and welfare.*

EDUCATION

17. *Spread of education.*

18. *Other educational and cultural objects.*

18-A. *Maintenance and Repairs of Primary School Buildings vesting for the time being in the Zilla Parishad.*

19. *Provision of equipment and playgrounds for schools.*

20. *Adult literacy centres, libraries and reading rooms.*

21. *Rural Insurance.*

MEDICAL AND PUBLIC HEALTH

22. *Providing medical relief.*

23. *Maternity and child welfare.*

24. *Preservation and improvement of public health.*

25. *Taking of measures to prevent outbreak, spread or recurrence of any infectious disease.*

26. *Encouragement of human and animal vaccination.*

27. *Regulation by licensing or otherwise of tea, coffee and milk shops.*

28. *Construction and maintenance or control of slaughter houses.*

29. *Cleansing of public roads, drains, bunds, tanks and wells (other than tanks and wells used for irrigation) and other public places or works.*

30. *Reclaiming of unhealthy localities.*

31. *Removal of rubbish heaps, jungle growth, prickly pear, filling in of disused wells, insanitary ponds, pools, ditches, pits or hollows, prevention of water logging in irrigated areas and other improvement of sanitary conditions.*
32. ***Construction and maintenance of public latrines.***
33. ***Sanitation, conservancy, prevention and abatement of nuisance and disposal of unclaimed corpses and carcasses of dead animals.***
34. *[* * * *].*
35. *Excavation, cleansing and maintenance of ponds for the supply of water to animals.*
36. *Management and control of bathing or washing ghats which are not managed by any authority.*
37. *Provision, maintenance and regulation of burning and burial grounds.*

BUILDINGS AND COMMUNICATIONS

38. *Maintenance and regulation of the use of public buildings, tanks and wells (other than tanks and wells used for irrigation) vesting in or under the control of the panchayat.*
39. ***Removal of obstruction and projections in public streets or places and in sites, not being private property, which are open to the public whether such sites are vested in the panchayat or belong to Government ⁶³²[removal of unauthorised cultivation of any crop on any grazing land or any other land not being private property].***
40. ***Construction, maintenance and repair of public roads, drains, bunds and bridges :***

Provided that, if the roads, drains, bunds and bridges vest in any other public authority such works shall not be undertaken without the consent of that authority.

- 41. Planting of trees along roads, in market places and other public places and their maintenance and preservation.*
- 42. Provision and maintenance of playgrounds, public parks and camping grounds.*
- 43. Construction and maintenance of dharmashalas.*
- 44. Extension of village sites and regulation of buildings in accordance with such principles as may be prescribed.*
- 45. Lighting of the village.*

IRRIGATION

- 46. Minor irrigation.*

DRINKING WATER SUPPLY

- 46A. Identification, planning, designing, construction, implementation, operations and maintenance, repairs, reconstruction and management and all allied matters relating to **drinking water supply facilities**, sources and systems of all types.*
- 46B. Integrated development, management and regulation of drinking water supply and water sources within the area of the Panchayat.*

INDUSTRIES AND COTTAGE INDUSTRIES

- 47. Promotion, improvement and encouragement of cottage and village industries.*

CO-OPERATION

48. *Organisation of Credit Societies and Multi-purpose Co-operative Societies.*
49. *Promotion of Co-operative farming.*

SELF-DEFENCE AND VILLAGE DEFENCE

50. *Watch and Ward of the village :*
Provided that, the cost of watch and ward shall be levied and recovered by the Panchayat from such person in the village, and in such manner, as may be prescribed.
51. *Village Volunteer Force and Defence Labour Bank.*
52. *Rendering assistance in extinguishing fires and protecting life and property when fire occurs.*
53. *Regulating, checking and abating of offensive or dangerous trades or practices.*

GENERAL ADMINISTRATION

54. *Preparation, maintenance and up-keep of **panchayat records**.*
55. *Numbering of premises.*
56. ***Registration of births, deaths and marriages** in such manner and in such form as may be laid down by Government by general or special order in this behalf.*
57. ***Collection of land revenue** when entrusted by the State Government under Section 169.*
58. ***Maintenance of village records** relating to land revenue in such manner and in such form as may be prescribed from time to time by or under any law relating to land revenue.*

59. *Preparation of plans for the development of the village.*
60. *Drawing up of programmes for increasing the output of agriculture and non-agricultural produce in the village.*
61. *Preparation of the statement showing requirement of supplies and finances needed for carrying out rural development schemes.*
62. *Establishment, control and management of cattle pounds.*
63. *Destruction of stray and ownerless dogs and pigs.*
64. *Disposal of unclaimed cattle.*
65. *Construction and maintenance of houses for the conservancy staff of the panchayat.*
66. *Reporting to proper authorities village complaints which are not removable by the panchayat.*
67. *Making Surveys.*
68. *Acting as a channel through which assistance given by the Central or State Government for any purpose reaches the village.*
69. *Establishment, maintenance and regulation of fairs, pilgrimages and festivals.*
70. *Establishment and maintenance of markets, provided no markets shall be established without prior permission of the Zilla Parishad.*
71. *Control of fairs, bazars, tanga stands and car stands.*
72. *Establishment and maintenance of warehouses.*

73. *Establishment and maintenance of works or the provision of employment in times of scarcity.*

73-A. *Provision of employment to needy local persons seeking manual work under any scheme for employment guarantee undertaken or adopted by, or transferred to, the Panchayat.*

74. *Preparation of statistics of unemployment.*

75. *Assistance to the residents when any natural calamity occurs.*

76. *Organising voluntary labour for community work and works for the up-lift of the village.*

77. *Opening fair price shops.*

78. *Control of cattle stands, threshing floors, grazing grounds and community lands.*

79. *Securing or continuing **postal facilities** of experimental post offices in the village by providing for payment of non-refundable contribution to the Posts and Telegraphs Department, wherever necessary.*

INFORMATION AND TECHNOLOGY

80. *Use of information technology for citizen centric services and collection of data and all related procurement and maintenance of hardware, software and engagement of personnel within the area of the Panchayat.*

NON-CONVENTIONAL ENERGY RESOURCE

81. *Integrated development, management and regulations of non-conventional resource within the area of the Panchayat.”*

(Emphasis added)

(i) “Gram Sabha” is defined in Section 2(9) as a body consisting of persons registered on the electoral roll relating to village comprised within the area of the Panchayat.

(j) Section 8AA which is regarding power and duties of the Gram Sabha reads as under:

“8AA. Powers and duties of Gram Sabha.- It shall be competent for every Gram Sabha,—

(i) to approve the social or economic development plans, programmes and projects to be implemented by the panchayat before such plans, programmes and projects are taken up for implementation by such panchayat ;

(ii) to grant permission for incurring any expenditure by the panchayat on the development schemes ;

(iii) to convey its views to the panchayat before taking any decision by the panchayat in respect of any proposal for acquisition of any land falling within the jurisdiction of such panchayat, for the Government purpose, by the Land Acquisition Authority concerned.”

(k) Section 7 of the MVP Act is regarding meeting of Gram Sabha and the same provides that theyre shall be at least four meetings of the Gram Sabha held every financial year

on such date, at such time and place, and in such manner, as may be prescribed and if the Sarpanch, or in his absence the Upa-Sarpanch fails without sufficient cause, to hold any of such four meetings, he or she shall be disqualified for continuing as Sarpanch or, as the case may be, Upa-Sarpanch or for being chosen as such for the remainder of the term of office of the members of the Panchayat. It is further provided that a period of not more than four months shall be allowed to elapse between the two meetings of the Gram Sabha. It is further significant to note that if the Gram Sabha is not agreeable to the recommendations made in the meeting of the women members, it shall record the reasons therefor in writing. It is further significant to note that the Gram Sabha shall have the disciplinary control over the Government, semi-Government and Panchayat employees working in the village including the matters relating to their daily attendance in the office.

- (1) Section 8 provides that Panchayat to place before the Gram Sabha the annual statement of accounts etc. and that

Panchayat shall place the report on the administration of the preceding financial year, the development and other programme of work proposed for the current financial year, the last audit note and replies (if any) made thereto and any other matter which the Standing Committee, Panchayat Samiti or Chief Executive or any officer authorised by the Standing Committee or Panchayat Samiti in this behalf, requires to be placed before such meeting. It is further significant to note that Sub-Section 2 of Section 8 provides that it shall be open for the Gram Sabha to discuss any or all of the matters placed before it under sub-section i or sub-section 1A and the panchayat shall consider suggestions, if any made by the Gram Sabha. Thus, it is clear that every villager in a village Panchayat i.e. every voter has been given role to decide the social or economic development compliance programme and project to be implemented by the Panchayat, to grant permission for expenditure by the Panchayat on the development schemes.

35. Thus, the scheme of the MVP Act clearly show that elaborate provisions are made with respect to various aspects of village life and

very significant role is attributed to the Village Panchayat and Gram Sabha. It is clear that the MVP Act is enacted for the purpose to enable the Gram Panchayat to function as unit of local self-government. Thus, what is contemplated is that the villagers of a particular Village Panchayat through their elected representatives i.e. members of the Gram Panchayat will function as unit of local self-government and of development activities in rural areas and also Gram Sabha has been given significant importance. Thus, it is clear that the Village Panchayat plays very important part in the development of a village. Various provisions of the MVP Act i.e. establishment of Gram Sabha, meeting of Gram Sabha, statement of accounts etc., administrative power and duties of Panchayat as specified under Section 45 of the MVP Act, Village Development Committee, Beneficiary Level Sub-Committee, Establishment, Budget and Accounts and Taxation and Recovery of claims. All these provisions clearly show that the provisions are made with a view to encourage developmental activities in rural areas with people's participation.

36. Thus, Section 39 has to be interpreted in the context of various provisions of the MVP Act, the object of which is that the social and economic development of the village is to be carried out in the manner

as approved/decided by the Gram Sabha and the same is implemented by the Village Panchayat.

37. One of the important provision is regarding Gram Sabha. It is significant to note that it is the Gram Sabha which has got power under Section 8AA of the MVP Act to approve the social or economic development plans, programmes and projects to be implemented by the Panchayat before such plans, programmes and projects are taken up for implementation by such Panchayat, to grant permission for incurring any expenditure by the Panchayat on the development schemes and also to convey its views to the Panchayat before taking any decision by the Panchayat in respect of any proposal for acquisition of any land falling within the jurisdiction of such *Panchayat*, for the Government purpose, by the Land Acquisition Authority concerned. Thus, very significant role is allotted to the Gram Sabha in the framework of the Maharashtra Village Panchayat Act. Gram Sabha is defined under Section 3(9) means a body consisting of persons registered in the electoral roll relating to village comprised within the area of the Panchayat. Thus, all voters in a particular Village Panchayat area are the members of the Gram Sabha. A very important role is allotted to Gram Sabha as per the scheme of the MVP Act.

38. Thus, the provision made in Section 39(1)(i) of the MVP Act regarding removal from office of any member, Sarpanch and Up-sarpanch who has been guilty of discharge of his duty or any 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 is required to be considered from the point of view of very important role given to every voter in the jurisdiction of a particular Village Panchayat. If the interpretation as sought to be canvassed of Section 39(1)(i) of the MVP Act is only a *suo moto* power of the Commissioner and the said power cannot be exercised on the complaint/Application made by the citizen of particular village or voter or any person then, the same will mean that the Commissioner will act on his or her own whims and fancies. The person aggrieved will have to approach the State Government under Section 39A. It is also likely that Commissioner may not come to know about such misconduct or disgraceful conduct including in discharging his duties by member/Sarpanch/Upa-Sarpanch etc. Therefore, it is absolutely essential that citizen/voter of such Gram Panchyat and any other person who is concerned with the said issues are allowed to be filed complaint/Application with the Commissioner, who can then proceed to take action under Section 39(1)(i) of the MVP Act.

39. Mr. Nitin Gaware Patil, learned Counsel submitted that language of the said Section is clear and unambiguous which does not speak of moving an Application seeking removal from the office in context to member, Sarpanch or Upa-Sarpanch. He submitted that the powers are to be exercised by the Commissioner, but certainly not on the basis of an Application by the Applicants/Complaints and no such procedure is contemplated as per the Section 39(1)(i) of the MVP Act. He submitted that the very initiation of proceedings on the basis of an Application is contrary to the statutory scheme as laid down under the MVP Act and that the Commissioner ought not to have entertained the Application/Complaints routed through the Applicants thereof disqualifying the Sarpanch of respective village Panchayats.

40. Reading of scheme of Section 39(1)(i) with the proviso clearly shows that proper safeguards are provided to the member, Sarpanch or Upa-Sarpanch against whom the Applications/Complaints are filed. The legislative scheme as contemplated under Section 39 (1)(i) read with the proviso is as follows:

- (i) The Commissioner may 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.

(ii) Before taking action of removal of any member or any Sarpanch or Upa-Sarpanch under Section 39(1)(i) of the Act, the Chief Executive Officer is required to conduct an inquiry under the Orders of the Commissioner.

(iii) The Chief Executive Officer conducts 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.

(iv) After conducting the inquiry, the Chief Executive Officer submits his report to the Commissioner. Such report is submitted within a period of one month.

