



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 3165/2024

Ku Rajashree Ramdas Sapkal
(Sau. Rajashree Ashok Borade)
Aged about 27 years,
Occu. Household/Sarpanch
R/o. Raheer-Adgaon, Tq. Patur,
District- Akola.

... PETITIONER

...VERSUS...

1. The Hon'ble Minister,
Ministry of Rural Development,
Maharashtra State, Mantralaya,
Mumbai 400032.
2. The Divisional Commissioner,
Amravati Division, Amravati.
3. Zilla Parishad, Akola, through its
Chief Executive Officer, Dist. Akola
4. Block Development Officer,
Panchayat Samiti Patur, Dist. Akola.
5. Gat Gram Panchayat, Raheer Adgaon,
Post Pimpalkhuta, Tah. Patur,
District – Akola, through its
Secretary.
6. Shridhar Abhimanyu Pachpor,
Age: 41 years, Occu. Agriculturist,
Member, Gat Gram Panchayat
Raheer Adgaon

7. Sheikh Kasam Sheikh Abbas
Age: 66 years, Occu. Agriculturist,
Member, Gat Gram Panchayat
Raheer Adgaon
8. Sau. Sarala Dhyaneswar Kolase,
Age: 36 years, Occu. Household,
Member, Gat Gram Panchayat
Raheer Adgaon
9. Sau. Archana Ramesh Dhole,
Age: 41 years, Occ. Household,
Member, Gat Gram Panchayat
Raheer Adgaon
10. Sau. Jyoti Sagar Wankhade,
Age: 31 years, Occu. Household,
Member, Gat Gram Panchayat
Raheer Adgaon

Nos.6 to 10 are R/o. Raheer Adgaon,
Post Pimpalkhuta, Tah. Patur,
District- Akola 444501.

...RESPONDENTS

Shri R.D. Karode, Advocate for petitioner
Shri H.D. Futane, AGP for respondent Nos.1 and 2
Shri R.M. Sharma, Advocate for respondent Nos. 4 and 5
Shri N.B. Kalwaghe, Advocate for respondent Nos.6 to 10

CORAM : SMT. M. S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 13/01/2025

DATE OF PRONOUNCING THE JUDGMENT: 27/01/2025

JUDGMENT

. Heard learned Counsel for petitioner and learned

Counsel for respondents.

2. By the present petition, the petitioner is challenging the order dated 23.11.2023 passed by the respondent No.1- Hon'ble Minister, Rural Development Department received by the petitioner on 13.05.2024 from the office of respondent No.3- Zilla Parishad, Akola, thereby confirmed the order dated 01.08.2023 passed by the respondent No.2- Divisional Commissioner, Amravati and disqualified the petitioner from the post of member as well as Sarpanch of Gat Gram Panchayat Raher Adgaon by taking recourse of provisions of Section 39(1) of the Maharashtra Village Panchayat Act, 1959 on account of disgraceful conduct as alleged in the matter.

3. In January 2021, general elections were held and the petitioner is elected as a member of Gram Panchayat Raher Adgaon from Prabhag No.1 which was reserved for Backward Category (women) and thereafter duly elected as Sarpanch. Respondent Nos.6 to 10 are also elected as members. The complaint made by one Arif Kha Musa Kha Pathan alleging that a demand for illegal gratification was made by the petitioner's husband in respect of the

payment which was to be made for constructing of road under the Mahatma Gandhi National Employment Guarantee Scheme in the year 2017-2018, though the trap laid by the Anti-Corruption Bureau had failed, that on the said complaint, F.I.R. came to be lodged under Section 7 and 7A of the Prevention of Corruption Act, 1988 against Ashok Borade (ex-husband of the petitioner) on 08.06.2022 vide Crime No.186/2020.

