

(2022) 06 BOM CK 0102
In the Bombay High Court
Case No : Writ Petition No. 4805 Of 2021

Jagdish Mannalalji Sancheriya

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 24-06-2022

Acts Referred:

Constitution Of India, 1950 — Article 21, 311

Maharashtra Village Panchayats Act, 1959 — Section 8(1A)(1), 39, 39(1), 39(3), 55, 55A

Code Of Criminal Procedure, 1973 — Section 313

Citation : (2022) 06 BOM CK 0102

Hon'ble Judges : Manish Pitale, J

Bench : Single Bench

Advocate : A.M. Ghare, K.L. Dharmadhikari, Sangita Jachak, A.A. Sambaray

Final Decision : Allowed

Judgement

Manish Pitale, J

1. Rule. Rule made returnable forthwith. Heard finally with consent of the learned counsel for the parties.

(2) The petitioner is aggrieved by his removal from the elected post of Sarpanch of Gram Panchayat, Anji (Mothi), District – Wardha, under Section 39(1) of the Maharashtra Village Panchayats Act, 1959. The respondent No.2 – Additional Commissioner passed impugned order dated 23.08.2021, removing the petitioner from the elected post of Sarpanch, on the ground that he was found guilty of neglect in performance of his duties. The petitioner had approached the respondent No.1 under Section 39 (3) of the said Act, to challenge the order of his removal, but the respondent No.1 dismissed the appeal, thereby confirming the said order.

(3) The petitioner was directly elected as Sarpanch of the said Municipal Council for a period of five years in an election held in March, 2019, thereby showing

that his term would expire in the year 2024. The respondent Nos.5 and 6 approached the respondent No.3 – Chief Executive Officer (CEO) with complaint against the petitioner and claimed that he deserved to be removed from the said post of Sarpanch. The respondent No.3 – CEO took into consideration the complaints submitted by respondent Nos.5 and 6. It appears that the said respondent No.3 – CEO conducted a preliminary enquiry into the matter and sent a communication to the respondent No.2 – Additional Commissioner, stating that he found prima facie substance in the complaints submitted by respondent Nos.5 and 6. Thereupon, the respondent No.3 – CEO sought permission of the respondent No.2 – Additional Commissioner for conducting an enquiry against the petitioner. In response, the respondent No.2 – Additional Commissioner appears to have granted permission and the enquiry was initiated by respondent No.3 – CEO.

(4) On the basis of the report submitted by the respondent No.3 – CEO, on 05.11.2020, the respondent No.2 – Additional Commissioner exercised power under Section 39(1) of the aforesaid Act, to call upon the petitioner to submit his explanation. On 20.07.2021, the petitioner submitted a detailed reply to the report of the respondent No.3 – CEO. The petitioner contended that adverse findings rendered in the said report were not borne out from the record and that they were unsustainable. It was submitted that the Gram Panchayat acted in a collective manner and that the petitioner, as the Sarpanch, could not be singled out in the context of decisions taken by the Gram Panchayat collectively. It was highlighted by the petitioner on each issue raised in the report of the respondent No.3-CEO that no ingredient of Section 39(1) of the said Act was made out and that therefore, the proceedings initiated against him deserved to be dropped.

(5) By order dated 23.08.2021, the respondent No.2 –

Additional Commissioner considered the material on record and rendered findings against the petitioner on six issues. Thereupon, the respondent No.2 – Additional Commissioner rendered a finding that the petitioner was guilty of neglect in performing his duties. On this basis, the respondent No.2 – Additional Commissioner passed the order removing the petitioner from the post of Sarpanch. It is significant that in the operative portion of the impugned order, the respondent No.2 – Additional Commissioner recorded that the application/complaint of the respondent No.3 – CEO was being allowed and the enquiry report submitted by the said respondent was being confirmed.

