



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 8012 of 2023

Smt. Ratnamala Vilas Selote,
aged about 46 years, Occ. Sarpanch
R/o. Gram Panchayat Wasada,
Tah. Armori, Dist. Gadchiroli.

.... Petitioner

VERSUS

- (1) State of Maharashtra,
Rural Development and water recourse
Department, Government of
Maharashtra, Mantralaya, Mumbai,
Through its Minister/Secretary.
- (2) The Additional Commissioner,
Commissioner Office compound,
Civil Lines, Nagpur.
- (3) The Zilla Parishad Gadchiroli
Through its Chief Executive Officer,
Zilla Parishad Compound,
Civil Lines, Gadchiroli.
- (4) The Block Development Officer,
Panchayat Samiti Compound,
Panchayat Samiti, Armori,
Tah. Armori, Distt. Gadchiroli.

Respondent
no. 5 added
as per
Court's
order dtd.
4-12-2023

- (5) Sau. Ujwala Ganesh Mangre,
Aged about 30 years,
Up-Sarpanch, Gram
Panchayat Wasada,
R/o. Wasada, Tah. Armori,
District - Gadchiroli.

.... Respondents

Mr. B. S. Dhandale, Advocate for the petitioner
Ms. S. N. Thakur, AGP for respondent nos. 1 and 2
Mr. S. R. Agrawal, Advocate for respondent nos. 3 and 4
Mr. V. N. Morande, Advocate for respondent no. 5

CORAM : ANIL L. PANSARE J.

DATED : 05-08-2024

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard finally with consent of learned counsel appearing for the parties.

2. The petitioner – Sarpanch of Gram Panchayat, Wasada, Tahsil Armori, District Gadchiroli has been removed from the office in terms of Section 39(1) of the Maharashtra Village Panchayats Act, 1958 (for short ‘the Act of 1958’).

3. Having heard both sides and having gone through the record, it transpires that the respondent no. 3 - Chief Executive Officer (CEO), Zilla Parishad, Gadchiroli received an inquiry report dated 4-10-2021. The inquiry was conducted by the Block Development Officer. The CEO accordingly issued a request letter dated 1-11-2021 in favour of the Divisional Commissioner, Nagpur stating therein that the inquiry report is so received and for conducting necessary inquiry in terms of Section 39(1) of the Act of 1958, the proposal is being sent seeking permission to conduct such inquiry. Thus, the CEO has sought permission to conduct inquiry under Section 39(1) of the Act of 1958.

4. The Additional Commissioner vide letter dated 7-12-2021 has granted such permission only upon the request so made by the CEO. The letter does not disclose application of mind either to the complaint made or to the report submitted by the Block Development Officer to the CEO or to the record placed before the Additional Commissioner, Nagpur. The CEO then filed report, which was blindly relied upon by the Additional Commissioner to remove the petitioner vide order dated 31-1-2023. This order has been upheld by the respondent no. 1 – Minister without applying mind to the provisions of the Act of 1958.

5. The question before the Court is whether the procedure so adopted by the CEO, Zilla Parishad, Gadchiroli and Additional Commissioner, Nagpur was in tune with the provisions of the Act of 1958. The answer finds place in the judgment passed by the coordinate Bench of this Court in the case of ***Jagdish Mannalalji Sancheriya Vs. The State of Maharashtra and ors. [2023(1) Mh.L.J. 196]*** which is relied upon by the learned counsel appearing for the petitioner. The relevant portion of the judgment read as under.

“19. A bare reading of the above quoted provisions shows that the role of the CEO is specified in the proviso to Section 39(1) of the Act, which mandates that the CEO shall hold an enquiry under the orders of the respondent No.2 – Additional Commissioner, when the Commissioner considers the question of removal of Sarpanch, Upa-Sarpanch or Member of the Gram

Panchayat from the elected Office. The role of the CEO starts upon a specific order of the Commissioner, who intends to remove a Sarpanch, Upa-Sarpanch or Member from the elected Office. Thus, under the statutory scheme, the CEO is expected to act as an authority which conducts an independent enquiry into the matters that may be referred by the Commissioner in the context of the question of removal of a Sarpanch, Upa-Sarpanch or a Member of the Gram Panchayat.