(v) After submission of the report by the Chief Executive Officer to the Commissioner, the Commissioner shall after giving the person concerned a reasonable opportunity of being heard, take a decision on the report submitted by the Chief Executive Officer within a period of one month from the date of receipt

thereof.

(vi) Any person aggrieved by an Order of the Commissioner has given right to file Appeal before the State Government.

41. Thus, it is clear that there is no prejudice whatsoever to the person concerned i.e. a member, Sarpanch or Upa-Sarpanch against whom the allegations are made as contemplated under Section 39(1)(i) of the MVP Act even by Complainant/Applicant. As far as the voters or the residents of the particular village or any other person concerned, their role is to bring to the notice of the Commissioner the allegations against such member, Sarpanch or Upa-Sarpanch and thereafter the Commissioner initiates the action.

42. It is further significant to note that if the submission made by Mr. Gaware Patil, learned Counsel and other learned Counsel appearing on behalf of the Sarpanch is accepted that Commissioner can only take *suo moto* action, then prior to the year 2006, no Complaint or Application could have been made by the affected person as Section 39A providing filing Application to the State Government was introduced only in the year 2006. Mr. Gavnekar, learned Counsel is correct in pointing out that before substitution of Section 39 in the year 2006, the power was vested

with the Standing Council and the affected persons use to file complaints/Applications with the Zilla Parishad/Standing Council and on the basis of the same, actions were used to be taken. At that time, even Section 39A was also not in existence in the statute and therefore, at that time the Zilla Parishad/Standing Committee (i.e. now the Commissioner) can initiate action under Section 39(1)(i) of the MVP Act on the basis of the complaint/Applications filed by citizens/voters etc. of the said village.

43. Relevant portion of Section 39 (before 2006) and as substituted on 21st December 2006 is set out in tabular form for the purpose of comparison and clarity:

Section 39(1) with proviso of M.V.P. Act as in operation prior to 21 st December 2006	Section 39(1)(i) with relevant part of proviso as substituted on 21 st December 2006
39.(1) The Standing Committee (Note:- Substituted for the words “Zilla Parishad” in the year 1965) may 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	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 Standing Committee also be removed from the Panchayat: Provided that, no such person shall be removed from office unless the Chief Executive Officer under the orders of the President of the Zilla Parishad concerned 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 submits his report to the Standing Committee. Provided that such action is taken within a reasonable time after such resignation. (3) Any person aggrieved by an order of the Standing Committee under sub-section (1) or (2) may, within a period of thirty days from the date of the communication of such order, appeal to the Commissioner.	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 Provided that, no such person shall be removed from office unless, in case of clause (i), 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, submits his report to the Commissioner. The inquiry officer shall submit his report within a period of one month: Provided further that, the Commissioner shall, after giving the person concerned a reasonable opportunity of being heard, take a decision on the report submitted by the Chief Executive Officer or, as the case may be, the Deputy Chief Executive Officer, within a period of one month from the date of receipt thereof. (3) Any person aggrieved by an order of the Commissioner under sub-section (1) or (2) may, within a period of fifteen
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	days from the date of the receipt of such order, appeal to the State Government and the Government shall decide the appeal within a period of one month from the date of receipt thereof.
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44. Thus, it is clear that for the purpose of this issue, it is clear that there is no change in the phraesology of Section 39(1) (Old) and Section 39(1)(i) (Newly substituted on 21st December 2006) except for the change from “Zilla Parishad” (prior to the year 1965)/ “Standing Committee” (from the year 1965 till 2006) to “Commissioner”. From the year 1959 till the year 2006 (i.e. for a period of 47 years) complaints were filed with the Zilla Parishad/ Standing Committee etc. and the same was never restricted to only *suo moto* action.

45. The Supreme Court of India in *Vinay Tyagi v. Irshad Ali* ⁷ has held that the matters which are understood and implemented for a long time, and such practice that is supported by law should be accepted as part of the interpretative process. The relevant discussion is in paragraph Nos.49 and 50, which read as follows:

7 (2013) 5 SCC 762

*“49. Now, we may examine another significant aspect which is how the provisions of Section 173(8) have been understood and applied by the courts and investigating agencies. It is true that though there is no specific requirement in the provisions of Section 173(8) of the Code to conduct “further investigation” or file supplementary report with the leave of the court, the investigating agencies have not only understood but also adopted it as a legal practice to seek permission of the courts to conduct “further investigation” and file “supplementary report” with the leave of the court. The courts, in some of the decisions, have also taken a similar view. The requirement of seeking prior leave of the court to conduct “further investigation” and/or to file a “supplementary report” will have to be read into, and is a necessary implication of the provisions of Section 173(8) of the Code. The doctrine of contemporanea expositio will fully come to the aid of such interpretation as **the matters which are understood and implemented for a long time, and such practice that is supported by law should be accepted as part of the interpretative process.**”*

*50. Such a view can be supported from two different points of view: firstly, through the doctrine of precedent, as aforenoticed, since quite often the courts have taken such a view, and, secondly, the investigating agencies which have also so understood and applied the principle. **The matters which are understood and implemented as a legal practice and are not opposed to the basic rule of law would be good practice and such interpretation would be permissible with the aid of doctrine of contemporanea expositio.** Even otherwise, to seek such leave of the court would meet the ends of justice and also provide adequate safeguard against a suspect/accused.”*

(Emphasis added)

46. The Supreme Court in *N. Suresh Nathan v. Union of India*⁸ has held as follows:

8 1992 Supp (1) SCC 584

*“4. In our opinion, this appeal has to be allowed. There is sufficient material including the admission of respondents diploma-holders that the practice followed in the department for a long time was that in the case of diploma-holder Junior Engineers who obtained the degree during service, the period of three years' service in the grade for eligibility for promotion as degree-holders commenced from the date of obtaining the degree and the earlier period of service as diploma-holders was not counted for this purpose. This earlier practice was clearly admitted by the respondents diploma-holders in para 5 of their application made to the Tribunal at page 115 of the paper book. This also appears to be the view of the Union Public Service Commission contained in their letter dated December 6, 1968 extracted at pages 99-100 of the paper book in the counter-affidavit of respondents 1 to 3. **The real question, therefore, is whether the construction made of this provision in the rules on which the past practice extending over a long period is based is untenable to require upsetting it. If the past practice is based on one of the possible constructions which can be made of the rules then upsetting the same now would not be appropriate. It is in this perspective that the question raised has to be determined.**”*

(Emphasis added)

47. Therefore, submission made by Mr. C.G. Gavnekar, learned Counsel that for several years Complaints/Applications are entertained and therefore it can be held that Complaints/Applications filed under Section 39(1)(i) can be entertained by the Commissioner.

48. In this background of the matter, submissions of Dr. Birendra Saraf, learned Advocate General are required to be appreciated. He is correct in submitting that Section 39(1)(i) of the MVP Act confers on

the Commissioner the power to remove from the office any member or Sarpanch or Upa-Sarpanch in certain circumstances set out therein. This is a provisions conferring a power on the Commissioner to remove the member, Sarpanch or Upa-Sarpanch. Under Section 39(1)(i), the Commissioner can exercise the power against any member, 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. There is nothing which circumscribes the powers of Commissioner except the procedure provided in the proviso. There is nothing in Section 39(1)(i) which indicates that the Commissioner cannot exercise his powers on a complaint or application received by him from anyone. Any such reading that the power of the Commissioner under Section 39(1)(i) cannot be exercised on a complaint/Application made by anyone would lead to absurd results. In that eventuality, even if someone brings to the notice of the Commissioner by way of a complaint/Application a gross act of misconduct or any other circumstances under Section 39(1)(i), the Commissioner would have to turn a blind eye and would be rendered powerless. This could never be the object or purpose of Section 39(1)(i).

49. Dr. Birendra Saraf, learned Advocate General is also correct in submitting that Section 39(1)(ii) empowers the Commissioner to remove a member, Sarpanch or an Upa-Sarpanch on the ground that the annual accounts and the report of the expenditure incurred by the panchayat on the development activities are not placed before the Gram Sabha and the information thereof is not displayed on the notice board as required by Sub-Section 1 or 1A of Section 8. However, this power of the Commissioner can be exercised only on receipt of a complaint from not less than 20% of the total number of voters in the village who have paid all dues of the panchayat regarding taxes on buildings and lands water charges. Thus, Section 39(1)(ii) circumscribes the power of Commissioner and empowers him to exercise the power of removal on the ground set out therein only on a complaint being received by the requisite number of voters as set out therein. Section 39(1)(ii) contemplates a removal on certain technical/procedural non-compliance. It is therefore expected that the power should be exercised only on a grievance made by a certain number of voters who complain about the same. However, the circumstances set out in Section 39(1)(i) being far more serious, the Commissioner has been given a full authority to exercise his power of removal.

50. Dr. Birendra Saraf, learned Advocate General is also correct in submitting that the contention that the mention of a complaint under Section 39(1)(ii) indicates that the power of a Commissioner under Section 39(1)(i) cannot be exercised on the basis of a complaint is a misreading of the said provision. In fact, it indicates to the contrary. A holistic reading of the provision indicates while the power under Section 39(1)(ii) can be exercised only on receipt of a complaint from the requisite number of voters, there is no such restriction or bar under Section 39(1)(i) in the exercise of powers of the Commissioner. Section 39(1)(i) the Commissioner can exercise powers either on his own volition and/or upon receipt of a complaint/Application.

51. Many learned Counsel have relied on the decision of a learned Single Judge in *Sandip Ramesh Khidbide v. Pratima Prakash Gaikar*⁹. In the said case, the learned Single Judge after examining the scheme under Section 39 has held that the same is a self-contained Code in the matter of removal of a person from the office of member, Sarpanch or Upa-Sarpanch of Village Panchayat. Grounds on which a person can be removed from those offices have been specified. A mechanism of conducting an inquiry after affording a reasonable opportunity of

9 2023 SCC OnLine Bom 772

hearing has been prescribed and decision of the Divisional Commissioner is amenable to an Appeal before the State Government.

52. Dr. Birendra Saraf, learned Advocate General has relied on the decision of the Gujarat High Court in *Ganpat Mohanbhai Vasava v. Additional Development Commissioner* ¹⁰ and another decision of the Gujarat High court in *Manubhai Hathibhai Patel v. Sejalben Janakbhai Patel* ¹¹. He submitted that the role of a Complainant has been recognised by these decisions of the Gujarat High Court. In the decision of *Ganpat Mohanbhau Vasava* (Supra), it has been held that the Complainant/Applicant can file the complaint under Section 57 of the Gujarat Panchayats Act, 1993 and on the basis of his complaint he can be said to have set the machinery in motion regarding removal of Member, Sarpanch or Upa-Sarpanch. It is further held that however, after having brought to notice of the Competent Authority about the alleged irregularities, the said Complainant no longer has any role to play so far as proceedings under Section 57 of the said Gujarat Panchyats Act, 1993 is concerned. Dr. Birendra Saraf, learned Advocate General on the basis of said Gujarat High Court decision submitted that the residents of a Village or the voter can file the

10 AIR 2008 Guj 88

11 2010 SCC OnLine Guj 6104

Complaints/Applications with the Commissioner. The relevant portion of Section 57 of the Gujarat Panchayats Act, 1993 is as follows:

“57. Removal from office.—The competent authority may remove from office any member of the panchayat, the Sarpanch or, as the case may be, the Upa-Sarpanch, thereof, after giving him an opportunity of being heard and giving due notice in that behalf to the panchayat and after such inquiry as it deems necessary, if such member, Sarpanch or, as the case may be, Upa-Sarpanch has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct or abuses his powers or makes persistent default in the performance of his duties and functions under this Act or has become incapable of performing his duties and functions under this Act. The Sarpanch or, as the case may be, the Upa-Sarpanch, so removed may at the discretion of the competent authority also be removed from the membership of the panchayat.

(2) The competent authority may, after following the procedure laid down in sub-section (1) disqualify for a period not exceeding five years any person who has resigned his office as a member, Sarpanch or Upa-Sarpanch, or otherwise ceased to hold any such office and has been guilty of misconduct specified in sub-section (1) or has been incapable of performing his duties and functions;

Provided that an action under this sub-section shall be taken within six months from the date on which the person resigns or ceases to hold any such office.

(3) Any person aggrieved by an order of the competent authority under sub-section (1) or (2) may, within a period of thirty days from the date of the communication of such order, appeal to the State Government.

(Emphasis added)

Thus it is clear that the relevant part of Section 39(1)(i) of the MVP Act is identical to Section 57 of the Gujarat Panchayats Act, 1993.

53. Although the discussion of the Gujarat High Court is from the point of view of “the aggrieved person”, however, it is clear that by examining the scheme under Section 57 of the Gujarat Panchayats Act, 1993, it is held that a person can file the Complaint/Application with the Competent Authority and the said discussion is relevant and applicable for deciding the issue in the present batch of Writ Petitions before this Court. However, insofar as the observations in the said decision of the Gujarat High Court that the person who files the Application/Complaint and if the said complaint is dismissed then he cannot challenge the same as he is not an aggrieved person as contemplated under Section 57 of the Gujarat Panchayat Act, 1993, with respect, there can be two views possible regarding the said aspect. However, the said issue is not before this Court and therefore it is not necessary to decide the said issue. However, what is significant to note is that even the Division Bench of the Gujarat High Court insofar as the almost similar provision, has taken the view that the complaint can be filed by the Applicant/Complainant.

