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**(2013) 03 GUJ CK 0044**

**In the Gujarat High Court**

**Case No : Special Civil Application No. 7338 of 2012**

Dashrathlal Ishwarlal Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

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**Date of Decision : 05-03-2013**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation : (2013) 2 GLR 1257**

**Hon'ble Judges : Abhilasha Kumari, J**

**Bench : Single Bench**

**Advocate :** Dipan Desai, for the Appellant; Asmita Patel, Assistant Government Pleader for Respondent No. 1, Mr. Rajesh Chauhan for Mr. H.S. Munshaw, Advocate for Respondent No. 3 and Rule Served By DS for the Respondent(s) No. 1-4, for the Respondent

**Final Decision : Allowed**

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## **Judgement**

Abhilasha Kumari, J.—By preferring this petition under Article 226 of the Constitution of India, the petitioner has challenged the order dated 16.05.2012, passed by respondent No. 2-Additional Development Commissioner, Panchayat Department, Gandhinagar, whereby the appeal filed by the petitioner against the order dated 08.01.2010, passed by respondent No. 3-District Development Officer, District Panchayat, Patan, removing him from the post of Sarpanch of Sujanpur Gram Panchayat, has been rejected. Briefly stated, the case of the petitioner is that while he was performing his duties as an elected Sarpanch of Sujanpur Gram Panchayat, Taluka: Siddhpur, District: Patan, a show cause notice came to be issued to him on 27.08.2009, by respondent No. 3, calling upon him to show cause why he should not be removed from the post of Sarpanch on the ground of alleged irregularities committed in the work of laying of the road from the Pond till the Highway. It is stated in the show cause notice that upon asking the villagers, it was noticed that the work of laying the road was performed by the use of machinery, rather than through employment of labourers. The petitioner replied to the show cause notice on 12.06.2010,

pointing out that the work had been carried out under the supervision of the Talati-cum-Mantri, Executive Engineer and the Programme Officer, and that the measurement had been taken by those officials. It was further pointed out by the petitioner that the Technical Assistant and the Programme Officer have appended their signatures on the Measurement Book and the cheque for payment of the work done has been issued to the labourers by the Talati-cum-Mantri, therefore, the petitioner has no hand in the commission of the alleged irregularities. According to the petitioner, at every stage of the work inspection was carried out by the Technical Assistant, under the supervision of the Taluka Development Officer, and the site was visited and inspected by the Programme Coordinator, Deputy Executive Engineer and the Taluka Development Officer. It is the case of the petitioner that without taking into consideration all these aspects pointed out by him in his reply, the impugned order, removing the petitioner from the post of Sarpanch, was passed by respondent No. 3 in exercise of power u/s 57(1) of the Gujarat Panchayats Act, 1993 ("the Act" for short). The petitioner preferred an appeal before respondent No. 2 under the provisions of Section 57(3) of the Act. While admitting the appeal, initially, the order dated 08.11.2010, passed by respondent No. 3, was stayed. However, vide order dated 14.03.2012, respondent No. 2 dismissed the appeal of the petitioner for default, as the learned advocate for the petitioner did not remain present on that date. An application for restoration (styled as "review application") was filed by the petitioner before respondent No. 2, upon which notice was issued but no order was passed. During the pendency of the said application, the election of the Upa Sarpanch was declared, therefore, the petitioner approached this Court by filing Special Civil Application No. 6016 of 2012, with a prayer to restrain the respondent-authorities from conducting the election of Upa Sarpanch till the decision of the review application or, in the alternative, for directions to pronounce the order in the said application, at the earliest. When the petition was taken up for hearing before the High Court, the election to the post of Upa Sarpanch had already been held and the result declared. This Court, vide order dated 25.04.2012, therefore, directed respondent No. 2 to decide the review application within a period of ten days. Pursuant thereto, respondent No. 2 has passed the impugned order dated 16.05.2012, giving rise to the filing of this petition.

