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PSV/VSA

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3729 OF 2024

Ramesh Vasantrao Patil ...Petitioner

Vs.

1. The State of Maharashtra
2. The Additional Divisional Commissioner
3. The District Collector, Sangli
4. Bhanudas Yashwant Mote
5. Prakash Vilas Patil
6. Satish Manohar Gondkar ...Respondents

Mr. Pramod Patil with Mr. Shyamsunder Solanke i/b. PNP & Associates for Petitioner.
Ms. Savita Prabhune, AGP for State/Respondent Nos.1 to 3.
Mr. Vishal Kanade with Ms. Janhvi Joshi i/b. Mr. Bhalchandra Mote for Respondent No.4.

CORAM: G. S. KULKARNI &
ARIF S. DOCTOR, JJ.
DATE: 16 JULY 2025.

Oral Judgment (Per G. S. Kulkarni, J.) :-

1. This petition under Article 226 of the Constitution of India challenges an order dated 21 February 2024 passed by the Additional Divisional Commissioner (respondent no.2) being the appellate authority, upholding the disqualification of the petitioner as a member of the Gram Panchayat, Tandulwadi, Taluka – Walwa, District – Sangli under the provisions of Section 14(1)(d) of the Maharashtra Village Panchayats Act, 1959 (for short, "**Panchayats Act**").

2. The facts lie in a narrow compass:- It is the petitioner's case that prior to elections in question, general elections of the Village Panchayat were held on 16

October 2017 for a five year term till 15 October 2022. The petitioner in such election was elected as a member of the village panchayat and later on as a Sarpanch. In relation to this election, on 18 August 2020, a complaint came to be filed by respondent no.4/Bhanudas Yashwant Mote, before respondent no.2 seeking removal of the petitioner, and some other members of the Village Panchayat under Section 39(1)[1] of the Panchayats Act. This complaint was adjudicated by respondent no.2 by an order dated 06 December 2021, whereunder the petitioner was removed from the post of Sarpanch of Village Panchayat. The said removal order was challenged by the petitioner by approaching the Hon'ble Minister for Rural Development and Panchayat Raj, Maharashtra State (appellate authority) in an appeal filed under Section 39(3) of the Panchayats Act. By an order dated 23 February 2022, the Hon'ble Minister set aside the removal of the petitioner. Respondent no.4 (complainant) challenged the said order passed by the Hon'ble Minister before this Court in the proceedings of Writ Petition No. 5222 of 2022. In the proceedings of the said writ petition, learned Single Judge passed an order dated 05 September 2022, whereby the writ petition was admitted and an interim relief in terms of prayer clause (b) of the said petition was granted. By virtue of the interim order, the relief which was granted to the petitioner by the Hon'ble Minister (appellate authority) in his appeal against removal as a member of the village panchayat, was stayed.

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1 Section 39 – Removal from office

3. In such situation of a removal of an elected member of the Gram Panchayat under Section 39(1), a disqualification under Section 14(1)(d) of the Panchayats Act automatically kicks in. Section 14(1)(d) *inter alia* provides that such member of the Panchayat cannot continue as a member till a period of 6 years has not elapsed from the date of such removal, unless by an order of the State Government notified in the Official Gazette, the candidate has been relieved from disqualification arising on account of such removal from the office.

4. It may be observed that the stay orders passed by the learned Single Judge of this Court, in the nature of interim relief, cannot be said that it would have no legal effect. This in as much as, although the appellate authority passed the order dated 23 February 2022 setting aside removal of the petitioner as a member of the Gram Panchayat, such order being stayed by the High Court by an order dated 05 September 2022 in the writ petition filed by respondent no.4, it certainly brought about legal consequences of a disqualification under Section 14(1)(d) of the Panchayats Act taking effect. The petitioner in such situation ought to have applied in the proceedings of the said writ petition for vacating of the stay orders passed by the learned Single Judge, however, the petitioner accepted and/or acquiesced in such interim orders, which had a legal effect not only qua the balance term of the said election (2017-2022), but also by virtue of Section 14(1)(d) of a disqualification even in regard to the subsequent election considering period of disqualification Section 14(1)(d) prescribes. This is exactly what has happened in regard to the petitioner's subsequent election. As despite the aforesaid clear legal position, the petitioner again contested in the subsequent

elections of the Gram Panchayat held in November-December 2022, and was elected.

5. It is in the aforesaid circumstances, on the ground that the petitioner had in fact suffered a disqualification under Section 14(1)(d) to contest the said elections, respondent nos.4 and 5 filed a complaint against the petitioner before the Collector, District-Sangli (respondent no.3) seeking disqualification of the petitioner as a member of the Village Panchayat under Section 14(1)(d) of the Panchayats Act.

6. The Collector (respondent no.3) adjudicated such complaint by an order dated 19 May 2023 whereby the Collector rejected the complaint filed by respondent nos.4 and 5. Against such order passed by the Collector, respondent nos.4 and 5 preferred an appeal before the Additional Commissioner (appellate authority). The appellate authority by the impugned judgment and order dated 21 February 2024 *inter alia* allowed respondent no.4's appeal by declaring that the petitioner was disqualified under Section 14(1)(d) of the Panchayats Act as he was removed during the previous term under Section 39(1). It was held that by applicability of Section 14(1)(d), the period of 6 years having not lapsed from the date of such removal (06 December 2021) the petitioner being disqualified to contest the said election, was the case of respondent no.4.

