



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

WRIT PETITION NO. 1465 OF 2025

(Anilkumar s/o Tejlal Soyam Vs. The State of Maharashtra & Ors.)

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

Court's or Judge's orders.

Mr. Hrishikesh Chitaley, Counsel for the petitioner (through VC).

Ms K.P. Marpakwar, A.G.P. for respondent nos. 1 and 2/State.

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CORAM : ANIL L. PANSARE, J.
MAY 8, 2025

Heard Mr. Hrishikesh Chitaley, learned Counsel for the petitioner and Ms K.P. Marpakwar, learned A.G.P. for respondent nos. 1 and 2. None appeared for respondent nos. 3 and 4 though served.

2] The petitioner was compelled to approach this Court to challenge order dated 14/1/2025 passed by respondent no.2 – Additional Commissioner, Nagpur Division, Nagpur, in V.P.A. Appeal No. 39(1)/13/2023-24 with an alternative prayer to direct respondent no.1 to decide the appeal within stipulated period, and until such time, to stay the order impugned, viz., order dated 14/1/2025. By the impugned order, respondent no.2 was pleased to disqualify the petitioner - Sarpanch under Section 39(1) of the Maharashtra Village Panchayats Act, 1959 (for short “Act of 1959”), on the ground that he has misappropriated funds.

3] The petitioner filed appeal against the said order on 22/1/2025, which should have been decided within one month in terms of sub-section (3) of Section

39 of the Act of 1959. The same having been not done, the petitioner approached this Court questioning the legality of the aforesaid order, which, in fact, was the subject matter before respondent no.1.

4] As such, the petitioner had earlier approached this Court with similar such prayer by filing Writ Petition No. 525/2025. The petition was heard on 29/1/2025, and having found that the petitioner approached this Court within five days of filing appeal before respondent no.1, the petitioner was called upon to justify filing petition without waiting for the statutory period to enable respondent no.1 to decide the appeal. The petitioner then sought to withdraw the petition, which was allowed but by imposing cost of Rs.5,000/- with a direction to the respondent no.1 to hear the petitioner on interim relief and to pass appropriate orders in accordance with law. At that time, the petitioner's Counsel submitted that respondent no.1 may not decide appeal within stipulated time, upon which liberty was given to the petitioner to approach this Court for appropriate remedy, if the appeal is not decided within one month.

5] As expected by the petitioner, the respondent no.1 failed to decide the appeal within stipulated time and accordingly the instant petition is filed. The learned Counsel for the petitioner submits that the petitioner anticipated such status because none of the appeals (barring exception), filed under Section 39 of the Act of 1959 before respondent no.1, are decided within

stipulated time. He further submits that even applications seeking interim relief are not heard expeditiously, and in many cases, for months together.

6] The learned A.G.P then took instructions and submitted that the appeal was heard on 13/2/2025 and the matter is closed for judgment/order.

7] To this, the learned Counsel for the petitioner submitted that the petitioner was never informed of closure of appeal for judgment/order. He then informed that judgment/order has been not passed. This would mean that though appeal was heard on 13/2/2025 and the matter was closed for judgment/order, the judgment/order is not yet passed.

8] The learned Counsel for the petitioner submitted that election for the post of Sarpanch may be taken up at any time and the petitioner will be left with no remedy. He further submitted that this is not the first instance where appeal is not decided within stipulated time but is happening in almost all cases pending before respondent no.1.

9] The Counsel submits that the inability of respondent no.1 to decide appeals within stipulated time is a reason why this Court, in identical matters, was required to stay the impugned orders, which, as such, was the subject matter of appeal before respondent no.1. In fact, I was informed that in many such cases, this Court has, because of inability of the appellate authority to decide matters in accordance with the provisions of the Act of 1959, shown indulgence by granting stay to the

impugned orders so that the purpose of filing appeal will not be frustrated. Two such orders are placed on record by the petitioner, one is dated 3/12/2019 passed in Writ Petition No. 7927/2019 and another is dated 13/8/2021 passed in Writ Petition No. 2947/2021.

10] Taking note of above, the appellate authority – respondent no.1 was called upon to show cause as to why, henceforth, in all appeals that will be filed before it, if the appeal is not decided in terms of Section 39 of the Act of 1959, the order impugned should not stand stayed until the appeal is decided.

