

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

Writ Petition No.3263 of 2009

1. Shri Shrikant Chahakar.
2. Sau. Omshila Khobragade.
3. Sau. Surekha Kakde.
4. Shri Sudhakar Jambhodi.
5. Shri Pankaj Dhone.
6. Sau. Shakuntala Rahangdale.
7. Shri Prital Lohsarva.
8. Shri Rajendra Raut.

All aged : major,  
Occupation : Cultivator,  
All R/o Mahadula,  
Tah. Kampti,  
District : Nagpur.

... Petitioners

Versus

1. The State of Maharashtra,  
through Minister,  
Rural Development,  
Mantralaya,  
Mumbai -32.
2. Shri Ratnadeep s/o Lalchand Rangari,  
The Ex. Sarpanch,  
The Gram Panchayat,  
Mahadulla,  
Tah. Kampti, Distt. Nagpur.
3. The Secretary,  
Gram Panchayat,  
Mahadulla,  
Tah. Kampti, Distt. Nagpur.

4. Chief Executive Officer,  
Zilla Parishad,  
Nagpur.

5. Additional Commissioner,  
Nagpur.

... Respondents

Shri A.S. Kilor, Advocate for Petitioners.  
Shri N.W. Sambre, Government Pleader for Respondent Nos.1  
and 5.  
Shri M.I. Dhatrak, Advocate for Respondent No.2.  
Shri V.D. Raut, Advocate for Respondent No.4.

**CORAM** : R.C. Chavan, J.  
Reserved on : 20-1-2010

Pronounced on : 08-04-2010

Judgment :

1. Rule. Heard finally by consent of the learned counsel of the learned counsel for the parties.

2. This petition raises an interesting question about rights and duties of representatives democratically elected to local self-governing body.

3. The petitioners as well as respondent No.2 are elected members of Gram Panchayat, Mahadulla. One Smt. Nirmala Bonde had been elected as Sarpanch.

According to the petitioners, since Smt. Nirmala Bonde was not acting in the interest of Gram Panchayat and people at large, they moved a motion of no confidence on 5-8-2006, which was passed by majority. The Collector had unseated Smt. Nirmala Bonde as a result of no confidence motion being passed. Thereafter elections for the post of Sarpanch and Up-Sarpanch were held and the petitioner Nos.2 and 7 claimed to have been elected as Sarpanch and Up-Sarpanch respectively. Smt. Nirmala Bonde's appeal before the Commissioner was, however, pending. It seems that respondent No.2 Ratnadeep Rangari was also shown as Ex Sarpanch of Gram Panchayat, though it is not clear from the petition as to how and when said Ratnadeep Rangari became Sarpanch.

4. On 26-10-2006, Smt. Nirmala Bonde made a complaint to the Chief Executive Officer about misconduct by the petitioners in discharge of their duties, abuse of their powers and obstruction in the work of Gram Panchayat. The Chief Executive Officer seems to have issued show cause notices in pursuance of the complaint received from Smt. Nirmala Bonde. All the petitioners replied to these

show cause notices in December, 2006. These replies are similar worded. The petitioners also wrote on 10-2-2008 to the Deputy Chief Executive Officer, since it seems that the Chief Executive Officer had entrusted the enquiry to the Deputy Chief Executive Officer, reiterating that they had not misconducted themselves and that the complaint should be filed.

5. After a hearing on 24-3-2008, the Chief Executive Officer submitted a report, which is at Annexure III, holding that the petitioners were liable for action under Section 39(1) of the Bombay Village Panchayats Act, 1958. In pursuance to this report of the Chief Executive Officer, the Divisional Commissioner, Nagpur Division, Nagpur, by his order dated 23-4-2009, unseated the petitioners from the post of members of Gram Panchayat. The petitioners preferred an appeal before the Government, which was decided by the Hon'ble Minister of State for Rural Development, by his order dated 24-7-2009, whereby he dismissed the said appeal. Aggrieved thereby, the petitioners are before this Court.

6. The misconduct, which the petitioners are alleged to have committed and in respect of which a complaint was made by Smt. Bonde, appears to be causing obstruction in the work of Gram Panchayat by opposing all the resolutions brought in the meetings of Gram Panchayat. The Chief Executive Officer observed in his enquiry report that the petitioners had recorded their opposition to the resolutions pertaining to confirmation of minutes of previous meeting, approval to income and expenditure of previous month, and even reading of Government circulars. They also opposed the resolutions about levy and recovery of taxes, and the resolutions pertaining to execution of works under National Rural Employment Scheme, works sanctioned by the 12<sup>th</sup> Finance Commission, works like cleaning of drains, lighting, water supply, etc.