Submission :-

7. Mr. Patil, learned counsel for the petitioner has limited submissions. He submits that applicability of Section 14(1)(d) in the present facts was totally

uncalled for. The reason being that the petitioner suffered an order passed under Section 39(1) of removal for the remainder of the term and there was no order passed against the petitioner disqualifying him from becoming a member of the Panchayat for 6 years under Section 39(2) of the Panchayats Act. It is submitted that the interpretation of Section 14(1)(d) needs to be made in the context of sub-sections (1), (1A), (2) of Section 39 of the Panchayats Act. To support his contention that in the event during the previous term, a member of the Village panchayat was removed only for the remainder of the term, under the provisions of Section 39(1) and when no separate order was passed disqualifying such person for a period of 6 years under Section 39(2), there was no question of the petitioner suffering any disqualification under Section 14(1)(d) in relation to a subsequent election. It is submitted that if such interpretation is not accepted, Section 14(1)(d) would render itself contrary to the provisions of Section 39(1), (1A) and 39(2) of the Panchayats Act and/or the said provisions become contradictory to each other.

8. Mr. Patil submits that an interpretation of the said provision as sought to be made in the impugned order, would render Section 14(1)(d) unconstitutional and violative of Article 14 of the Constitution. This more particularly as Section 39(2) provides that a separate order would be required to be passed by the Commissioner for disqualifying the person, for a further period of 6 years and such order can be challenged independently by the person aggrieved by such order, by taking recourse to the provisions of Section 39(3) of the Panchayats Act. It is submitted that it is for such reason, reading of Section 14(1)(d) with Section

39(1) would lead to absurd consequences.

9. Mr. Patil has also made a very peculiar submission namely that the order dated 05 September 2022 passed by the learned Single Judge needs to be held to be illegal, invalid and a nullity, hence, the same ought not to be given effect to for the reason that under Chapter XVII Rule 18(3) of the Bombay High Court Appellate Side Rules, the learned Single Judge had no jurisdiction to entertain a writ petition involving an issue under the provisions of the Panchayats Act as held by the Division Bench of this Court in **Shivaji Laxman Wadkar vs. Election Returning Officer, Grampanchayat Velu & Ors.**[2]. Mr. Patil submits that the petition accordingly needs to be allowed.

10. On the other hand, Mr. Kanade, learned counsel for respondent no.4 (complainant) in supporting the impugned order, submits that the impugned order disqualifying the petitioner under Section 14(1)(d) of the Panchayats Act is legal and valid, as it is not in dispute that by an order dated 06 December 2021 passed by the appellate authority the petitioner was removed from the post of Sarpanch under Section 39(1). He submits that although the petitioner had succeeded before the appellate authority, learned Single Judge of this Court in the proceedings of Writ Petition No.5222 of 2022 by an order dated 05 September 2022 stayed the orders passed by the appellate authority and therefore, it was not a situation that the disqualification of the petitioner had ceased to operate, as the interim order passed by the learned Single Judge has remained valid and subsisting and the said writ petition is pending adjudication. Mr. Kanade would

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further submit that although the petitioner had the remedy against the order dated 05 September 2022 passed by the learned Single Judge of this Court, he did not challenge the same and contested the next election which was held in the month of November-December 2022 and on such backdrop, the petitioner has been rightly held to be disqualified by the impugned order, having incurred disqualification for 6 years from the date of his removal under Section 14(1)(d) of the Panchayats Act, which is yet to get over.

11. Mr. Kanade would next submit that the contention as urged on behalf of the petitioner that the order dated 05 September 2022 passed by the learned Single Judge in Writ Petition No. 5222 of 2022 is required to be held to be illegal and a nullity is wholly untenable, as the decision of the Division Bench as relied on behalf of the petitioner in **Shivaji Laxman Wadkar vs. Election Returning Officer, Grampanchayat Velu & Ors.** (supra) as the said decision has been held to be per *incuriam* in the decision of the Full Bench of this Court in the case of **Magnum Opus IT Consulting Pvt. Ltd., Pune vs. Artcad Systems, Nashik**[3].

12. Mr. Kanade further submits that the petitioner's contention that Section 14(1)(d) read with Section 39(1) of the Panchayats Act is invalid, is also untenable as no averments are made in the petition making out any ground whatsoever that the petitioner's rights are violated under part III of the Constitution. Mr. Kanade would next submit that the petitioner's assertion is insufficient to establish arbitrariness of Section 39(1), *vis-a-vis* 39(1A) and

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39(2), Section 14(1)(d) as these provisions operate independently. It is also his submission that Section 14(1)(d) governs a different area, as the said provision deals with the members who are removed from the office on being found guilty under Section 39(1) of the Panchayats Act. He accordingly prays that the petition be dismissed.

Analysis :-

13. We have heard learned counsel for the parties. With their assistance, we have perused the record as also relevant provisions of the Act.