4. It is contended that respondent No.1 had directed to the Chief Executive Officer to conduct an enquiry in the matter. The respondent No.3 without following principles of natural justice and without calling any report of the Secretary of respondent No.5-Gram Panchayat, prepared the report on the basis of submission of respondent No.4-Block Development Officer, petitioner and the complainants. The said report is in complete violation of principles of natural justice as notice to the Panchayat is not issued and as such the say of Panchayat was not called for. That, in the submissions, it was pointed out that the petitioner is living separately from Ashok Borade as she had obtained divorce from Ashok Borade through a mutual divorce deed signed by both the

parties witnessed by the respectable panchas, as such, the marriage is dissolved on the basis of a divorce deed.

5. The respondent no.2 allowed the application filed by the respondent Nos.6 to 10 and thereby disqualified the petitioner from the post of member as well as Sarpanch of respondent No.5-Gram Panchayat. The petitioner had preferred appeal under Section 39 (3) of the Maharashtra Village Panchayat Act, 1959 before the respondent No.1-Hon'ble Minister. The respondent No.1 has rejected the appeal and confirmed the order dated 01.08.2023 passed by the respondent No.2-Divisional Commissioner, Amravati and disqualified the petitioner from the post of member as well as Sarpanch of Gat Gram Panchayat Raher Adgaon. That, the impugned order which is received by the office of respondent No.3-Zilla Parishad vide communication dated 14.03.2024, but the respondent No.3 has not communicated the order dated 23.11.2023 to the petitioner as on today. The petitioner on 13.05.2024 personally enquired in the office of respondent No.3 and received the said order. The aforesaid order is the subject matter of challenge in the present petition.

6. Learned Counsel for the petitioner contended that the respondent Nos.1 and 2 failed to consider the consent terms of divorce written and notarized. The consent terms which are notarized before the Notary Public speaks about the separation of petitioner and Shri Ashok Borade and, therefore, the petitioner is not responsible for any activity of her ex-husband. It is further submitted that, on a complaint of Arif Kha Musa Kha Pathan, an F.I.R. came to be lodged under Section 7 and 7-A of Prevention of Corruption Act though the trap by Anti Corruption Bureau had failed on account of the admitted position that Shri Ashok Borade (Ex-husband) never turned up to receive the alleged demand, which indicated that the complaint was false, and though on such a false complaint, Shri Ashok Borade was put behind the bar for a period of one month and 8 days and later on released on bail, that cannot be a ground to disqualify the petitioner, as nothing could be attributable to the petitioner in the matter on account of failure of trap against Shri. Ashok Borade. That, both the respondent Nos.1 and 2 ought to have considered that mere registration of F.I.R. against Shri Ashok Borade does not mean that the petitioner is responsible for any kind of act of Shri Borade. The Government

Resolution dated 18.06.2011 is in respect of persons who had been caught red handed and, therefore, same is clearly not applicable to the case of the petitioner. Hence prayed for the interference by this Court in the said impugned order.

7. Learned Counsel for petitioner relied on following citations:

- 1) Dnyaneshwar Shridhar Matkar Vs. State of Maharashtra 2023 (4) ABR 68*
- 2) Ravi Yashwant Bhoir Vs. District Collector, Raigad and others (2012) 4 SCC 407*
- 3) Rupali Dinesh Kale Vs. The State of Maharashtra and others in Writ Petition No.899/2023 of this Court.*

8. Learned Counsel for the respondent Nos.6 to 10 contended that the petitioner was not performing her duty as Sarpanch and she was permitting her husband namely Ashok Borade for interfering in the work of Gram Panchayat. It was further contended that Ashok Borade used to always sit on the chair of Sarpanch in the monthly meeting and he used to give direction to do work to respondent No.5-Secretary on behalf of petitioner. Moreover the husband of petitioner demanded and tried to take bribe upon the instructions and on behest of the petitioner. The act

of petitioner is against the Government Circular dated 17.07.2007 issued by the respondent No.1. Therefore, the respondent No.2 has rightly removed the petitioner from the post of Sarpanch and member on the ground that there was misconduct and disgraceful conduct in the discharge of her duty. The respondent No.1 has rightly dismissed the appeal preferred by the petitioner by passing well reasoned order. Accordingly, prayed for the dismissal of the present petition.