6A. The petitioners do not dispute that they had opposed these resolutions, but they stated in the replies filed before the Chief Executive Officer and the Deputy Chief Executive Officer that the then Sarpanch, who was in a minority, was not conducting the affairs of Gram Panchayat by taking all the members in confidence. They

stated that the Sarpanch did not read the proceedings of the previous meeting and indulged in making alterations in the minutes. According to them, the Sarpanch used to authorize the expenditure, which was not in accordance with the Gram Panchayat budget. They wondered as to how they could sanction wrong expenditure or expenditure involving corruption. They stated that the Government circulars were not read and, therefore, there was no alternative but to record their opposition. They claimed that even they wanted that the taxes should be recovered – but revised taxes should be demanded and recovered in accordance with the new rules. They claimed that they wanted that the income of Gram Panchayat should increased by levying taxes. According to them, the Sarpanch used to prepare proceedings in advance and rather than taking up works, which were demanded by the citizens, she used to proceed with the works of her favourites.

6B. The petitioners claimed that they were ready to approve the works under the National Rural Employment Scheme and 12<sup>th</sup> Finance Commission, if the works in which

both the sides were interested were taken up. They alleged that an attempt to draw bogus bills by inserting false names of labourers for the works in the wards was noticed. They wanted that after the drains were cleaned in their wards, their signatures should have been obtained. They opposed purchase of bleaching powder for water supply schemes, because such purchase was sought to be made without inviting quotations from various shopkeepers, but by inviting quotation from only one shopkeeper and without getting the material tested. They stated that they had recorded their opposition in order to avoid being party to any corrupt practice. They have reiterated these claims in the present petition.

7. I have heard the learned counsel for the petitioners; the learned Government Pleader for respondent Nos.1 and 5; the learned counsel for respondent No.2; and the learned counsel for respondent No.4.

8. The learned counsel for the petitioners submitted that the Chief Executive Officer had to conduct the enquiry himself and by delegating the same to the Deputy Chief

Executive officer, the enquiry and actions based upon it are vitiated.

9. In *Nimba Yadav Bhoi v. President, Standing Committee, Zilla Parishad, Jalgaon and others*, reported at 2002(3) *Mh.L.J.* 466, on which the learned counsel for the petitioner relied this Court was considering the provisions of Section 39(1) of the Bombay Village Panchayats Act and observed that the provisions were mandatory and hence the Chief Executive Officer could not have delegated his power to conduct an enquiry to the Deputy Chief Executive Officer.

10. The learned Government Pleader submitted that the Chief Executive Officer could always use his machinery for collecting material. Therefore, the grievance about collection of material by the Deputy Chief Executive Officer on which the Chief Executive Officer only relied ought to be rejected. According to the petitioners, there was no application of mind on the part of the Chief Executive Officer. Report, which is annexed at Annexure-III to the petition, shows that he had merely recounted the



allegations against the petitioners, and the fact that the petitioners were served with show cause notices, and were called upon to attend a personal hearing. The learned counsel for the petitioner stated that the Chief Executive Officer heard the petitioners in person as also the Village Development Officer and the Extension Officer of Panchayat Samiti and then simply drew his conclusions without giving any reasons. He then reported that since the petitioners had abused their position and had failed to perform their duties, they were liable for action under Section 39(1) of the Bombay Village Panchayats Act.

11. The learned counsel for the petitioners relied on a judgment of this Court in *Kum. Nirmala Tikana Giripo v. State of Maharashtra and others*, reported at 2009(1) All MR 91. In that case, the Court was considering the order passed by the Hon'ble Minister for Food and Civil Supplies in respect of allotment of a ration shop. This Court referred to a number of judgments of the Supreme Court in respect of requirement of a speaking order and the necessity of giving reasons.

12. I have carefully considered these contentions. The learned Government Pleader is right in submitting that the Chief Executive Officer may have requisite material collected by his subordinates. But it does not follow that his report should not reflect any reasons for the conclusions which he drew. And, in my view, the report is woefully deficient as far as reasons go. Such a report could not have been a foundation for drastic action of unseating democratically elected members of the Panchayat.

13. The learned counsel for the petitioners submitted that the petitioners had applied before the Divisional Commissioner, Nagpur Division, Nagpur, for copies of all the relevant documents and the copy of the complaint of the deposed Sarpanch. This application is at Annexure IV to the petition. The petitioners had on 1<sup>st</sup> July, 2008 sought time to file reply till they got copies of the documents. According to the learned counsel for the petitioners, these documents were not supplied to the petitioner and this fact was specifically mentioned in the reply filed by the petitioners before the Divisional Commissioner, which is at Annexure-V.