(6) Aggrieved by the said order, the petitioner filed appeal under Section 39(3) of the said Act before the respondent No.1. Various grounds of challenge were raised on behalf of the petitioner in the appeal proceedings. Hearing was conducted on the prayer for interim stay, but since no order was passed thereon, the petitioner was constrained to file Writ Petition No.4324/2021, before this Court. By order dated 28.10.2021, this Court allowed the writ petition, directing the respondent No.1 to decide the appeal filed by the petitioner in a time bound manner and it was directed that in the meanwhile election would not be held for

the post of Sarpanch of the said Gram Panchayat.

(7) On 25.11.2021, the respondent No.1 passed its order dismissing the appeal filed by the petitioner, thereby confirming the order passed by the respondent No.2 – Additional Commissioner, removing the petitioner from the post of Sarpanch. Aggrieved by the same, the petitioner filed the present writ petition, wherein notices were issued. The respondents entered appearance through counsel and the petition was taken up for final disposal.

(8) Mr. A.M. Ghare, learned counsel appearing for the petitioner submitted that the impugned orders deserved to be set aside because the proceedings conducted before the respondent No.2 – Additional Commissioner stood vitiated due to violation of the mandatory procedure prescribed under Section 39 of the said Act. It was submitted that under the provisions of the said Act, the respondent No.2 – Additional Commissioner could remove the petitioner as the elected Sarpanch on specific grounds, subject to a report being called from the respondent No.3 – CEO after conducting a proper enquiry. It was emphasized that upon the respondent No.2 – Additional Commissioner receiving information or complaint, that the procedure under Section 39 of the said Act could be triggered and it is thereupon that the CEO is expected to conduct an enquiry and submit report before the Commissioner. According to the learned counsel for the petitioner, in the present case the said procedure was violated, inasmuch as the respondent No.3 – CEO himself acted as the complainant by approaching the respondent No.2 – Additional Commissioner stating that a prima facie case existed against the petitioner, further seeking permission to conduct enquiry into the matter. It was highlighted that the operative portion of the impugned order passed by the Additional Commissioner itself recorded that the complaint of the respondent No.3- CEO was being allowed and the report of the said authority was being confirmed. On this basis, it was submitted that due to the said procedural flaw in the present case, the impugned orders deserved to be set aside.

(9) On the merits of the matter, it was submitted that the petitioner had furnished a detailed reply on each and every issue raised by the respondent No.3- CEO in his report. The petitioner had explained the circumstances in which the Gram Panchayat, discharging its collective responsibility, had taken certain decisions on the issues that were highlighted in the report. It was submitted that none of the said decisions could be said to be the individual responsibility of the petitioner and that in any case no material had come on record to indicate that the petitioner could be held guilty for neglect in performing his duty. By placing reliance on judgment of the Division Bench of this Court in the case of Baburao Vishwvanath Mathpati Vs. State of Maharashtra and others 1996 (1) Mh.L.J. 366, the learned counsel for the petitioner submitted that the word “neglect” was explained in the said judgment of this Court to mean that “gross neglect” would have to be demonstrated against an elected Sarpanch, Upa-Sarpanch or Member of the Gram Panchayat to justify his or her removal. It was submitted that the

said position of law demonstrated that the material on record ought to show gross neglect and absolute irresponsible conduct on the part of an elected Sarpanch, Upa-Sarpanch or Member of the Gram Panchayat, to justify his or her removal under Section 39(1) of the said Act. On the basis of the material on record, it was submitted that no such case of neglect in performing duties was made out against the petitioner and that therefore, the impugned orders deserved to be set aside.

(10) The learned counsel for the petitioner also placed reliance on judgment of the Hon'ble Supreme Court in the case of Ravi Yashwant Bhoir Vs. District Collector, Raigad and others 2012 (4) SCC 407, to emphasize that when the Commissioner exercising powers under Section 39 of the said Act, was removing an elected representative and thereby nullifying the verdict of the people, strict and high standards of proof of ingredients of the aforesaid provision were necessary to justify such an action of removal of the elected representative. It was submitted that no such material was available on record in the present case to justify the impugned orders. On this basis, it was submitted that the writ petition deserved to be allowed.