11] In response, respondent no.2 has filed affidavit on behalf of respondent no.1. The eight page affidavit, filed by respondent no.1, consists of all averments except addressing the issue involved. Respondent no.1 has not even touched the issue of compliance of Section 39(3) of the Act of 1959 rather made an attempt to justify delay in deciding appeals. A reference is made to the Hon'ble Supreme Court (without giving details of judgment) to aver that it has consistently held that interpretation of 'shall' and 'may' depends on the context of the relevant legislature. Thereafter, reason and object of the Act of 1959 are reproduced. Then is reproduced Section 39(3) of the Act of 1959, which reads thus :

“39. Removal from office

(1) and (2)

(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.”

12] As could be seen, respondent no.1 is duty bound to decide appeal within one month from the date of its presentation. Despite such provision, respondent no.1 has averred that the word ‘shall’ is interchangeable into ‘may’ because the Hon’ble Minister, Rural Development Department, is wholly responsible to fulfill the reason and object of the Act of 1959, and since the appeal is decided on 24/3/2025 and since it does not violate any fundamental rights of the petitioner, the word ‘shall’ should be read as ‘may’.

13] The learned Counsel for the petitioner has rightly responded by contending that firstly, respondent no.1 should himself have filed reply, and most importantly, should have addressed the issue involved. Secondly, the theory of ‘shall and may’ has been put forth without applying mind.

14] Let me explain as to why the word ‘shall’, used in Section 39(3) of the Act of 1959, cannot be treated as ‘may’.

15] Sections 39(1) of the Act of 1959 provides for removal of any Sarpanch or Upa-Sarpanch or Member, if found guilty of misconduct in discharge of his duties or of disgraceful conduct or for other reasons mentioned in sub-section (1). Sub-section (2) of Section 39 provides for period of disqualification. Sub-section (3) permits aggrieved person to file appeal to the State Government

within fifteen days from the date of receipt of order passed under sub-section (1) or (2). The appeal is to be decided within a period of one month from the date of its receipt.

16] Once the Sarpanch/Upa-Sarpanch is removed from office, the Collector concerned has to fill in the vacancy in terms of Section 43 of the Act of 1959. The vacancy is to be filled in within thirty days from the date of such vacancy. Sub-section (2) provides that meeting for election of Sarpanch under sub-section (1) shall be convened by the Collector in the manner described in sub-section (1) of Section 33, by which the Collector will have to fix a date for election of Sarpanch or Upa-Sarpanch. Necessary arrangements will have to be made. It is but natural that for fixing a date for election of Sarpanch or Upa-Sarpanch, notice will have to be given in advance. This procedure is to be completed within thirty days from the date of vacancy.

17] The Collector, therefore, will have to act immediately on and from the date the vacancy of Sarpanch or Upa-Sarpanch arises. At the same time, sub-section (3) of Section 39 enables the aggrieved person (in the present case – Sarpanch) to approach the State Government within fifteen days from the date of receipt of order of disqualification, meaning thereby, that persons, like the petitioner, may prefer appeal within fifteen days, and the appellate authority is duty bound to decide appeal within one month from its receipt.

18] In the circumstances, if the appeal is filed on fifteenth day and appellate authority fails to take up the application seeking interim relief in first fifteen days of filing appeal, thirty days of accruing vacancy of the post of Sarpanch or Upa-Sarpanch will lapse, within which time, the Collector is duty bound to fill in the vacancy in terms of the first proviso to Section 43 of the Act of 1959. Accordingly, another Sarpanch will be elected. In other words, if the interim application seeking stay is not decided expeditiously, the purpose of filing appeal will be defeated, and eventually, if appeal is allowed, that would lead to creating a complex situation of having two Sarpanch to one Gram Panchayat, which may further lead to multiplicity of proceedings.

19] In case the appeal is filed on next day of receiving order and if it is not decided within one month, again, the situation, as put forth above, will arise.

20] Thus, it is indispensable to decide appeal within thirty days. It is equally important to take up the application seeking interim relief for hearing as expeditiously as possible. Unless the appellate authority, who holds a constitutional post, discharges its functions in terms of the provisions of the Act of 1959, the functioning of Gram Panchayat will be adversely affected, and the sufferers will be the villagers, apart from the fact that the aggrieved person will be left remediless.