14. The learned counsel for the petitioners relied on a decision in *Smt. Savitri Chandrakesh Pal v. State of Maharashtra and others*, reported at 1009(4) All MR 200. In that case, this Court held that in any quasi judicial proceeding, non-supply of adverse material to the affected person, but supply thereof to the authority taking decision against him on that basis, constitutes violation of natural justice. Therefore, according to the learned counsel for the petitioners, in the absence of availability of documents to the petitioners, the order of the Divisional Commissioner was vitiated.

15. The learned Government Pleader rightly repelled these submissions by pointing out that the replies filed by the petitioners before the Chief Executive Officer themselves show that the petitioners had responded to the allegations in the complaint clause-by-clause, which they could not have done, had they not been in receipt of the complaint. Therefore, the contention of the petitioners that they had not received the copy of the complaint and that, therefore, the orders passed against them were vitiated, has no force.

16. This takes me to the question whether the authorities were justified in holding that the petitioners were guilty of conduct referred to in Section 39(1) of the Act entailing their removal. Section 39(1) may be usefully reproduced as under :

*“39. Removal from office :- (1) The Commissioner may,--*

*(i) remove from office any member or any Sarpanch or Upa-Sarpanch who has been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct, or of neglect of or incapacity to perform his duty , or is persistently remiss in the discharge thereof. A Sarpanch or Upa-Sarpanch so removed may at the discretion of the Commissioner also be removed from the Panchayat; or*

*(ii) remove from office the member, Sarpanch or as the case may be, Upa-Sarpanch if not less than twenty per cent, of the total number of voters in the village who have paid all dues of the Panchayat regarding taxes on buildings and lands and water charges, make a complaint that the annual accounts and the report of the expenditure incurred by the panchayat on the development activities are not placed before the Gram Sabha; and the information thereof is not displayed on the notice board as required by sub-section (1) or (1-A) of section 8:*

*Provided that, no such person shall be removed from office unless, in case of clause (i), the Chief Executive Officer or in case of clause (ii), the Deputy Chief Executive officer as directed by*

*the Chief Executive Officer; under the orders of the Commissioner, holds an inquiry after giving due notice to the panchayat and the person concerned; and the person concerned has been given a reasonable opportunity of being heard and thereafter the Chief Executive Officer or, as the case may be, the Deputy Chief Executive Officer concerned through the Chief Executive officer, submits his report to the Commissioner. The inquiry officer shall submit his report within a period of one month:*

*Provided further that, the Commissioner shall, after giving the person concerned a reasonable opportunity of being heard, take a decision on the report submitted by the Chief Executive Officer or, as the case may be, the Deputy Chief Executive Officer, within a period of one month from the date of receipt thereof."*

17. It may be seen that a member has to be guilty of misconduct in the discharge of his duties, or of any disgraceful conduct, or of neglect of or incapacity to perform his duty, or is persistently remiss in the discharge of duties. 'Misconduct' has not been defined in the Act. It is not alleged that the petitioners had indulged in any disgraceful conduct. They are not suffering from any infirmity in discharge of their duties. It may be seen from the report of the Chief Executive Officer to the Commissioner that the petitioners are alleged to have misused their offices and failed to discharge their duties.

Therefore, it is not necessary to examine whether the conduct attributed to the petitioners amounts to misconduct. The impugned orders do not indicate any misuse of office by the petitioners. The enquiry by this Court would have to be restricted to the question as to whether the petitioners' conduct amounted to neglect in performing their duties or whether they are persistently remiss in discharge of their duties.

18. Before going into the facts of the case at hand, it may be useful to refer to two judgments cited at bar, in order to examine the facts with reference to the principles emerging from these judgments, though delivered in the context of the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965

19. In *Sureshkumar s/o Kanhaiyalal Jethlia v. State of Maharashtra and others*, reported at 2001(1) Mh.L.J. 901, this Court held in relation to Section 55-A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 that an omission to do what

is required by a person to do may constitute a misconduct even though a person has not acted wilfully or maliciously. The failure to do a thing itself may not be a misconduct, but if the failure is deliberate or motivated, it may amount to misconduct. It was further observed that what matters is the seriousness of the acts of misconduct and not mere persistent or repeated defaults.