(11) Mr. A.A. Sambaray, learned counsel appearing for contesting respondent No.6 i.e. one of the original complainants, submitted that there was no substance in the contentions raised on behalf of the petitioner. On the question of alleged procedural defect or flaw in the present case, the learned counsel emphasized that even if the respondent No.2 – Additional Commissioner had referred to the respondent No.3 – CEO as a complainant in the operative portion of the impugned order removing the petitioner from the post of Sarpanch, it could not vitiate the said order, for the reason that respondent No.3 – CEO had conducted enquiry on specific directions given by the respondent No.2 – Additional Commissioner, in terms of the proviso to Section 39(1) of the said Act. It was submitted that merely because respondent No.5 and 6 had approached the respondent No.3 – CEO with their grievance and the CEO had in turn brought the same to the notice of the respondent No.2 – Additional Commissioner, it could not be said that the CEO had acted as the complainant himself. Even if, the respondent No.3 – CEO in the communication to the respondent No.2 – Additional Commissioner, referring to the grievance of respondent Nos.5 and 6 had opined that a prima facie case was made out against the petitioner, it could not be said that the proceedings stood vitiated or that there was a procedural flaw in the present case. The learned counsel emphasized that there was substantial compliance with the requirement of Section 39(1) of the said Act and that therefore, there was no substance in the said contention raised on behalf of the petitioner.

(12) As regards the merits of the matter, it was submitted that the report of the respondent No.3 – CEO stated in detailed as to the manner in which the petitioner as the Sarpanch of the Gram Panchayat had avoided performing statutory duties and this had resulted in pecuniary loss to the Gram Panchayat. It

was submitted that the petitioner had taken lead in passing Resolutions of the Gram Panchayat against earlier Resolutions, in the teeth of the statutory requirements, which had resulted in unfair advantage to persons who were rank encroachers. It was further submitted that the respondent No. 2 – Additional Commissioner took into consideration the reply filed by the petitioner and it was found that at least on six issues the petitioner was unable to give proper explanation and thereupon, it was found that he was guilty of neglect in performing his duties. On this basis, it was submitted that no error could be attributed to the respondent No.2 – Additional Commissioner for having passed the impugned order and the respondent No.1 having confirmed the same.

(13) Mr. K.L. Dharmadhikari, learned AGP appeared on behalf of the respondent Nos.1 and 2 and defended the impugned orders. Ms. Sangita Jachak, learned counsel appeared on behalf of respondent No.3.

(14) Having heard the learned counsel for the rival parties, in the backdrop of the material placed on record, two points arise for consideration in the present petition. Firstly, as to whether it can be said that the procedure adopted in the present case was in consonance with the statutory requirements of Section 39 of the aforesaid Act, particularly when the respondent No. 3 – CEO had approached the respondent No.2 – Additional Commissioner to proceed against the petitioner, stating that a prima facie case was made out. Secondly, as to whether the respondent No.2 – Additional Commissioner was justified in concluding that the petitioner deserved to be removed from the elected position of Sarpanch for being guilty of neglect in performance of his duties. Both these points will have to be examined in the backdrop of the settled position of law laid down by the Supreme Court in the case of Ravi Yashwant Bhoir (supra), wherein a note of caution has been sounded when an elected representative of the people is sought to be removed from office.

(15) The Supreme Court in the aforesaid judgment in the case of Ravi Yashwant Bhoir Vs. District Collector and Ors., (supra), in the context of removal of a representative of people, concerning local self-Government, held as follows :

“22. Amendment in the Constitution by adding Parts IX and IX- A confers upon the local self Government a complete autonomy on the basic democratic unit unshackled from official control. Thus, exercise of any power having effect of destroying the Constitutional Institution besides being outrageous is dangerous to the democratic set-up of this country. Therefore, an elected official cannot be permitted to be removed unceremoniously without following the procedure prescribed by law, in violation of the provisions of Article 21 of the Constitution, by the State by adopting a casual approach and resorting to manipulations to achieve ulterior purpose. The Court being the custodian of law cannot tolerate any attempt to thwart the Institution.

