

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.16859 OF 2024

Somnath Dattatraya Kanse

... Petitioner.

Versus

Divisional Commissioner Pune

Division Pune Throu. Govt Pleader and Ors.

... Respondents.

Mr. Anil Anturkar, Senior Advocate (through VC) a/w Mr. Kashish Chelani and Mr. Tanaji Mhatugade for Petitioner.

Mr. Datta Pawar for Respondent Nos.3, 5 and 6.

Mr. Mohan Tekavde, Ms. Swati Tekavde, Ms. Reha Jaiswal and Ms. Kajol Mhatre i/b ADI Legal for Respondent No.4.

Ms. M. S. Bane, AGP for Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : December 14, 2024

P. C.:

1. The present Petition has been filed challenging the order of the Divisional Commissioner dated 30th October, 2024 passed in exercise of powers under Section 39 of the Maharashtra Village Panchayats Act, 1958 [**"Village Panchayats Act"**] removing the Petitioner who was the Sarpanch. Mr. Anturkar, learned Senior Advocate appearing for the Petitioner would fairly submit that against the order of the Additional Commissioner, there is no remedy of an Appeal before the Hon'ble Minister, however, considering that the Cabinet has not yet been formed instead of filing an Appeal, the present petition has been filed. He would further submit that as the Appellate remedy is available, the impugned order be stayed till the formation of the Cabinet.

2. He would further point out on the merits of the matter that the removal is for the reason that the required quorum of 100 people for holding Gram Sabha meeting was not present and only 97 people were present. He submits that the other ground on which Section 39 has been invoked is that the funds were not expended and the explanation which has been tendered by the Petitioner would show that for the past two years, there is no pending development work and the funds have been utilised for the purpose of the various development work. He submits that the said allegation of is the year 2022-2023 and the holding of the Gram Sabha Meeting is of the year 2022. He would submit that an elected Sarpanch cannot be removed in such a manner under Section 39 of the Village Panchayats Act, as the reasons for removal do not fall within the purview of Section 39 of the Village Panchayats Act. He submits that the order of the Commissioner does not clarify whether the removal is on the ground of misconduct or disgraceful conduct or negligent or incapacity to perform the duties and therefore the invocation of the said Section itself is doubtful.

3. Learned counsel appearing for the Respondent No.4 would submit that the present Petition came to be filed as pleaded in the Petition in view of the Code of Conduct before the elections of the Vidhan Sabha. He submits that subsequently, the elections have been conducted and the matter can be taken up by the Principal Secretary

till the Cabinet is formed. He submits that without filing an Appeal, the present proceedings have been initiated before this Court.

4. Learned counsel appearing for the Respondent Nos.3,5 and 6 would support the Respondent No.4 and would submit that the remedy lies before the Appellate Authority.

5. Learned AGP, on instructions, submits that the appeal can be heard by Principal Secretary, if the same is filed and in event, the Cabinet is formed then the Hon'ble Minister will hear the same.

6. Learned counsel for petitioner submits that within a period of two weeks from today, the appeal will be filed.

7. Considering that due to elections of Vidhan Sabha, the Appeal even if filed could not have been heard by the Hon'ble Minister, the present Petition has been filed. The submissions advanced by the parties would indicate that the parties are agreeable to have the matter adjudicated by Appellate Authority. I am not inclined to make any observations on merits of the matter, however, considering that a duly elected Sarpanch, is sought to be removed, for a period of three weeks, the order of 30th October, 2024 is stayed. Thereafter, the Petitioner to move the Appellate authority for seeking extension of order. Petition stands disposed of in the above terms.

[Sharmila U. Deshmukh, J.]