



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

WRIT PETITION NO. 5989 OF 2024

Rahul S/o Vasantao Arakhaarao,
Aged about 39 years, Occupation:
Agriculturist, R/o At Po. Rajanda,
Tq. Barshitakli, Dist. Akola.

....**PETITIONER**

....**VERSUS**....

- 1) Hon'ble Minister of Village Development, Maharashtra State, Mantralaya, Mumbai-32.
- 2) The Additional Commissioner, Amravati Division, Amravati
- 3) The Collector, Akola, Tq. & Dist. Akola.
- 4) Zilla Parishad, Akola through its Chief Executive Officer, District Akola
- 5) Block Development Officer, Panchayat Samiti Barshitakli, Dist. Akola.
- 6) Village Development Officer, Gram Panchayat Rajanda, Tah. Barshitakli, Dist. Akola.
- 7) Shrikrishna Sukhdev Solanke, Aged about 64 years, Occupation: Agriculturist/Up-Sarpanch, Gram Panchayat, Rajanda.

- 8) Raju S/o Uttamrao Solanke,
aged about 47 years, Occupation: Ex-Sarpanch, Gram Panchayat, Rajanda.
- 9) Vijay S/o Kisan Bhagewar,
aged about 33 years, Occ: Member,
Gram Panchayat, Rajanda.
- 10) Jaya Prabhakar Kale,
Aged about 40 years, Occ: Member,
Gram Panchayat, Rajanda
- 11) Karuna Dhyandeo Arakharao,
aged about 51 years, Occupation:
Member, Gram Panchayat, Rajanda.
- 12) Varsha Ramdas Solanke,
aged about 45 years, Occupation :
Member, Gram Panchayat Rajanda.

All Nos. 7 to 12 R/o of Rajanda,
Tah. Barshitakli, Dist. Akola

....RESPONDENTS

Shri S.D. Chopde, Advocate for petitioner.

Ms D.I. Charlewar, Assistant Government Pleader for
respondent/State.

Shri Dhiraj Aailani, Advocate h/f Shri U.J. Deshpande,
Advocate for respondent Nos. 4,5 & 6.

Shri R.D. Karode, Advocate for respondent Nos. 7 to 12

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

DATE OF RESERVING THE JUDGMENT : 01/04/2025

DATE OF PRONOUNCING THE JUDGMENT: 08/05/2025

(1) **Rule.** Rule made returnable forthwith.

(2) Being aggrieved by the order dated 27/06/2024 and order dated 05/02/2024 passed by the respondent No. 1 and 2 authorities respectively and thereby removed the petitioner from the post of Sarpanch/Member.

(3) The petitioner is an elected 'Sarpanch' of Gram Panchayat Rajanda, Tq. Barshitakli, Dist. Akola. The respondent No. 7 to 12 are the Members of Gram Panchayat, Rajanda. On 03.01.2023, respondent no. 7 to 12 filed an application under Section 39 (1) of Maharashtra Village Panchayat Act before respondent no.2 Additional Commissioner, thereby praying for disqualification of the petitioner. After receipt of the application respondent no. 2 Additional Commissioner directed the respondent no. 4 Chief Executive Officer, to conduct an inquiry and submit its report. Despite Section 39 of the Maharashtra Village Panchayat Act, 1959 (for short the "VP Act") and despite there is a specific direction by respondent no. 2 Additional Commissioner to the respondent no. 4 Chief Executive Officer, by way of its

communication dated 20.01.2023 directed to the respondent no. 5 Block Development Officer to conduct an inquiry and submits its report.