54. Mr. Nitin Gaware Patil learned Counsel submitted that Section 39A of the MVP Act provides that notwithstanding anything contained in Section 39, the State Government may, *suo moto* or on an Application made to it against any member, Sarpanch or Upa-Sarpanch regarding any Act or omission specified in Sub-Section 1 of Section 39, direct the Chief Executive Officer concerned to conduct an inquiry against such Member, Sarpanch or as the case may be Upa-Sarpanch. He submitted that as the said power is exclusively with the State Government, it is not permissible for the Commissioner to exercise said power. However, it is clear that power under Section 39 and power under Section 39A are distinct and different in a sense, Section 39 of the MVP Act is the exclusive power of the Commissioner whereas under Section 39A, the State Government *suo moto* or on an Application made can initiate the action as contemplated under Section 39A.

55. Mr. C.G. Gavnekar, learned Counsel is correct in pointing out the relevant paragraphs (Pages 256-258) from Principles of Statutory Interpretation by Justice Guru Prasanna Singh, [Third Edition] regarding Non-obstante clause. The relevant portion of the same is as follows:

"4. NON-OBSTANTE CLAUSE

A clause beginning with 'notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force', is sometimes appended to a section in the beginning, with a view to give the enacting part of the section in case of conflict an overriding effect over the provision or Act mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provision or Act mentioned in the non-obstante clause, the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause will not be an impediment for the operation of the enactment. The phrase 'notwithstanding anything in' is used in contradistinction to the phrase 'subject to'; the latter conveying the idea of a provision yielding place to another provision or other provisions to which it is made subject. A non-obstante clause must also be distinguished from the phrase 'without prejudice'. A provision enacted 'without prejudice' to another provision has not the effect of affecting the operation of the other provision and any action taken under it must not be inconsistent with such other provision. Ordinarily, there is a close approximation between the non-obstante clause and the enacting part of the section and the non-obstante clause may throw some light as to the scope and ambit of the enacting part in case of its ambiguity; but when the enacting part is clear its scope cannot be cut down by resort to non-obstante clause.

In overruling the High Court, PATANJALI SHASTRI, CJ observed: "This is not, in our judgment, a correct approach to the construction of section 2. It should first be ascertained what the enacting part of the section provides on a fair construction of the words used according to their natural and ordinary meaning, and the non-obstante clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing laws which is inconsistent with the new enactment". Proceeding further, the Chief Justice said: "The enacting part of a statute must, where it is clear, be taken to control the non-obstante clause where both cannot be read harmoniously". "

(Emphasis added)

Thus, it is clear that providing *non obstante* clause only means to set aside as no longer valid anything contained in relevant existing laws which is inconsistent with the new enactment. Reading of Section 39 and Section 39A of the MVP Act clearly show that there is no inconsistency between them. In fact Section 39A also contemplates that the State Government can act on its own motion or on the complaint received but the scheme of Section 39A is also very clear that it contemplates the Commissioner to take a decision by following the procedure which is the same as provided in Section 39. Therefore, Dr. Birendra Saraf, learned Advocate General is correct in submitting that the word ‘notwithstanding’ in Section 39A does not circumscribe the power under Section 39 but rather suggests that the power of the State Government under Section 39A is in addition to the power of the Commissioner under Section 39(1)(i). It only implies that the fact that the Commissioner has been conferred with the power of removal under Section 39(1)(i) does not prevent the State Government on receipt of a complaint /Application or *suo moto* from also initiating a procedure for removal as per the procedure set out in Section 39A.

56. Dr. Saraf, learned Advocate General relied on the decision of the Supreme Court in *Iridium* (supra) and submitted that it is settled law

that the usage of the term ‘notwithstanding’ does not circumscribe the powers under any other Section. The relevant paragraph of *Iridium* (supra) is paragraph No.34, which reads as under:

*“34. After noticing the observations made in Aswini Kumar Ghosh [(1952) 2 SCC 237 : 1953 SCR 1, p. 24 : AIR 1952 SC 369, p. 377] and Dominion of India v. Shrinbai A. Irani [(1955) 1 SCR 206 : AIR 1954 SC 596] this Court in Chandavarkar Sita Ratna Rao v. Ashalata S. Guram [(1986) 4 SCC 447, pp. 477-78, paras 67-68] observed thus, **in the context of construction of a non obstante clause:***

*“67. A clause beginning with the expression ‘notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract’ is more often than not appended to a section in the **beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non obstante clause would not be an impediment for an operation of the enactment. See in this connection the observations of this Court in South India Corpn. (P) Ltd. v. Secy., Board of Revenue, Trivandrum [(1964) 4 SCR 280 : AIR 1964 SC 207].***

68. It is well settled that the expression ‘notwithstanding’ is in contradistinction to the phrase ‘subject to’, the latter conveying the idea

of a provision yielding place to another provision or other provisions to which it is made subject. This will be clarified in the instant case by comparison of sub-section (1) of Section 15 with sub-section (1) of Section 15-A. We are therefore unable to accept, with respect, the view expressed by the Full Bench of the Bombay High Court as relied on by the learned Single Judge in the judgment under appeal.””

(Emphasis added)

57. Thus, Dr. Saraf, learned Advocate General is correct in contending that it is apparent from a perusal of the aforesaid decision that the word ‘notwithstanding’ in Section 39A does not circumscribe the power under Section 39 but rather suggests that the power of the State Government under Section 39A is in addition to the power of the Commissioner under Section 39(1)(i). It only implies that the fact that the Commissioner has been conferred with the power of removal under Section 39(1)(i) does not prevent the State Government on receipt of a complaint/Application, from also initiating a procedure for removal as per the procedure set out in Section 39.

58. Mr. Nitin Gaware Patil, learned Counsel has relied on various decisions. He relied on the decision of the Supreme Court in *OPTO Circuits (India) Ltd. v. Axis Bank*¹² to substantiate his contention that if

12 (2021) 6 SCC 707

a statute provides for a thing to be done in a particular manner, then it has to be done in that manner alone and in no other manner. On the basis of the said decision it is his submission that Section 39 only contemplates that the Commissioner can take only *suo moto* action and not on the basis of complaint/Application. If the said submission is accepted then the same will mean that it has to be read in Section 39 at the beginning in the context of Section 39(1)(i) that “the Commissioner may suo-moto” instead of “the Commissioner may” and will amount to reading something which is not in Section 39(1)(i). In fact, what Section 39(1)(i) contemplates is that the Commissioner can take action of removal of Sarpanch, Upa-Sarpanch, or Member in case the complaint is made with respect to misconduct etc. as contemplated under Section 39(1)(i) or even on his or her own motion action can be initiated. Thus, the said submission made on the basis of *OPTO Circuits* (supra) is not correct and the said decision has no application herein. In fact, if said submission is accepted then the same will amount to reading something which is not existing in Section 39.

59. In this behalf, it is to be noted that in the earlier part of this Judgment, it has been extensively discussed how the Gram Sabha has been given a very important function in the scheme of the *Maharashtra*

Village Panchayats Act, 1959. Under section 8 of the MVP Act, Village Panchayat has to place before the Gram Sabha the annual statements of accounts, the report on the administration of the preceding financial year, the development and other programme of work proposed for the current financial year, the last audit note and replies (if any) and any other matter. In fact, under Section 8AA, it is provided that it shall be competent for every Gram Sabha —

- (i) to approve the social or economic development plans, programmes and projects to be implemented by the *Panchayat* before such plans, programmes and projects are taken up for implementation by such *Panchayat*;
- (ii) to grant permission for incurring any expenditure by the *Panchayat* on the development schemes;
- (iii) to convey its views to the *Panchayat* before taking any decision by the *Panchayat* in respect of any proposal for acquisition of any land falling within the jurisdiction of such *Panchayat*, for the Government purpose, by the Land Acquisition Authority concerned.

60. As already set out, Gram Sabha consist of all persons registered in the electoral roll relating to Village comprised within the area of the Panchayat. Thus, it is significant to note that every person registered in the electoral roll relating to village is part of Gram Sabha and Gram Sabha has been given a very important function. The functions which

are set out in the Schedule I i.e. village list clearly shows that the duties of Panchayat are very diverse and are concerning overall development of the village in all fields of life including Agriculture, Animal Husbandry, Social Welfare, Education, Medical and Public Health, Buildings and Communications, Irrigation, Drinking Water Supply, Industries and Cottage Industries, Co-operation, Self-defence and Village Defence, General Administration, Information and Technology, and Non-Conventional Energy Resources. Thus, it is clear that as per the scheme of the *Maharashtra Village Panchayats Act, 1959* every citizen who is a voter in the election of Gram Panchayat/Village Panchayat is made part of the process of the village development. In this background of the matter, to accept the submission that under Section 39(1)(i) of the MVP Act, Commissioner can only act *suo moto* and not on the basis of complaint/Application received from citizens/voters or concerned persons will not only be contrary to the scheme of the *Maharashtra Village Panchayats Act, 1959* but such interpretation will not even further the purpose for which various provisions are made in the *Maharashtra Village Panchayats Act, 1959*.

61. Mr. Nitin Gaware Patil, learned Counsel has also relied on the decision of the Supreme Court in *Gujarat Composite Ltd. v. Ranip*

*Nagarpalika*¹³. He relied on paragraph no.9 of the said decision, which is as follows:

"9. The learned Attorney General, appearing on behalf of the first respondent submitted that it was not the function of the Court to supply a comma between "Grog" and "Minerals" and that the said Entry 70 should be read only as referring to an item called "Grog Minerals". In this behalf he drew our attention to the judgment of this Court in Hira Devi v. District Board [(1952) 2 SCC 154 : AIR 1952 SC 362 : 1952 SCR 1122] where it was said that

"it is the duty of the court to try and harmonise the various provisions of an Act passed by the legislature. But it is certainly not the duty of the court to stretch the words used by the legislature to fill in gaps or omissions in the provisions of an Act".

Reference was also made to Nalinakhya Bysack v. Shyam Sunder Haldar [AIR 1953 SC 148 : 1953 SCR 533] where it was said that:

"It is not competent to any court to proceed upon the assumption that the legislature has made a mistake. The court must proceed on the footing that the legislature intended what it has said. Even if there is some defect in the phraseology used by the legislature, the court cannot aid the legislature's defective phrasing of an Act or add and amend or, by construction, make up deficiencies which are left in the Act. Even where there is a casus omissus, it is for others than the courts to remedy the defect."

In P.K. Unni v. Nirmala Industries [(1990) 2 SCC 378] this Court said that it must proceed on the assumption that the legislature did not make a mistake and that it intended to say what it said. Assuming there was a defect or an omission in

13 (1999) 8 SCC 675

the words used by the legislature, the court would not go to its aid to correct or make up the deficiency. The court cannot add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. Where, however, the language of the statute led to manifest contradiction of the apparent purpose of the enactment, the court could adopt a construction which would carry out the obvious intention of the legislature. In doing so, as Denning, L.J., had said: "A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

(Emphasis added)

The above decision is not applicable to the issue involved in these cases as this Court has elaborately discussed in an earlier part of this Judgment that if the submission of Mr. Nitin Gaware Patil, learned Counsel is accepted then the same will mean that it has to be read in Section 39 at the beginning that "the Commissioner may suo moto" instead of "the Commissioner may" in the context of Section 39(1)(i) and will amount to reading something which is not existing in Section 39. By no stretch of imagination can Section 39 of the MVP Act be interpreted to mean that power of the Commissioner is to be exercised only *suo moto*. If the said submission is accepted then the Commissioner will act only on his or her own volition and that the only remedy for an aggrieved person is to approach the State Government under Section 39A. In fact, what Section 39A contemplates is that the complaint can be filed with the State Government and thereafter the

State Government directs the Commissioner to take appropriate decision. In fact, it is necessary to read Section 39 harmoniously with Section 39A. Apart from that, Section 39A was inserted only in the year 2006 and before that Section 39 (before substitution) was in operation since the year 1959 and the complaints/Applications were filed by the aggrieved persons even earlier with the Zilla Parishad etc.. If the submission of Mr. Gaware Patil is accepted then the Zilla Parishad/Standing Committee could have taken action only *suo moto* till the year 2006 and no Application/Complaint could have been filed with the Standing Committee. Thus, there is no substance in the contention of Mr. Gaware Patil, learned Counsel and other learned Counsel raising said contention.

62. Mr. Nitin Gaware Patil, learned Counsel has also relied on the decision of the Supreme Court in *Bipinchandra Parshottamdas Patel v. State of Gujarat*¹⁴ to submit that a law leading to disqualification of an office should be clear and unambiguous like a penal law. He has relied on paragraph no.31 of the said decision, which reads as under:

“31. *It is trite that a law leading to disqualification to hold an office should be clear and unambiguous like a penal law. In the event a statute is not clear, recourse to strict interpretation*

14 (2003) 4 SCC 642

must be made for construction thereof. In his classic work The Interpretation and Application of Statutes Read Dickerson states:

“(1) The court will not extend the law beyond its meaning to take care of a broader legislative purpose. Here ‘strict’ means merely that the court will refrain from exercising its creative function to apply the rule announced in the statute to situations not covered by it, even though such an extension would help to advance the manifest ulterior purpose of the statute. Here, strictness relates not to the meaning of the statute but to using the statute as a basis for judicial law-making by analogy with it.