2. Mr. Dipan A. Desai, learned counsel for the petitioner, has made lengthy submissions, the gist of which is as follows:

(A) That, the provisions of Section 57(1) of the Act, pertaining to the removal of a Sarpanch, are attracted only when the concerned Sarpanch has been held guilty of misconduct in the discharge of his duties, has been guilty of any disgraceful conduct, has abused his powers or has committed persistent defaults in the performance of his duties under the statute. In the present case, none of the aforesaid ingredients are attracted, as the work of laying the road in which the alleged irregularities have been found, has been conducted under the supervision of the Taluka Development Officer and Deputy Executive Engineer.

The petitioner had no role to play in the same, as Sarpanch of the Gram Panchayat. It is submitted that elected representatives, such as the petitioner, can only be removed on proved misconduct but not on flimsy and frivolous grounds, as in the present case.

(B) In the order dated 01.06.2009, of the Programme Officer (NREGA), it is stated that it shall be the responsibility of the Talati-cum-Mantri to see that proper implementation of the work is done. Moreover, the Measurement Books and the record produced at Pages 37 to 61 of the paper-book show that the payment has been made to the workers after appropriate measurement of the work has been made and the Measurement Book has been signed by the Programme Officer (NREGA) and the Technical Assistant, who have personally verified the work done before appending their signatures. The record does not reveal that the petitioner has put his signature or made any measurement of the work done, therefore, no responsibility for any alleged irregularity can be fixed upon the petitioner.

(C) Only the petitioner has been singled out for taking action and has been victimised for reasons best known to the authorities and he has been removed from the post of Sarpanch though no misconduct or abuse of powers are proved against him. No action has been taken against the Talati-cum-Mantri or any other officer concerned with the laying of the road. In fact, a notice was issued to the Talati-cum-Mantri, who replied to the same by stating that labourers had been engaged for laying the road and payments had been made to them. No action has been taken against him and he was permitted to retire from service, whereas uncalled for and drastic action has been taken against the petitioner.

(D) The impugned order dated 16.05.2012, passed by respondent No. 2, is based on certain other alleged irregularities that find no mention in the show cause notice, therefore, the petitioner cannot be removed on the basis of those irregularities. The impugned order is, therefore, beyond the scope of the show cause notice and deserves to be quashed and set aside.

(E) Though it is denied that the petitioner has committed any irregularity, even if assumed that this were so, the nature of the alleged irregularity is such that it does not attract the ingredients of section 57(1) of the Act, as the allegations against the petitioner do not constitute misconduct, disgraceful conduct, or abuse of power. The petitioner has not committed persistent defaults and nor has he become incapable of performing his duties and functions under the Act. The action of removal of the petitioner from the post of Sarpanch is, therefore, illegal and arbitrary.

3. On the above grounds, it is prayed on behalf of the petitioner, that the impugned orders be quashed and set aside.

4. In support of the above submissions, reliance has been placed by learned counsel for the petitioner, on the following judgments:

- (a) Tarlochan Dev Sharma Vs. State of Punjab and Others,
- (b) Sharda Kailash Mittal Vs. State of M.P. and Others,
- (c) Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others,
- (d) Raysangbhai Ranchhodbhai Thakor v. State of Gujarat Through Secretary & Others-2011 (2) GCD 1337
- (e) Anand D. Lodariya Salt & Storage Pvt. Ltd. & Anr. v. State of Gujarat Through Special Secretary & Ors.-Special Civil Application No. 9757 of 2012, decided on 28.12.2012.

5. Ms. Asmita Patel, learned Assistant Government Pleader, has submitted that the order of removal of the petitioner as Sarpanch passed by respondent No. 3, has rightly been confirmed by respondent No. 2, by the order dated 16.05.2012. It is submitted that the concerned Gram Panchayat was to perform the work under the NREGA Scheme for which a grant was given. As per the said Scheme, the work had to be performed by labourers and not by the use of machinery. The petitioner has flouted this requirement, therefore, a show cause notice was issued and proceedings were initiated against him. The impugned order of respondent No. 2, is just and proper, and no interference is called for by the Court.