9. Learned Counsel for the respondent No. 2 supported the order passed by the Hon'ble Minister and submitted that the inquiry report and all other documents shows that the petitioner is guilty for giving indirect consent to her husband to interfere in the business of Gat Gram Panchayat Raher Adgaon and it supports in view of the fact that the involvement of her husband in criminal offence.

10. Learned Counsel **Shri Kalwaghe**, relied on ***Vandana Ramesh Wagh and others Vs. State of Maharashtra and others***,

2019(5) ALL MR 130.

11. Heard learned Counsel for the parties, perused impugned order and considered citations relied on by the parties. On perusal of order passed by Divisional Commissioner, Amravati dated 01.08.2023, it is concluded after hearing the parties that the petitioner Sau Rajashree Ashok Borade was elected as Sarpanch on 15.01.2021 and tenure of Gram Panchayat is from 2021 to 2026. It is also concluded that in 2017-2018 in Gram Panchayat Raher Adgaon under the Employment Guarantee Scheme, the construction of road carried out of which, the fund is received by the Gram Panchayat Raher from Government in 2021 itself. The said construction was carried out by one Arif Kha Musa Kha Pathan and there was bill of amount of Rs.7,50,000/- was pending. After receipt of fund from Government, the said Contractor on 08.12.2021, applied to Sarpanch/Secretary, Gat Gram Panchayat Raher Adgaon making demand of pending bills. Said Musa Kha Pathan lodged the complaint to the Anti Corruption Bureau that husband of petitioner Shri Ashok Borade demanded amount of Rs.1,27,500/- for getting amount released of pending bills. It is

further recorded by the learned Divisional Commissioner that as per petitioner, she sought divorce from Ashok Borade on 22.03.2022 before Notary. However, his contention is rejected by the Divisional Commissioner on two grounds that the said divorce is notarized one and marriage was not dissolved by any order of the Court. So also, there is no other evidence placed on record by the petitioner that she is residing separately from her husband.

12. It is also held by learned Divisional Commissioner that husband of petitioner, who was Gram Sevak earlier was booked under the provision of Corruption Act. He was arrested from which it is concluded that husband of petitioner herein interfered in the office working of Gat Gram Panchayat Raher Adgaon to which petitioner was having consent. Therefore, petitioner was held guilty of misconduct and dereliction of duties and was held disqualified for holding the post of Sarpanch for a Member of Gat Gram Panchayat, Raher Adgaon. The petitioner preferred appeal before the State and the appeal came to be dismissed vide order dated 23.11.2023, by Hon'ble Minister. The Hon'ble Minister rejected the appeal on the same grounds that there was interference of the

husband of petitioner in the official work of Gat Gram Panchayat.

13. It is admitted fact that amount of Rs.7,50,000/- was received by the Gram Panchayat Raher Adgaon in the year 2021 itself. There was application also on behalf of Contractor on 08.12.2021, however the amount was not released for no reason. This is nothing but misconduct on the part of petitioner. The complaint lodged by contractor to the Anti Corruption Department that there was demand of Rs.1,27,500/- followed by arrest of the husband of petitioner is sufficient to conclude interference of the husband of petitioner in the working of Gram Panchayat. Attempt was made to show that there was divorce between petitioner and her husband and they are residing separately is also not substantiated. There was enquiry conducted by the Chief Executive Officer, Zilla Parishad Akola. The detailed report after considering the contention of the parties is placed by Executive Officer before the Divisional Commissioner. It is also alleged that principle of natural justice is not followed by Chief Executive Officer. However record shows that due notice was given and all contentions of the petitioner herein are considered while completing the enquiry. It is

contention of the petitioner that she cannot be held responsible for the act of her husband or his arrest and jail.