(4) The learned Deputy Chief Executive Officer, Zilla Parishad, Akola issued a communication dated 25.01.2023 directed the respondent no. 5 Block Development Officer, to inform through Secretary of Gram Panchayat, the petitioner and respondent no. 7 to 12 that hearing is scheduled on 03.02.2023 before the respondent No. 4 Chief Executive Officer. That, at one place there was a letter of inquiry dated 20.01.2023 issued by the respondent No. 4 Chief Executive Officer, directing to the respondent No. 5 Block Development Officer to conduct an inquiry and submit its report, and at another place, there was a letter of Deputy Chief Executive Officer dated 25.01.2023 informing the hearing to be scheduled on 03.02.2023 before Respondent No. 4 Chief Executive Officer. Thereafter, the petitioner received one more communication from Deputy Chief Executive Officer, informing him about hearing to be taken place before the respondent no. 4 Chief Executive Officer on 03.03.2023. The

petitioner appeared before both i.e. respondent no. 4 Chief Executive Officer and respondent No. 5 Block Development Officer, submitted his reply along with the relevant documents. As the Chief Executive Officer, Zilla Parishad was not conducting the inquiry as per mandate of Section 39, the respondent nos. 7 to 12, therefore, had filed a Writ Petition No. 1277/2023 before this Court, wherein it was alleged that, the inquiry is not conducted by the respondent no. 4 Chief Executive Officer. The respondent no. 5 Block Development Officer, allegedly conducted the inquiry and submitted its report dated 13.06.2023 to the Deputy Chief Executive Officer, Zilla Parishad, Akola.

(5) The respondent no. 4 Chief Executive Officer, thereafter, submitted his inquiry report to the respondent no.1 stating that, he has conducted inquiry on the basis of Inquiry Report of Block Development Officer. The respondent no. 4 Chief Executive Officer, did not himself conducted the inquiry which a mandate of law. The petitioner therefore, filed a Writ Petition No. 5879/2023 before this Court challenging the Inquiry Report dated 26.06.2023, submitted by respondent no.

4 Chief Executive Officer, to respondent no. 2 Additional Commissioner. The writ petition filed by respondent nos.7 to 12 and by the present petitioner decided by this Court by a common order dated 11.07.2023, as the petitioner can challenge the Inquiry Report before respondent no.2, purpose of petition filed by respondent nos.7 to 12 has been served.

(6) The petitioner objected and challenged the inquiry report submitted by the Chief Executive Officer before the respondent no. 2 Additional Commissioner. The petitioner had also challenged the proceedings initiated against him on merits. The respondent No. 2 Additional Commissioner, despite there being specific challenge to the inquiry report of respondent No.4 Chief Executive Officer, without giving any finding on the same, erroneously allowed the application filed by the respondent nos. 7 to 12, thereby disqualified the petitioner from the post of Sarpanch vide order dated 05.02.2024.

(7) The petitioner being aggrieved by the order passed by the respondent no. 2 disqualifying him from the post of Sarpanch, filed a statutory Appeal under Section 39(3) of the

Maharashtra Village Panchayat Act, before respondent No. 1 Hon'ble Minister of Village Development on 7.02.2024 i.e. within limitation along with application for stay, however, the said application was not heard for a long time and, therefore, Writ Petition No.2996/2024 filed by the present petitioner for directing to decide the statutory appeal and application for stay. This Court disposed of the writ petition with specific direction that appeal be decided within a period of six months. There was also specific direction that in case if an election programme of Sarpanch is declared, it shall be open for the petitioner to move an application for stay of the same in view of the pendency of the appeal. It is contended that inspite of this direction, the Collector/respondent no.3 passed an order dated 13.05.2024 thereby declaring the election for the post of Sarpanch of Gram panchayat Rajanda on 28.05.2024. Immediately, it was challenged before the Hon'ble Minister, however respondent no.1/Minister was busy in election of 'Loksabha' and, therefore, there is no compliance the order passed by this Court. Therefore, the petitioner again filed a Writ Petition No.3222/2024, wherein this Court by way of an

interim order directed that the election of Sarpanch would be subject to the result of the petition.