28. In State of Punjab v. Baldev Singh, this Court considered the issue of removal of an elected office bearer and held that where the statutory provision

has a very serious repercussions, it implicitly makes it imperative and obligatory on the part of the authority to have strict adherence to the statutory provisions. All the safeguards and protections provided under the statute have to be kept in mind while exercising such a power. The Court considering its earlier judgments in *Mohinder Kumar v. State* and *Ali Mustafa Abdul Rehman Moosa v. State of Kerala*, held as under:

"It must be borne in mind that severer the punishment, greater has to be the care taken to see that all the safeguards provided in a statute are scrupulously followed."

29. The Constitution Bench of this Court in *G. Sadanandan v. State of Kerala*, held that if all the safeguards provided under the Statute are not observed, an order having serious consequences is passed without proper application of mind, having a casual approach to the matter, the same can be characterised as having been passed mala fide, and thus, is liable to be quashed.

32. In service jurisprudence, minor punishment is permissible to be imposed while holding the inquiry as per the procedure prescribed for it but for removal, termination or reduction in rank, a full fledged inquiry is required otherwise it will be violative of the provisions of Article 311 of the Constitution of India. The case is to be understood in an entirely different context as compared to the government employees, for the reason, that for the removal of the elected officials, a more stringent procedure and standard of proof is required."

(16) The aforesaid observations were made by the Supreme Court in the context of a pari materia provision concerning removal of President of Municipal Council under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. Thus, a stringent standard has to be applied for examining the validity of the action of the respondent No. 2 – Additional Commissioner in the present case in removing the petitioner from the of the said Act. Strict adherence to the mandatory requirements of the statute is necessary and therefore, the procedure adopted in the present case needs to be examined in detail.

(17) The procedural flaw claimed by the petitioner, which has allegedly caused substantive injustice, is that in the present case, the respondent No.3 – CEO himself approached the respondent No.2 – Additional Commissioner, on the basis of a complaint submitted by respondent Nos.5 and 6, claiming that prima facie case was made out against the petitioner for removal from the elected position of Sarpanch and permission was sought to conduct enquiry against the petitioner. It is for this reason that in the impugned order dated 23.08.2021, it is recorded at the outset that the respondent No.3 – CEO was the applicant, who applied on 30.07.2020, making a complaint against the petitioner. In the operative portion of the said impugned order also it is specifically stated that the complaint filed by the applicant/complainant i.e. respondent No.2 – CEO was being allowed and the enquiry report dated 05.11.2020, was being confirmed.

(18) A perusal of Section 39 of the aforesaid Act, in this context becomes relevant and it reads as follow:

"Section 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 an 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 (1A) 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.];

[(1A) Where a person is removed from office of the Sarpanch or Upa-Sarpanch, he shall not be eligible for re-election as Sarpanch or Upa-Sarpanch during the remainder of the term of office of members of the panchayat.]

[(2) The Commissioner may subject to like condition disqualify for a period of not exceeding [six years], any person who has resigned his office as a member, Sarpanch or Upa-Sarpanch and has been guilty of the acts and omissions specified in sub-section (1).

(3) Any person aggrieved by an order of the Commissioner under sub-section (1) or (2) may, within a period of fifteen days from the date of the receipt of such order, appeal to the State Government and the Government shall decide the appeal within a period of one month from the date of receipt thereof."

