



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO.6057/2024

- 1) Sudam Bhika Jadhav,
Age: 59 Years, Occupation: Agriculture,
- 2) Dr. Bhushan Dulaji Gawande,
Age: 39 years, Occupation: Physician,
(Member, Grampanchayat Gadegaon),
Both R/o. Gadegaon, Tq. Manora,
Dist.: Washim.

... PETITIONERS

-Versus-

- 1) Hon'ble Minister for Rural
Development State of Maharashtra,
Mantralaya, Mumbai.
- 2) Additional Commissioner, Amravati,
Tq. & Dist.: Amravati.
- 3) Zilla Parishad, Washim,
Through its Chief Executive Office,
Tq. & Dist. Washim.
- 4) Gram Panchayat Gadegaon,
through its Secretary,
Tq. Manora, Dist: Washim.
- 5) Sau. Pratima Laxman Chavan,
Age: 33 years, Occupation: Agriculture,
Sarpanch, Grampanchayat, Gadegaon,
R/o. Gadegaon, Tq. Manora,
Dist.: Washim.

...RESPONDENTS

Shri Devdutt Gawande, Advocate for petitioners
Shri H.D. Futane, AGP for respondents/State
Shri P.S. Giratkar, Advocate for respondent No.3
Ms K.N. Majithia, Advocate for respondent No.4
Shri A.V. Band, Advocate for respondent No.5

CORAM : **SMT. M. S. JAWALKAR, J.**
DATE : **14/02/2025**

ORAL JUDGMENT

. **Rule.** Rule made returnable forthwith.

2. Heard learned Counsel for the respective parties.

3. The present petition is filed being aggrieved by the order passed by Hon'ble Minister for Rural Development, Maharashtra, dated 26/08/2024, in Appeal No. 2023/Pra. Kra. 179/Pan.Ra.-6/Gram Panchayat Gedegaon, Tq. Manora, District Washim. By this order the Minister allowed the appeal filed by respondent No.5. The respondent No.5 came to be elected as Sarpanch on 17/02/2021. Petitioners herein filed application under Section 39(1) of the Maharashtra Village Panchayat Act, 1959, against the respondent No.5 for her removal from the post of

Sarpanch as well as Member of Panchayat, being guilty of misconduct in discharging her duties before the respondent No.2, on the several grounds like financial irregularities and corruption in several construction works of Panchayat, failure to hold mandatory Panchayat meetings, false record of Gramsabhas, purposeful avoidance to remove encroachments committed by relatives of Sarpanch etc.

4. The respondent No.2, Additional Commissioner, Amravati, directed respondent No.3 to conduct an inquiry as per Section 39(1) of the Act. The respondent No.3, Chief Executive Officer Zilla Parishad Washim then directed the Block Development Officer (BDO), Panchayat Samiti, Manora, to conduct preliminary inquiry and to submit fact finding report to the respondent No.3.

5. The BDO submitted his report of preliminary inquiry on 11/04/2022. The respondent No.3 after receiving the aforesaid preliminary inquiry report from BDO, conducted inquiry as per Section 39(1) of the Act by granting opportunity of hearing to the respondent No.5. The inquiry report submitted by respondent No.3

to respondent No.2, found respondent No.5 Sarpanch, along with Secretary, to be guilty of misconduct as per Section 39(1) of the Act.

6. The respondent No.2 allowed the application under Section 39(1) of the Act, filed by the petitioners, thereby, removed the respondent No.5 from her post of Sarpanch, as well as, Member of the Panchayat. The respondent No.5 challenged the said order before the respondent No.1 i.e. Minister for Rural Development, State of Maharashtra, by way of filing appeal. The appeal came to be allowed.

7. The learned Counsel for the respondent submitted that the BDO cannot conduct inquiry and even if it is a preliminary, the Chief Executive Officer was required to apply his mind independently. However, it is his contention that both the authorities have not given any consideration to the reply filed by respondent No.5 and Chief Executive Officer submitted his report in verbatim as per the report of BDO. This aspect is again agitated before the respondent No.2. However, it does not appear to be given any consideration.

8. Learned Counsel for respondent drawn my attention to the order passed by this Court in Writ Petition No. 4703/2023 (page 49). It was specifically observed by this Court that validity of report of the BDO or the CEO, can be raised at the time of final hearing of the application. Writ Petition was disposed of with direction to the Divisional Commissioner to decide the application filed by the respondent Nos. 4 and 5 i.e. petitioners in the present petition. On merit and while considering the said application on merit, the Divisional Commissioner shall decide the objection to the report afresh, after hearing both the parties.

9. From the order of respondent No.2, it appears that this aspect is not considered afresh by the Additional Commissioner. There is no whisper about the validity of the inquiry report submitted by the CEO. After perusal of the report, I am satisfied that there is no consideration to the objections raised by the respondent No.4. In the report of CEO, he has not applied independently his mind while submitting the report. It also appears that no fair opportunity was granted while conducting inquiry. The report of CEO is exactly as the report of BDO and no independent

findings are recorded by the CEO.

10. So far as order passed by the respondent No.1 is concerned, it is also unsustainable in law. Though, it is observed that the charges against the respondent No.5 are held to be proved by CEO as well as, as per order of Additional Commissioner, Amravati, however, it is held that as per Maharashtra Grampanchayat Act, for financial transactions, Secretary as well as Sarpanch both are responsible and they are expected to do the financial transactions as per law and therefore appellant cannot be held liable. Further it is observed by the Hon'ble Minister, that removal of elected lady candidate, on the ground of administrative irregularity means depriving her from the constitutional rights in her favour. Both these reasons given by the Hon'ble Minister is erroneous and unsustainable. The order based on such finding is not only unsustainable but without any valid reason. As such, the order passed by Hon'ble Minister dated 26/08/2014, in Appeal No. 2023/Pra.Kra.179/Pan.Ra.-6, Gram Panchayat Gedegaon, District Washim. is hereby quashed and set aside. So also the order passed by the respondent No.2, Additional Commissioner, Amravati, dated

20/11/2023, is also liable to be set aside as it has not considered the objection raised by the respondent No.5, by the learned CEO, while submitting his inquiry report nor by respondent No.2. Hence, matter is remanded back to the Additional Commissioner to consider afresh the application and also to consider objection of the respondent No.5, as directed by this Court in Writ Petition No. 4703/2023. As such, petition is partly allowed in the above terms.

11. The learned Additional Commissioner to decide the application within a period of one month.

12. Parties to appear before the learned Additional Commissioner, Amravati, on 18/02/2025 at 11:00 p.m.

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

Jayashree..