14. The questions which fall for consideration in the present proceedings; **firstly** whether the impugned order correctly disqualifies the petitioner as a member of the Village Panchayat under Section 14(1)(d) of the Panchayats Act; **secondly** whether in the facts and circumstances of the case, by virtue of the petitioner's removal as a Sarpanch/member of the Village Panchayat under order dated 06 December 2021 passed by the appellate authority, the petitioner suffered disqualification under Section 14(1)(d) of the Panchayats Act, albeit his subsequent election; **thirdly** what is the effect of the interim order dated 05 September 2022 passed by this Court, which stays the operation of the order passed by the Hon'ble Minister allowing petitioner's appeal against his removal in the proceedings of writ petition filed by respondent no.4 and whether the petitioner would be correct that he does not suffer a removal and a consequent disqualification.

15. At the outset we may observe that the right to get elected and hold a

elected post is governed by a statute and the edifice of such rights of a candidate to get elected and continue on the elected post is a creature of a statute, which is in the realm of statutory rights.

16. To appreciate the rival contentions, at the outset, we are required to note the relevant provisions of the Panchayats Act namely Sections 14 and 39 as relied on behalf of the parties. The said provisions read thus:-

> "Section14. [(1)] No person shall be a member of a panchayat, or continue as such, who—
> (a) has, whether before or after the commencement of this Act, been convicted—
> (i) of an offence under the Untouchability (Offences) Act, 1955, or under the Bombay Prohibition Act, 1949 or any law corresponding thereto in force in any part of the State, unless a period of five years, or such lesser period as the State Government may allow in any particular case, has elapsed since his conviction, or
> (ii) of any other offence and been sentenced to imprisonment for not less than six months, unless a period of five years, or such lesser period as the State Government may allow in any particular case, has elapsed since his release ; or
> [(a-1) has been disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the Maharashtra State :
> Provided that, no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years];
> (b) has been adjudged by a Competent Court to be of unsound mind ;
> (c) has been adjudicated an insolvent and has not obtained his discharge ; or
> [(c-1) having held any office under any Government or local authority, has whether before or after the commencement of this Act, been dismissed for misconduct, unless a period of five years has elapsed since his dismissal ; or]
> (d) has been removed from office under sub-section (1) of section 39 and a period of five years has not elapsed from the date of such removal, unless he has, by an order of the State Government notified in the Official Gazette, been relieved from the disqualification arising on account of such removal from office ; or
> (e) has been disqualified from holding office under sub-section (2) of section 39 and the period for which he was so disqualified has not elapsed ; or
> (f) holds any salaried office or place of profit in the gift or disposal of the Panchayat, while holding such office or place ; or
> (g) has directly or indirectly, by himself or his partner, any share or interest in any work done by order of the panchayat, or in any contract

with, by or on behalf of, or employment with or under, the panchayat ; or

(h) fails to pay any tax or fee due to the panchayat 1[or the Zilla Parishad within three months from the date on which the amount of such tax or fee is demanded, and a bill for the purpose is duly served on him ; or]

(h-1) fails to pay the amount of surcharge or charge under section 140 or the amount ordered to be paid under section 178 together with interest, if any, within the period provided in that behalf, and where an appeal has been made, then within one month from the date of receipt of the decision rejecting such appeal ;]

(i) is a servant of the Government or a servant of any local authority ; or

(j) has voluntarily acquired the citizenship of a Foreign State, or is under any acknowledgement of allegiance or adherence to a Foreign State ; or

(j-1) has more than two children :

Provided that, a person having more than two children on the date of commencement of the Bombay Village Panchayats and the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) Act, 1995 (hereinafter in this clause referred to as "the date of such commencement"), shall not be disqualified under this clause so long as the number of children he had on the date of such commencement does not increase :

Provided further that, a child or more than one child born in a single delivery within the period of one year from the date of such commencement shall not be taken into consideration for the purpose of disqualification mentioned in this clause ; or]

(j-2) has been elected as a Councillor of the Zilla Parishad or as a member of the Panchayat Samiti ; or]

(j-3) has encroached upon the Government land or public property; or]

(j-4) has been disqualified by the State Election Commission under section 14 B; or]

(j-5) fails to submit a certificate of the concerned panchayat, alongwith the resolution of the Gram Sabha certifying that,—

(i) he resides in a house owned by him and has a toilet in such houseand he regularly uses such toilet ; or

(ii) he resides in a house not owned by him and has a toilet in such house and he regularly uses it or he has no such toilet but regularly uses the public toilet :]

Provided that, no member of a panchayat shall be disqualified under this clause, if he submits such certificate to the Block Development Officer, within a period of one year from the 10th January 2011, being the date of commencement of the Bombay Village Panchayats and Maharashtra Zilla Parishads and Panchayat Samitis (Second Amendment) Act, 2010

Provided further that, nothing contained in this clause shall affect the member holding office on the 10th January 2011, who has not submitted the certificate within a period of ninety days from the said date, as required under the provisions of this Act, as amended by the Bombay Village Panchayats and Maharashtra Zilla Parishads and Panchayat Samitis (Second Amendment) Act, 2010; and he shall not be deemed to be disqualified and shall continue to hold his office for a

period of one year from the said date, unless he is disqualified under any other provisions of this Act or any other law for the time being in force; or]

(k) is disqualified under any other provisions of this Act, and the period for which he was so disqualified has not elapsed.

Explanation 1.—A person shall not, by reason only of his being a shareholder in or a member of, any incorporated or registered company or a co-operative society registered under any law for the time being in force in the [State of Maharashtra] be held to be interested in any contract entered into between the company or co-operative society and the panchayat.