6. Mr. Rajesh Chauhan, learned advocate for Mr. H.S. Munshaw, learned counsel for respondent No. 3, has opposed the petition by submitting that, a number of irregularities and illegalities were found in the implementation of the Scheme, therefore, a notice under the provisions of Section 57(1) of the Act, was issued to the petitioner. The petitioner has failed to justify his case on facts. Learned advocate for respondent No. 3 has taken the Court through the contents of the affidavit-in-reply filed on behalf of the said respondent and has submitted that the very purpose of the NREGA Scheme was to give employment to rural persons, therefore, it was incumbent upon the petitioner to have the work performed by labourers, and not by the use of machinery. It is further submitted that the entire purpose of employing local villagers/under the Scheme was frustrated and the report submitted by the Executive Engineer (Irrigation Division) to the Director of District Rural Development Agency, Patan, clearly shows that there were a number of irregularities and illegalities in the implementation of the Scheme. That, though notice was also issued to the Talati-cum-Mantri, however, no action has been taken against him and he has now retired. However, that does not make the responsibility of the petitioner any the less, as he was the Sarpanch of the village. On the above grounds, it is prayed that the petition be rejected.

7. I have heard learned counsel for the respective parties, perused the averments made in the petition and the documents annexed thereto and considered the submissions advanced at the Bar.

8. The only charge levelled against the petitioner in the show cause notice is

that, upon inquiry from the villagers, it was revealed that the road from the Pond to the Highway has been constructed by use of machinery and not by using human labour, which constitutes the irregularity allegedly committed by the petitioner.

9. In the context of the above, it would be fruitful to advert to the provisions of Section 57(1) of the Act, which is reproduced hereinbelow:

57. Removal from office-(1) The competent authority may remove from office any member of the Panchayat, the Sarpanch or, as the case may be, the Upa-Sarpanch thereof, after giving him an opportunity of being heard and giving due notice in that behalf to the Panchayat and after such inquiry as it deems necessary, if such member, Sarpanch or, as the case may be, Upa-Sarpanch has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct or abuses his powers or makes persistent default in the performance of his duties and functions under this Act or has become incapable of performing his duties and functions under this Act. The Sarpanch or, as the case may be, the Upa-Sarpanch, so removed may at the discretion of the competent authority also be removed from the membership of the Panchayat.

(emphasis supplied)

As per the provisions of Section 57(1) of the Act, a Sarpanch or an Upa-Sarpanch, as the case may be, can be removed after issuance of notice, providing an opportunity of hearing and after due inquiry, if he is found to be guilty of (i) misconduct in the discharge of his duties, (ii) disgraceful conduct, (iii) abuse of powers vested in him by the statute (iv) persistent default in the discharge of his duties and (v) if he has become incapable of performing his duties and functions under the Act. These are the five necessary ingredients upon proof of one or more of which, the Sarpanch or Upa Sarpanch can be removed. The power of removal cannot be exercised if none of the above ingredients are attracted in a given case.

10. Whether the alleged irregularity with the commission of which the petitioner is charged, attracts the provisions of Section 57(1) of the Act, justifying his removal from the post of Sarpanch, is the issue that falls for determination by this Court.

11. It has been submitted by learned counsel for the petitioner that the petitioner was not responsible for the supervision of the work of the road, and the work was carried out under the supervision of the Executive Engineer and Programme Officer. The measurement of the road was undertaken by the above two officers and the Talati-cum-Mantri, and the petitioner had no role to play. It has also been submitted that the entire work was undertaken by the Talati-cum-Mantri under the supervision of the Executive Engineer and other technical officers. Learned counsel for the petitioner has referred to the order/guidelines dated 01.06.2009 for implementation of the NREGA Scheme issued by the Programme Officer, wherein it is mentioned that the implementation of the

Scheme is the responsibility of the Talati-cum-Mantri, who has to maintain a Register for this purpose.

12. In the impugned order dated 16.05.2012, respondent No. 3 has arrived at the conclusion that the petitioner is responsible for the implementation of the NREGA Scheme and has not fulfilled his responsibilities as Sarpanch, as there is no record of the payments made to labourers. It is further stated that the main object of the NREGA is to provide employment to rural persons which has not been done due to the use of machinery in the construction of the road. According to the petitioner, while passing the impugned order, respondent No. 2 has considered various charges that are not part of the show cause notice.