(19) A bare reading of the above quoted provisions shows that the role of the CEO is specified in the proviso to Section 39(1) of the Act, which mandates that the CEO shall hold an enquiry under the orders of the respondent No.2 – Additional Commissioner, when the Commissioner considers the question of removal of Sarpanch, Upa-Sarpanch or Member of the Gram Panchayat from the elected Office. The role of the CEO starts upon a specific order of the Commissioner, who intends to remove a Sarpanch, Upa-Sarpanch or Member from the elected Office. Thus, under the statutory scheme, the CEO is expected to act as an authority which conducts an independent enquiry into the matters that may be referred by the Commissioner in the context of the question of removal of a Sarpanch, Upa-Sarpanch or a Member of the Gram Panchayat. himself approached the respondent No.2 - Additional Commissioner as an applicant/complainant and sought permission to hold an enquiry against the petitioner for removal from the elected office of Sarpanch. In the said communication dated 20.07.2020, the respondent No.3 – CEO himself stated that prima facie he was convinced that a case was made out against the petitioner. No doubt, the respondent No.3 – CEO referred to the grievances raised by the respondent Nos.5 and 6, but the tenor of the communication sent by the respondent No.3 – CEO to the Commissioner clearly indicated that the CEO had already reached a prima facie conclusion that the petitioner was liable to be removed under section 39(1) of the said Act.

(21) It is in response to the said communication sent by the respondent No.3 – CEO that the Commissioner, on 07.08.2020, passed the order directing the CEO to conduct the enquiry. A perusal of the said order shows that the respondent no.2-Commissioner simply stated that since the CEO had asked permission to conduct enquiry, it was being ordered that such an enquiry shall be conducted. The order does not show any application of mind on the part of the respondent no.2-Commissioner about existence of circumstances for initiation of such an enquiry against the petitioner. The direction to conduct the enquiry was to the very same CEO, who as an applicant/complaint, had approached the Commissioner for removal of the petitioner under Section 39(1) of the said Act.

(22) This Court is of the opinion that such a procedure was not only flawed and defective, but it was not in strict adherence to the requirements of the above quoted Section 39 of the said Act. As laid down by the Supreme Court in the case of Ravi Bhoir (supra), in cases where elected representatives are sought to be removed from elected Office, all safeguards provided in the statute have to be scrupulously followed and if such safeguards are not observed and an adverse order is passed, such an order can be characterized as having been passed malafide, rendering it liable to be quashed and set aside.

(23) In a given case the CEO may place complaints and other material before the Commissioner for consideration, upon which after application of mind the Commissioner may deem it fit to direct the CEO to conduct an enquiry as mandated under proviso to section 39(1) of the said Act. But, in the facts of the

present case, it is found that the CEO conducted a preliminary enquiry on the complaints submitted by respondent nos. 5 and 6. Thereupon, the CEO reached prima facie conclusion that the petitioner was liable to be removed under section 39(1) of the said Act. The CEO sent the said communication dated 20.07.2020 to the respondent Commissioner, who in turn mechanically passed the order dated 07.08.2020, granting the direction to conduct such an enquiry merely on the asking of the CEO, demonstrating no application of mind on the part of the Commissioner and further the enquiry was directed to be conducted by the very same CEO.

(24) In the present case, the respondent No.3 – CEO himself was the applicant/complainant before the Commissioner against the petitioner and the said CEO himself conducted the enquiry in the matter and thereupon, the respondent No.2 – Additional Commissioner relied on the findings rendered in such an enquiry to remove the petitioner from the elected Office of Sarpanch. This Court is of the opinion that such a procedure adopted in the present case suffered from serious procedural flaw, demonstrating that the safeguards provided in Section 39 of the said Act, were not observed and on this ground itself the impugned order passed by the Commissioner was rendered unsustainable and liable to be set aside. The respondent No.1 failed to appreciate that this aspect of the matter while dismissing the appeal filed by the petitioner.