[Explanation 1A.—A person shall not be disqualified under clause (g) by reason only of such person,—

(i) having a share or a interest in any newspaper in which any advertisement relating to the affairs of the panchayat is inserted ; or

(ii) having a share or a interest in the occasional sale to the panchayat of any article in which he regularly trades, or in the purchase from the panchayat of any article, of a value in either case not exceeding in any financial year two hundred rupees ; or

(iii) having a share or interest in the occasional letting out on hire to the panchayat or in the hiring from the panchayat of any article for an amount not exceeding in any financial year twenty-five rupees or such higher amount not exceeding one hundred rupees, as the panchayat, with the sanction of the Collector may fix in this behalf ; or

(iv) having any share or interest in any lease for a period not exceeding ten years, of any immovable property or in agreement for the same; and before such lease or agreeement is executed, the Block Development Officer certifies that no other suitable premises were available to the panchayat on lease.]

Explanation 2.—For the purpose of clause (h)—

(i) a person shall not be deemed to be disqualified if he has paid the amount of any tax or fee due, prior to the day prescribed for the nomination of candidates ;

(ii) failure to pay any tax or fee due to the panchayat by a member of an undivided Hindu family, or by a person belonging to a group or unit the members of which are by custom joint in estate or residence, shall be deemed to disqualify all members of such undivided Hindu family or as the case may be all the members of such group or unit.

Explanation 3.—For the purposes of clause (i), a Police— patil appointed under section 5 of the Maharashtra Village Police Act, 1967, shall be deemed to be a servant of Government.

Explanation 4.—For the purposes of clause (g), a person shall not be deemed to have any share or interest in any employment by reason only of any relation of his being employed with or under a panchayat, as an officer or servant thereof.]

Explanation 5.—for the purpose of clause (j-1),—

(i) where a couple has only one child on or after the date of such commencement, any number of children born out of a single subsequent delivery shall be deemed to be one entity ;

(ii) "child " does not include an adopted child or children.]

Section 39. 1[(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 (1A) 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.]

(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 Commissioner may subject to like condition disqualify for a period of not exceeding five years, any person who has resigned 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.]

[39A. (1) Notwithstanding anything contained in section 39, the State Government may, suo motu or on an appliction 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 supplied)

17. On a bare reading of the provisions of Section 14(1)(d) (supra), providing for 'Disqualification', it clearly ordains that no person shall be a member of a panchayat, or continue as such if such person has been removed from the office under sub-section (1) of section 39, and a period of six years has not elapsed from the date of such removal, unless he has, by an order of the State Government notified in the Official Gazette, been relieved from the disqualification arising on account of such removal from office. In the facts of the present case, Sub-section (1)(e) of Section 14 is not relevant, which provides that such person also cannot be a member of the panchayat and continue as such, who has been disqualified from holding office under sub-section (2) of Section 39 and the period for which he was so disqualified has not elapsed.

18. The second provision is Section 39 (supra) which provides for 'Removal from office', being a power to be exercised by the Commissioner in the context of what has been provided for under sub-section (1)(i) & (ii), namely, to 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 and in the circumstances as set out in Clause (ii) (which may not be relevant in the present context). Sub-section (1A) of Section 39 provides

that 'where a person is removed from the 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. Sub-section (2) of Section 39 provides that the Commissioner may subject to like condition disqualify for a period of not exceeding six years, any person who has resigned his office as a member, Sarpanch or Up-Sarpanch and has been guilty of the acts and omission specified in sub-section (1). Sub-section (3) provides for a remedy of an appeal before the State Government if the person is aggrieved by an order passed by the Commissioner under sub-section (1) or (2) may, within a period of fifteen days from the date of the receipt of such order or as the case may be.

19. In the applicability of the aforesaid provisions to the facts in hand, it is not in dispute that a complaint was made against the petitioner qua the earlier elections held on 16 October, 2017 for the period (2017 to 2022) in which the petitioner was elected as Sarpanch of the Village Panchayat. As noted hereinabove, during the subsistence of the said term on 18 August, 2020 a complaint was filed by respondent no. 4 against the petitioner seeking his removal under section 39(1) of the Maharashtra Village Panchayat Act, in which on merits, a removal order dated 6 December, 2021 came to be passed by respondent no. 2- Additional Divisional Commissioner under Section 39(1) removing the petitioner as Sarpanch for the balance period from the date of the order. A complaint of respondent no. 4 was *inter alia* to the effect that the petitioner was spending funds of the village panchayat without inviting tenders, he was not complying with the rate list etc. which on materials appear to have

been accepted as valid ground for removal of the petitioner. The said order reads thus:

"[Official Translation of a photocopy of a Decision typewritten in Marathi.]

Exhibit-'A'

IN THE COURT OF HON'BLE SHRI. SAURABH RAO,
DIVISIONAL COMMISSIONER,
PUNE DIVISION, PUNE.

No. Development/Grampanchyat/SR-07/2021.