13. In this context, a perusal of the show cause notice makes it clear that the single allegation against the petitioner is that it came to light from the villagers that the metalled road from the Pond to the Highway has been constructed by the use of machinery, instead of by manual labour. In the impugned order passed by respondent No. 2 dated 16.05.2012, it has been held that it is the responsibility of the Sarpanch to see that the NREGA Scheme is implemented properly, and as per the order/guidelines. A finding has been recorded that the NREGA Scheme has not been implemented properly, therefore, the petitioner has failed in the performance of his duties. The aspect regarding improper implementation of the NREGA Scheme is not an allegation that has been levelled against the petitioner in the show cause notice.

14. It is a well-settled position of law that an authority cannot consider the grounds that have not been stated in the show cause notice and no order can be passed, beyond the scope of the show cause notice.

15. In Janardan Jaishankar Jokharkar and Another Vs. State of Gujarat and Others, , this Court has held as below:

15. On perusal of the record, it is noticed that in the notice dated 12.12.1988, pursuant to which the impugned order has been passed, no allegation about the construction touching the State Highway and/or insufficient margin was mentioned. In absence of any such reference in the notice, the impugned order passed by the Secretary (Appeals) turns into an order beyond the scope of the notice. The authority passing an order of adjudication cannot take into account the grounds or circumstances which are not alleged in the notice and/or in respect of which the petitioner is not put to notice. Otherwise, the very purpose of issuing notice and inviting explanation is frustrated, and going beyond the purview of the Show Cause Notice or taking into account aspects not enumerated in the Show Cause Notice and/making them basis for the order also amount to violation of principles of natural justice. When an authority passes an order which is based on grounds or facts not alleged and stated in the notice, then such order results into denial of opportunity of hearing and becomes violative of audi alteram partem rule. In present case, it is obvious that the grounds of insufficient margin and/or the building touching the State Highway are not mentioned in the

Show Cause Notice. Not only this, but even the order of the original and competent authority also does not contain any such finding of fact at his stage in the order dated 11.2.1989. In this view of the matter, it was not permissible for the Secretary (Appeals) to take into consideration aspects which did not form part of the Show Cause Notice and/or which were not reflected in the original order impugned before that authority. The impugned order, on this ground, alone deserves to be set aside."

(emphasis supplied)

16. In *Kesarbhai Bhagwanbhai and Another Vs. State of Gujarat and Others*, , a similar view has been taken by this Court.

17. In *Anand D. Lodariya Salt & Storage Pvt. Ltd. & Anr. v. State of Gujarat Through Special Secretary & Ors.* (supra), after considering the above judgments, this Court has held as below:

19. The principles of law enunciated in the above-quoted judgments would squarely apply to the facts of the present case. By passing the impugned order that is undoubtedly beyond the scope of the Show Cause Notice and directing the vesting of the land for breach of conditions, other than condition No. 6, for which the Show Cause Notice was issued, there is a flagrant violation of the principles of natural justice. The rule of *Audi Alteram Partem* that enjoins an adequate opportunity of hearing, has been violated by the respondents as the petitioners have not been granted an opportunity of hearing for the alleged breach of the other conditions, not mentioned in the Show Cause Notice. The findings of respondents Nos. 2 and 1 are, therefore, unsustainable in law.

(emphasis supplied)

18. In the present case as well, this Court finds that the order passed by respondent No. 2 is beyond the scope of the show cause notice, as it affixes sole responsibility for proper implementation of the NREGA Scheme upon the petitioner, which is not an allegation levelled against him at all, therefore, the petitioner has not been granted an opportunity of hearing to rebut this specific charge. The order passed by respondent No. 2, insofar as it fixes sole responsibility for implementation of the NREGA Scheme upon the petitioner, is clearly beyond the scope of the show cause notice.