(8) It is further contended that the Chief Executive Officer has allegedly conducted the inquiry on the basis of inquiry report of Block Development Officer, the petitioner fails to understand that the Block Development Officer has submitted his report on 13.06.2022 and the hearing was taken place before Chief Executive Officer on 03.03.2023, then how can Chief Executive Officer can say that, his inquiry report is on the basis of inquiry report of Block Development Officer. This itself shows that, there is no opportunity given by the Chief Executive Officer after the submission of inquiry report to the petitioner. It is out of placed to mention here that, the said inquiry report of Block Development Officer was not provided to the petitioner, all these facts needs to be taken into consideration and needs to be set aside.

(9) Learned Counsel for petitioner relied on following citations :

***(1) Sitaram S/o Kaniram Chavhan, Writ Petition
No. 2904/2023,***

- (2) Ankush S/o Pandurang Shinde Vs. The State of Maharashtra and others, 2022(3) ALL MR5,*
- (3) Nimba Yadav Bhoi Vs. President, Standing Committee, Zilla Parishad, Jalgaon and others, 2002(3) Mh.L.J. 466,*
- (4) Shalik S/o Bolan Dahiwale Vs. State of Maharashtra, Writ Petition 7158/2017 and*
- (5) Swaraj S/o Dilip Thote Vs. State of Maharashtra, Writ Petition No. 1547/2022.*

(10). Learned counsel for the Respondent nos. 7 to 12 contended that on 03.03.2023 parties from the both sides were present before the Respondent No. 2 authority in the proceeding, the Respondent No. 2 authority had personally heard the parties and granted them every opportunity of hearing. Therefore, the allegation of the petitioner that the Respondent No. 2 authority is not conducting the proceeding under section 39(1) of the Maharashtra Village Panchayat Act, 1959 as per the mandatory provision of law and delegating the authority to conduct an inquiry to the Respondent no.5 is not correct. This fact is also substantiated from the Rojanama of the proceeding, as the concerned parties were present at the time of hearing and there signatures were also taken on the

Rojanama of the proceeding. Therefore, the reasons mentioned in the above instant petition filed by the present Petitioner is devoid of any merit and is liable to be dismissed.

(11) Learned Counsel for respondent nos.7 to 12 relied on following citations :

- (1) *Diwakar S/o Bajirao Pachare Vs. Hon'ble Minister, Village Development and Panchayat Raj and others, Writ Petition No. 1965/2022,*
- (2) *Sau. Leena Ramesh Dongarwar Vs. The Commissioner, Nagpur and others, Writ Petition No. 688/2016,*
- (3) *Smt. Meerabai W/o Daulatrao Gawali Vs. State of Maharashtra, Writ Petition No. 4450/2019,*
- (4) *Damayanti W/o Omprakash Tapadiya Vs. Ashok S/o Dadarao Thakare and others, Writ Petition No. 4453/2019,*
- (5) *H.V. Nirmala Vs. Karnathaka State Financial Corporation and others, 2009(3) ALL MR 465,*
- (6) *Rajendra S/o Radhakisan Raut Vs. The State of Maharashtra and others, 2022(4) ALL MR 226 &*
- (7) *Ram Sarup Mohan Singh Vs. The Deputy Commissioner, Rohtak and others, AIR 1971 Punjab and Haryana 408.*

(12) I have heard both the parties at length. Perused the impugned order and documents placed on record and considered the citations relied on by both the parties.

(13) The application for disqualification was moved by respondent nos.7 to 12 before the Divisional Commissioner, it is alleged in the said application that, from Gram-Panchayat Rajanda, a list of beneficiary belonging to Schedule Caste, Schedule Tribes and other eligible persons, who are entitled for grant of "Gharkul" under the scheme of "Prime Minister Aawas Yojna" (PAY) was sent. From the Panchayat Samiti Barshitakli, an approved list was received, wherein the name of one Ajay Devidas Gaikwad and Devkabai Mansaram Hivrle, persons belonging to Scheduled Caste were included. So also, name of one Balkrushna Chatursingh Daberao and Ajabrao Gyansing Solanki were included as belonging to Scheduled Tribes. Similarly, the name of Prafulla Mahadeo Munde and Shivaji Purnaji Munde were included in other beneficiaries. It is alleged that the present petitioner by taking Gram Sabha on 03.01.2022, changed the names of beneficiaries. The names of handicap, widow and other disable

persons were not included. There was a preliminary inquiry conducted by officers of Panchayat Samiti i.e. one Shrikant More and one D. M. Shirsat and has submitted a report to Block Development Officer. As per the report, there is correction made in the list of beneficiaries and as per correction, name of Sudhakar Suroshe and Gajanan Suroshe were included though, there is a house in their name. The names of disabled, widowed and landless persons have not been included.