1. Shri. Bhanudas Yashwant Mote,
Member,
Grampanchyat Tandulwadi,
Taluka – Walwa, District – Sangli. .....Applicant.

Versus

1. Shri. Ramesh Vasantrao Patil,
Sarpanch,
2. Smt. Sunita Arjun Patil, the then Deputy
Sarpanch
3. Shri. Arjun Shivaji Patil, Member
4. Shri. Rahul Madhukar Kamble, Member
5. Shri. Bajrang Sadashiv Gurav, Member
6. Shri. Nandatai Shankar Salunkhe,
Member
7. Shri. Prakash Vilas Patil, Member
8. Smt. Vatsla Mahadeo Chougule,
Member
9. Smt. Manisha Rajaram Mote, Member
10. Smt. Ashwini Pradeep Jadhav, Member
11. Smt. Bhanudas Yashwant Mote,
Member
12. Smt. Shobha Ramesh Kamble, Member
Grampanchyat Tadulwadi, Taluka
Walwa, District – Sangli. .....Respondents.

Decision given under section 39 of the Maharashtra Grampanchyat Act.

The tenure of the Managing Committee of the Grampanchyat Tandulwadi, Taluka Walwa, District – Sangli is from the date 18/11/2017 to the date 17/11/2022. The Applicant is a sitting member of the Grampanchyat Tadulwadi, Taluka Walwa, District Sangli and Respondent No.1 is the present Sarpanch of the Grampanchyat Tadulwadi, Taluka Walwa, District Sangli and Respondent Nos. 2 to 12 are the sitting members of Grampanchyat Tadulwadi, Taluka Walwa. During the course of hearing, it has come to the notice that Respondent No.6, a member of the Grampanchayat from out of them, is now not

alive.

2) The Applicant has made a complaint by his application dated 18/08/2020 to this office against the below-named Grampanchayat Office Bearers and the Gramsevak of Grampanchyat Tandulwadi that they are committing the acts by disregarding the rules and has demanded to take an action of removing them from their respective posts and also to take a disciplinary action against the Gramsevak.

Sr No.	The name of the person against whom the complaint had been made.	Designation
1.	**Shri. Ramesh Vasantrao Patil,**	**Sarpanch (Petitioner)**
2.	Shri. Arjunrao Shivaji Patil,	Member
3.	Shri. Rahul Madhukar Kamble	Member
4.	Shri. Bajarang Sadashiv Gurav	Member
5.	Sau. Nandatai Shankar Salunkhe	Member
6.	Shri. Satish M. Gondkar	Gramsevak

3) In pursuance of the Applicant's application dated 18.08.2020, by this Office letter bearing No. Development/ Establishment/ G.P. Appeal/ Section 39/347, dated – 21/09/2020, it was informed to the Chief Executive Officer, Zila Parishad Sangli to conduct a preliminary inquiry into the points mentioned in the Applicant's complaint application and if any substance is found during the course of the said enquiry then, to submit a proposal for taking action against the persons concerned as per Section 39 of the Maharashtra Grampanchayat Act and also to conduct an inquiry into the complaints against the Gram Sevak in this matter and to take further appropriate action in that regard, as per the Rules. Similarly, in the present matter, as the Applicant vide his application dated 05/11/2020, has brought to the notice of this Office that delay is being caused in taking action, by this Office letter bearing No. Development/ Establishment/ G.P. Appeal/ Section 39/ 413, dated – 23/11/2020, the Chief Executive Officer, Zila Parishad Sangli was informed to take action immediately in the said matter.

4) Accordingly, the Chief Executive Officer, Zilla Parishad, Sangli vide his letter bearing No. Z.P.S./GP/ ADM-3/ W.S./2197/2021, dated – 30/04/2021, has submitted report in the said matter. In this matter, it has been recommended that action under Section 39(1) of the Maharashtra Grampanchayat Act shall be taken against the Sarpanch and all Gram Panchayat members, of the Grampanchayat Tandulwadi, Taluka – Walwa.

5) After receiving the recommendation as mentioned hereinabove from the Chief Executive Officer, Zilla Parishad, Sangli, online hearings were conducted on the dates 21/09/2021 and 26/10/2021, to give an opportunity of hearing to the Applicants and Respondents. Similarly, Applicant had also filed a Writ Petition No. 4848/2021 before the Hon'ble Bombay High Court, Mumbai, seeking a timely hearing and decision in this matter. On the date 01st September, 2021, the directions

were given in the said Petition that, in view of the complaint application dated 18/08/2020 filed by the Applicant, the hearing should be conducted in the said matter and that the decision should be taken on merits within eight days. Similarly, in this matter, the Applicant, vide his application dated 26/05/2021, had filed complaint application to the Lokayukta, Maharashtra State. In view of both these above referred applications, an urgent hearing was conducted in the present matter and sufficient and reasonable opportunity was given to the Applicant and the Respondent to put forth their say.

6. In the complaint application, as well as in the various applications and Written Say submitted from time to time and during the course of arguments before me, the Applicant has raised the following points :

1. In the application dated 18/08/2020, the Applicant has alleged that the Respondents are spending Panchayat Funds without proper resolutions, are not following tender procedures, complying with rate lists, etc. Further, works under the 14th Finance Commission are being undertaken by ignoring the order of priority. Development works barred by the time limit, are being carried out illegally, in collusion with contractors, without formally granting time extensions to the same. Government funds are being spent on private properties. Several works have been carried out in violation of prescribed procedures and rules.

2. …….