(2) The court will resolve an evenly balanced uncertainty of meaning in favour of a criminal defendant, the common law, the ‘common right’, a taxpayer, or sovereignty.

(3) The court will so resolve a significant uncertainty of meaning even against the weight of probability.

(4) The court will adhere closely to the literal meaning of the statute and infer nothing that would extend its reach.

(5) Where the manifest purpose of the statute, as collaterally revealed, is narrower than its express meaning, the court will restrict application of the statute to its narrower purpose. This differs from the Riggs situation in that the narrow purpose is revealed by sources outside the statute and its proper context.””

(Emphasis added)

63. Mr. Nitin Gaware Patil, learned Counsel has also relied on the decision of the Supreme Court in *Hira Devi v. Distt. Board*,

*Shahjahanpur*¹⁵ and more particularly on the following portion of paragraph no.15.

“15. We are afraid we cannot agree with this line of reasoning adopted by the High Court. The defendants were a Board created by statute and were invested with powers which of necessity had to be found within the four corners of the statute itself. The powers of dismissal and suspension given to the Board are defined and circumscribed by the provisions of Sections 71 and 90 of the Act and have to be culled out from the express provisions of those sections. When express powers have been given to the Board under the terms of these sections it would not be legitimate to have resort to general or implied powers under the law of master and servant or under Section 16 of the U.P. General Clauses Act. Even under the terms of Section 16 of that Act, the powers which are vested in the authority to suspend or dismiss any person appointed are to be operative only “unless a different intention appears” and such different intention is to be found in the enactment of Sections 71 and 90 of the Act which codify the powers of dismissal and suspension vested in the Board. It would be an unwarranted extension of the powers of suspension vested in the Board to read, as the High Court purported to do, the power of suspension of the type in question into the words “the orders of any authority whose sanction is necessary”. It was unfortunate that when the legislature came to amend the old Section 71 of the Act it forgot to amend Section 90 in conformity with the amendment of Section 71. But this lacuna cannot be supplied by any such liberal construction as the High Court sought to put upon the expression “orders of any authority whose sanction is necessary”. No doubt, it is the duty of the Court to try to harmonise the various provisions of an Act passed by the legislature. But, it is certainly not the duty of the Court to stretch the words used by the legislature to fill in gaps or omissions in the provisions of an Act.”

(Emphasis added)

15 (1952) 2 SCC 154

It is to be noted that Section 39(1)(i) is concerning removal from office any Member or any Sarpanch or Upa-Sarpanch who is guilty of misconduct in the discharge of his or her 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 significant to note that as far as the procedure to be followed under 39(1)(i) and Section 39A is concerned, the procedure is the same. In fact, if the complaint is filed to the State Government, ultimately it is the Chief Executive Officer who inquires into the said complaint and the decision is taken by the Commissioner. The above paragraph no.31 of *Bipinchandra Parshottamdas Patel* (Supra) only provides that the Court will not extend the law beyond its meaning to take care of a broader legislative purpose and that the provision will have to be strictly interpreted. Even if Section 39 is strictly interpreted, it cannot be said that the power under Section 39(1)(i) is only the *suo moto* power of the Commissioner. In fact, strict interpretation of the Section 39 clearly shows that it is not only the *suo moto* power of the Commissioner but also that the Commissioner can entertain complaints/Applications with respect to the acts more particularly set out in Section 39(1)(i). Entertaining complaints filed by the citizens/voters making allegations concerning the same can not by any stretch of imagination will be

contrary to the above statement of law. Therefore, the said decision will have no application.

64. Mr. Nitin Gaware Patil, learned Counsel also relied on the decision of the Supreme Court in *Ravi Yashwant Bhoir v. Collector*¹⁶. The Supreme Court in said decision in paragraph No.35 has held as under:

“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 v. Debi Ghosal [(1982) 1 SCC 691 : AIR 1982 SC 983] , Mohan Lal Tripathi v. District Magistrate, Rae Bareilly [(1992) 4 SCC 80 : AIR 1993 SC 2042] and Ram Beti v. District Panchayat Raj Adhikari [(1998) 1 SCC 680 : AIR 1998 SC 1222]).”

(Emphasis added)

Taking action under Section 39(1)(i) of the MVP Act by the Commissioner on the complaints/Applications can not by any stretch of imagination be held as taking action without strictly adhering to the provisions provided by the legislature for removal. It is significant to note that Section 39(1)(i) of the MVP Act provides elaborate procedure

¹⁶ (2012) 4 SCC 407

to be followed. The Commissioner is duty bound to follow the said procedure while entertaining the complaints/Applications by aggrieved persons. Thus, the said case has no application while considering the issue under consideration.

FIRST POINT CONCLUSION :

65. Thus, for the above reasons it has to be held that power under Section 39(1)(i) read with the proviso to the same of the Maharashtra Village Panchayats Act, 1959 can be exercised by the Commissioner on Application/Complaint filed by voter/resident of said Grampanchayat or any person concerning to take action for removal of any member or any Sarpanch or Upa-Sarpanch of the Village Panchayat on the grounds contemplated under Section 39(1) (i) of the MVP Act.

66. The second point which is raised by learned Counsel representing Sarpanchs/Members is as follows:

SECOND POINT:

The inquiry conducted by any officer other than the Chief Executive Officer under Section 39(1)(i) of the M.V.P. Act would not amount to an inquiry as contemplated under the relevant provisions of law and therefore the entire proceedings are null and void.

67. Mr. Nitin Gaware Patil, learned Counsel for Respondent No.2 has raised a point regarding the inquiry conducted by any officer other than the Chief Executive Officer under Section 39(1)(i) of the MVP Act. He submitted that inquiry conducted by any officer other than the Chief Executive Officer would not amount to an inquiry as contemplated under Section 39(1)(i) of the MVP Act. He submitted that in Writ Petition No.5660 of 2023 the Chief Executive Officer had called for the reports from the Block Development Officer of respective Panchayat Samiti. He therefore submitted that the inquiry conducted by any officer other than the Chief Executive Officer would not amount to be the inquiry as contemplated under Section 39 of the MVP Act. He submitted that it is a well established principle of law that any authority bestowed with judicial or quasi-judicial powers under a statute cannot delegate its powers except when specifically permitted under the statute. The action of the Chief Executive Officer calling for the report from the Block Development Officer from concerned Panchayat Samitis was unwarranted and without any legal basis. Hence, the inquiry which has been undertaken against the respective Sarpanchs stands vitiated and moreover disqualifying statutes are to be interpreted strictly. He

submitted that as per the settled law the statute regarding disqualification and the provisions concerning disqualifying elected members of Panchayat are required to be construed strictly as the same has a drastic effect of unseating the democratically elected office bearer and the same would amount to disrespecting the will of the public reposed in him or her through the mechanism of elections. To substantiate his contentions, he has relied on following decisions of the Supreme Court as well as of this Court.

- (i) *Nimba Yadav Bhoi v. President, Standing Committee* ¹⁷
- (ii) *Sanjay Devram Bhoir v. Divisional Commissioner* ¹⁸
- (iii) *OPTO Circuits (India) Ltd. v. Axis Bank* ¹⁹
- (iv) *Bipinchandra Parshottamdas Patel v. State of Gujarat* ²⁰
- (v) *Kumar Kamala Ranjan Roy v. Secretary of State* ²¹
- (vi) *Doypack Systems v. Union of India* ²²

68. Mr. Anturkar, learned Senior Counsel, Mr. Abhay Anturkar, learned Counsel, Mr. Pradeep Gole, learned Counsel and Mr. Rahul More, learned Counsel adopted the contentions of Mr. Nitin Gaware

17 2001 SCC OnLine Bom 833

18 2012 SCC OnLine Bom 1025

19 (2021) 6 SCC 707

20 (2003) 4 SCC 642

21 (1938) SCC OnLine PC 54

22 (1988) 2 SCC 299

Patil, learned Counsel and further submitted that the action of the Commissioner calling for the report from the Block Development Officer is beyond the scope of Section 39(1)(i) of the MVP Act and therefore, the entire action is illegal.

69. The factual position on record in Writ Petition No.5660 of 2023 is already set out earlier. Ms. Nimbalkar, learned AGP has also produced documents on 21st February 2024. The same clearly shows that the Block Development Officer issued notices to all the concerned including the complainant as well as the Respondent No.2 and the Gramsevak. He conducted a detailed inquiry and submitted a report to the Deputy Chief Executive Officer with respect to the complaint filed by the Petitioner. In the said detailed report, the Block Development Officer records a finding that the Respondent No.2-Sarpanch and the Village Development Officer are guilty of misconduct. The Chief Executive Officer of Raigad Zilla Parishad, Alibag on the basis of the report submitted by the Block Development Officer, communicated to the Deputy Commissioner by letter dated 7th September 2021 that as per the preliminary inquiry, it was found that Respondent No.2 and Village Development Officer have committed misconduct. A reference is made to the reply dated 17th June 2021 submitted by Respondent No.2-

Sarpanch and Village Development Officer to the Block Development Officer and after taking into consideration the said reply, it is recorded that both Respondent No.2-Sarpanch and the Village Development Officer are responsible for the said misconduct. It is clear that the said letter dated 7th September 2021 has been submitted by the Chief Executive Officer to the Deputy Commissioner entirely on the basis of the report of the Block Development Officer and the material which is collected during the inquiry conducted by the Block Development Officer and the reply filed in the inquiry conducted by the Block Development Officer. Thereafter the Divisional Commissioner, Konkan Division, Navi Mumbai by Order dated 22nd October 2021 records that as per the preliminary inquiry report dated 7th September 2021 of the Chief Executive Officer, it is observed that there are irregularities in the functioning of the Respondent No.2-Sarpanch and it is necessary that the Chief Executive Officer shall conduct the inquiry as contemplated under Section 39(1)(i). By said letter dated 22nd October 2021, the Divisional Commissioner by exercising the powers under Section 39(1)(i) specified the charges and further directed the Chief Executive Officer to conduct the inquiry personally and submit the report within 30 days. Thereafter the Chief Executive Officer conducted the inquiry and submitted a report dated 30th December 2021 to the Divisional

Commissioner, Konkan Division. However, it is significant to note the following clause in the said report:

"प्रस्तुत प्रकरणी अर्जदार व सामनेवाला यांनी सुनावणी दरम्यान केलेले कथन तसेच सामनेवाला व तक्रारदार यांनी सुनावणी वेळी समक्ष सादर केलेले लेखी निवेदन व गट विकास अधिकारी, पंचायत समिती अलिबाग यांचे कडील प्राप्त अहवाल व त्या अनुषंगाने कागदपत्रांचे अवलोकन करता अभिप्राय पुढील प्रमाणे आहेत."

(Emphasis added)

The English translation of the same is as follows:

Considering the averments put forth by the Applicant and the Respondent during the course of hearing in this matter and also considering the say in writing filed by the Respondent and Complainant personally at the time of hearing and **on perusing the Report received from the Block Development Officer, Panchayat Samiti, Alibaug and also on perusing the documents in connection therewith, the Opinion is as under.**

Thus it is clear that the Chief Executive Officer has *inter alia* taken into consideration the report of the Block Development Officer and recorded his finding. Thus, it is necessary to consider whether the decision of the Commissioner, Konkan Division is in compliance of the mandatory requirement of Section 39(1)(i) of the MVP Act.

70. Section 39 of the MVP Act is already set out herein above. In the present case, in all these Petitions, the relevant provision is Section

39(1)(i) of the MVP Act and the proviso thereof. The same contemplates following stages:

(i) The Commissioner may 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.

(ii) Before taking an action of removal of any member or any Sarpanch or Upa-Sarpanch under Section 39(1)(1) of the MVP Act, the Chief Executive Officer is required to conduct an inquiry under the Orders of the Commissioner.

(iii) The Chief Executive Officer to conduct 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.

(iv) After conducting the inquiry, the Chief Executive Officer submits his report to the Commissioner. Such report is to be submitted within a period of one month.

(v) After submission of the report by the Chief Executive Officer to the Commissioner, the Commissioner shall after giving the person concerned a reasonable opportunity of being heard, takes a decision on the report submitted by the Chief Executive Officer. Said decision is to be taken by the Commissioner within a period of one month from the receipt of the report of the Chief Executive Officer.

71. It is settled law that if the statute provides a thing to be done in a particular manner, then it has to be done in that manner alone and in no other manner. The said settled law is reiterated by the Supreme Court in *Chandra Kishore Jha v. Mahavir Prasad*²³ and again reiterated by the Supreme Court in *OPTO Circuits* (supra). As set out herein above, what is contemplated under Section 39(1)(i) read with proviso therefor is that 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 submits his report to the Commissioner.