(14) It is also alleged that record of Gram Sabha dated 03.01.2022 was fabricated as the names of proposer and seconder in the resolution and in certified copy of resolution are different. It is also alleged that there is an encroachment of Panjab Vishwnath Arakharao and Usha Anandrao Wankhade on the Government lands. However, there is a false Namuna-8 prepared in the name of said persons and the proposal was sent for grant of Gharkul to the said persons. Further an amount of Rs.15,000/- has been paid towards first installment to the above said persons. It was also alleged that as far as proposal of one Punjaji Narayan Kedar for grant of Gharkul is

concerned, the Namuna-8 regarding his other land is attached. However, the said Punjaji Kedar has constructed the Gharkul in front of the School on the Government land. It is further allegation that in the year 2012-13, the work of Anganwadi was started, but it was incomplete, however, without completing the said work, Rs.35,000/- was paid on 02.03.2022 to one Sawalaram Jangaliman Arakharao and Rs.1,35,000/- paid to one Dilip Wasudeo Kshirsagar and Rs.25,000/- withdrawn in the name of Sarpanch and Secretary. Names of disabled persons and widow ladies were not included in the list. It is main contention of the petitioner that respondent no.2/Additional Commissioner after receipt of complaint directed the respondent no.4/Chief Executive Officer to conduct an inquiry and submit its report. However, respondent no.4/Chief Executive Officer by its communication dated 20.01.2023 to respondent no.5/Block Development Officer, directed to conduct an inquiry and submit its report. Thereafter on 25.01.2023, the Chief Executive Officer directed to respondent no.5/Block Development Officer to inform through Secretary of Gram Panchayat to the petitioner and

respondent nos.7 to 12 that hearing is scheduled on 03.02.2023 before the respondent no.4/Chief Executive Officer.

(15) Learned Counsel for the petitioner submitted that there was complete illegality on the part of respondent nos.4 and 5. Hearing before the Chief Executive Officer on 03.02.2023 as well as hearing before the Block Development Officer, both were attended by the petitioner and filed his reply along with relevant documents. It is contention of the petitioner that the list of beneficiaries of Gharkul was prepared by Officers of Panchayat-Samiti by conducting a survey of Gram Panchayat Rajanda and it was approved by the Gram Sabha. However, allegation is that there are certain changes in original proceeding and in the certified copy issued by the Gram Panchayat.

(16) Learned Counsel for petitioner relied on judgment in ***Writ Petition No.2904/2023*** (supra), wherein this Court held that “powers under Section 39(1) of the Village Panchayats Act, 1959 cannot be delegated by Chief Executive

Officer to the Block Development Officer”. In the said matter, no opportunity of hearing was given by Chief Executive Officer before relying on the report submitted by Block Development Officer.

(17) Learned Counsel for the petitioner also placed reliance on ***Ankush S/o Pandurang Shinde*** (supra), wherein this Court held in para 12 as under :

“12. The term “inquiry” convey a systematic investigation or examination into the facts or principles. In the wake of the accusations levelled against the present petitioner who was working as a Sarpanch on being elected by a democratic process to hold the said post”.

However, in the said matter the facts are distinguishable. In the said matter, order of removal of the petitioner from the office of Sarpanch was not proceeded by an inquiry by the Chief Executive Officer. There was no order of President appointing Chief Executive Officer to enquire into the matter.