Hence, I, Saurabh Rao, Divisional Commissioner, Pune Division, Pune, in exercise of the powers conferred upon me, pass the Order as under :-

O R D E R

1) The Respondent No.1 is removed from the post of Sarpanch of the Grampanchayat – Tandulwadi, Taluka – Walwa, for the remaining period of tenure under the General Election 2017, from the date of this Order.

2) All the remaining Respondents, except Respondent No.6, are removed from the post of Member of the Grampanchayat – Tandulwadi, Taluka – Walwa, for the remaining period of tenure under the General Election 2017, from the date of this Order.

3) It has come to the notice during the course of hearing that, the Respondent No.6 by name Smt. Nandatai Shankar Salunkhe, a member of the present Grampanchayat Managing Committee has passed away and therefore, no order has been issued against her.

4) This Order be communicated to all the persons concerned.

Place : Pune.
Date : 06.12.2021.

(Signature Illegible)
(Saurabh Rao)
Divisional Commissioner,
Pune Division, Pune."

20. The petitioner being aggrieved by the aforesaid order dated 6 December, 2021 passed by respondent no. 2 filed an appeal before the appellate authority namely the Hon'ble Minister under the provisions of Section 39(3). The said appeal was adjudicated by the Hon'ble Minister by an order dated 23 February, 2022 whereby the petitioner's appeal was allowed in terms of the following order:

> " ORDER
>
> 1. The Appeal preferred by the Appellant Shri Ramesh Vasantrao Patil, Sarpanch and 9 others, the members of Grampanchayat Tandulwadi, Tal. Walwa, District Sangli, is allowed.
>
> 2. The Appeal preferred by the Appellant Shri Bhanudas Yashwant Mote, residing at Tandulwadi, Tal. Walwa, District Sangli, is partly allowed. Shri Bhanudas Yashwant Mote, residing at Tandulwadi, Tal. Walwa, District Sangli is declared as qualified to be a member of Grampanchayat Tandulwadi and his request to disqualify Shri Ramesh Vasantrao Patil, Sarpanch and 9 others, the members of Grampanchayat Tandulwadi, Tal. Walwa, District Sangli, to be the members of Grampanchayat Tandulwadi, except him, is rejected.
>
> 3. The Order dated 06.12.2021 passed by the Divisional Commissioner, Pune Division in this matter is set aside.
>
> 4. This Order should be intimated to the persons concerned."

21. Against the said order dated 23 February, 2022 passed by the Hon'ble Minister, respondent no. 4 approached this Court in Writ Petition No. 5222 of 2022 wherein the learned Single Judge by an order dated 5 September, 2022 admitted the petition and stayed the aforesaid order dated 23 February, 2022 passed by the Hon'ble Minister.

22. The legal consequences which are brought about by the said interim order passed by this Court is that the disqualification of the petitioner under section

39(1) as ordered by respondent no.2-Additional Divisional Commissioner by order dated 6 December, 2021 continued to operate and the petitioner was prohibited from acting as a member of Village Panchayat or the Sarpanch. Also, by virtue of the interim order passed by this Court, the effect and operation of the orders passed by the Hon'ble Minister allowing the petitioner's appeal and/or setting aside disqualification under Section 39(1) ceased to operate.

23. It cannot be that the interim order dated 05 September 2022 passed by this Court was of no consequence and despite such order, the petitioner nonetheless could to held to be qualified. Such interim orders passed by this Court although as an interim measure halted the effect and operation of the petitioner being declared to be not removed under Section 39(1) of the Panchayats Act. Any other interpretation of the High Court's order if accepted, it would render the interim order nugatory. It is difficult to accept the petitioner's case that by virtue of the stay, the petitioner was eligible to contest the election and/or even if such contest was legal, the High Court intended that he continues to hold legally.

24. In other words, as a consequence brought about by such interim order passed by this Court, the provisions of Section 14(1)(d) certainly had become applicable, which *inter alia* provide that 'No person shall be a member of a panchayat or continue to be such if he has been removed from office under sub-section (1) of Section 39 and a period of six years has not been elapsed from the date of such removal.

25. It is surprising that during the existence of the clear legal position as brought about, the petitioner nonetheless contested the subsequent elections after the end of term of earlier election under which the petitioner suffered such disqualification (October 2017 to October 2022), namely, the Village Panchayats elections held in November-December, 2022.

26. As rightly urged on behalf of the respondents on the application of Section 14(1)(d) certainly a period of six years had not elapsed from the date of removal of the petitioner under Section 39(1), the date of removal being 6 December 2021, as the period of six years from such date would otherwise come to an end in December, 2027. It is qua such election, respondent nos. 4 and 5 again filed a complaint before respondent no.3-Collector seeking disqualification of the petitioner under Section 14(1)(d). Respondent no.4 and 5's complaint came to be rejected by the Collector vide order dated 19 May 2023. This order of the Collector was challenged by respondent nos. 4 and 5 before respondent no. 2-Additional Divisional Commissioner, who by the impugned judgment has allowed the said appeal and held that the petitioner was disqualified under Section 14(1)(d) to hold the office of Member of the Panchayat, as the petitioner was removed from the office of Sarpanch during the previous term under Section 39(1) and the period of six years had not elapsed.