19. In the order/guidelines issued the Programme Officer dated 01.06.2009, produced at running Page-35 of the paper-book, it is stated that it shall be the responsibility of the Talati-cum-Mantri to see that proper implementation of the work under the Scheme is carried out. The material on record further indicates that the Measurement Book has been signed by the Programme Officer (NREGA) and the Technical Assistant, who have personally verified the work done. It is worthwhile to note that the Talati-cum-Mantri was issued a show cause notice on the same grounds as that issued to the petitioner, on 27.08.2009. This document is produced at running page-29 of the paper-book. In response thereto, the

Talati-cum-Mantri, vide his reply dated 03.09.2009 (pages 30-31 of the paper-book), has stated that he has carried out the work of laying the road through labourers and after the measurement is undertaken by the Technical Officers, necessary payment has also been made to the said labourers. It is stated by the Talati-cum-Mantri that the work was carried out after necessary approvals were accorded by the District Panchayat and, therefore, no irregularities have been committed. It is an admitted position that no further action has been taken against the Talati-cum-Mantri, and his explanation was accepted. Only the petitioner has been singled out for drastic action and has been removed from the post of Sarpanch.

20. Although the aspect regarding the responsibility of the petitioner for the proper implementation of the NREGA Scheme was not a part of the show cause notice issued to the petitioner, from the material on record, it does not appear that such responsibility lay with the Sarpanch. Even assuming that this was so, and the petitioner failed to discharge such responsibility properly, it would, at the most, amount to an irregularity or an administrative lapse, but cannot be termed as misconduct in the discharge of his duties, disgraceful conduct, abuse of powers, persistent default or incapability in the performance of his duties under the Act. These are the only circumstances under which the power of removal u/s 57(1) of the Act can be invoked. It cannot be exercised for a mere administrative lapse, irregularity, inefficiency, or failure to maintain high standards of performance.

21. In *Raysangbhai Ranchhodbhai Thakor v. State of Gujarat Through Secretary & Others* (supra), a Division Bench of this Court has held as below:

11. On close reading of the provisions of Section 57, it appears that a mere irregularity or even an illegality in the discharge of duties or causing loss to the Gram Panchayat does not by itself empower the State Government or its delegate to remove a Sarpanch from the elected office. There must be a finding supported by evidence to show that the concerned Sarpanch has been guilty of misconduct in discharge of his duties or of his disgraceful conduct or is incapable of performing his duties under the Act persistently. We take notice of the fact, more particularly considering the nature of the charges levelled against the appellant that the authorities are equating misconduct or disgraceful conduct or persistent defaults to that with dereliction of duty. There is a vast difference between misconduct in the discharge of duties and dereliction of duty. Again, at the cost of repetition, we say that the charges as levelled against the appellant and said to have been proved are not of such a nature which can be termed as misconduct in the discharge of duties or disgraceful conduct. Apparently, it is not a case of persistent default in the performance of duties.

12. Section 57 does not speak about dereliction of duty. Misconduct is a violation of definite law. Dereliction of duty or carelessness is an abuse of discretion under a definite law. Misconduct is a forbidden act whereas dereliction of duty is forbidden quality of an act and is necessarily indefinite. However, lack of

efficiency, failure to attain the highest standard of administrative ability while holding a public post or office like Sarpanch would not by themselves constitute misconduct. Person may be negligent in performance of duty and a lapse in performance of duty or error of judgment in evaluating a developing situation, may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to the negligence would be such as to the repairable or so heavy that the degree of culpability would be very high.

(emphasis supplied)

22. Considering the case of the petitioner in light of the above-quoted principles of law, it is evident that the petitioner cannot be said to have committed misconduct in the discharge of his duties, any disgraceful conduct or abused his powers in any manner.

23. The nature of the allegation itself as contained in the show cause notice, "is vague. The allegation is that, it has come to light from the villagers that machinery was used for laying the road, instead of labourers. Nowhere has it been mentioned in the show cause notice that it is the duty and sole responsibility of the petitioner to ensure that machinery is not used and only labourers are used. Even assuming that machinery has been used, it cannot be said that it has been ordered to be used by the petitioner. There is ample material on record to show that the construction of the road was supervised by the Talati-cum-Mantri who has been let off scot free, and by Technical persons, such as the Executive Engineer, Technical Assistant and Programme Officer. It appears that several official agencies were involved in the laying of the road, and not only the petitioner.