21] Adherence to time limit to decide appeal will have to be considered in the light of consequences provided in the Act of 1959. If the Sarpanch/Upa-

Sarpanch is to be elected within thirty days from the date of vacancy, the appellate authority will have to decide the appeal within one month from the date of its presentation. The provision, if considered in the light of above, the word 'shall', used in sub-section (3) of Section 39 of the Act of 1959, will have to be given its true effect. It cannot be, thus, treated as 'may', as it will frustrate the purpose of the Act of 1959. Therefore, the contention of respondent no.1 that the word 'shall' should be treated as 'may' is without any substance and is accordingly rejected.

22] Unfortunately, the provision is not followed scrupulously. In fact, learned Counsel for the petitioner submitted that appeals under Section 39 of the Act of 1959 and similar such other proceedings are not taken up on daily basis. The practice adopted is that appeals are fixed on date when cabinet meeting is scheduled (usually Tuesday and Friday), and when Counsel appears, he is informed that the Hon'ble Minister is busy in cabinet meeting and the hearing is postponed.

23] In context with above, it will be appropriate to refer to the judgment passed by a Division Bench of this Court in the case of *Shri Balwantraai Harilal Parekh Since deceased through legal heirs Paresh Balwantraai Parekh and others Vs. State of Maharashtra and others* [2018 SCC OnLine Bom 5848]. The Division Bench noted issues about the manner in which revision applications and appeals under the Maharashtra Land Revenue Code, 1966, were dealt with by the State Government. The

Division Bench noted two orders, one passed in *Writ Petition No. 4101/2007 [Smt. Savitri Chandrakesh Pal Vs. State of Maharashtra]* and another in *Writ Petition No. 9708/2010 [Smt. Chaya Jagan Kale Vs. The State of Maharashtra]*, wherein procedure and guidelines for dealing with appeals by the State Government were laid down. In doing so, the Division Bench highlighted the issue of not giving priority to hearing of interim applications by the appellate/revisional authorities. The Division Bench reproduced the guidelines laid down by the Single Judge in *Savitri Pal's* case in following terms :

“11. Now, we turn to the decision wherein the procedural guidelines have been laid down in the case of Smt. Savitri Chandrakesh Pal (supra). The learned single Judge of this Court in paragraphs - 17 to 19 has laid down the following guidelines :

“Procedural Guidelines for Quasi-Judicial Authority :

17. This Court in exercise of powers conferred under Articles 226 and 227 of the Constitution of India prescribes the following procedure to be adopted by quasi-judicial authorities including the Ministers, Secretaries, officials and litigants while hearing and determining appeals, revisions, review applications and interim applications etc.:

(1) Memo of appeal or revision, review and or any application shall specifically mention under which enactment and/or under what provisions of law the said appeal/ review/ revision or application is filed.

(2) The appellant/applicant shall give a synopsis of concise dates and events along with the memo of appeal or revision. (3) The appeal, revision and/or application shall be filed within a period stipulated under the law governing the subject from the receipt of the order/decision which is impugned in the above matter. In the

event of delay, it should only be entertained along with application for condonation of delay.

(4) At the time of presentation of the appeal, review or revision, the applicant shall, if, filed in person, establish his identity by necessary documents or he shall file proceedings through authorised agent, and/or advocate.

(5) The application shall be accompanied by sufficient copies for every opponents/respondents and also supply 2 extra copies for the authorities.

(6) For issuance of summons to the opponents/respondents, court fees/postal stamps of sufficient amount shall be affixed on the application form/memo of appeal or revision as the case may be.

(7) In addition to service through the authority, appellant/ applicant may separately send the additional copies to each of the opponents/respondents by registered post acknowledgement due and may file affidavit of service along with evidence of despatch. The postal and acknowledgment alone should be treated as evidence of service in the event of service through postal authority.

(8) In the event of an urgency of obtaining an interim relief like stay, injunction/other interim order or direction or status-quo etc, a specific case of urgency should be made out in the application, which the authority may entertain subject to the brief reasons recorded. The said order shall also be communicated immediately to all the effected persons. The proof of timely despatch of the Registered A.D.s and all the acknowledgments shall be separately maintained.

(9) If there is real urgency, the concerned authority may grant ex parte interim/ad-interim relief for the reasons to be recorded for a particular period only within which time the service on the concerned opponents/respondents shall be effected. Appellant/applicant should file affidavit of service, if such party requires early hearing or continuation for interim relief or of an appeal, revision or review.