72. Section 3(27) of the MVP Act *inter alia* specifies that the

23 (1999) 8 SCC 266

expression “Chief Executive Officer” and “Block Development Officer” shall have the meaning respectively assigned to them in the *Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961* (“ZP and PS Act”).

72.1 Section 2(7) of ZP and PS Act defines “Chief Executive Officer” as the Chief Executive Officer of a Zilla Parishad appointed under Section 94. Section 94 is concerning appointment of Chief Executive Officer and Deputy Chief Executive Officer for every Zilla Parishad. Section 95 of ZP and PS Act specifies powers and functions of Chief Executive Officer. Section 96 is concerning delegation of powers of Chief Executive Officer. Said Section 96 read as follows:

“96. Delegation of power of Chief Executive Officer

(1) Any of the powers conferred or duties or functions imposed upon or vested in the Chief Executive Officer by or under this Act, may also be exercised, performed or discharged under the Chief Executive Officers control, and subject to such conditions and limitation, if any, as he may think fit to lay down, by any officer or servants holding office under the Zilla Parishad to whom the Chief Executive Officer generally or specially empower by order in writing.

(2) Every such order of the Chief Executive Officer

shall be laid before the President, the Standing Committee and the relevant Subject Committee or Committees for information”

72.2 “Block Development Officer” is defined in Section 2(5) as an officer appointed by that designation under Section 7. Section 7 provides authorities and organisation charged with carrying out the provisions of the ZP and PS Act. Said Section 7 reads as under:

“7. Parishad authorities and organisation thereof

(1) The authorities charged with carrying out the provisions of this Act for each District are-

- (a) the Zilla Parishad,*
- (b) Panchayat Samitis,*
- (c) the Standing Committee,*
- (d) Subjects Committees,*
- (e) Presiding Authorities,*
- (f) the Chief Executive Officer,*
- (f-a) the Executive Officer, and*
- (g) Block Development Officers.*

(2) The Zilla Parishad shall be assisted in its functions by such number of Departments as the State Government may direct, and each Department shall be in charge of an officer of the grade of Class I or Class II of the State Services (hereinafter referred to as the Head of the Department of the Zilla Parishad).”

72.3 Block Development Officers are appointed under Section 97 of the ZP and PS Act and their powers and functions are defined under Section 98. Said Sections 97 and 98 read as follows:-

“97. Appointment of Block Development Officer

There shall be a Block Development Officer for every Panchayat Samiti who shall be appointed by the State Government.

98. Powers and functions of Block Development Officer

(1) Subject to the provisions of this Act, and any rules made thereunder, a Block Development Officer may—

(a) subject to the general order of the Chief Executive Officer, grant leave of absence to officers or servants of Class III service or of Class IV service of the Zilla Parishad working under the Panchayat Samiti; and

(b) call for any information, return, statement, account, report or explanation from any such officer or servant.

(2) A Block Development Officer shall—

(a) have the custody of all papers and documents connected with the proceedings of meeting of the Panchayat Samiti;

(b) save as otherwise provided by or under this Act, exercise executive powers in the Block for the purpose of carrying out the provisions of this Act therein;

(c) draw and disburse money out of the grant or grants payable to the Panchayat Samiti under ¹[sub-section (6) of section 155 and section 188];

(d) in relation to works and development schemes to be undertaken from block grants, exercise such

powers of sanctioning acquisition of property or sale or transfer thereof as may be specified by the State Government.”

73. There is nothing on record to indicate that the powers and duties as contemplated under Section 39(1)(i) of the MVP Act are delegated to the Deputy Chief Executive Officer and/or Block Development Officer. In any case, the learned Single Judge in *Sandip Ramesh Khidbide* (supra), after examining the scheme under Section 39 has held that the same is a self-contained Code in the matter of removal of a person from the office of Member, Sarpanch or Upa-Sarpanch of Village Panchayat. Thus, by no stretch of imagination, can it be held that any officer other than the Chief Executive Officer can conduct an inquiry contemplated under Section 39. It is significant to note that said inquiry is to be conducted under the orders of the Commissioner by the Chief Executive Officer. It is significant to note that on the basis of the inquiry report of the Chief Executive Officer, the Commissioner takes a decision regarding whether a person is to be removed as Member, Sarpanch or Upa-Sarpanch, after giving the person concerned a reasonable opportunity of being heard. Thus it is clear that Section 39 of the MVP Act contemplates only one inquiry report i.e. of the Chief Executive Officer and by no stretch of imagination, the Chief Executive Officer can

prepare his report on the basis of the inquiry report of the Block Development Officer.

74. As per the factual position on record in Writ Petition No.5660 of 2023, Commissioner has directed the Deputy Chief Executive Officer to conduct the inquiry and in turn the Deputy Chief Executive Officer directed Block Development Officer to conduct the inquiry and thereafter the Block Development Officer conducted the inquiry. The Block Development Officer recorded a finding that Respondent No.2 has committed misconduct. On the basis of said report of the Block Development Officer, the Chief Executive Officer formed an opinion that the Respondent No.2-Sarpanch has committed misconduct and therefore submitted a letter dated 7th September 2021 to the Deputy Commissioner. It is significant to note that in the said letter dated 7th September 2021, except in the last paragraph, the Chief Executive Officer has recorded in detail what is observed in the report of the Block Development Officer. In the last paragraph of said letter, it is stated that *prima facie* it is found that Respondent No.2-Sarpanch has committed misconduct. Thus, it is clear that the entire letter dated 7th September 2021 is sent on the basis of the inquiry report of the Block Development Officer. On the basis of said letter dated 7th September 2021 of the Chief

Executive Officer, the Divisional Commissioner, Konkan Division framed charges against Respondent No.2-Sarpanch and directed that the inquiry be conducted personally by the Chief Executive Officer. Thereafter the Chief Executive Officer has issued notices to all the concerned. Respondent No.2-Sarpanch filed reply pursuant to the said notice and thereafter on the basis of the complaint filed by the Petitioner, the reply of the Respondent No.2-Sarpanch and on the basis of report of the Block Development Officer, Chief Executive Officer submitted the report to the Commissioner recording a finding that the Respondent No.2 has committed misconduct.

75. The Supreme Court in *Bipinchandra* (supra) has held that it is trite that a law leading to disqualification to hold an office should be clear and unambiguous like a penal law and the same should be strictly interpreted. The Supreme Court in *Ravi Yashwant Bhoir* (supra) while considering the case under the provisions of *Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1956* ("Municipal Councils Act") was dealing with a similar provision regarding removal of a member of Uran Municipal Council, by which he had been disqualified under Section 55(b) of the Municipal Councils Act and held that an elected member can be removed in exceptional

circumstances giving strict adherence to the statutory provisions and conducting an inquiry. The relevant discussions in paragraph nos.34 to 37 read as under:

"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 v. Debi Ghosal* [(1982) 1 SCC 691 : AIR 1982 SC 983], *Mohan Lal Tripathi v. District Magistrate, Rae Bareilly* [(1992) 4 SCC 80 : AIR 1993 SC 2042] and *Ram Beti v. District Panchayat Raj Adhikari* [(1998) 1 SCC 680 : AIR 1998 SC 1222]).

36. In view of the above, the law on the issue stands crystallised 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 from the office and further declared disqualified to contest the election for a further stipulated period."

(Emphasis added)

76. A learned Single Judge was considering a similar situation in *Nimba Yadav Bhoi* (supra). The factual position in that case as set out in paragraph no.3, reads as under:

"3. Few facts relevant for the decision are that:

(a) The petitioner was elected as Sarpanch of Village Thorgawhan (Taluka: Yawal, District: Jalgaon), on 24th August 1998. A dispute sought to be raised by the respondent No. 3, as regards, the election of the petitioner to the office of Sarpanch which was dismissed by the Additional Collector, Jalgaon, by order dated 29th December, 1998. A no confidence motion was then moved by the respondent Nos. 3 and 4 against the petitioner. But the same was rejected in the meeting of the Panchayat held

on 7th April 1999.

(b) A complaint was received by the Deputy Chief Executive Officer of Zilla Parishad, Jalgaon, against the petitioner. In April 2000, whereupon the respondent No. 1 directed the Deputy Chief Executive Officer to enquire into the matter and to submit a report.

(c) Further by orders dated 29-4-2000 and 3-5-2000, the Chief Executive Officer of Zilla Parishad, Jalgaon, authorised the Block Development Officer of Panchayat Samiti, Yawal, to hold enquiry into the matter and the Block Development Officer, on such enquiry being held, submitted his report on 12th May, 2000.

(d) Based on the said report, the Chief Executive Officer issued a show cause notice to the petitioner, as to why action proposed should not be taken under Section 39(1) of the said Act. Thereupon the petitioner filed his reply on 15th June, 2000. But the same was followed by a resolution by the Standing Committee on 15th July 2000 to the effect that the petitioner should be removed from the office of the Sarpanch. The same was followed by the order dated 20th July, 2000 issued by the respondent No. 1 whereby the petitioner was sought to be removed from the office of Sarpanch of the said village and was further restrained from contesting the election for the membership of the Panchayat for 5 years purportedly in exercise of powers under Section 39(2) of the said Act. The appeal preferred by the petitioner against the same was dismissed on 28th August, 2000. Hence the present petition."

In the said decision, the un-amended Section 39 is considered.

However, the point in the said case is also the same, as the Chief Executive Officer directed the Block Development Officer to conduct an inquiry. Thereafter, the Chief Executive Officer conducted the inquiry by

directing the Petitioner in that case to file a reply and thereafter the Chief Executive Officer has submitted a report and thereafter the Standing Committee took the decision. While considering the provision of Section 39, the learned Single Judge has clearly held that Section 39 is mandatory in nature and requires strict compliance. Reliance is also placed by the learned Single Judge in *Nimba Yadav Bhoi* (supra) on a decision of the Supreme Court in *Hukam Chand Shyam Lal v. Union of India* ²⁴, wherein it has been held that it is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised only in that manner or not at all, and all other modes of performance are necessarily forbidden. The relevant discussion in *Nimba Yadav Bhoi* (supra) is in paragraph nos.16 to 20, and 26, which read as under:

"16. The Apex Court, in the case of Hukam Chand Shyam Lal v. Union of India, (1976) 2 SCC 128 : AIR 1976 SC 789, while dealing with the powers of the officers under the Telegraph Act and rules made thereunder, as ruled that:—

"It is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performance are necessarily forbidden.

24 (1976) 2 SCC 128

17. In the case of Chandra Kishore Jha v. Mahavir Prasad, JT 1999 (7) SC 256, the Apex Court has held that it is well settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. Therein, reference has been made by the Apex Court to its various earlier decisions, namely, Nazir Ahmad v. King Emperor, 63 Indian Appeals 372 : AIR 1936 PC 253; Rao Shiv Bahadur Singh v. State of Vindhya Pradesh, 1954 SCR 1098 : AIR 1954 SC 322 and State of Uttar Pradesh v. Singhara Singh, AIR 1964 SC 358 : (1964) 1 SCWR 57.

18. In the case of M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu, (1999) 6 SCC 464, while reiterating its earlier decision in the case of H.S. Rikhy (Dr.) v. New Delhi Municipal Committee, AIR 1962 SC 554, the Apex Court has held that where a statute makes a specific provision that a body corporate has to act in a manner and no other manner, that provision being mandatory and not directory, has to be strictly followed.

19. In the case of Municipal Council, Khurai v. Kamal Kumar, AIR 1965 SC 1321, while construing Section 78 of the Madhya Pradesh Municipalities Act, 1961, which provided that any powers or duties or executive functions which may be exercised or performed by or on behalf of the Council may, in accordance with the rules made under this Act, be delegated by the Council to the President or Vice-President or to the Chairman of the Standing or other Committees, or to one or more stipendiary or honorary Officers, but without prejudice to any powers that may have been conferred, on the Chief Municipal Officer by or under Section 92, it was held that even assuming that under the said provision the power of the Council of hearing objections could be delegated, the delegation can presumably be only in favour of the persons mentioned in Section 78 of the Act and it cannot be in favour of a Sub-Committee or a Committee. The Apex Court was dealing with the matter pertaining to the power of the municipality and the procedure to be followed in the matter of imposing

the liability to pay tax upon the residents in the municipal locality.

20. It is apparent from bare reading of proviso to sub-section (1) of Section 39 of the said Act, that the enquiry is to be conducted by the Chief Executive Officer pursuant to an order in that behalf by the President of Zilla Parishad and there being no provision for delegation of such power by the Chief Executive Officer in favour of any other officer of the Parishad or otherwise, the enquiry has necessarily to be conducted by the Chief Executive Officer himself. The provisions contained in Section 96 of the Samitis Act can be of no help to justify any delegation of the powers of the Chief Executive Officer to hold the enquiry in the matter under Section 39(1) of the said Act as Section 96 of the Samitis Act restricts the entitlement of delegation of powers to the extent they relate to the duties and functions under the Samitis Act and not under the said Act.