27. In so far as the petitioner's prayer that this Court examines the legality of the provisions of Section 14(1)(d) of the Panchayats Act is concerned, we are of the opinion that certainly the facts of the case do not warrant that this Court need

to delve on such issues considering the vague and ambiguous challenge as mounted and for such reason, issue notice to the Advocate General and admit the petition. In our opinion, there is no legal injury to the petitioner to raise such challenge in the present facts. This more particularly accepting what is pointed out by the State Government in its reply affidavit that the petitioner was disqualified from contesting the election in question as held in December 2022. and that the petitioner was rightly disqualified by the impugned order. Thus, to test the legality of the provisions in the present proceedings would be wholly academic and/or of no consequence, considering our aforesaid discussion. The Court can be called upon to examine the validity of the legislative provision only when a strong *prima facie* case has been made out by a litigant of a legal injury being suffered by the petitioner and it is in the context of such legal injury, a challenge being mounted to a legislative provision is accepted and prudent norm. The petitioner certainly does not make out any such case that we make such endeavour and delve on such academic issues, which would be in an absolute vacuum.

28. We do not find that anything erroneous or illegal in the impugned order passed by respondent no. 2-Additional Divisional Commissioner for more than one reason. By virtue of the interim order dated 5 September 2022 passed by the learned Single Judge of this Court in Writ Petition No. 5222 of 2022 staying the order dated 23 February, 2022 passed by the Hon'ble Minister setting aside the removal of the petitioner as a member/Sarpanch of the Village Panchayat, the legal consequence was certainly of the order of the Hon'ble Minister not being

available to the petitioner the same being halted and/or made inoperative by such interim order passed by this Court. Such order has continued to subsist and is legal and valid till date.

29. It is well settled position in law that every order passed by the Court and moreso an order which grants interim injunction, has a consequence and a legal effect. This is certainly not a paper order and once such orders passed by the Court, it would give rise to a particular legal position, which necessarily would be required to be recognized and given effect to. In the present case as noted hereinabove, the legal position was that the petitioner's removal under Section 39(1) which triggered the operation of Section 14(1)(d) of the Panchayats Act, although set aside by the Hon'ble Minister by virtue of stay granted by this Court, the setting aside has remained in a suspended animation. Hence, the position of the petitioner having stood disqualified under Section 39(1) under the order dated 6 December, 2021 passed by the Additional Divisional Commissioner cannot be said to have any legal recognition.

30. As held by the Supreme Court in **Smt. Indira Nehru Gandhi vs Shri Raj Narain and Anr.**[4] an order of stay granted by the Superior Court, is a plenary order. It has the effect of eclipsing the order, which is stated to bring about a legal position that for no purpose whatsoever, it can be given effect. The consequence of this position in the present facts would be to the effect that the order passed by the Additional Divisional Commissioner, removing the petitioner under Section

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4 AIR 1975 SC 1590

39(1) would stand recognized as a consequence of which the petitioner having suffered a disqualification under Section 14(1)(d) (supra) for a period of six years from the date of the removal, having not elapsed the petitioner was disqualified to be a member of the Panchayat. There cannot be any other reading of the stay order dated 05 September 2022 as passed by this Court. It is for such reason, it cannot be said that the impugned order passed by respondent no. 2 to disqualify the petitioner under Section 14(1)(d) to be bad and illegal.

31. For such reasons, the petitioner's contention on the non-applicability of provisions of Section 14(1)(d) qua his disqualification under section 39(1) is not well-founded. If the petitioner's contention in regard to applicability of Section 14(1)(d) is to be accepted, then the period of six years as provided for in the said provision is rendered nugatory. We also do not accept the petitioner's case on the applicability of Section 14(1)(d) vis-a-vis the provisions of Section 39(1) and/or to accept the petitioner's contention, that as there is no order passed under section 39(2), he would not suffer a disqualification would amount to reading something alien in the provision of section 14(1)(d) which the legislature itself has not provided.

32. We may also observe that Section 14(1)(d) is a provision which incorporates the applicability of section 39(1) namely a consequence of removal of a member of Panchayat and it is in such context, the period of disqualification of six years has been prescribed. If such period of six years from the date of such removal has not elapsed, the candidate would suffer disqualification as a member

of the Panchayat. It is thus clear that the petitioner has no legal right whatsoever to continue as a member of Panchayat. The petitioner in contesting the election in November-December was qualified to so context, having suffered disqualification under section 14(1)(d) as also urged on behalf of the State Government.

33. Insofar as Mr. Patil's contention that the order dated 5 September, 2022 passed by the learned Single Judge of this Court on Writ Petition No. 5222 of 2022 filed by respondent no. 4 is required to be held to be void and/or a nullity, as the learned Single Judge had no jurisdiction to entertain such Writ Petition and grant such order inasmuch as under Chapter XVII Rule 18(3) of the Bombay High Court Appellate Side Rules, jurisdiction to entertain such petition was not conferred on the learned Single Judge, but was of the Division Bench relying upon the decision of the Division Bench of this Court in **Shivaji Laxman Wadkar vs. Election Returning Officer, Grampanchayat Velu & Ors.** (supra) is not well founded. This for two fold reasons. Firstly, a Division Bench of this Court exercising jurisdiction under Article 226 of the Constitution of India *per se* would not have any jurisdiction to determine the legality of an order passed by the learned Single Judge. A Division Bench exercising its jurisdiction under Article 226 is no manner exercises appellate jurisdiction against an order passed by a learned Single Judge. If the petitioner was to be aggrieved by such order passed by the learned Single Judge, the only remedy to the petitioner in the absence of writ appeal, was to approach the Supreme Court. The petitioner, however, has accepted such order passed by the learned Single Judge and the said

