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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

902 CRIMINAL WRIT PETITION NO. 635 OF 2023

MOHAN LAXMAN BHANDARE

....Petitioner

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

.....Respondent

WITH

**CRIMINAL APPLICATION NO. 2302 OF 2023
IN WP/635/2023**

Mr. S. S. Shinde, Advocate for the petitioner

Mr. G. A. Kulkarni, APP for the respondents/State

**CORAM : SMT. VIBHA KANKANWADI &
HITEN S. VENEGAVKAR, JJ.**

DATE : 10th SEPTEMBER, 2025

P. C.

1. The present petition has been filed invoking the constitutional power of this court under Article 226 of the Constitution of India to challenge a letter dated 06-04-2023 issued by the Chief Executive Officer, Zilla Parishad, Latur to the Superintendent of Police, Anti Corruption Bureau, Nanded Region, Nanded thereby authorizing him or permitting him to hold an enquiry as contemplated under Section 17-A of the

Prevention of Corruption Act, 1988 (Hereinafter referred to as 'P. C. Act').

2. Heard the learned advocates for the parties.

3. The learned advocate appearing for the petitioner has submitted that one Bhagwat Fulchand Bondge, r/o Aurad, Shahajani, Tq. Nilanga, Dist. Latur an enquiry was conducted which is alleged to be in respect of corruption that had been committed by then Sarpanch and village Development Officer between 2001 to 2010. Without perusal of the said report that was then submitted impugned order or letter appears to have been issued. Perusal of the said report would show that the present petitioner who was Sarpanch for some period was not involved, rather, it shows that the Sarpanch and the Village Development Officer was not guilty in respect of various articles those were purchased and funds those were disbursed in respect of the Grampanchayat. They found that in the log book as well as other record those have been kept in respect of consumption

of fuel and repairs of the Grampanchayat's vehicle, entries have been taken from 2001-2002 to 2009-2010. Likewise in almost all the headings under which expenses shown to have been incurred the entries were found. The Block Development Officer appears to have been helped for some reason but as against the petitioner there is absolutely no finding that he has committed any corruption or indulged in any corrupt practice. Said Bhagwat had filed a criminal writ petition No.232 of 2022 before this court and by order dated 27-07-2023, the statement was made that ACB officials are making inquiry and the matter would be taken to the logical end. Said petition was then disposed off. Prior to that in the same matter, the order was passed on 29-03-2023 stating that the learned APP sought time that in spite of communication there was no response from the State Government. The court said that if the learned APP is unable to make statement touching the merits of the matter, then respondent No. 1 shall be asked to remain present personally. Thereafter, it appears that Section Officer from Village Development Department by letter dated 03-04-2023

directing him to grant permission under Section 17-A of the P. C. Act. Similar directions appears to have been issued to learned Deputy Commissioner (Development), Divisional Commissioner Office, Aurangabad Division, Aurangabad by letter dated 12-04-2023 and as a result of which it appears that on 06-04-2023 that impugned letter was issued. There was absolutely no application of mind by Chief Executive Officer, Zilla Parishad, Latur. In the inquiry the petitioner was held to be not responsible, then it would be unjust to ask the petitioner to face further procedure. Said letter deserves to be quashed and set aside.

4. Learned APP appearing for respondent Nos. 1 to 3 submitted that it is not the case that under pressurize the CEO has taken these steps. Though the preliminary inquiry has been made, it will have to be read in toto and it has been then stated that certain amounts have been taken as spent on items like Gramvikas Nidhi. Year-wise entries have been checked and they are reflected in the report. The period, in which, the present petitioner was Sarpanch has been also given and it can be seen

that almost from 01-04-2001 till 31-03-2010 he was a Sarpanch. Conclusion has been given by the Enquiry Officer from para No. 1 to 6 and then opinion has been given. In the opinion, it might not be stated that Sarpanch is also responsible. However, when each and every fact has been taken in para Nos. 1 to 6 it has been mentioned that Sarpanch and the then Gramsevak were responsible. Under such circumstance, open enquiry has been ordered and it would be taken to the logical end. For that purpose permission has been granted. No fault can be found in the communication dated 06-04-2023.

5. The present foremost fact when it requires to be noted is that whether authority who had issued letter dated 06-04-2023, whether had authority to grant previous approval as contemplated under Section 17-A of the P. C. Act for that purpose, we would like to reproduce the relevant portion of section 17-A of the P. C. Act which reads as under:

“No police Officer shall conduct any enquiry or inquiry or investigation into any offence

alleged to have been committed by a public servant under this Act, where the alleged offence relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without previous approval.