(18) Learned Counsel for the petitioner also placed reliance on ***Shalik S/o Bolan Dahiwale*** (supra), wherein there

is judgment in *Nimba Yadav Bhoi Vs. President, Standing Committee, Zilla Parishad, Jalgaon & Ors.*, reported in *2002(3) Mh.L.J. 466* is quoted, which reads thus :

“8. The removal of a person from the office of Sarpanch is to be preceded by an opportunity of being heard in the matter by the authority holding enquiry pursuant to the order issued in that regard by the President of Zilla Parishad. Such authority to enquire into the matter has necessarily to be the Chief Executive Officer of the Zilla Parishad and the decision regarding the removal should be on the basis of the report by the Chief Executive Officer submitted to the Standing Committee. Referring to this proviso to Section 39(1), it has been contended that the expression "shall" therein and the proviso in the negative language discloses the intention of legislature that the pre-conditions which are specified thereunder are to be strictly complied with in order to have a legal sanctity to the order of removal of Sarpanch under the said provision of law.”

There is no dispute over this proposition of law.

(19) Learned Counsel for petitioner also relied on *Swaraj S/o Dilip Thote* (supra), wherein reliance is placed on *Nimba Yadav Bhoi* (supra) and similar view is taken by this Court.

(20) As against this, learned Counsel for respondent nos.7 to 12 relied on ***Diwakar S/o Bajirao Pachare*** (supra), wherein this Court held that :

“2. the report of the Chief Executive Officer, is based upon the report of the Block Development Officer respondent No.4. It is material to note that, the enquiry under Section 39(1) in case, it is in respect of the Sarpanch, has to be done by Chief Executive Officer. That by itself, would not mean that the Chief Executive Officer has to go from place to place and person to person for making the enquiry and it would be permissible for the Chief Executive Officer, to obtain reports and material from the concerned Village Panchayat or the Block Development Officer or other necessary Authorities and thereafter, by applying his mind, submit a report, otherwise the enquiry, would become an impossibility. The respondent No.1 while passing the impugned order, has not considered this position and merely on the ground that the Chief Executive Officer has relied upon the report of the Block Development Officer to submit this enquiry report, has set aside the order dated 30.08.2021 (page 68), considering which, the same is hereby quashed and set aside and the matter is remanded back to the respondent No.1 to consider the matter on merits and decide the same.”

(21) Learned Counsel for the respondent nos.7 to 12 also placed reliance on ***Sau. Leena Ramesh Dongarwar*** (supra), wherein this Court held that :

“5. In support of his contention that an enquiry in the matter of removal of Sarpanch of Member of Gram Panchayat must be made by the Chief Executive Officer himself and no delegation is permissible, learned counsel relied on the judgment of our Court in the case of Nimba Yadav Bhoi v/s. President Standing Committee, Zilla Parishad, Jalgaon, reported in 2002(3) Mh.L.J. 466. There is no quarrel with the proposition canvassed by learned counsel for the petitioner. The fact of the matter is that this requirement is satisfied in the present case. What was initially carried out by the Block Development Officer was merely a preliminary enquiry. The inquiry within the meaning of the first proviso to Section 39(1) of the Act was indeed undertaken by the Chief Executive officer himself. There is, therefore, no need to consider the question of delegation in this behalf. As far as compliance with the second proviso to Sub-section (1) of Section 39 is concerned, there is a provision in the Act (Section 182) authorizing the Commissioner, subject to the general or special orders of the State Government, to delegate powers exercisable by the Commissioner under this Act to an Officer not below the rank of a

Mamlatdar, Tahsildar or Naib-Tahsildar. The powers of the Commissioner in this behalf are delegated under this provision to the Deputy Commissioner. The observations in Nimba Yadav Bhoi's case that no delegation of powers under Section 39(1) is permissible were in the context of the powers of the Chief Executive Officer to inquire into the matter, for which there is no provision in law for delegation. The powers of the Commissioner, on the other hand, are expressly permitted in the Act itself to be delegated, as noted above. No challenge can be laid, therefore, on the basis of Nimba Yadav Bhoi's judgment to the delegation here. Such delegation is recognized and countenanced by this Court in case of Mohd. Izaz Abdul Rafique vs. Addl. Commissioner, Amravati, reported in 2010(2) ALL MR 355. The hearing conducted as well as the decision taken by the Deputy Commissioner is thus intra vires the statute."

