



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

WRIT PETITION NO.4321 OF 2024

(Sunita Santosh Rathod .vs. Hon'ble Minister, Rural Development Department, Mantralaya,
Mumbai and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri N.A. Gawande, Advocate for petitioner,
Shri H.R. Dhumale, Assistant Government Pleader for respondent
nos.1, 2, 4 and 5.
Shri A.V. Band, Advocate for respondent no.8.

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CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.
DATE : 23.07.2024.

The petitioner was disqualified under Section 39 (1) of the Maharashtra Village Panchayats Act, 1958 (for short 'Act of 1958') on the basis of an enquiry report submitted by the Chief Executive Officer, Zilla Parishad, Washim.

2. It is the contention of Mr. Gawande, learned Counsel appearing for the petitioner, that the proviso to Section 39 (1) (i) of the Act of 1958 contemplates that the respondent-Commissioner can direct the Chief Executive Officer to conduct an enquiry in case the powers under Section 39 of the Act of 1958 for removal of Sarpanch are to be invoked. He would claim that instead of invocation of the powers by the Commissioner, it was the Chief

Executive Officer, who sought permission from the Divisional Commissioner to conduct an enquiry against the petitioner. He would claim that even if such act is a procedural one, the learned Single Bench of this court in the matter of *Jagdish Mannalalji Sancheriya .vs. State of Maharashtra and others*, reported in *2022 (4) Bom. C.R. 634*, particularly in paragraphs 16 and 17, has observed that such approach on the part of the Chief Executive Officer of the Zilla Parishad goes contrary to the scheme of Section 39 of the Act of 1958. According to him, the act of the Chief Executive Officer of causing an enquiry after voluntarily taking permission from the Divisional Commissioner has caused substantial prejudice to the petitioner.

3. As against above, Shri Dhumale, the learned Assistant Government Pleader for respondent nos.1, 2, 4 and 5 and Shri Band, the learned Counsel appearing for the respondent no.8, would urge that since the appeal of the petitioner is pending before the State Government, hearing of which is expedited, this Court should not invoke extra-ordinary jurisdiction.

4. We have considered the submissions.

5. Rightly so pointed out, *prima facie*, we are of the view that the Chief Executive Officer in the case in hand has sought permission of the Divisional Commissioner to conduct an enquiry, which procedure is not contemplated under the provisions of Section 39 of the Act of 1958.

6. This Court has already held in the aforesaid judgment of **Jagdish Mannalalji** (cited supra) that such act of the Chief Executive Officer so also the respondent-Commissioner causes prejudice to the parties like the petitioner.

7. In that view of the matter, we are of the view that there is a strong case in favour of the petitioner and possibility of her getting succeeded before the State Government cannot be ruled out. That being so, we dispose of the petition by directing that till the appeal is decided by the Minister and two weeks thereafter, the election on the post of the Sarpanch of Village Panchayat be not conducted.

8. Steno copy is allowed.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)