20. In *Baburao Vishwvanath Mathpati v. State of Maharashtra and others*, reported at 1996(1) Mh.L.J. 366, a Division Bench of this Court was considering the word 'neglect' appearing in Section 55-A of the Maharashtra Municipal Councils Act, 1965 in relation to the power of the Government to remove the President of the Municipal Council. After considering a number of judgments on statutory interpretation, the Bench concluded in para 50 as under :

“50. We may observe that a confusion may arise by reading the words 'neglect' and 'negligence'. The word 'neglect' appears to have a different connotation than the word 'negligence'.

*The word 'neglect' as earlier said means 'gross neglect', wilful, intentional, culpable or flagrant disregard of duties. It is mentioned earlier that the President of Municipal Council can be dislodged by resorting to the power conferred on the councillors by moving no-confidence motion under section 55 of the Act for no grounds or reasons are required to be stated. The object behind this is that there should not be any stigma on the President so removed. We have also referred to section 313 of the Act where the power is conferred on the State Government for supersession of the municipal council by appointing an administrator. There the word "misconduct" has been interpreted to mean "gross misconduct". Section 55A of the Act no doubt confers power on the State Government to remove the President on account of "misconduct, neglect of duties, incapacity to perform duties and disgraceful conduct." This provision sufficiently entails civil consequences and attaches stigma to the President and therefore, in order to remove a*



*president on these grounds the order must be founded on strong grounds. Therefore, the word "neglect" must be understood from the gravity of the charges and therefore, the word "neglect" as used in the section means "gross neglect" which may be synonymous to the word "wilful, intentional or culpable as the case may be". There should be flagrant disregard of duties so as to call for removal of the President under section 55A of the Act. Therefore, applying the 'golden rule' of construction of statute which has been recognised by the Apex Court, we have no hesitation to come to the conclusion that the word 'neglect' has a connotation as 'gross', 'wilful' or 'intentional' neglect. Here we are concerned with either gross neglect or gross statutory neglect on the part of the petitioner. We, therefore, proceed to consider the other contention of the learned counsel in regard to the procedure to be followed when power under section 55A of the Act is to be exercised."*

21. The duties of the members of Gram Panchayat have also not been defined in the Act. The learned counsel for the petitioners submitted that if the business of Gram Panchayat was to be conducted by putting requisite resolutions to vote at a Gram Panchayat meeting, it would follow that the members would have a right to vote either way. He submitted that as of now the members do not have a duty to vote at all and a member could even abstain from voting.

22. The learned counsel for the petitioners submitted that in *Lily Thomas (Ms.) Advocate v. Speaker, Lok Sabha and others*, reported at (1993) 4 SCC 234, the Supreme Court was considering abstention from voting by the members of a political party in motion of impeachment against a Judge of the Supreme Court. The Court held in para 2 of the judgment as under :

*“2. ... Right to vote means right to exercise the right in favour of or against the motion or resolution. Such a right implies right to remain neutral as well. 'Neutral' means, 'indifferent,*

*unbiased, impartial, not engaged on either side'. Conceptually it is not aligning with either view. But what happens where a person entitled to vote on a resolution participates in discussion but abstains from voting. It is neither neutrality nor expression of opinion one way or the other. Yet it is legitimate and valid. In removal of an elected representative by vote of no confidence neutrality, partial or complete, is not unknown. A construction as suggested by the petitioner would lead to uncertainty as, if non-exercise of right by a member, even though present, amounts to support, it shall frustrate the entire removal process based on exercise of the right."*

23. The right to vote either for or against the resolution can be exercised by the member even in respect of a formal resolution and it is his free will which would determine on which side he would vote. Therefore, according to the learned counsel for the petitioner, if a resolution is required to be considered at a meeting, it implies that the members at the meeting would have a right

to vote either for or against the resolution and, therefore, without going into the question as to what was the nature of the resolutions tabled, the petitioners' right to vote against such resolutions had to be recognized. He submitted that this was apart from the fact that the petitioners had a good justification for voting against the resolutions, which they had put forth in their replies to the Chief Executive Officer. He submitted that it would not be open to the Chief Executive Officer, or for that matter to any authority, to examine whether the justification offered by the petitioners was proper or not, since it would be a matter of perception of the petitioners. If the petitioners perceive a situation in a particular fashion and vote accordingly, even if their perception may be wrong, their right to vote the way they did cannot be questioned. Therefore, according to him, it is not necessary to go into the question as to whether the petitioners had opposed the resolutions for implementation of the National Rural Employment Scheme or the scheme started under the 12<sup>th</sup> Finance Commission. All the same, according to him, since the petitioners had put forth specific objections to various resolutions, including those pertaining to recovery of taxes,

it was incumbent upon the Chief Executive Officer to examine whether the objections of the petitioners deserved to be looked into. He submitted that total absence of reference to the replies filed by the petitioners in the report of the Chief Executive Officer itself speaks volumes and indicates total non-application of mind.