26. Considering the provisions contained in Section 39(1) of the said Act, and the law on the subject matter discussed hereinabove, it is apparent that the enquiry under Section 39 of the said Act has necessarily to be conducted by the Chief Executive Officer and none else. Such Enquiry has to be preceded by necessary order directing the Chief Executive Officer to hold the enquiry and such order should be necessarily issued by the President of the Zilla Parishad. Pursuant to such appointment, the Chief Executive Officer himself has to hear the person against whom the enquiry is to be conducted and based on such enquiry, the Chief Executive Officer has to prepare a report and submit the same to the President of the Zilla Parishad. All these requirements are mandatory in nature and any failure in that regard on the part of the authorities, the proceedings under Section 39(1) of the Said Act would be vitiated and any order passed on the basis of such proceedings which are vitiated would be rendered null and void. Reverting to the facts of the case, undisputedly, the order of the removal of the petitioner from the office of Sarpanch was not preceded by any enquiry by the Chief Executive Officer. There was no order of the President

appointing the Chief Executive Officer to enquire into the matter."

(Emphasis added)

77. As Mr. Gavnekar, learned Counsel, Mr. Anil Sakhare, learned Senior Counsel and Mr. Prasad Dani, learned Senior Counsel along with Mr. Kadam, learned Counsel has pointed out that in *Nimba Yadav Bhoi* (supra), the Order of removal of the said Petitioner from the office of Sarpanch was not preceded by any inquiry by the Chief Executive Officer and there was no Order of appointing the Chief Executive Officer to inquire into the matter and therefore submitted that the said decision will have no application to the present case. They relied on the last sentence of paragraph no.26 of *Nimba Yadav Bhoi* (supra). There is no substance in the said contention for the reasons set out hereunder:

- (a) It is required to be noted that in Writ Petition No.5660 of 2023, the Divisional Commissioner directed the Chief Executive Officer to conduct an inquiry. The Chief Executive Officer in turn directed the Block Development Officer to conduct an inquiry and thereafter, the Block Development Officer thereafter conducted a full-fledged inquiry and submitted a report by recording the finding

that Respondent No.2 has committed misconduct.

- (b) Thereafter the Chief Executive officer forms an opinion on the basis of the report of the Block Development Officer that *prima facie* Respondent No.2 has committed the misconduct and therefore communicates the same to the Commissioner.
- (c) On the basis of the said report of the Chief Executive Officer, the Commissioner frames the charges and directs the Chief Executive Officer to conduct an inquiry.
- (d) The Chief Executive Officer thereafter issues notices to Respondent No.2-Sarpanch and records the finding that Respondent No.2 has committed the misconduct.
- (e) It is significant to note that the Chief Executive Officer before holding an inquiry has already formed an opinion, although *prima facie*, as recorded in letter dated 7th September 2021 that the Respondent No.2-Sarpanch has committed misconduct. He conducted the inquiry with said

prima facie view. Thus the same is contrary to the principles of natural justice.

- (f) It is also significant to note that the Chief Executive Officer while submitting report *inter alia* takes into consideration the findings recorded by the Block Development Officer.

Therefore, it is clear that the entire proceeding conducted is completely contrary to Section 39(1)(i) read with the proviso of the MVP Act.

78. Mr. Nitin Gaware Patil, learned Counsel for the Petitioner has relied on the decision of a learned Single Judge in *Sau. Sunita Pruthaviraj Meshram v. State of Maharashtra*²⁵. The factual position in the said case is similar to that as in the present case. Paragraph Nos.8 to 11 of the said decision are relevant and the same read as under:

"8. A plain reading of Section 39 indicates that direction by the President of Zilla Parishad to the C.E.O. to hold an enquiry and consequent enquiry by the C.E.O. after giving an opportunity of being heard are the essential pre-requisites of Section 39(1) of the said Act. In Nimba Yadav Bhoi (supra), this Court has considered the scope and ambit of Section 39(1) of the said Act and has held that the provisions contained in Section 39 of the said Act are

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mandatory in nature. The same is in negative form, which specifically prohibits removal of a person from the office of Sarpanch unless certain pre-conditions are strictly complied with.

9. In the instant case, the Petitioner having been elected as a Sarpanch was entitled to hold office for a term for which she has been elected, unless disqualified and removed by following procedure prescribed under Section 39(1) of the said Act. The records reveal that the Respondent No. 3 - C.E.O. had directed the Respondent No. 4 - B.D.O. to conduct an enquiry into the allegations levelled against the Petitioner by some of the members of the Panchayat. The Extension Officer, Panchayat Samiti, deputed by the B.D.O., conducted the preliminary enquiry and submitted the report. Pursuant to which, Respondent No. 3 - C.E.O. sought permission of Respondent No. 2 - Commissioner to conduct an enquiry against the Petitioner under Section 39(1) of the said Act. Pursuant to the permission, the Respondent No. 3 - C.E.O. purportedly initiated an enquiry and submitted the report that the Petitioner is liable to be removed from the office. Acting upon the said report, Respondent No. 2 - Commissioner has ordered removal of the Petitioner.

10. A perusal of the enquiry report submitted by Respondent No. 3 - C.E.O. clearly indicates that he had not conducted an independent enquiry as envisaged by Section 39(1) of the said Act. On the contrary, the report reveals that Respondent No. 3 - C.E.O. had only endorsed the findings recorded in the fact finding enquiry, without affording opportunity of fair hearing and without recording subjective satisfaction with independent application of mind. The decision in the case of Damayanti w/o Omprakash Tapadiya (supra), is distinguishable and is of no assistance to the Respondents as in the said case, the fact finding was followed by another enquiry by C.E.O. as required by the provisions of Section 39(1) of the said Act. In the instant case, as noted above, there is no independent application of mind and the findings are based on the preliminary report. There has been flagrant violation of the

mandatory provision of Section 39(1) of the said Act.

11. It has to be borne in mind that removal from office curtails the terms of democratically elected member. Moreover, the removal renders such person ineligible for re-election for the remainder of the term with further disqualification for six years to be elected under the said Act. Therefore, the action of removal of elected member should be viewed seriously followed by strict compliance of mandatory provisions. In the instant case, the order has been passed in flagrant violation of the mandatory provision and this vitiates the proceedings under Section 39(1) and renders the order null and void."

79. The factual position in *Sunita Pruthviraj Meshram* (supra) is squarely applicable to the present case. The same factual position is in the cases of *Sunita w/o Ulhas Bhalerao v. Minister of State for Rural Development and Panchayat Raj* ²⁶, *Kashinath s/o Motiramji Lonkar v. Minister, Rural Development Department* ²⁷, *Shalik S/o Bolan Dahiware v. State of Maharashtra* ²⁸, and *Suman w/o Parmeshwar Rangari v. State of Maharashtra* ²⁹ and the respective learned Single Judges dealing with those cases have set aside the impugned Orders of removal of respective Petitioners either as Member, Sarpanch or Upa-Sarpanch. The learned Single Judge in *Shalik Dahiware* (supra) in paragraph no.10 has observed as follows:

²⁶ Writ Petition No. 3036/2019 (Nagpur Bench)

²⁷ Writ Petition No. 7551 Of 2018 (Nagpur Bench)

²⁸ Writ Petition No. 7158 Of 2017 (Nagpur Bench)

²⁹ Writ Petition No. 700 Of 2009 (Nagpur Bench)

"10. The learned Counsel for respondent no.4, Shri Mohan Sudame and the learned counsel for respondents 7 and 8 Shri N.Y. Thengre made a variant attempt to support the orders impugned. The thrust of their submission is that the Chief Executive Officer is not expected to record the statements and there is nothing inherently wrong in Block Development Officer's recording the statements of the witnesses in view of the grant of opportunity of hearing to the petitioner by the Chief Executive Officer. This submission can not be countenanced. The mandate of section 39(1) of the Act is that the inquiry must be personally conducted by the Chief Executive Officer and no delegation thereof to subordinate officer/s is permissible. Moreover, as is rightly submitted by Shri. R.M. Tahliyani, the inquiry conducted by the Block Development Officer was not preceded by the permission of the Commissioner and irrefutably after the Commissioner permitted inquiry by order dtd 22.4.2016, no inquiry is conducted. In this view of the matter, the orders impugned are unsustainable in law and are quashed and set aside."

(Emphasis added)

80. In view of the settled law that if a statute provides one thing to be done in a particular manner the same has to be done in that manner only, again it is very important to note what is required to be done in terms of Section 39(1)(i). The same is as follows:

- (i) The Commissioner directs the Chief Executive Officer to conduct an inquiry in case of misconduct in the discharge of duties, or any disgraceful conduct, or of neglect of or incapacity to perform duty or is persistently remiss in the discharge thereof, as the case may be of any Member/Sarpanch/Upa-Sarpanch.

(ii) While conducting said inquiry, the Chief Executive Officer has to give notice to the panchayat and the person concerned; and give a reasonable opportunity to the person concerned of being heard and thereafter, the Chief Executive Officer submits his report to the Commissioner.

(iii) The Commissioner to take a decision on the report submitted by the Chief Executive Officer after giving the person concerned a reasonable opportunity of being heard.

Thus, it is significant to note that as per Section 39(1)(i) of the MVP Act only one inquiry is contemplated and the same is required to be conducted by the Chief Executive Officer. Thereafter what the Commissioner does is that he takes the decision on the said report submitted by the Chief Executive Officer after giving the person concerned a reasonable opportunity of being heard.

81. Mr. Prashant Jadhav, learned Counsel relied on the decision of a learned Single Judge in *Shrikant Chahakar* (supra) and more particularly on paragraph nos.8, 10 and 12 of the same. In paragraph no.8 submissions of learned Counsel appearing for the Petitioners were recorded and in paragraph no.10 submissions of the learned

Government Pleader were recorded. The material paragraph is paragraph no.12, which reads as under:

“12. I have carefully considered these contentions. The learned Government Pleader is right in submitting that the Chief Executive Officer may have requisite material collected by his subordinates. But it does not follow that his report should not reflect any reasons for the conclusions which he drew. And, in my view, the report is woefully deficient as far as reasons go. Such a report could not have been a foundation for drastic action of unseating democratically elected members of the Panchayat.”

(Emphasis added)

In fact what is held by the learned Single Judge is that during the course of an inquiry being conducted by the Chief Executive Officer, the material collected by the subordinates can be relied on. However, the same is different from conducting an inquiry by the Block Development Officer.

82. In any case, it is also required to be noted that the decision of the Supreme Court in *Bipinchandra Purshottamdas Patel* (supra) wherein it has been held that ‘it is trite that the law leading to disqualification to hold an office should be clear and unambiguous like a penal law and the same should be strictly interpreted’ is not considered. The decision of the Supreme Court in *Ravi Yashwant Bhoir* (supra) is also not

considered as the said decision of the Supreme Court is dated 2nd March 2012 and the said decision in *Shrikant Chahakar* (supra) is dated 8th April 2010. Thus, the said decision is not helpful for deciding the point No.2.

83. In all these cases, what has been done by the Chief Executive Officer, who has been directed to conduct an inquiry by the Commissioner is that he has obtained the report from either the Block Development Officer or some other authority. In Writ Petition No.11455 of 2023 (Page No.35), the Chief Executive Officer, Satara Zilla Parishad has formed a Panel of Deputy Chief Executive Officer, Block Development Officer and Extension Officer (Panchayat) to conduct the inquiry and to submit the report within eight days. Thus, it is clear that the said procedure adopted is totally contrary to the mandatory requirement of Section 39(1)(i) of the MVP Act.

84. It is the contention of Mr. Nitin Gaware Patil, learned Counsel, Mr. Anturkar, learned Senior Counsel, Mr. Abhay Anturkar, Mr. Pradeep Gole and Mr. Rahul More, learned Counsel that the same is impermissible as the proviso to Sub-Section (1)(i) of Section 39 of the MVP Act contemplates that an inquiry should be conducted only by the Chief

Executive Officer.

85. On the other hand, Mr. Gavnekar, learned Counsel, Mr. Anil Sakhare, learned Senior Counsel, Mr. Dani, learned Senior Counsel, Mr. Prashant Jadhav, learned Counsel, Mr. Abhijit Kadam, learned Counsel and Mr. Satale, learned Counsel submitted that actually the inquiry has been conducted by the Chief Executive Officer after giving notice to the concerned Members/Sarpanch/Upa-Sarpanch as the case may be and the inquiry, which the Block Development Officer or other authority conducted was the preliminary inquiry. All of them submitted that the Block Development Officer or other authority conducted the preliminary inquiry and on the basis of that, a further full-fledged inquiry has been conducted by the Chief Executive Officer. Therefore, it cannot be said that the action taken is illegal as it is not the case that the Chief Executive Officer has not conducted any enquiry as contemplated under the provisions of Section 39(1)(i) of the MVP Act. However, the same is impermissible as per Section 39(1)(i) of the MVP Act. In fact the same is also contrary to the principles of natural justice as the said report of the Block Development Officer or other Authorities are prepared after conducting a full-fledged inquiry and recording the conclusions about misconduct and thereafter the Chief Executive Officer conducted the

inquiry and the said so called preliminary inquiry report is also relied on. In any case, under Section 39(1)(i) of the MVP Act only one report is contemplated i.e. of Chief Executive Officer and Commissioner takes decision on the basis of the said report after giving reasonable opportunity of being heard to the person concerned. Thus, what has been done in the proceedings impugned in all these Writ Petitions is totally contrary to the mandatory requirement of Section 39(1)(i) of the MVP Act.