24. In addition thereto, there is no material on record to show that the petitioner has persistently defaulted in the discharge of his duties, or has become incapable of performing his duties and functions under the Act. The allegation against the petitioner cannot be said to have been proved and, in view of the above discussion, does not amount to misconduct, disgraceful conduct or abuse of powers, so as to attract the provisions of Section 57(1) of the Act.

25. In *Dineshbhai Govabhai Makwana v. State of Gujarat & Ors.*, reported in 2012 (3) GLR 2285, this Court has held as below:

20. Normally, the High Court would not be lightly persuaded to enter into the correctness of findings rendered concurrently by two authorities, ostensibly based upon material on record. However, the court is not precluded, under its powers of judicial review, from ensuring that those findings are amply supported by cogent and convincing material, especially in a case where removal of a democratically elected Sarpanch from his office would entail serious civil consequences. Under Article 226 of the Constitution of India, the Court is empowered to examine the matter in order to do complete justice and prevent a miscarriage of justice. The nature of the power of removal u/s 57(1) of the Act and the resultant consequences are such, that it becomes all the more necessary

for the Court to ensure that such drastic power is not exercised for minor irregularities in the discharge of duties and functions by a Sarpanch, but for solid and weighty reasons.

26. In the present case as well, it cannot be denied that the petitioner is a democratically elected Sarpanch. His removal from the said post would entail serious consequences. In order to do complete justice and to prevent a miscarriage of justice, it would be necessary for the Court to ensure that the power u/s 57(1) of the Act is not exercised at the whims and fancies of the concerned authorities, or for minor irregularities or administrative lapses in the discharge of the duties and functions of a Sarpanch.

27. In *Tarlochan Dev Sharma V. State of Punjab and Haryana* (supra), the Supreme Court had occasion to deal with the removal of a President of the Council under the Punjab Municipal Act, 1911. In the above context, the Supreme Court has held as below:

7. In a democracy governed by rule of law, once elected to an office in a democratic institution, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law. That a returned candidate must hold and enjoy the office and discharge the duties related therewith during the term specified by the relevant enactment is a valuable statutory right not only of the returned candidate but also of the constituency or the electoral college which he represents. Removal from such an office is a serious matter. It curtails the statutory term of the holder of the office. A stigma is cast on the holder of the office in view of certain allegations having been held proved rendering him unworthy of holding the office which he held....

(emphasis supplied)

In Paragraph-11 of the said judgment, it was further observed that:

11. The expression "abuse of powers" in the context and setting in which it has been used cannot mean use of power which may appear to be simply unreasonable or inappropriate. It implies a willful abuse or an intentional wrong. An honest though erroneous exercise of power or an indecision is not an abuse of power. A decision, action or instruction may be inconvenient or unpalatable to the person affected but it would not be an abuse of power. It must be such an abuse of power which would render a Councilor unworthy of holding the office of President. Inasmuch as an abuse of power would entail adverse civil consequences, the expression has to be narrowly construed. Yet again, the expression employed in Section 22 is "abuse of his powers or habitual failure to perform his duties". The use of plural-powers, and the setting of the expression in the framing of Section 22 is not without significance. It is suggestive of legislative intent. The phrase "abuse of powers" must take colour from the next following expression-"or habitual failure to, perform duties". A singular or casual aberration or failure in exercise of power is not enough; a course of conduct or

plurality of aberration or failure in exercise of power and that too involving dishonesty of intention is "abuse of powers" within the meaning of Section 22 of the Act. The legislature could not have intended the occupant of an elective office, seated by popular verdict, to be shown exit for a single innocuous action or error of decision.

