



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

WRIT PETITION NO. 3036/2019

Sunita w/o Ulhas Bhalerao,
Aged about 52 years, Occupation : Sarpanch,
Gram Panchayat Murmadi-Sawri,
Resident of Murmadi-Sawri,
Tahsil Lakhni, District Bhandara.

PETITIONER

.....VERSUS.....

1. Hon'ble Minister of State for
Rural Development and Panchayat Raj,
4th Floor, Mantralaya, Mumbai-400 032.
2. The Additional Commissioner,
Nagpur Division, Nagpur.
3. The Block Development Officer,
Panchayat Samiti, Lakhni,
Tahsil Lakhni, District Bhandara.
4. Sheshrao Dhonduji Wanjari,
Up-Sarpanch, Gram Panchayat
Murmadi-Sawri, Resident of Murmadi-
Sawri, Tahsil Lakhni, District Bhandara.

RESPONDENTS

Shri M.V. Samarth, counsel for petitioner.
Mrs. K.R. Deshpande, Assistant Government Pleader for respondent nos.1 and 2.
Shri R.S. Khobragade, counsel for respondent no.3.
Shri A.A. Dhawas, counsel for respondent no.4.

CORAM : A.S. CHANDURKAR, J.

DATE : 3RD MAY, 2019.

ORAL JUDGMENT

In view of notice for final disposal issued earlier, the learned
counsel for the parties have been heard at length.

2. **RULE.** Rule made returnable forthwith.

3. The petitioner challenges the order dated 02.04.2019 passed in the appeal as filed under Section 39(3) of the Maharashtra Village Panchayats Act, 1958 (for short, 'the said Act') dismissing the said appeal and confirming the order dated 23.10.2018 passed by the Additional Commissioner disqualifying the petitioner from holding the post of Sarpanch under Section 39(1) of the said Act.

4. In the elections that were held on 11.11.2017, the petitioner secured the highest votes and was thus elected as Sarpanch of Gram Panchayat Murmadi-Sawari. The respondent no.4 herein who was elected as Upa-Sarpanch filed a complaint before the Divisional Commissioner alleging misuse of authority of the post of Sarpanch by the petitioner. In the application in question, it was stated that the development works in the Gram Panchayat had been stalled by the petitioner and in the monthly meeting of the Gram Panchayat dated 21.12.2017, the petitioner as Sarpanch refused to sign the minutes despite being present. Taking cognizance of that complaint, the Chief Executive Officer called upon the petitioner to remain present on 12.06.2018 in the enquiry that was proposed to be held under Section 39(1) of the said Act. That meeting was thereafter postponed to 18.06.2018 in which the petitioner remained present and submitted her explanation. After considering the same, the Divisional Commissioner by

the order dated 23.10.2018 accepted the complaint as made by the respondent no.4 and on the basis of the enquiry report submitted by the Chief Executive Officer, Zilla Parishad Bhandara, removed the petitioner from the post of Sarpanch. Being aggrieved, the petitioner filed an appeal before the State Government. By the impugned order, the said appeal has been dismissed maintaining the order of removal as passed. Being aggrieved, the petitioner has challenged the aforesaid adjudication.

5. Shri M.V. Samarth, learned counsel for the petitioner submitted that the entire proceedings were vitiated on account of non-compliance of the provisions of Section 39 of the said Act. According to him, as per the proviso to Section 39(1) of the said Act, a Sarpanch could be removed only after the Chief Executive Officer under the orders of the Commissioner holds an enquiry after giving due notice to the Panchayat and the person concerned. According to him, the enquiry in question was not conducted by the Chief Executive Officer but it was conducted by the Block Development Officer. The same was not permissible. Placing reliance on the decision in *Nimba Yadav Bhoi Versus President, Standing Committee, Zilla Parishad, Jalgaon & Others* [2002(3) Mh.L.J. 466], it was submitted that if the enquiry in question is not conducted by the Chief Executive Officer but is conducted by some other authority, the enquiry stands vitiated. He therefore submitted that on this count, the

impugned orders were liable to be set aside. It was then submitted that the charges levelled against the petitioner were not of such a nature that would warrant removal of the petitioner from the post of Sarpanch under Section 39(1) of the said Act. He submitted that the proposal with regard to construction of the roads and pipelines was already processed and work order in that regard had already been issued on 07.02.2018. The allegation that the petitioner had prevented carrying out such work had no basis. As regards the charge that the petitioner did not sign the minutes of the meeting held on 21.12.2017, it was submitted that as per the resolution passed in the said meeting, the Panchayat had resolved to take action against the petitioner herself. In that view of the matter, it could not be expected of the petitioner to sign the said resolution proposing action against herself. As regards third charge, it was submitted that the meeting in question was held in the manner prescribed and there was no illegality therein. Insofar as the fourth charge levelled against the petitioner is concerned, it was submitted that the site of the E-Library was resolved to be changed on 13.05.2017 which was much prior to the petitioner's election as Sarpanch. It was thus submitted that none of the charges levelled against the petitioner had any legal or factual basis warranting her removal under Section 39(1) of the said Act. There was no basis whatsoever to hold that the petitioner was guilty of any misconduct in the discharge of duties or was guilty of any disgraceful