*a] ****

*b] ****

c] In the case of any other persons, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed.

*“*****”*

Provided further that concerned authority shall convey its decision under this section within a period of three months, which may for reasons to be recorded in writing by such authority, be extended by a further period of one month.”

6. That means what is contemplated as regards a

Sarpanch is concerned, that such previous approval should be granted by the authority competent to remove him from his office at the time, when offence alleged to have been committed.

7. After considering the provisions, we adjourned the matter for today for submission of the parties especially the learned APP to show that the CEO, Zilla Parishad, Latur is the authority to grant previous approval as contemplated under Section 17-A (c) of the P. C. Act.

8. Learned advocate for the petitioner points out section 39 of the Maharashtra Village Panchayats Act which runs thus:

“39-A- Power of Government to direct inquiry.

(1) Notwithstanding anything contained in section 39, the State Government may, suo motu or on 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.”

9. He submits that the learned Commissioner has authority to remove a Sarpanch and as per proviso, the CEO is empowered to hold an inquiry after giving notice to the concerned persons. No such activity appears to have been

undertaken in this case. Even if for the sake of argument, it is stated that there was an inquiry, yet in the letter dated 06-04-2023, there is absolutely no mention further CEO cannot be said to be a authority who can remove a Sarpanch, only the learned Commissioner is has the authority and therefore, on this count, the said letter deserves to be quashed and set aside.

10. Learned APP then points out section 16 M. V. P. Act . He submits that CEO has exercised same powers upon letter dated 03-04-2023 by the Village Development Officer. When the Government has directed, said approval has been granted. Inquiry was also held by the BDO (Class-1) Panchayat Samiti, Nilanga and has submitted report. Report shows that there are irregularities amounting to corruption and it was going on since 2001. It is, necessary therefore, to have a detail inquiry through the ACB.

11. We have considered section 39 as well as 39-A of the Maharashtra Village Panchayats Act. Section 39-A M. V. P. Act

prescribes about the powers of the Government to direct the inquiry and it starts with non-obstinate clause in respect of section 39 M. V. P. Act that means, it is also an independent powers of the government to be exercised either suo-motu on an application to take it against any member, Sarpanch or Up-sarpanch regarding any act of omission specified in sub-section 1 of section 39 M. V. P. Act. The Government can direct CEO to hold an inquiry against such persons and then report is required to be submitted within a month to the learned Commissioner. The letter dated 03-04-2023, is on record. Perusal of the same would show that there is straightway direction to the CEO to grant approval under Section 17-A of the PC Act. It is then stated that since the complaint-application by the said Bhagwat raises point of corruption that approval should be granted. This letter cannot be by any stretch of imagination considered under Section 13-A(1) of the Maharashtra Village Panchayats Act that power to direct CEO to hold an inquiry is reflected in respect of act or omission specified in sub-section 1 of section 39 M. V. P. Act and then after an inquiry, report has to be submitted to the

learned Commissioner. Sub-section 2 of section 39-A of the Mahareashtra Village Panchayats Act provides that the learned Commissioner shall after giving a reasonable opportunity of being heard to the Panchayat and concerned persons take a decision within a period of one month on the inquiry report. Sub-section 3 of Section 39-A M. V. P. Act then gives remedy to the persons aggrieved to file an appeal to the State Government challenging the decision / order of the learned Commissioner. Here, in the present case, learned Commissioner is not at all coming in picture. Further, if we considered letter dated 12-04-2023 by Section Officer, Village Development Departmental to Deputy Commissioner (Development), the learned Divisional Commissioner Office, Aurangabad Division, it can be seen that it refers to letter dated 03-04-2023, given to the Chief Executive Officer for grant of approval under Section 17-A of the P. C. Act. Conjoint reading of section 39 and 39-A of the Maharashtra Village Panchayats Act would make it clear that the power to remove a Sarpanch is with the learned Commissioner and not with the CEO. When the letter dated 06-04-2023 is issued by the

officer who is not competent as contemplated under Section 17-A of the PC Act, said order deserves to be quashed and set aside. Therefore, we proceed to allow the criminal writ petition.

12. In view of above, the criminal writ petition stands allowed in terms of prayer clause-B.

13. In view of disposal of the criminal writ petition, pending criminal application does not survive and stand disposed off.

[HITEN S. VENEGAVKAR, J.] [SMT. VIBHA KANKANWADI, J.]