24. The learned counsel for respondent No.4 – Chief Executive Officer submitted that there was no lacuna in the procedure followed by the Chief Executive Officer, who had given a hearing to the petitioners. He submitted that it would be improper to assail the order of respondent No.4 on the ground that it does not refer to or deal with the replies filed by the petitioners to show cause notices issued by respondent No.4. He submitted that on petitioner's own admission they had opposed all the resolutions consistently, principally because the Sarpanch happened to be in minority and had already suffered a no confidence motion. He submitted that in the scheme of things, where the Sarpanch, who had been removed, had a right to have recourse to remedies available in law, and had done so, it was incumbent on the part of the petitioners, as responsible

representatives of the people, to ensure that the work of local self-governing body did not come to a standstill. He submitted that the petitioners should have avoided a stalemate and should have allowed the Gram Panchayat to function. Therefore, according to him, the behaviour of the petitioners was irresponsible and, therefore, they were rightly held to be remiss in their duties as members of the Panchayat.

25. The learned counsel for respondent No.4 pointed out that under Section 45 of the Bombay Village Panchayats Act, the Gram Panchayat has control over subjects enumerated in the village list appended as Schedule 1 to the Act. Item 73-A in the said list refers to the provisions of employment to local needy persons seeking manual work under any scheme of employment guarantee undertaken or adopted or transferred to the Panchayat. Therefore, according to the learned counsel for respondent No.4, failure of the petitioners to approve works under the National Rural Employment Scheme resulted in failure of the Panchayat to deal with a subject in the village list. He also made available for my perusal the relevant circulars

issued by the Government in respect of the works to be conducted by the Gram Panchayat under the schemes sanctioned by the 12<sup>th</sup> Finance Commission. The sum and substance of his arguments is that rather than waiting for a decision by the Competent Authority on proceedings initiated by the Sarpanch, who had been voted out, the petitioners indulged in obstruction simply because they happened to be in majority. He criticized politicization of the development works and, therefore, termed the conduct of the petitioners as remiss.

26. The learned Government Pleader for respondent Nos.1 and 5 also submitted that if the petitioners had a grievance about any particular item of work, they could have raised the same, but simply opposing every resolution made no sense and, therefore, on proved facts, according to him, the orders passed by the Divisional Commissioner as also the Hon'ble Minister of State for Rural Development cannot be assailed.

27. I have carefully considered these contentions. While there can be no doubt that democratically elected

representatives must behave with responsibility and should ensure that the functioning of the local self-governing bodies are not stalled for political reasons, instances, when it became impossible for the Legislature of the State to function because of political impasse, are far too many in the sixty years of the existence of this Republic. Therefore, it would be difficult to uphold the contention that majority of elected representatives do not have the right to bring to a halt the working of an elected body, should such body be headed by a person in whom they have lost confidence. Moral exhortations cannot take the place of a legal duty and hence the right of the petitioners to use their vote for obstructing the work of the Panchayat would have to be recognised as a right flowing from and being a part of the democratic process. Therefore, it would be unnecessary to go into the question as to what were the resolutions which the petitioners were opposing. Rather it may be impermissible, not only for this Court, but for any authority, to examine as to whether any member of the elected body had a justification for voting in a particular fashion. It would be for the electorate to question the actions of their elected representatives as and when the concerned body would go



to polls again. A political problem would have to be resolved only by the political means and recourse to legal procedure might not be permissible.

28. It is not that the administration did not have any other options open in the matter. If they came to the conclusion that the work of Gram Panchayat had come to a standstill, powers under Section 145 of the Bombay Village Panchayat Act could have been invoked and the Panchayat could have been dissolved. Rather than looking into the grievance of the petitioners in the replies, which they had sent, the Chief Executive Officer seems to have gone by the complaint of the Sarpanch, who had been unseated, that the petitioners opposed all the resolutions and seems to have concluded that the petitioners were not entitled to oppose the resolutions, which hits at the root of the democratic process and the rights of democratically elected representatives. In this view of the matter, it was not competent for the Divisional Commissioner to accept the report of the Chief Executive Officer and to remove the petitioners from the offices of members of Gram Panchayat or for the Hon'ble Minister of State to uphold such an order

passed by the Divisional Commissioner.

29. The petition is, therefore, allowed and the order dated 24-7-2009 passed by Hon'ble Minister of State and that dated 23-4-2009 passed by the Divisional Commissioner, Nagpur Division, Nagpur, are quashed and set aside.

JUDGE.

Pdl.