(25) Despite the aforesaid findings on the first point that arises for consideration in the present case, this Court is proceeding to consider the second point concerning the merits of the matter. It is found from the material available on record that the respondent No.2 – Additional Commissioner passed the impugned order dated 23.08.2021, holding the petitioner guilty of neglect in performing duties, on the basis of six findings rendered against the petitioner. These findings were entirely based on the report submitted by the CEO. It is necessary to examine as to whether the aforesaid findings were based on a proper appreciation of the material available on record and as to whether the reply filed by the petitioner was taken into consideration on each of the points on which the respondent – Commissioner held against the petitioner.

(26) The material on record shows that the respondent No.3 – CEO submitted a detailed enquiry report dated 05.11.2020, on various issues. On some of the issues, the respondent No.3 – CEO found that the Secretary of the Gram Panchayat was also to be held responsible, but in respect of majority of the points taken up for consideration, conclusions were rendered against the petitioner.

(27) The petitioner submitted a detailed reply dated 20.07.2021, before the respondent No.2 – Additional Commissioner on the points that arose for consideration in the light of the report of the respondent No.3 – CEO dated 05.11.2020. The explanation furnished in the said reply pertained to the six issues on which the respondent No. 2 – Additional Commissioner rendered findings against the petitioner in the impugned order dated 23.08.2021, while

holding the petitioner guilty of neglect in performing duties. The findings rendered on the six issues in the said impugned order and the discussion prior to rendering findings, shows that the detailed reply and explanation given on behalf of the petitioner was not considered in the proper perspective and reasons were not stated as to why the explanation was not found worthy of acceptance and why the respondent No.2 – Additional Commissioner reached the conclusion that the petitioner was guilty of neglect in performing his duties. Before considering the correctness or otherwise of the findings rendered by the respondent No.2 – Additional Commissioner and as to whether the conclusion about the petitioner being guilty of neglect in performing duties is sustainable, it would be appropriate to refer to the position of law on the question as to what can be said to be negligence on the part of a Sarpanch or elected representative in performing his or her duties.

(28) In this context, a Division Bench of this Court, in the context of a *pari materia* provision under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, on the expression "neglect" held that the said expression ought to mean gross neglect, indicating that it is willful, intentional or culpable. It was found that since removal from an elected office has a drastic consequence, negligence or the expression neglect ought not to be construed in its usual meaning. The relevant portions of the said judgment of the Division Bench of this Court in the case of Baburao Mathpati (*supra*) read as follows :

"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 "mis-conduct" 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."

(29) The said position of law laid down by the Division Bench of this Court applies in the present also because the petitioner as the elected Sarpanch has been removed from Office on the ground that he was guilty of neglect in performing his duties. The material on record must indicate that such neglect, if at all, was gross neglect, willful or intentional on the part of the petitioner. With this backdrop, the material on record needs to be considered to examine the correctness or otherwise of the impugned orders passed by the respondents.

(30) Findings on Issue Nos.1 and 2 in the impugned order of the respondent No.2 – Additional Commissioner dated 23.08.2021, show that they pertained to the alleged failure of the petitioner to remove encroachment. It is found by the respondent No.2 – Additional Commissioner that when removal of the said encroachment was to be carried out from a School under the Gram Panchayat, while a status quo order from a competent Court had been obtained only by two encroachers, the process of removal of encroachment was stayed at the behest of the petitioner for all the encroachers. In this context, it is also found that the petitioner, as the Sarpanch, was guilty of having called a meeting for passing Resolutions by the Gram Panchayat by a majority of eight against six members while concurrence of at least eleven members was required for passing such a resolution to keep the process of removal of encroachment in abeyance.

(31) In the context of the aforesaid findings, when the reply and the explanation therein submitted by the petitioner is perused, it is found that when two of the encroachers had admittedly obtained orders of status quo, from the competent Court, guidance was sought by the Gram Panchayat and the petitioner from Officials as to what was to be done in the matter as regards other persons, who had allegedly encroached upon the said property. It was claimed by the petitioner that when no such specific guidance was made available, a meeting of the Gram Panchayat was fixed, wherein Resolution was passed by majority to keep the process of removal of encroachment in abeyance in respect of even those persons who had not obtained orders of status quo from the Court. According to the petitioner, the Gram Panchayat by majority was of the opinion that in such a situation, it may be appropriate to wait for further orders of the Court. It is an admitted position on record that after the monsoon season was over, the encroachments were indeed removed.

