

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

WRIT PETITION 7158 of 2017

Shalik s/o. Bolan Dahiwale,
Age : 38 years, Occ. Agriculturist,
R/o. Village Chiroli, Post Chiroli,
Tahsil Mul, District Chandrapur

..PETITIONERS

...V E R S U S...

- 1 State of Maharashtra,
Through The Village Development
and Panchayatraj Department,
Mantralaya, Mumbai
- 2 The Additional Commissioner,
Nagpur Division, Nagpur
- 3 The Deputy Divisional Commissioner,
(GAD)Nagpur Division, Nagpur
- 4 The Chief Executive Officer,
Zilla Parishad, Chandrapur,
Tah. Dist. Chandrapur
- 5 Bhauji s/o. Nana Lengure,
R/o. Chiroli, Tah. Mul,
Dist. Chandrapur
- 6 Devidas Ramteke,
R/o Chiroli, Tah. Mul,
Dist. Chandrapur.
- 7 Manjulabai Ramteke,
R/o Chiroli, Tah. Mul,
Dist. Chandrapur.
- 8 Kavita w/o. Santosh Suramwar,
R/o Chiroli, Tah. Mul,
Dist. Chandrapur.

9 Archana Kumbhare,
R/o Chiroli, Tah. Mul,
Dist. Chandrapur.

...**RESPONDENTS**

Shri R.M. Tahaliyani, counsel for petitioner
Shri Mohan Sudame, counsel for respondent 4.
Shri A.Y. Thingre, counsel for respondents 7 & 8.
Shri A.V. Palshikar, AGP for respondents 1 to 3.

CORAM :ROHIT B. DEO, J.
DATE :6th OCTOBER, 2018.

ORAL JUDGMENT

Heard Shri R.M. Tahaliyani, the learned counsel for petitioner, Shri Mohan Sudame, the learned counsel for respondent 4, Shri A.Y. Thingre, the learned counsel for respondents 7 & 8 and Shri A.V. Palshikar, the learned AGP for respondents 1 to 3.

2 Rule. Rule made returnable forthwith by consent.

3 The petitioner – who is elected member and Sarpanch of Grampanchayat Chiroli is challenging the order dated 22.2.2017 passed by the respondent 2 in Case 39(1)/165/2015-16 by and under which, the petitioner is held disqualified under section 39(1) of the Maharashtra Village Panchayat Act, 1959 (“Act” for short) and the confirmatory order dated 19.6.2017 passed by respondent 1 – Hon’ble Minister rejecting the appeal

preferred by the petitioner under section 39(3) of the Act.

4 The short submission of the learned counsel for the petitioner Shri R.M. Tahliyani is that the order impugned is ex-paice contrary to the mandatory provisions of section 39 of the Act.

5 It would be necessary to note few facts, which are either admitted or are irrefutable.

Pertinent to complaint dated 12.2.2016 lodged by respondents 5 to 9 seeking action against illegal water connections, the Block Development Officer of Panchayat Samiti, Mul conducted an inquiry and submitted report dated 8.3.2016 to the Deputy Chief Executive Officer, Zilla Parishad, Chandrapur. Record reveals that the Block Development Officer submitted the said report after recording the statement of 13 persons between 16.2.2016 to 18.2.2016.

6 Pursuant to the receipt of the report from the Block Development Officer, the respondent 4 – Chief Officer sought permission from respondent 3 – Deputy Divisional Commissioner (GAD), Nagpur Division Nagpur to conduct an inquiry for removal

of the petitioner under section 39(1) of the Act. Permission to conduct an inquiry is granted on 22.4.2016.

7 The original record, which is produced during the course of hearing reveals that the Chief Executive Officer heard the petitioner and submitted his report on 28.7.2016. It is pursuant to the said report that the respondent 2 declared the petitioner disqualified by order dated 22.2.2017 and the challenge thereto is rejected by the Hon'ble Minister by order dated 19.6.2017.