order continues to be legal, valid and subsisting and all material consequences, as observed hereinabove, emanating from such order passed by the learned Single Judge, are required to be taken into account. Secondly the petitioner's contention that said order is required to be held to nullity and without jurisdiction, also cannot be accepted as the Full Bench of this Court in its judgment in **Magnum Opus IT Consulting Pvt. Ltd., Pune vs. Artcad Systems, Nashik** (supra) as rightly pointed out on behalf of respondent no. 4, has held the decision of the Division Bench in **Shivaji Laxman Wadkar** (supra) as relied by Mr. Patil to be *per incuriam*, in paragraph 13 of the said decision, the Full Bench has made the following observations:

> "13. In conclusion, it is declared that the decision of the Division Bench in the case of *Shivaji Laxman Wadkar,* which holds that only those quasi-judicial orders and enactments specified under Rule 18(3) of Chapter XVII of the 1960 Rules fall under the purview of a Single Judge, is per incuriam of the Full Bench decision in the case of *Prakash Securities* and, therefore, does nto constitute a binding precedent. The decision in the case of *Hariom Krishi Kendra* pertained to an entirely different aspect. The existing pronouncement of the Full Bench in teh case of *Prakash Securities,* whcih has held that the Explanation to Clause (3) of Rule 18, added in 1999, encompasses orders of any quasi judicial authority under any other legislation, even if not specified in Clauses (1) to (43), is binding."

34. We find that Ms. Prabhune, learned AGP is correct in her contention and relying on the reply affidavit filed on behalf of the State Government as noted hereinabove, that the provisions of Section 14(1)(d) and Section 39(1) operate independently. They are compartmentalized. Merely because Section 14(1)(d) makes a reference to Section 39(1) by incorporation, cannot bring about any bearing on the applicability of sub-section (2) of Section 39, in the consequence

of a disqualification brought about by Section 14(1)(d).

35. We may also refer to the affidavit in reply filed on behalf of the State Government wherein the State Government justifying the impugned order has stated that as there was a specific order passed removing the petitioner from the post of Sarpanch/member of the Village Panchayat under the provisions of Section 14(1)(d) of the Panchayats Act, the petitioner was disqualified from contesting election of Grampanchayat for the period of 5 years from the date of the said order and that, once such order was passed under Section 39(1), the provisions of Section 14(1)(d) of the Panchayats Act are automatically applicable. The averments in that regard are required to be noted with read thus:-

> "5. I say that on 18/8/2020, the Respondent No.4 herein filed complaint with the Respondent No.2 U/s. 39 of the Maharashtra Village Panchayat Act, 1959. I further say that after following due process of Law, the Respondent No.2 passed an order dated 6/12/2021 thereby holding that the Petitioner and other members of Tandulwadi Grampanchayat are liable for removal U/s.39 of the said Act and according passed an order of removal of Petitioner from the post of Sarpanch from the post of Sarpanch from the date of order for the remainder period. The Respondent also ordered that except deceased member Smt. Nandatai Shankar Salunkhe, other members are removed from post member for remainder period. It is pertinent to note that there was specific order of removal of Petitioner from the post of Sarpanch from the date of order and as per section 14(1)(d) of the Maharashtra Village Panchayat Act, 1959, the Petitioner was disqualified from contesting election of Grampanchayat for the period of 5 years from the date of order. I say that once an order is passed u/s. 39(1), the provisions of Sec 14(1)(d) of the Maharashtra Village Panchayat Act, 1959 are automatically applied.
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> 9. I say that as provisions of section 14(1)(d) of the Maharashtra Village Panchayat Act, 1959, the petitioner is disqualified for contesting election and/or acting as a member of Grampanchayat until 6/12/2027 and as such an impugned order dated 21/2/2024 passed by the Respondent No.2 is proper and legal. I further say that an appeal filed by the Respondent No.4 and 5 was partly allowed by the Respondent No.2, by considering the mandatory provisions of law and by following

> due process of law and on this ground only the present Writ Petition filed by the Petitioner deserves to be rejected."

36. While parting, we may observe that the entire edifice of the rights being asserted by the petitioner are statutory rights. The petitioner when contested the election in December 2022, was bound by these statutory provisions which pertain to disqualification. There cannot be any fundamental right of the petitioner being violated on such assertions of the petitioner which are purely in regard to the election and the code as prescribed for such election. As held by the Supreme Court in **Jammu and Kashmir National Panthers Party v/s. Union of India**[5], all rights in relation to election are statutory rights and there cannot be any complaint of breach of fundamental rights.

37. We clarify that our observations in this judgment are in the context of deciding the present proceedings. All rights and contentions of the parties in any other proceedings are expressly kept open.

38. In the aforesaid circumstances, looked from any angle, this petition is wholly misconceived. It is accordingly rejected. No costs.

(ARIF S. DOCTOR, J.) (G. S. KULKARNI, J.)

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5 (2011) 1 SCC 228