(32) In such a situation, it needs to be examined whether the petitioner individually can be held responsible for the sequence of events. The record shows that the Gram Panchayat collectively in the aforesaid meeting by majority decided to adopt the aforesaid course of action. As an elected body consisting of

representatives elected by the people for local self-Government, in situations that may arise concerning action to be taken by the elected body, an individual cannot be held solely responsible for a particular act or omission. The respondent No. 2 – Additional Commissioner did not at all take into consideration the explanation given by the petitioner and proceeded as if the petitioner as the Sarpanch was solely and individually responsible for the sequence of events, in the context of removal of encroachment. This Court is of the opinion that the approach adopted by the respondent No. 2 – Additional Commissioner was not justified, inasmuch as the petitioner was singled out as the only person responsible for the aforesaid turn of events.

(33) Finding No.3 rendered by the respondent No.2 – Additional Commissioner in the impugned order dated 23.08.2021, shows that the petitioner was found responsible for delay in deducting and depositing income tax as well as GST. It was also found that the petitioner was responsible for making payments in the context of projects and development works in violation of the relevant rules and in the absence of administrative approval. petitioner was not discussed and properly considered by the respondent No.2 – Additional Commissioner. The material on record shows that the deductions pertaining to income tax and GST and depositing the same within time was in the area of operation of the Gram Sewak and the Village Development Officer. Reference was made to circulars in that regard. The respondent No.2 – Additional Commissioner failed to consider as to whether an elected Sarpanch was to sit and make deductions towards GST and income tax and deposit the same and if there was any delay in the same, it would justify drastic action of removal under Section 39 of the said Act. The aforesaid duties of making statutory deductions within time are matters to be handled by the Officer specified as per procedure laid down in Government Circulars and the elected Sarpanch cannot be held individually responsible, if there is delay in performance of the said duties. In the model of local self-Government, the elected Sarpanch, Upa-Sarpanch and Members of the Gram Panchayat are expected to collectively ensure development work for the benefit of people. Delay in making statutory deductions and depositing them cannot be said to be the individual duty of the elected Sarpanch and any delay in performance of the same cannot lead to a conclusion that such a Sarpanch is guilty of gross, willful or intentional neglect, justifying his removal under Section 39 of the said Act. The respondent No.2– Additional Commissioner, therefore, erred in holding against the petitioner on the said issue.

(35) Even as regards alleged violation of rules for taking administrative sanction regarding development works, the petitioner in his detailed reply before the Commissioner had referred to a Resolution whereby administrative approval was granted for such works. The date of the Resolution was specified and a copy of the same was annexed. There was no discussion in the impugned order dated 23.08.2021, passed by the Commissioner, as to why the said explanation and the document placed on record was not acceptable and despite such explanation the petitioner individually was to be held responsible. As noted above, the Gram

Panchayat as an elected body collectively passed such Resolutions wherein approvals were granted and therefore, the petitioner could not be said to have indulged in gross, willful or intentional neglect of his duties.

(36) The respondent No.2 – Additional Commissioner, while rendering Finding No.4 against the petitioner held that he was responsible for benefit given to two individuals under a Government scheme pertaining to encouraging use of toilets. The petitioner had explained in his detailed reply that the said persons were given such benefit on the recommendation of the Zilla Parishad and when it was found in the case of one of the individuals that he was not eligible for the same, it was ensured that the amount disbursed was refunded by the said individual by way of cheque.

(37) In the case of the other individual, it was explained that the amount was not actually disbursed, when it was found that the said person was not eligible. The said explanation has not been dealt with by the respondent No.2 – Additional Commissioner, while reaching adverse findings against the petitioner.