(22) Learned Counsel for respondent nos.7 to 12 also placed reliance on **Smt. Meerabai W/o Daulatrao Gawali** (supra), wherein this Court held that :

"The initial enquiry conducted by the Sub-Divisional Officer (Block Development Officer) and its report is also on record. It is true that under Section 39 (1) of the said Act, the Chief Executive Officer has to conduct an enquiry and submit his report. In the present case such enquiry report has been submitted by the Chief Executive Officer on 27.09.2018. Thus

requirements of Section 39(1) of the said Act stand complied with. The law laid down in Nimba Yadav Bhoi (supra) thus stands complied with.”

(23) Learned Counsel for respondent nos.7 to 12 also placed reliance on ***Damayanti W/o Omprakash Tapadiya*** (supra), wherein this Court held that :

“6. A preliminary enquiry was conducted by the Tahsildar and after inspecting the location in question and by recording statements of several villagers, it was reported by him on 23.10.2017 that six trees had been cut from their base and branches of three trees had also been cut. There was no permission duly obtained that was brought to his notice during the enquiry. This enquiry was a fact findings enquiry. It was thereafter followed by another enquiry by Chief Executive Officer as required by the provisions of Section 39(1) of the said Act.”

(24) Learned Counsel for respondent nos.7 to 12 also placed reliance on ***H. V. Nirmala*** (supra), wherein in the disciplinary enquiry Legal Advisor has appointed as Enquiry Officer, his competency was under challenged. However, Objection not raised at the earliest stage. Appellant participated in enquiry proceedings, no prejudice or violation

of principles of natural justice alleged. It is held by the Hon'ble Apex Court that the Superior Courts in a case of this nature may not permit to raise such a question for the first time.

(25) Learned Counsel for Respondent Nos.7 to 12 also placed reliance on ***Rajendra S/o Radhakisan Raut*** (supra), in support of his contention, which reads thus :

“It is held that since petitioner failed to raise any objection about jurisdiction at the time of hearing appeal, he cannot raise it in this petition and thus impugned order passed by Minister upheld.”

(26) Similar reliance is placed on ***Ram Sarup Mohan Singh*** (supra), wherein it is held that :

“No new ground can be raised in the Petition when the Petitioner a Sarpanch does not take objection to the findings of the Inquiry Officer at the proper stage. It cannot be challenged those findings in the writ petition”.

(27) Considering the documents on record, it can be seen that due opportunity was granted to the petitioner, though it is alleged that Chief Executive Officer has not conducted an Inquiry and directed the Block Development Officer to conduct the same. However, on perusal of

documents, it transpires that the Block Development Officer has conducted a preliminary inquiry and Chief Executive Officer himself conducted inquiry by granting due opportunity of hearing to the petitioner. He has recorded his findings against all the charges. As such, there is no substance in the contention that Chief Executive Officer has not conducted inquiry or not granted opportunity of hearing. The citations relied on by the petitioner, there was an inquiry at all conducted by Chief Executive officer or he has forwarded report of his subordinate without application of his mind. In the present matter, it also appears that due notice of hearing also given to the petitioner as well as respondent to remain present before the Chief Executive Officer for inquiry. The Report shows that due inquiry was conducted after granting opportunity of hearing. On the basis of said Report, the Divisional Commissioner has passed the order after granting due opportunity to all the parties. The findings about gross misconduct is recorded by the Divisional Commissioner.

(28) As such, there are no error or perversity in findings recorded by the Divisional Commissioner or the Minister. It is

settled position of law that if there is a plausible view on the basis of fact and evidence on record, the High Court should refrain itself from appreciating the evidence, if there is no perversity. Therefore, the writ petition liable to be dismissed. Hence, it is **dismissed**. No order as to costs.

(SMT. M.S. JAWALKAR, J.)

Kirtak