20. *But, in the present case, the respondent No.3 – CEO himself approached the respondent No.2 - Additional Commissioner as an applicant/complainant and sought permission to hold an enquiry against the petitioner for removal from the elected office of Sarpanch. In the said communication dated 20.07.2020, the respondent No.3 – CEO himself stated that prima facie he was convinced that a case was made out against the petitioner. No doubt, the respondent No.3 – CEO referred to the grievances raised by the respondent Nos.5 and 6, but the tenor of the communication sent by the respondent No.3 – CEO to the Commissioner clearly indicated that the CEO had already reached a prima facie conclusion that the petitioner was liable to be removed under section 39(1) of the said Act.*

21. *It is in response to the said communication sent by the respondent No.3 – CEO that the Commissioner, on 07.08.2020, passed the order directing the CEO to conduct the enquiry. A perusal of the said order shows that the respondent no.2-Commissioner simply stated that since the CEO had asked permission to conduct enquiry, it was being ordered that such an enquiry shall be conducted. The order does not show any application of mind on the part of the respondent no. 2 - Commissioner about existence of circumstances for initiation of such an enquiry against the petitioner. The direction to conduct the enquiry was to the very same CEO, who as an applicant/complaint, had approached the Commissioner for removal of the petitioner under Section 39(1) of the said Act.*

22. *This Court is of the opinion that such a procedure was not only flawed and defective, but it was not in strict adherence to the requirements of the above quoted Section 39 of the said Act. As laid down by the Supreme Court in the case of Ravi Bhoir (supra), in cases where elected representatives are sought to be removed from elected Office, all safeguards provided in the statute have to be scrupulously followed and if such safeguards are not observed and an adverse order is passed, such an order can be characterized as having been passed malafide, rendering it liable to be quashed and set aside.*

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24. *In the present case, the respondent No.3 – CEO himself was the applicant/complainant before the Commissioner against the petitioner and the said CEO himself conducted the enquiry in the matter and thereupon, the respondent No.2 – Additional Commissioner relied on the findings rendered in such an enquiry to remove the petitioner from the elected Office of Sarpanch. This Court is of the opinion that such a procedure adopted in the present case suffered from serious procedural flaw, demonstrating that the safeguards provided in Section 39 of the said Act, were not observed and on this ground itself the impugned order passed by the Commissioner was rendered unsustainable and liable to be set aside. The respondent No.1 failed to appreciate that this aspect of the matter while dismissing the appeal filed by the petitioner.*

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40. *The respondent No.2– Additional Commissioner simply referred to the stand taken by the petitioner in brief and then proceeded to render the aforesaid six findings against him. Thereupon, it was concluded that the petitioner was guilty of neglect in performing his duties and on that basis, he was removed from the elected office of Sarpanch. Despite the fact that the petitioner raised detailed grounds of challenge in the appeal filed before the respondent No.1, the said respondent*

simply repeated and concurred with the findings of the respondent No.2 – Additional Commissioner, to dismiss the appeal and to confirm the impugned order removing the petitioner from the elected office of Sarpanch.”

6. The High Court thereafter proceeded to set aside the order passed by the Additional Commissioner not only on the ground of procedural flaws but also on merit.

7. The facts in the present case are identical to the facts in ***Jagdish Mannalalji Sancheriya***'s case. The CEO himself has approached the Additional Commissioner seeking permission to conduct inquiry under Section 39(1) of the Act of 1958. The respondent no. 2 – Additional Commissioner, without applying mind, has obliged the CEO permitting him to proceed with the inquiry. The Additional Commissioner has then blindly relied upon the report of CEO to remove the petitioner. The procedure as laid down under the provisions of the Act of 1958 has been not adhered to at all. The orders impugned, therefore, are not sustainable. The only difference in the case cited and in the present case is that in the case cited, this Court proceeded further to decide the matter on merit whereas in the present case, the parties are not insisting to record finding on merit. Even otherwise, the respondent no. 2 – Additional Commissioner, having not applied his mind to the

material placed before him, it will be appropriate to relegate the matter back to decide it afresh in the light of provisions of law so also the judgment in the case of ***Jagdish Mannalalji Sancheriya*** (supra).

8. Resultantly, writ petition is partly allowed. Orders passed by the respondent no. 1 in Case No. VPM-2023/Pra. Kra.52/Panchayat Raj-6, (Ratnamala Selote Vs. Additional Commissioner, Nagpur and others) dated 21-9-2023 as also the order passed by respondent no. 2 – Additional Commissioner, Nagpur dated 31-1-2023 in Case No. 39(1)/26/2021-22 are quashed and set aside.

9. Case No. 39(1)/26/2021-22 is remanded back to the Respondent no. 2 – Additional Commissioner, Nagpur to decide it afresh in terms of the provisions of the Maharashtra Village Panchayats Act, 1958 and the judgment passed by the coordinate Bench in the case of ***Jagdish Mannalalji Sancheriya*** (supra).

10. Rule is made absolute in aforesaid terms.

(Anil L. Pansare, J.)