(10) The competent authority shall also communicate the next date of hearing to all the

parties along with time and place and shall, as far as possible, adhere to the said date and time of hearing.

(11) The concerned official in every department should be asked to remain present at the time of hearing and assist the concerned authority in the matter.

(12) Reasonable sufficient time be provided between the date of receipt of notice and the actual date of hearing. If any party is unable to remain present at the time of hearing for a sufficient cause, one further opportunity should be given to such party for hearing.

(13) The authority hearing quasi-judicial matters shall duly fix a date, time and venue for such hearing. Such authority shall refrain from interacting with third party during the course of hearing either in person or on phone and shall not do any act which would tend to affect or prejudice fair hearing.

(14) A speaking order shall be passed by the authority hearing the matter as early as possible after the hearing is concluded and, as far as possible, within a period of four to eight weeks from the conclusion of the hearing, on the basis of the record before it as well as the submissions made at the hearing. The order must contain reasons in support of the order.

(15) The authority shall not receive information or documents after the hearing is concluded and/or shall not pass the speaking order on the basis of such documents and/or information unless such material is brought to the notice of the parties to the proceedings following rules of natural justice.

(16) The order passed by the quasi-judicial authority on the hearing shall be forthwith communicated to all the parties by Registered A.D.

(17) No application or request or prayer from the political worker, Member of Legislative Assembly, Member of Parliament or third party shall be entertained in the quasi-judicial proceedings unless such person is a party respondent or intervenor in the proceedings.

(18) The order pronounced shall be communicated to the parties immediately.

(19) Record of hearing shall be meticulously maintained in a separate Roznama.

(20) The notings of concerned officials/law assistants to assist the authority shall include only content of facts and legal provisions along with case laws, if any.

(21) The notings made by the law officials/concerned officials shall not be in the form of order.

18. In addition to the above guidelines, the quasi-judicial authorities shall also follow the parameters laid down by this Court in the case of Lokmanya Nagar Priyadarshini v. State of Maharashtra, (2007) 1 Bom CR 929, which read as under:

PARAMETERS

“(a) While considering the stay application, the authority concerned should at least briefly set out case of the applicant/appellant, as the case may be.

(b) While granting the ex parte order, it should be granted for a shorted duration with short notice to the opponent(s).

(c) If ex parte stay is to be granted, then the authority passing the order should specify the reasons in short for grant of ex parte order.

(d) The Authority passing the order should,

(i) record its findings as to whether or not a prima facie case is made out with short reasons in support of the finding;

(ii) record its finding as to in whose favour balance of convenience lies, and

(iii) record its finding whether non-grant of interim relief would cause any prejudice to the person seeking interim relief.

(e) The ingredients at (d) (i) to (iii) should be discussed and positive finding should be recorded while granting or refusing to grant interim relief.”

19. The aforesaid procedural guidelines shall also be applicable to all quasi-judicial authorities in respect of hearing of appeals, revisions, review applications/ interlocutory applications, where there are no specific rules prescribed for hearing under a specific law like Maharashtra Co-operative Societies Act, Bombay Tenancy and Agricultural Lands Act, etc.””

24] As could be seen, a detailed procedure/ guidelines were issued in the matter of quasi judicial proceedings. It speaks of the manner in which stay application should be processed, as also appeal/revision. Most importantly, the guidelines were made applicable to all quasi judicial authorities in respect of hearing of appeals, revisions, review applications/interlocutory applications, where there are no specific rules prescribed for hearing under specific law, which, to my mind, includes the Act of 1959. The Division Bench then expressed concern over non-compliance of guidelines. The Division Bench then referred to the judgment of the Supreme Court in the case of *Noor Mohammed Vs. Jethanand* [(2013) 5 SCC 202] to highlight the importance of speedy justice, wherein the Supreme Court held that whoever has a role to play in justice-dispensation system cannot be allowed to remotely conceive of a casual approach.