14. Learned Counsel for petitioner relied on a *Dnyaneshwar Shridhar Matkar (supra)*, in support of his contention that Panchayat has to be heard before enquiry report is submitted by Chief Executive Officer. The respondent No.3 in his affidavit stated that notice was duly served on Block Development Officer Panchayat Samiti, Patur. The notices were served asking non-applicant Secretary of Gram Panchayat to remain present. On perusal of the affidavit by respondent No.3, it clearly appears that due notice was given to all concerned parties through Block Development Officer including Panchayat, the opportunity was granted of hearing. As such, facts involved in the cited judgment, *Dnyaneshwar Shridhar Matkar (supra)* are distinguishable. The notice in the said matter is issued to the Gram Sevak, however, in the present matter, the Gram Panchayat has served through Secretary.

15. The learned Counsel for petitioner relied on *Ravi*

Yashwant Bhoir (supra), wherein it is observed by Hon'ble Apex Court in paragraph No. 28 as under:

"28. In State of Punjab v. Baldev Singh this Court considered the issue of removal of an elected office bearer and held that where the statutory provision has a very serious repercussions, it implicitly makes it imperative and obligatory on the part of the authority to have strict adherence to the statutory provisions. All the safeguards and protections provided under the statute have to be kept in mind while exercising such a power. The Court considering its earlier judgments in Mohinder Kumar v. State and Ali Mustafa Abdul Rehman Moosa v. State of Kerala, held as under:-

"28. ...It must be borne in mind that severer the punishment, greater has to be the care taken to see that all the safeguards provided in a statute are scrupulously followed."

16. Learned Counsel for petitioner also relied on the judgment in the ***Writ Petition No.899/2023 Rupali Dinesh Kale Vs. The State of Maharashtra and others*** passed on 27.07.2023 by this Court, in support of his contention that in the case, trap laid by Anti Corruption Bureau did not fructify and had failed on account of the petitioner not having approached the complainant for receiving the alleged illegal gratification, in such cases, it is merely at a stage of

allegation having been made which has not fructified into a trap.

However in the said judgment itself, it is further held that:

“9] ...

10. ... But if the alleged offence is committed during the term as member, Sarpanch or Up-Sarpanch and in the opinion of the Commissioner, such act amounts to disgraceful conduct on his part, then to meet such situation which though does not become a disqualification till conviction could still be a reason to remove such member, Sarpanch or Up-sarpanch from the post held by him which would make him ineligible to contest for such post for the remainder of the term.”

17. In my considered opinion, in view of the detailed enquiry conducted by the Chief Executive Officer after giving due opportunity to all the concerned, the order passed by Divisional Commissioner and by the Hon’ble Minister cannot be faulted with.

18. The learned Counsel for respondent relied on ***Vandana Ramesh Wagh (supra)***, wherein this Court relied on judgment of ***Ravi Yashwant Bhoir (supra)***, wherein the Hon’ble Apex Court has considered Section 39(1) of the Act and has been examined as to what could be said to be ‘Misconduct’ and ‘Disgraceful Conduct’.

Under the said provision, “Misconduct’ in office has been defined as under:

“17.

MISCONDUCT:

11. *Any unlawful behavior by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.*

12. ... *Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskilfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law.”*

19. As held in Writ Petition No.899/2023, even if a trap was not successful however, considering over all facts and circumstances, the act of the Sarpanch in the eye of law amounts to ‘Misconduct’ and ‘Disgraceful Conduct’, and, therefore, Divisional Commissioner can remove the Sarpanch from his office from

membership as well as Sarpanch. As such, I am of the considered opinion that there is no substance in the petition filed by the petitioner. Accordingly I proceed to pass the following order:

ORDER

- (i) The Writ Petition is dismissed.
- (ii) The order dated 23.11.2023 passed by the respondent No.1 Hon'ble Minister, Rural Development Department and the order dated 01.08.2023 passed by the respondent No.2 Divisional Commissioner are hereby confirmed.

The Writ Petition stands disposed of in above terms. No orders as to costs.

R.S. Sahare

(Smt. M.S. Jawalkar, J.)