conduct or had neglected her duty or was under any handicap to perform her duty. Without considering these aspects, the authorities had removed the petitioner who was a directly elected Sarpanch under Section 39(1) of the said Act. Reliance was also placed on the decision in *Ravi Yashwant Bhoir Versus District Collector, Raigad & Others* [(2012)4 SCC 407] and *Shrikant Chahakar & Others The State of Maharashtra through Minister Rural Development & Others* [2010 Vol.112(4) Bom.L.R. 1704]. It was thus submitted that the impugned orders deserve to be set aside.

6. On the other hand Shri A.A. Dhawas, learned counsel for the respondent no.4, Shri R.S. Khobragade, learned counsel for the respondent no.3 and Mrs. K.R. Deshpande, learned Assistant Government Pleader for the respondent nos.1 and 2 supported the impugned order. It was submitted that the enquiry in question had been held by the Chief Executive Officer and not by the Block Development Officer as alleged. This contention of the enquiry not being held by the Chief Executive Officer was being raised for the first time before this Court. The said aspect was not raised either before the Divisional Commissioner or before the State Government and hence it was not permissible for the petitioner to raise that contention. It was then submitted that based on the enquiry report it was clear that all the charges levelled against the petitioner were duly proved. There was sufficient material on record to justify the order

of removal of the petitioner. It was not permissible for this Court to re-appreciate the entire material and record a different finding. Since the impugned orders were passed after considering all the documents placed on record, there was no case made out to interfere in writ jurisdiction. It was thus submitted that the writ petition was liable to be dismissed.

7. I have heard the learned counsel for the parties at length and I have perused the material placed on record. The provisions of Section 39(1) of the said Act specifically require the Chief Executive Officer to hold an enquiry when directed by the Commissioner under Section 39(1) of the said Act. The law in this regard stands settled in the light of the decision in *Nimba Yadav Bhoi* (supra). It has been held in the aforesaid decision that the enquiry as contemplated by the first proviso to Section 39 of the said Act has necessarily to be conducted by the Chief Executive Officer and not by any other authority. In that case, the Block Development Officer was authorized by the Chief Executive Officer to hold the enquiry and submit a report. It was held that such a course was not permissible and the enquiry as held was found to be vitiated.

In the present case, the record indicates that pursuant to the communication dated 16.04.2018 issued by the Deputy Executive Officer, the Block Development Officer was directed to hold an enquiry and submit a report in that regard. The said enquiry was under Section 39(1)

of the said Act. Pursuant thereto, the petitioner was issued a notice in that regard and thereafter the enquiry was held by the Extension Officer (Panchayat) in the presence of the Block Development Officer. After this enquiry was held which can also be seen from the enquiry report signed by the Chief Executive Officer, the matter proceeded further. In other words, the Chief Executive Officer himself did not conduct the enquiry as contemplated but instead directed the Block Development Officer to conduct such enquiry. The enquiry was actually held by the Extension Officer (Panchayat) alongwith the Block Development Officer. In the light of the law laid down in *Nimba Yadav Bhoi* (supra) it is clear that as the enquiry in question was not held by the Chief Executive Officer, the enquiry report stands vitiated to that extent. The order of removal passed on that basis therefore cannot be sustained.

8. Though it was submitted by the learned counsel for the parties that this contention was not raised by the petitioner in the proceedings before the State Government, I do not find any reason to preclude the petitioner from raising the same in the writ petition. The said aspect goes to the root of the matter and as held by this Court, the enquiry proceedings stand vitiated if the enquiry is not conducted by the Chief Executive Officer when the Sarpanch is sought to be removed under Section 39(1) of the said Act. There are no disputed questions arising

and on a bare perusal of the report submitted by the Enquiry Officer it becomes clear that the enquiry was held by the Block Development Officer and not by the Chief Executive Officer. Hence, that submission raised on behalf of the respondents cannot be accepted.

9. Once it is found that the enquiry has been held in a manner contrary to Section 39(1) of the said Act, it is not necessary to further examine the conclusions recorded in that regard. The petitioner is entitled to succeed on the ground that the enquiry has been held in a manner contrary to Section 39(1) of the said Act.

10. In that view of the matter, the orders passed by the Divisional Commissioner under Section 39(1) of the said Act and confirmed by the State Government in the appeal under Section 39(3) of the said Act are set aside. It is declared that the petitioner is entitled to continue as the elected Sarpanch till such period she is removed from Office in accordance with law. Needless to state that the concerned authorities can always proceed to take further steps in the matter in accordance with law.

11. Rule is made absolute in aforesaid terms. No order as to costs.

(A.S. CHANDURKAR, J.)

APTE