86. The factual position on record in Writ Petition No.5660 of 2023 is already set out herein above. In all the matters, a full-fledged inquiry is conducted either by the Block Development Officer or by the panel of officials including the Block Development Officer and the conclusions about misconduct is specifically recorded which is contrary to the scheme of Section 39(1)(i) read with proviso to the same.

SECOND POINT CONCLUSION :

87. As per Section 39(1)(i) read with proviso to the same as per Maharashtra Village Panchayats Act, 1959, the inquiry is to be conducted only by the Chief Executive Officer under the Orders of the

Divisional Commissioner and no other Officer/ Authority can be directed to conduct any inquiry. Thus what is required to be done in terms of Section 39(1)(i) is summarised as follows:

(i) The Commissioner directs the Chief Executive Officer to conduct an inquiry in case of misconduct in the discharge of duties, or any disgraceful conduct, or of neglect of or incapacity to perform duty or is persistently remiss in the discharge thereof, as the case may be of any Member/Sarpanch/Upa-Sarpanch.

(ii) While conducting said inquiry, the Chief Executive Officer has to give notice to the panchayat and the person concerned; and give a reasonable opportunity to the person concerned of being heard and thereafter, the Chief Executive Officer submits his report to the Commissioner.

(iii) The Commissioner to take a decision on the report submitted by the Chief Executive Officer after giving the person concerned a reasonable opportunity of being heard.

88. Ms. Nimbalkar, learned AGP pointed out the following factual position in each of the Writ Petitions and contended that the Chief

Executive Officer has conducted the inquiry in all the matters as contemplated under Section 39(1)(i) of the MVP Act. The factual position as pointed out by Ms. Nimbalkar, learned AGP in the form of written note is as follows:

WRIT PETITION NO.5660 OF 2023

1. The Petitioner has filed a Complaint Application u/s. 39 of Maharashtra Village Panchayat Act before the Divisional Commissioner, Konkan Division, Navi Mumbai on 27.01.2021.
2. After receipt of the above Application the Deputy Commissioner, Konkan Division, Navi Mumbai has issued a letter dated 11.02.2021 to the Deputy Chief Executive Officer, Zilla Parishad, Raigad and directed to conduct the enquiry in respect of the contentions raised in the Complaint Application and submit the report.
3. Then after Deputy Chief Executive Officer, Zilla Parishad, Raigad, has issued letter dated 30.03.2021 to the Block Development Officer to hold the preliminary enquiry in respect of the Complaint Application.
4. After conducting preliminary enquiry in respect of the Complaint Application, the Block Development Officer has submitted a Enquiry Report dated 26.08.2021 to the Deputy Chief Executive Officer, Zilla Parishad, Raigad.
5. After considering the Report of Block Development Officer, the Chief Executive Officer, Raigad Zilla Parishad, Alibag has prima facie come to the conclusion that action u/s. 39(1) of the Maharashtra

Village Panchayat Act has to be taken against the Respondent No. 2 i.e. Anant Soma Patil and the Report has been submitted to the Deputy commissioner, Konkan Bhavan, Navi Mumbai as per letter dated 07.09.2021.

6. After considering the Report submitted by the Chief Executive Officer, the Divisional Commissioner has framed the charges against the Respondent No. 2 and directed the Chief Executive Officer to conduct the personal enquiry as per section 39(1) of Maharashtra Village Panchayat Act and submit the self explanatory Enquiry Report within thirty days from 22.10.2021.

7. As per above directions, the Deputy Chief Executive Officer has issued notice dated 01.11.2021 to the Petitioner and the Respondent No. 2 in respect of the personal hearing and called explanation as per section 39(1) of the Maharashtra Village Panchayat Act.

8. On 15.11.2021 and 22.11.2021, all the parties have been appeared before the Chief Executive Officer and after giving opportunity of hearing, the Deputy Chief Executive Officer has come to the conclusion with a request to the Divisional Commissioner to initiate action u/s. 39(1) of Maharashtra Village Panchayat against the Respondent No. 2 and submitted Report to the Divisional Commissioner on 30.12.2021.

9. After receipt of the Report of the Chief Executive Officer, The Divisional Commissioner has issued Notice of Hearing dated 24.05.2022 to the Petitioner and the Respondent No. 2. After hearing both the parties, the Divisional Commissioner has passed the order dated 30.05.2022 and removed the Respondent No. 2 from the post of

Sarpanch, Kurdus.

As stated above, the preliminary enquiry has been conducted by the Block Development Officer, Panchayat Samiti, Alibag and submitted the report.

The Divisional Commissioner as per letter dated 22.10.2021, has framed the charges against the Respondent No. 2 Sarpanch and directed to CEO to conduct the enquiry as contemplated u/s. 39(1) of the Maharashtra Village Panchayat Act and the same has been conducted by the Chief Executive Officer himself after giving opportunity of hearing to all the parties and submitted Report to the Divisional Commissioner, Konkan Bhavan, Navi Mumbai.

Considering the above said facts and circumstances, the enquiry has been conducted by the Chief Executive Officer and not by the Block Development Officer, Panchayat Samitee, Alibag.

WRIT PETITION NO.10135 OF 2023

1. The Respondent No. 1 has filed a Complaint Application u/s. 39 (1) of Maharashtra Village Panchayat Act before the Divisional Commissioner, Konkan Division, Navi Mumbai on 05.01.2021.
2. After receipt of the above Application the Deputy Commissioner, Konkan Division, Navi Mumbai has issued a letter dated 11.01.2021 to the Deputy Chief Executive Officer, Zilla Parishad, Raigad and directed to conduct the enquiry in respect of the contentions raised in the Complaint Application and submit the report.

3. Then after Deputy Chief Executive Officer, Zilla Parishad, Raigad, has issued letter dated 20.03.2020 to the Block Development Officer to hold the preliminary enquiry in respect of the Complaint Application.
4. After conducting preliminary enquiry in respect of the Complaint Application, the Block Development Officer has submitted a Enquiry Report dated 23.03.2021 to the Deputy Chief Executive Officer, Zilla Parishad, Raigad.
5. After considering the Report of Block Development Officer, the Chief Executive Officer, Raigad Zilla Parishad, Alibag has prima facie come to the conclusion that action u/s. 39(1) of the Maharashtra Village Panchayat Act has to be taken against the Petitioner i.e. Jayashree Gajanan Waghmare and the Report has been submitted to the Deputy commissioner, Konkan Bhavan, Navi Mumbai as per letter dated 23.08.2021.
6. After considering the Report submitted by the Chief Executive Officer, the Divisional Commissioner has framed the charges against the Petitioner and directed the Chief Executive Officer to conduct the personal enquiry as per section 39(1) of Maharashtra Village Panchayat Act and submit the self explanatory Enquiry Report within thirty days from 21.04.2022.
7. As per above directions, the Deputy Chief Executive Officer has issued notice dated 10.05.2022 to the Petitioner and the Respondent No. 2 in respect of the personal hearing and called explanation as per section 39(1) of the Maharashtra Village Panchayat Act.
8. On 23.05.2022, all the parties have been appeared before the Chief Executive Officer and after giving opportunity of hearing, the

Chief Executive Officer has come to the conclusion with a request to the Divisional Commissioner to initiate action u/s. 39(1) of Maharashtra Village Panchayat against the Petitioner and submitted Report to the Divisional Commissioner on 04.07.2022 .

9. After receipt of the Report of the Chief Executive Officer, The Divisional Commissioner has issued Notice of Hearing dated 04.07.2022 to the Petitioner and the Respondent No. 2. After hearing both the parties, the Divisional Commissioner has passed the order dated 19.10.2022 and removed the Petitioner from the post of Sarpanch, Waredi, Taluka Pen , District Raigad.

As stated above, the Divisional Commissioner as per letter dated 30.06.2021, has framed the charges against the Petitioner, Sarpanch and directed to CEO to conduct the enquiry as contemplated u/s. 39(1) of the Maharashtra Village Panchayat Act and the same has been conducted by the Chief Executive Officer himself after giving opportunity of hearing to all the parties and submitted Report to the Divisional Commissioner, Konkan Bhavan, Navi Mumbai.

Considering the above said facts and circumstances, the enquiry has been conducted by the Chief Executive Officer and not by the Block Development Officer, Panchayat Samitee, Alibag, District Raigad.

WRIT PETITION NO.10139 OF 2023

1. The Petitioner has filed a Complaint Application u/s. 39 (1) of Maharashtra Village Panchayat Act before the Chief Executive Officer , Raigad Zilla Parishad, Alibaug on 17.11.2017.

2. The Deputy Commissioner, Konkan Division, Navi Mumbai has issued a letter dated 15.09.2018 to the Chief Executive Officer, Zilla Parishad, Raigad and directed to conduct the enquiry in respect of the contentions raised in the Complaint Application and submit the report.
3. Then after Deputy Chief Executive Officer, Zilla Parishad, Raigad, has issued letter dated 01.10.2018 to the Block Development Officer to hold the preliminary enquiry in respect of the Complaint Application.
4. After conducting preliminary enquiry in respect of the Complaint Application, the Block Development Officer has submitted a Enquiry Report dated 12.03.2018 to the Deputy Chief Executive Officer, Zilla Parishad, Raigad.
5. After considering the Report of Block Development Officer, the Chief Executive Officer, Raigad Zilla Parishad, Alibag has prima facie come to the conclusion that action u/s. 39(1) of the Maharashtra Village Panchayat Act has to be taken against the Respondent No.1 Monika Sameer Salokhe, member of Grampanchayat, Umroli and the Report has been submitted to the Divisional commissioner, Konkan Bhavan, Navi Mumbai as per letter dated 20.07.2018.
6. After considering the Report submitted by the Chief Executive Officer, the Divisional Commissioner has framed the charges against the Respondent No. 1 and directed the Chief Executive Officer to conduct the personal enquiry as per section 39(1) of Maharashtra Village Panchayat Act and submit the self explanatory Enquiry Report within thirty days from 22.10.2018.
7. As per above directions, the Deputy Chief Executive Officer has issued notice dated 14.11.2018 to the Petitioner and the Respondent

No. 2 in respect of the personal hearing and called explanation as per section 39(1) of the Maharashtra Village Panchayat Act.

8. On 17.11.2018, 29.11.2018, 27.12.2018 and 10.01.2019, , all the parties have been appeared before the Chief Executive Officer and after giving opportunity of hearing, the Chief Executive Officer has come to the conclusion with a request to the Divisional Commissioner to initiate action u/s. 39(1) of Maharashtra Village Panchayat against the Respondent No. 1 and submitted Report to the Divisional Commissioner on 19.01.2019.

9. After receipt of the Report of the Chief Executive Officer, The Divisional Commissioner has issued Notice of Hearing dated 02.04.2019 to the Petitioner and the Respondent No. 2. After hearing both the parties, the Divisional Commissioner has passed the order dated 16.04.2019 and removed the Petitioner from the post of Member of Grampanchayat Umroli.

As stated above, the Divisional Commissioner as per letter dated 22.10.2018, has framed the charges against the Respondent No.1, Sarpanch and directed to CEO to conduct the enquiry as contemplated u/s. 39(1) of the Maharashtra Village Panchayat Act and the same has been conducted by the Chief Executive Officer himself after giving opportunity of hearing to all the parties and submitted Report to the Divisional Commissioner, Konkan Bhavan, Navi Mumbai.

Considering the above said facts and circumstances, the enquiry has been conducted by the Chief Executive Officer and not by the Block Development Officer, Panchayat Samitee, Alibag, District Raigad.

WRIT PETITION NO.8802 OF 2023

1. The Petitioner has filed a Complaint Application to the Guardian Minister in respect of the misappropriation have been done by the Sarpanch in respect of funds of Rs. 30 Lakhs in respect of Plan Plus Yojana dated 07.10.2020.
2. By letter dated 11.12.2020 the Chief Executive Officer, Nashik directed the Block Development Officer, Baglan to conduct the enquiry.
3. On 26.02.2021, the Block Development Officer submitted report to the Chief Executive Officer.
4. As per letter dated 26.03.2021, the Deputy Chief Executive Officer has directed the Block Development Officer to conduct the fresh enquiry as per the contentions raised in Complaint Application.
5. As per Report dated 05.04.2021 the Block Development Officer submitted the Report to Chief Executive Officer, Nashik.
6. As per letter dated 10.05.2021 the Chief Executive Officer has again directed to Block Development Officer to conduct the enquiry.
7. As per letter dated 14.06.2021, the Block Development Officer has submitted the Report to Chief Executive Officer.
8. Then after, as per letter dated 07.09.2021, the Chief Executive Officer has requested the Divisional Commissioner to initiate action against the Respondent No. 4 Dhananjay Ananda Pawar, Sarpanch.
9. As per letter dated 24.11.2021, the Divisional Commissioner has directed to Chief Executive Officer to conduct a enquiry under section 39(1) of the Maharashtra Village Panchayat Act.