(emphasis supplied)

28. In *Sharda Kailash Mittal v. State of M.P. & Ors.* (supra), the Supreme Court was dealing with a case of removal of a President under the Madhya Pradesh Municipalities Act, 1961. The principles of law enunciated by the Supreme Court are reproduced hereinbelow:

18. For taking action u/s 41-A for removal of President, Vice-President or Chairman of any Committee, power is conferred on the State Government with no provision of any appeal. The action of removal casts a serious stigma on the personal and public life of the concerned office-bearer and may result in his/her disqualification to hold such office for the next term. The exercise of power, therefore, has serious civil consequences on the status of an office bearer. There are no sufficient guidelines in the provisions of Section 41-A as to the manner in which the power has to be exercised, except that it requires that reasonable opportunity of hearing has to be afforded to the office bearer proceeded against. Keeping in view the nature of the power and the consequences that flows on its exercise it has to be held that such power can be invoked by the State Government only for very strong and weighty reason. Such a power is not to be exercised for minor irregularities in discharge of duties by the holder of the elected post. The provision has to be construed in strict manner because the holder of office occupies it by election and he/she is deprived of the office by an executive order in which the electorate has no chance of participation.

19. In the present case, the actions of the appellant, even if proved, only amount to irregularities, and not grave forms of illegalities, which may allow the State Government to invoke its extreme power u/s 41-A.

(emphasis supplied)

29. Testing the case of the petitioner on the touchstone of the above-quoted principles of law, and taking into consideration the factual matrix of the case as already discussed hereinabove, it is clear that the allegation levelled against the petitioner, as stated in the show cause notice, is not sustainable in law, as it does not attract the provisions of Section 57(1) of the Act.

30. As noted earlier, a finding has been rendered in the impugned order dated 16.05.2012 passed by respondent No. 2 that it was the responsibility of the petitioner to ensure that NREGA Scheme is implemented properly and as per the guidelines, and in not doing so the petitioner has failed in his duties as a Sarpanch. This finding is clearly beyond the scope of the show cause notice.

31. Even otherwise, the impugned orders do not state that the petitioner has

committed misconduct, disgraceful conduct, abused his powers, committed persistent defaults in performance of his duties or is incapable of performing his duties under the Act. As these are the mandatory ingredients of Section 57(1) of the Act, failure to prove them would not invite the action of removal from the post of Sarpanch. Section 57(1) of the Act contains a drastic power which, if exercised, would entail serious civil consequences to an elected representative of the petitioner. It would cast a stigma on the petitioner and result in his disqualification to hold such office in the next term. When the Competent Authority exercises such power, it should ensure that the provisions of Section 57(1) of the Act are fully proved before an order of removal is passed.

32. In the present case, not only does the record fail to reveal how the entire responsibility for implementation of the NREGA Scheme lies solely with the petitioner, but it also shows that the technical aspects of the matter such as measurement of the road, use of machinery, etc. were undertaken by the Executive Engineer, Technical Assistant and the Programme Officer who have appended their signatures to the Measurement Book. The order dated 01.06.2009 of the Programme Officer (NREGA) states that it shall be the responsibility of the Talati-cum-Mantri to ensure that the Scheme is properly implemented. The Talati-cum-Mantri has been conveniently saved from further action upon his explanation and the petitioner has been singled out for removal, for reasons best known to the concerned authorities. At the best, the petitioner could have had a general supervisory role in the laying of the road. Even if it is assumed that he failed to supervise the work properly, or to ensure that labourers should be engaged instead of the use of machinery, it would only amount to an irregularity. By no stretch of imagination can it be termed as misconduct or abuse of powers, within the meaning of Section 57(1) of the Act. A single aberration or failure on the part of the petitioner would not invite the exercise of the drastic power contained in Section 57(1) of the Act. Further, there is no whisper of any financial irregularity or pecuniary loss to the Gram Panchayat.

33. Viewed from all angles, in the considered view of this Court, the case of the petitioner is not one that would attract the provisions of Section 57(1) of the Act or justify the exercise of the power of removal. The cumulative result of the above discussion is that the impugned order dated 16.05.2012 passed by respondent No. 2 and the order dated 08.11.2010 passed by respondent No. 3 are unsustainable in law and, therefore, deserve to be quashed and set aside. Accordingly, they are quashed and set aside. The petition is allowed. Rule is made absolute. There shall be no orders as to costs.