25] The Division Bench, after highlighting the importance of speedy justice, took note of the fact that on many occasion, the Hon'ble Minister, exercising appellate/revisional powers, are not available. Accordingly, the Division Bench observed that the State Government will have to consider of authorizing senior secretaries to hear the prayers for interim/ad interim relief in absence of the Hon'ble Minister. The Division Bench emphasized on everyday functioning by saying that the State Government must ensure that the appellate/revisional authority is available at a fix time of every working day so that the litigants can mention their

matters. Accordingly, the Division Bench was pleased to issue further directions in addition to the directions issued by this Court in *Savitri Pal's* case and *Chaya Kale's* case, which read as under :

“21. Hence, we dispose of the civil application and the writ petitions by passing following order:

(i) In addition to the directions issued in the case of Smt. Savitri Chandrakesh Pal (supra), we direct the State Government to ensure that each and every appeal/revision application as well as review application are serially numbered on par with the proceedings filed in the Civil and District Courts. Apart from maintaining the institution register, data entries shall be made of the proceedings filed on day to day basis on the dedicated website of the State Government which shall be accessible to the citizens;

(ii) The State Government shall ensure that interim and final orders passed by it in quasi judicial proceedings (appeals/revision applications/review applications) under the Maharashtra Land Revenue Code, 1966 are uploaded on the same dedicated website on which the data of proceedings is uploaded;

(iii) The State Government shall ensure that an intimation of the date fixed for pronouncement of judgment is served to the parties to the proceedings;

(iv) The State Government shall make a provision for serving notices/intimations of the dates fixed for hearing by e-mail/SMS/whats app in addition to usual mode of service to those parties who provide e-mail addresses and cell phone numbers;

(v) We hold that a litigant who prefers appeal/revision/ review application before the State Government under the said Code has a right to move the appellate/revisional authority and pray before the authority by appearing before the same that an application for ad-interim relief/interim relief should be taken up immediately. It is the duty of the State to ensure that a litigant has an opportunity to

mention his case before the appellate/revisional authority for pointing out the urgency and for praying that application for interim/ad-interim relief should be taken up immediately. The State Government may consider of conferring powers of hearing appeals/revisions or interim applications therein on senior Secretaries who can hear the proceedings in absence of the Hon'ble Ministers;

(vi) The appeals/revision applications and interim applications made therein shall be disposed of as expeditiously as possible and in accordance with the guidelines provided in the Government Resolution dated 17th December 2017;

(vii) The appeals which are subject matter of Writ Petition (St.) Nos. 11253/2017 and 11254/2017 shall be heard and disposed of within a period of six weeks from the date this judgment and order is uploaded;

(viii) No separate direction is required to be issued in Civil Application No.2041/2018;

(ix) Both the writ petitions and the civil application are disposed of with the aforesaid directions.”

26] Thus, a complete mechanism is provided from the date of filing appeal/revision till its disposal, which includes registration of proceedings, taking up interim applications for hearing, passing orders thereon, uploading the same, importance of timely decision, etc. Despite such status, there appears no improvement in the functioning of the appellate authority. In fact, under the provisions of the Act of 1959, there is absolutely no scope for the appellate authority to not decide appeal within one month from the date of its filing. Unfortunately, even interim applications are not decided within the said period. The reason is that the appeals/revisions are not taken up for hearing everyday. No arrangement is made to mention the matter for urgent hearing. The appellate

authority is not available in the office. Most importantly, it failed to realize the importance of deciding appeal within stipulated time, which is a mandate of Section 39(3) of the Act of 1959.

27] In the circumstances, I propose to adopt the guidelines issued by the Division Bench of this Court for the proceedings under the provisions of the Act of 1959, and in addition, consequences of not adhering to the time frame, is being proposed. Accordingly, following order is passed :

ORDER

I] Since the appeal filed before respondent no.1 has been decided, until the order is uploaded, the order impugned, viz., order dated 14/1/2025 passed by respondent no.2, shall stand stayed.

II] The guidelines issued by the Division Bench in *Balwantrao Parekh's* case, including guidelines referred to in its judgment, are made applicable to the proceedings under the Act of 1959.

III] The appeals filed under Section 39(3) of the Act of 1959 shall be decided within one month from the date of its receipt in accordance with law.

IV] The appellate authority shall decide application seeking stay to the order challenged within fifteen days of its filing.

V] If the interim application seeking stay to the order challenged before the appellate authority under Section 39 of the Act of 1959 is not decided within fifteen

days of presentation of appeal, the order impugned shall stand stayed pending appeal.

VI] If the application seeking stay is rejected and appeal is not decided within one month of the date of its filing, the order impugned shall stand stayed until the appeal is decided.

VII] The petition is disposed of in above terms.
No costs.

(ANIL L. PANSARE, J.)

Sumit