10. Then after, as per letter dated 30.12.2021, the Deputy Chief Executive Officer has directed to BDO to conduct the enquiry as per letter dated 24.1.202.

11. As per letter dated 21.01.2022, the Block Development Officer has submitted report to Deputy Chief Executive Officer, Nashik.

12. Then after, as per the report dated 25.03.2022 the Chief Executive Officer has requested to the Divisional Commissioner, Nashik to initiate action u/s. 39(1)

13. After considering the Report submitted by the Chief Executive Officer, the Divisional Commissioner has framed the charges against the Petitioner and directed the Chief Executive Officer to conduct the personal enquiry as per section 39(1) of Maharashtra Village Panchayat Act and submit the self explanatory Enquiry Report within thirty days from 22.04.2022.

14. As per above directions, the Deputy Chief Executive Officer has issued notice dated 08.06.2022 to the Petitioner and the Respondent No. 2 in respect of the personal hearing and called explanation as per section 39(1) of the Maharashtra Village Panchayat Act.

15. On 14.06.2022, 05.07.2022, 30.08.2022 and 20.09.2022, all the parties have been appeared before the Chief Executive Officer and after giving opportunity of hearing, the Chief Executive Officer has come to the conclusion with a request to the Divisional Commissioner to initiate action u/s. 39(1) of Maharashtra Village Panchayat against the Petitioner and submitted Report to the Divisional Commissioner on 28.09.2022.

16. After receipt of the Report of the Chief Executive Officer and after hearing both the parties, the Divisional Commissioner has passed the

order dated 29.12.2022 and removed the Respondent No. 4 from the post of Sarpanch, Grampanchayat Ajmer, Soundane, Dist. Nashik.

17. As stated above, the Divisional Commissioner as per letter dated 22.04.2022, has framed the charges against the Respondent No. 4, Sarpanch and directed to the Chief Executive Officer to conduct the enquiry as contemplated u/s. 39(1) of the Maharashtra Village Panchayat Act and the same has been conducted by the Chief Executive Officer himself after giving opportunity of hearing to all the parties and submitted Report to the Divisional Commissioner, Konkan Bhavan, Navi Mumbai.

Considering the above said facts and circumstances, the enquiry has been conducted by the Chief Executive Officer.

WRIT PETITION NO.8972 OF 2023

1. The Respondent No. 2 has filed a Complaint Application u/s. 39 (1) of Maharashtra Village Panchayat Act before the Divisional Commissioner, Konkan Division, Navi Mumbai on 15.01.2020.

2. After receipt of the above Application the Deputy Commissioner, Konkan Division, Navi Mumbai has issued a letter dated 04.02.2020 to the Deputy Chief Executive Officer, Zilla Parishad, Raigad and directed to conduct the enquiry in respect of the contentions raised in the Complaint Application and submit the report.

3. Then after Deputy Chief Executive Officer, Zilla Parishad, Raigad, has issued letter dated 05.03.2020 to the Block Development Officer to hold the preliminary enquiry in respect of the Complaint Application.

4. After conducting preliminary enquiry in respect of the Complaint Application, the Block Development Officer has submitted a Enquiry

Report dated 09.09.2020 to the Deputy Chief Executive Officer, Zilla Parishad, Raigad.

5. After considering the Report of Block Development Officer, the Chief Executive Officer, Raigad Zilla Parishad, Alibag has prima facie come to the conclusion that action u/s. 39(1) of the Maharashtra Village Panchayat Act has to be taken against the Petitioner i.e. Rajendra Yawant Shinde and the Report has been submitted to the Deputy commissioner, Konkan Bhavan, Navi Mumbai as per letter dated 24.06.2021.

6. After considering the Report submitted by the Chief Executive Officer, the Divisional Commissioner has framed the charges against the Petitioner and directed the Chief Executive Officer to conduct the personal enquiry as per section 39(1) of Maharashtra Village Panchayat Act and submit the self explanatory Enquiry Report within thirty days from 30.06.2021.

7. As per above directions, the Deputy Chief Executive Officer has issued notice dated 06.07.2021 to the Petitioner and the Respondent No. 2 in respect of the personal hearing and called explanation as per section 39(1) of the Maharashtra Village Panchayat Act.

8. On 16.07.2021, 24.08.2021 and 11.10.2021, all the parties have been appeared before the Chief Executive Officer and after giving opportunity of hearing, the Chief Executive Officer has come to the conclusion with a request to the Divisional Commissioner to initiate action u/s. 39(1) of Maharashtra Village Panchayat against the Petitioner and submitted Report to the Divisional Commissioner on 18.11.2021.

9. After receipt of the Report of the Chief Executive Officer, The Divisional Commissioner has issued Notice of Hearing dated 15.02.2022 to the Petitioner and the Respondent No. 2. After hearing both the parties, the Divisional Commissioner has passed the order dated 19.04.2022 and removed the Petitioner from the post of Sarpanch, Kadsure, Taluka Roha, District Raigad.

As stated above, the Divisional Commissioner as per letter dated 30.06.2021, has framed the charges against the Petitioner, Sarpanch and directed to CEO to conduct the enquiry as contemplated u/s. 39(1) of the Maharashtra Village Panchayat Act and the same has been conducted by the Chief Executive Officer himself after giving opportunity of hearing to all the parties and submitted Report to the Divisional Commissioner, Konkan Bhavan, Navi Mumbai.

Considering the above said facts and circumstances, the enquiry has been conducted by the Chief Executive Officer and not by the Block Development Officer, Panchayat Samitee, Alibag, District Raigad.

WRIT PETITION NO.9544 OF 2023

1. The Respondent No. 4 to 7 have filed a Complaint Application before the Divisional Commissioner, Pune Division, Pune against the Petitioner u/s. 39(1) of the Maharashtra Village Panchayat Act on 28.01.2022.

2. The Divisional Commissioner, Pune Division, Pune as per letter dated 02.02.2022 directed to the Chief Executive Officer to conduct the enquiry in respect of the contentions raised in the Complaint Application and submit the report.

3. Then after the Chief Executive Officer, Pune vide letter dated 17.02.2022 appointed Block Development Officer to conduct the enquiry and submit the report within 15 days.
4. The Block Development Officer has conducted the enquiry as per the directions given by the Chief Executive Officer and report has been submitted vide letter dated 21.03.2022 to the Chief Executive Officer.
5. After considering the report submitted by the Block Development Officer, the Chief Executive Officer has submitted his report dated 04.05.2022 to the Divisional Commissioner, Pune Division, Pune and prima facie come to the conclusion that action u/s. 39(1) of the Maharashtra Village Panchayat Act has to be taken against the Petitioner.
6. After considering the Report submitted by the Chief Executive Officer, the Divisional Commissioner, Pune Division, Pune vide letter dated 12.05.2022 has directed to the Chief Executive Officer, Pune to conduct the enquiry as contemplated u/s. 39(1) of the Maharashtra Village Panchayat Act against the Petitioner i.e. Somnath Dinkar Kanase, Sarpanch , Jawalarjun, Taluka Purandar and submit the report.
7. As per above directions, the Chief Executive Officer has issued notices through the Block Development Officer dated 06.06.2022 to the Petitioner and the Respondent No. 4 to 7 in respect of the personal hearing and called explanation as per section 39(1) of the Maharashtra Village Panchayat Act.
8. On 15.06.2022 and 18.07.2022, all the parties have been appeared before the Chief Executive Officer and after giving opportunity of hearing, the Chief Executive Officer has come to the conclusion with a request to the Divisional Commissioner, Pune Division, Pune to

initiate action u/s. 39(1) of Maharashtra Village Panchayat against the Petitioner and submitted Report to the Divisional Commissioner on 28.10.2022.

9. After receipt of the Report of the Chief Executive Officer, The Divisional Commissioner has issued Notice of Hearing dated 20.12.2022 to the Petitioner and the Respondent No. 4 to 7. After hearing both the parties, the Divisional Commissioner has passed the order dated 13.01.2023 and removed the Petitioner from the post of Sarpanch and Member of Grampanchayat Jawalarjun, Taluka Purandar.

As stated above, the Divisional Commissioner, Pune Division, Pune as per letter dated 26.05.2022, has directed to CEO to conduct the enquiry as contemplated u/s. 39(1) of the Maharashtra Village Panchayat Act against the Petitioner and the same has been conducted by the Chief Executive Officer himself after giving opportunity of hearing to all the parties and submitted Report to the Divisional Commissioner, Pune Division, Pune.

Considering the above said facts and circumstances, the enquiry has been conducted by the Chief Executive Officer, Pune.

WRIT PETITION NO.11445 OF 2023

1. The Respondent Nos.5 to 14 have filed a Complaint Application in respect of misappropriation under Maharashtra Village Panchayat Act before the Chief Executive Officer, Zilla Parishad, Satara on 28.04.2022.

2. The Chief Executive Officer has constituted Committee consisting the Deputy Chief Executive Officer, the Block Development Officer and the Extension Officer, Panchayat Samitee as per letter dated 04.05.2022

to conduct the enquiry in respect of the contentions raised in the Complaint Application and submit the report.

3. Then after the Committee has conducted the enquiry and submitted Report to the Chief Executive Officer as per letter dated 05.07.2022.

4. After considering the report submitted by the Committee, the Chief Executive Officer has submitted his report dated 30.09.2022 to the Divisional Commissioner, Pune Division, Pune and prima facie come to the conclusion that action u/s. 39(1) of the Maharashtra Village Panchayat Act has to be taken against the Petitioner.

5. After considering the Report submitted by the Chief Executive Officer, the Divisional Commissioner, Pune Division, Pune vide letter dated 12.12.2022 has directed to the Chief Executive Officer, Satara to conduct the enquiry as contemplated u/s. 39(1) of the Maharashtra Village Panchayat Act against the Petitioner i.e. Prakash Dinkar Jadhav, Sarpanch , Tarale, Taluka Patan, District Satara and submit the report.

6. As per above directions, the Deputy Chief Executive Officer has issued notice dated 19.12.2022 to the Petitioner and the Respondent No. 5 to 14 in respect of the personal hearing and called explanation as per section 39(1) of the Maharashtra Village Panchayat Act.

7. On 26.12.2022 and 05.01.2023, all the parties have been appeared before the Chief Executive Officer and after giving opportunity of hearing, the Chief Executive Officer has come to the conclusion with a request to the Divisional Commissioner, Pune Division, Pune to initiate action u/s. 39(1) of Maharashtra Village Panchayat against the Petitioner and submitted Report to the Divisional Commissioner on 10.02.2023.

8. After receipt of the Report of the Chief Executive Officer, The Divisional Commissioner has issued Notice of Hearing dated 19.04.2023, 23.04.2023 and 06.06.2023 to the Petitioner and the Respondent No.5 to 14. After hearing both the parties, the Divisional Commissioner has passed the order dated 16.06.2023 and removed the Petitioner from the post of Sarpanch and Member of Grampanchayat Tarale, Taluka Patan, District Satara.

As stated above, the Divisional Commissioner, Pune Division, Pune as per letter dated 12.12.2022, has directed to CEO to conduct the enquiry as contemplated u/s. 39(1) of the Maharashtra Village Panchayat Act against the Petitioner and the same has been conducted by the Chief Executive Officer himself after giving opportunity of hearing to all the parties and submitted Report to the Divisional Commissioner, Pune Division, Pune.

Considering the above said facts and circumstances, the enquiry has been conducted by the Chief Executive Officer, Satara.

89. Thus, it is clear that in all these Writ Petitions the Commissioner/Chief Executive Officer have acted contrary to the scheme contemplated under Section 39(1)(i) of the MVP Act. The said aspect is already elaborately discussed. Thus, all the Orders passed in these proceedings by the Commissioner as well as all the Orders passed by the Hon'ble Minister which are subject matter of all these Writ Petitions are quashed and set aside.

90. However, it is to be noted that the allegations made in the Application/Complaint are regarding misconduct etc. as contemplated under Section 39(1)(i) of the MVP Act and are made against the Sarpanch. Therefore, although the procedure as contemplated under Section 39(1)(i) read with proviso to the same is not followed in the proceedings which are subject matter of all these Writ Petitions, and as a consequence of the same Orders passed in these proceedings which are subject matter of these Writ Petitions are quashed and set aside, it is necessary that the respective Applications/Complaints are required to be remanded back to the respective Divisional Commissioners and accordingly the same are remanded back. The respective Divisional Commissioners to proceed with the Applications/Complaints in question strictly in compliance with Section 39(1)(i) read with the proviso to the same of the MVP Act by directing the Chief Executive Officer to conduct the inquiry personally. The respective Chief Executive Officers to conduct the inquiry expeditiously and submit the report to the Divisional Commissioner. The respective Divisional Commissioners to take decision and ensure that the proceedings filed under Section 39(1)(i) are concluded expeditiously and in any case on or before 31st October 2024.

91. It is clarified that all contentions on merits in all these Writ Petitions, except as decided by this Judgment, are expressly kept open.

92. Accordingly, the Writ Petitions are disposed of in above terms with no order as to costs.

BHALCHANDRA
GOPAL DUSANE

[MADHAV J. JAMDAR, J.]

Digitally signed by
BHALCHANDRA
GOPAL DUSANE
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