8 Shri R.M. Tahliyani, the learned counsel for the petitioner invites my attention to the decision of a learned Single Judge of this Court in ***Nimba Yadav Bhoi..vs.. President, Standing Committee, Zilla Parishad, Jalgaon and Ors*** reported in **2002(3)Mh.L.J.466** and in particular to the following observations:

“6. Section 39(1) of the said Act which is relevant for the decision in the matter, reads thus :--

"39(1). The Standing Committee may 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 an Upa-Sarpanch so removed may at the discretion of the Standing Committee

also be removed from the Panchayat:

Provided that, no such person shall be removed from office unless the Chief Executive Officer under the orders of the President of the Zilla Parishad concerned 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 submits his report to the Standing Committee."

7. It cannot be disputed that in case a Sarpanch having been found 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, can be removed from the office in exercise of powers under Section 39(1) of the said Act and on such removal from the office of Sarpanch, he would be ineligible for re-election to the office of Sarpanch during the remainder term of the office, in view of the provisions contained in Section 39(1), and he may be rendered disqualified by virtue of decision of the Standing Committee to contest the election for the membership of the Panchayat for a period of five years from the date of the decision of the Standing Committee in that behalf, in view of Sub-section (2) of Section 39 of the said Act. However, any such action of removal of the Sarpanch is always subject to certain conditions which are specified in the proviso to Section 39(1) quoted herein above.

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.

12. Perusal of proviso to Sub-section (1) of Section 39 of the said Act clearly disclose that the language used therein is not only in negative form but it is also prohibitive. The proviso opens with the expression. "No such person shall be removed from the office unless....." These words apparently disclose the intention of the legislature that the compliance of the directions under the said proviso is a mandatory prerequisite for taking action of removal of a person from the office of Sarpanch. Once the intention of the legislature, as regards, the compliance of prerequisite for an action of removal of a person from the office of Sarpanch being apparent from the very language of the provision contained in proviso to Section 39(1), it cannot be said that any enquiry conducted by any officer other than the Chief Executive Officer would amount to the enquiry as contemplated under the said provision of law. It is not only necessary for the enquiry to be held by the Chief Executive Officer, but such enquiry has to be preceded with the specific order of Zilla Parishad in that behalf and only consequent to such order, the Chief Executive Officer would be entitled to hold enquiry for the purpose of finding out whether the person occupying the office of Sarpanch is to be removed from the said office or not and before arriving at any conclusion in that regard. It is necessary to give fair opportunity of being heard to the concerned person. The hearing has necessarily to be by the officer specified and designated under the said provision of law and not by any other person. The provisions contained in Section 39 of the said Act are, therefore, to be held as mandatory in nature and require strict compliance thereof.

15. There is no doubt, that the Chief Executive Officer under the Samitis Act is duly empowered to delegate his powers under certain circumstances. However, the said provision clearly disclose that a delegation of powers can be in relation to the powers or duties or functions which are imposed upon or vested in the Chief Executive Officer by or under the Samitis Act and not under any other Act. The function which has been entrusted to the Chief

Executive Officer under Section 39(1) of the said Act is not power or duty or function imposed upon the Chief Executive Officer under the Samitis Act. The enquiry which is contemplated by the Chief Executive Officer under proviso to Section 39(1) is in relation to the conduct of the Sarpanch and the said enquiry has nothing to do with any of the functions or duties of the Chief Executive Officer under the Samitis Act. Besides, it is well established principle of law that any authority bestowed with judicial or quasi judicial powers under a statute cannot delegate his powers except when specifically permitted under the statute. In other words, when the statute prescribes that a particular officer has to exercise the power thereunder, then such powers must be exercised by that officer, and that officer alone, and none else except and unless the statute by express words or by necessary implication permits delegation of such powers, and in which event such powers may also be exercised by the delegatee if the delegation is in accordance with the terms of the statute and not otherwise.

