



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

Writ Petition No. 2904 of 2023

Sitaram S/o Kaniram Chavhan,
Aged about 55 years,
Occ : Agriculture,
R/o. Malsur, Tah. Patur,
District – Akola.

... Petitioner

- Versus -

- (1) The State of Maharashtra,
through its Secretary, Rural
Development Department,
Bandkahn Bhavan, 25,
Marzban Path, Mumbai-01.
- (2) The Hon'ble Minister,
Rural Development Department,
Mantralaya, Mumbai-32.
- (3) The Divisional Commissioner,
Amravati Division, Amravati.
- (4) Zilla Parishad, Akola, through
its Chief Executive Officer,
Dist. Akola.
- (5) The Block Development Officer,
Panchayat Samiti, Patur,
District Akola.
- (6) Gram Panchayat Malsur, Tah. Patur,
Dist. Akola, through its Secretary.
- (7) Shivaji S/o Sukhdev Devkate,
Aged Major, Occ : Sarpanch,
Gram Panchayat Malsur,
R/o Malsur, Tah. Patur,
Dist. Akola.

... Respondents

Mr. R. D. Karode, Advocate for the petitioner
Mr. H. R. Dhumale, AGP for the respondent nos. 1 to 3
Mr. B. N. Jaipurkar, Advocate for respondent nos. 4 to 6
Mr. S. D. Chopde, Advocate for respondent no. 7

CORAM : ANIL L. PANSARE, J.

DATED : 17-02-2025

JUDGMENT

Heard.

2. Issue Rule, returnable forthwith. Mr. H. R. Dhumale, learned Assistant Government Pleader waives service of notice for the respondent nos. 1 to 3. Learned counsel Mr. B. N. Jaipurkar waives notice for respondent nos. 4 to 6 and learned counsel Mr. S. D. Chopde waives notice for respondent no. 7. With consent of learned counsels for the parties, the petition is taken up for final hearing.

3. The petitioner is aggrieved by the order dated 29-3-2023 passed by respondent no. 2 by which the order dated 28-10-2022 passed by respondent no. 3 is quashed and set aside. The respondent no. 7, who was removed by respondent no. 3, is now restored to original status viz. Sarpanch.

4. On 27-8-2024, following order was passed.

“Heard for some time.

Counsel for respondent No.7, the then Sarpancha, has taken aid of judgment of Coordinate Bench of this Court in Nimba Yadav Bhoi .Vs. President, Standing Committee, Zilla Parishad, Jalgaon and Ors. 2002 (3) Mh.L.J.466, to contend that compliance of Section 39(1) of the Bombay Village Panchayats Act, 1958 is mandatory. Consequently, it is only Chief Executive Officer, who should conduct inquiry and should give fair opportunity of hearing to the concerned person, in the present case, respondent No.7.

Counsel for respondent No.7 submits that the Chief Executive Officer herein has not conducted inquiry but has delegated the powers to the Block Development Officer and on the report submitted by him, the Chief Executive Officer has filed report, that too, without giving any opportunity, muchless fair opportunity, of hearing to respondent No.7.

Counsel for the Chief Executive Officer, Zilla Parishad seeks time to file affidavit on this point.

Stand over to 09.08.2024.”

5. In response to the said order, learned counsel for respondent no. 4 – Chief Executive Officer (CEO), Zilla Parishad, Akola has invited my attention to the reply dated 22-11-2021 filed by respondent no. 7 before the CEO, Zilla Parishad, Akola to contend that opportunity was given by CEO to respondent no. 7. In fact, in the affidavit of reply filed by respondent nos. 4 and 5, they have averred that CEO, after giving opportunity of hearing to respondent no. 7 and after permitting him to file reply and after hearing the arguments, prepared a report and further that after independent application of mind to the material placed before him by the Block Development

Officer (BDO), as collected by him in preliminary enquiry, the order is passed. Thus, it is suggested that opportunity of hearing was given.

6. Learned counsel for respondent no. 7 submits that he had filed reply on 22-11-2021 before the CEO. The CEO has, thereafter, entrusted the enquiry to BDO. The BDO vide communication dated 28-3-2022 addressed to Deputy Chief Executive Officer, Zilla Parishad, Akola submitted a report under Section 39(1) of the Maharashtra Village Panchayats Act, 1959 (for short 'the Act of 1959'). This report has been relied upon by the CEO to render a finding against respondent no. 7, that attracted disqualification as Sarpanch of Gram Panchayat.

7. The grievance is two fold, one is, that the power under Section 39(1) could not be delegated by the CEO to the BDO and secondly, the report submitted by BDO could not have been relied upon by the CEO without giving opportunity of hearing to respondent no. 7.

8. Accordingly, learned counsel for respondent no. 7 has supported the order dated 29-3-2023 passed by respondent no. 2, the appellate authority.

9. The petitioner is aggrieved by the said order. However, the petitioner's counsel failed to point out that opportunity of hearing was

given to the respondent no. 7 after the report was submitted by the BDO. The CEO also failed to point out that opportunity was so given to the respondent no. 7. Thus, it is evident that the CEO, Zilla Parishad, Akola failed to adhere to the principles of natural justice. Further, he has made misleading averments in reply where he pleaded that respondent no. 7 has made an incorrect submission.

10. That apart and most importantly, the CEO could not have delegated the power under Section 39(1) of the Act of 1959 to the BDO.

11. Learned counsel for respondent no. 7 has, in addition to the case of *Nimba Yadav Bhoi* supra, relied upon two more judgments. First is *Sau. Aarti W/o Khushal Tavar Vs. Chief Executive Officer, Zilla Parishad, Washim and ors. (Writ Petition No. 5609/2022) dated 15-11-2022* wherein the Division Bench of this Court held that it is only the CEO and in some cases, the Deputy CEO, who is entrusted with the task of conducting an enquiry under Section 39 of the Act of 1959, should conduct enquiry. The Court proceeded to hold that enquiry conducted by BDO of Panchayat Samiti is in violation of mandatory and statutory provisions of law. Similar view has been taken by the coordinate Bench of this Court in the case of *Ankush s/o. Pandurang Shinde Vs. The State of Maharashtra and ors. [2022(3) ALL MR 56]*.

12. As against, learned counsel for the petitioner has placed reliance upon the judgment of coordinate Bench of this Court in the case of *Damayanti w/o Omprakash Tapadiya Vs. Ashok s/o Dadarao Thakare (Writ Petition No. 4453/2019) dated 9-12-2019* wherein the CEO has directed the Deputy CEO to hold preliminary enquiry and on his instructions, the BDO has conducted preliminary enquiry by granting opportunity to the petitioner and respondents therein. The allegations therein were that the Sarpach had cut about twelve trees without due permission. The preliminary enquiry was conducted by Tahsildar. The CEO had also enquired in terms of Section 39(1) of the Act of 1959. The CEO concluded that the trees had been cut without obtaining due permission. The petitioner therein had raised no grievance of not giving opportunity in the said enquiry. The Court then rendered a categorical finding that since the enquiry had been conducted by CEO himself, the argument that power could not have been delegated to BDO was devoid of merit.

13. Thus, the facts of the said case were altogether different. The petitioner will get no help from the said judgment in as much as the settled position of law that the powers under Section 39(1) cannot be delegated by CEO has been not disturbed in the said case.

14. That being so, there appears no reason why should the impugned order be interfered with in writ jurisdiction. There is no substance in the petition. The petition is dismissed with no order as to costs.

15. Rule is discharged.

(Anil L. Pansare, J.)

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