(38) As regards Finding No.5 in the impugned order, indicating that financial loss was caused to the Panchayat due to the act of the petitioner, it was found that again the explanation put forth by the petitioner was not discussed and it was not stated as to why, despite the explanation, adverse finding was being rendered against him. In any case, there was no finding rendered as to why the respondent No.2– Additional Commissioner concluded that the act of omission or commission on the part of the petitioner had led to financial loss. In fact, in the reply submitted by the petitioner, it was stated, in the context of Finding No.5 in the impugned order, that rates were called regarding annual rent from Government recognized Civil Engineer and considering the condition of the building in question, the rent was fixed based upon the report of the said Government recognized Engineer. The same was finalized in a meeting of the Gram Panchayat and all recognized procedures as laid down by the Zilla Parishad were followed, thereby demonstrating that no financial loss was actually caused to the Gram Panchayat. These aspects were not considered by the respondent No.2 – Additional Commissioner, while erroneously holding the petitioner individually responsible.

(39) As regards Finding No.6, pertaining to failure in calling for tenders and approving them within time, it was explained that tenders were opened a few days late because of the fact that there were holidays due weekend and few festivals and thereafter, delay in the entire process occurred because of the Covid – 19 Pandemic having hit the nation in March 2020. The impugned order passed by the respondent No.2 – Additional Commissioner does not show consideration of any of these aspects highlighted in the explanation forwarded by the petitioner in his detailed reply.

(40) The respondent No.2– Additional Commissioner simply referred to the stand taken by the petitioner in brief and then proceeded to render the aforesaid six

findings against him. Thereupon, it was concluded that the petitioner was guilty of neglect in performing his duties and on that basis, he was removed from the elected office of Sarpanch. Despite the fact that the petitioner raised detailed grounds of challenge in the appeal filed before the respondent No.1, the said respondent simply repeated and concurred with the findings of the respondent No.2 – Additional Commissioner, to dismiss the appeal and to confirm the impugned order removing the petitioner from the elected office of Sarpanch.

(41) This Court is of the opinion that the findings rendered by the respondents in the impugned orders that the petitioner was guilty of neglect in performing his duties are not sustainable on the basis of the material available on record. The material available on record could not lead to the conclusion that the petitioner was guilty of gross, willful or intentional neglect, attracting an order of removal from the elected office of Sarpanch. The stringent standards laid down by the Division Bench of this Court in the context of the *pari materia* provision of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, in the case of Baburao Mathpati (*supra*), pertaining to the expression 'neglect', are not satisfied by the material available on record, which the respondents failed to appreciate while passing the impugned orders. It is also found that in terms of the law laid down by the Supreme Court in the case of Ravi Bhoir (*supra*), the stringent requirements of a provision like Section 39 of the aforesaid Act are not satisfied in the facts and circumstances of the present case, to justify removal of the petitioner from the elected office of Sarpanch.

(42) Hence, it is found that the impugned order dated 23.08.2021, passed by the respondent No. 2– Additional Commissioner, is unsustainable. It is found that, not only was the said order rendered unsustainable due to the glaring procedural flaw of the respondent No.3 – CEO himself acting as the complainant against the petitioner and then conducting enquiry into the matter, but even on the merits of the matter, the material available on record does not justify the adverse findings rendered by respondent No.2 – Additional Commissioner against the petitioner, while concluding that the petitioner deserved to be removed from the elected office of Sarpanch, for being guilty of neglect in performing his duties.

(43) In the light of the above, this Court finds that the impugned orders are unsustainable and they deserve to be quashed and set aside.

(44) Accordingly, the writ petition is allowed. The impugned orders are quashed and set aside. Consequently, it is held that the petitioner deserves to continue as the elected Sarpanch of the said Gram Panchayat.

(45) Rule made absolute in above terms. Pending applications, if any, stand disposed of.