20. It is apparent from bare reading of proviso to Sub-section (1) of Section 39 of the said Act, that the enquiry is to be conducted by the Chief Executive Officer pursuant to an order in that behalf by the President of Zilla Parishad and there being no provision for delegation of such power by the Chief Executive Officer in favour of any other officer of the Parishad or otherwise, the enquiry has necessarily to be conducted by the Chief Executive Officer himself. The provisions contained in Section 96 of the Samitis Act can be of no help to justify any delegation of the powers of the Chief Executive Officer to hold the enquiry in the matter under Section 39(1) of the said Act as Section 96 of the Samitis Act restricts the entitlement of delegation of powers to the extent they relate to the duties and functions under the Samitis Act and not under the said Act.

26. Considering the provisions contained in Section 39(1) of the said Act, and the law on the subject matter discussed hereinabove, it is apparent that the enquiry under Section 39 of the said Act has necessarily to be conducted by the Chief Executive Officer and none else. Such Enquiry has to be preceded by necessary order

directing the Chief Executive Officer to hold the enquiry and such order should be necessarily issued by the President of the Zilla Parishad. Pursuant to such appointment, the Chief Executive Officer himself has to hear the person against whom the enquiry is to be conducted and based on such enquiry, the Chief Executive Officer has to prepare a report and submit the same to the President of the Zilla Parishad. AH these requirements are mandatory in nature and any failure in that regard on the part of the authorities, the proceedings under Section 39(1) of the Said Act would be vitiated and any order passed on the basis of such proceedings which are vitiated would be rendered null and void. Reverting to the facts of the case, undisputedly, the order of the removal of the petitioner from the office of Sarpanch was not preceded by any enquiry by the Chief Executive Officer. There was no order of the President appointing the Chief Executive Officer to enquire into the matter.”

9 Shri R.M. Tahliyani, the learned counsel would submit that it is irrefutable that the Chief Executive Officer has not conducted an inquiry and has mechanically relied on the statements recorded by the Block Development Officer as would be apparent from the fact that the report of Chief Executive Officer is a mere verbatim reproduction of the report submitted by the Block Development Officer to the Deputy Chief Executive Officer. Shri R.M. Tahliyani, the learned counsel would submit that the mandate of section 39(1) of the Act is that the Commissioner should permit the Chief Executive Officer to conduct an inquiry and pursuant to such permission, the Chief Executive Officer should personally conduct the inquiry and

submit his report to the Commissioner after affording due opportunity to the member whose disqualification is proposed. Shri R.M. Tahliyani, the learned counsel would further submit that it is apparent from the record of the proceedings that the Chief Executive Officer did not conduct an inquiry and his report is predicated on the report of the Block Development Officer who recorded the statements. Such a course is impermissible in law and falls foul of section 39(1), is the submission. Shri R.M. Tahliyani, the learned counsel would further submit that the inquiry which is to be conducted by Chief Executive Officer must be preceded by permission from the Commissioner and in the factual scenario the inquiry conducted by the Block Development Officer, assuming arguendo that such inquiry has any sanctity, was conducted and report submitted even before the Commissioner granted permission to conduct the inquiry by order dated 22.4.2016.

10 The learned counsel for respondent 4, Shri Mohan Sudame and the learned counsel for respondents 7 and 8 Shri N.Y. Thengre made a valiant attempt to support the orders impugned. The thrust of their submission is that the Chief Executive Officer is not expected to record the statements and

there is nothing inherently wrong in Block Development Officer's recording the statements of the witnesses in view of the grant of opportunity of hearing to the petitioner by the Chief Executive Officer. This submission can not be countenanced. The mandate of section 39(1) of the Act is that the inquiry must be personally conducted by the Chief Executive Officer and no delegation thereof to subordinate officer / s is permissible. Moreover, as is rightly submitted by Shri R.M. Tahliyani, the inquiry conducted by the Block Development Officer was not preceded by the permission of the Commissioner and irrefutably after the Commissioner permitted inquiry by order dated 22.4.2016, no inquiry is conducted. In this view of the matter, the orders impugned are unsustainable in law and are quashed and set aside.

11 The petition allowed and Rule is made absolute.

JUDGE

RSB