
(2004) 10 BOM CK 0102
In the Bombay High Court
Case No : Writ Petition No. 5981 of 2004

Narayan Atmaram Borase

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 07-10-2004

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 39(1), 39(1)(1A), 39(1A), 39(2)

Citation : (2005) 3 ALLMR 410 : (2005) 2 MhLj 1093

Hon'ble Judges : P.B. Gaikwad, J;H.L. Gokhale, J

Bench : Division Bench

Advocate : B.R. Warma and Amol Savant, for the Appellant; N.B. Khandare, A.G.P. for Respondent Nos. 1 to 3 and D.S. Bagul, for the Respondent

Final Decision : Allowed

Judgement

H.L. Gokhale, J.—Heard learned counsel for the respective parties.

2. Rule. Rule is made returnable forthwith.

3. The petitioner was at the relevant time, a Sarpanch of village Varud, Tq. Shindkheda, District Dhule. It was alleged against the petitioner that he has been a party to serious misappropriation of the funds. Therefore, an action was initiated against him, on the basis of the audit report made by the Deputy Chief Auditor and Block Development Officer, Panchayat Samiti, Shindkheda. Firstly, a preliminary report was submitted that he was responsible for misappropriation to the tune of Rs. 3,95,213/- in Jawahar Rojgar Yojana. The petitioner was elected as a Sarpanch on 20-11-2002 but was proceeded on the basis of this report and the Standing Committee of the Zilla Parishad passed a resolution on 8-3-2004 to take an action u/s 39(1) and (2) of the Bombay Village Panchayat Act, 1958. (for the sake of brevity, hereinafter, referred to as "the said Act"), against the petitioner. On the basis of the said resolution dated 8-3-2004, the President of the Standing Committee of the Zilla Parishad passed an order on 15-5-2004 removing the petitioner from the post of Sarpanch. The petitioner preferred an

appeal against that decision, but the learned Additional Commissioner dismissed the same by his order dated 24-8-2004. Said orders are challenged in the present petition.

4. Shri Warma, learned Counsel for the petitioner has sought an amendment on earlier occasion and even today. We have permitted the amendment as sought. The petitioner has raised a ground that his term of Sarpanch has expired on 31-4-2001. The decision of the Zilla Parishad, though for certain misconduct during the tenure of the petitioner as a Sarpanch, was arrived at much later on 8-3-2004, i.e. much after expiry of the period when the petitioner was Sarpanch. It is further submitted that under the relevant Section 39(1)(1A) of the said Act, what is contemplated is that, in the event any such misconduct or disgraceful conduct is attributed and established against a Sarpanch or Upa-Sarpanch, he can be removed at the discretion of the Standing Committee. It is, however, submitted that this action can only be for the remaining period of the term and not beyond that. This submission is made on the basis of conjoint reading of Sub-sections (1) and (1A) of Section 39 of the said Act, Section 39(1A) of the said Act lays down that 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. It is, therefore, implied that it is the remaining term which will be denied to such a person. Any such mis-conduct will not be read to disqualify the person after expiry of the term, as has been submitted Shri Warma, learned Advocate for the petitioner.

5. As against these submissions of Shri Warma, it is submitted by Shri Bagul, learned Advocate for the respondents Nos. 4 and 5 that serious allegation of misappropriation was made against the petitioner and it was held proved against him by the competent authority and according to him, this being the position, the decision as taken by the Standing Committee was wholly justified and no such restriction should be read into the provisions to lay down that it is only remaining term which would be denied to such a person.

6. We have noted submissions of both the counsel. For the present purpose, reference to the provisions of Section 39(1), (1A) and (2) are necessary, which read as under :--

"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. (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 panchyat.

(2) The Standing Committee may subject to like condition disqualify for a period not exceeding five 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) :

Provided that such action is taken within a reasonable time after such resignation."

7. In our view, the scheme of Section 39(1) and (1A) of the said Act is quite clear. It is the misconduct during the tenure which is sought to be proceeded against the Sarpanch or Upa-Sarpanch. Therefore, he is to lose his office for the remaining period of that term and therefore, also under Sub-section (1A) it is provided that once he is removed, he shall not be eligible for the election during the remainder part of the term of the panchayat samiti. The section does not provide for dis-qualification spreading beyond the term and if it does not so provide, we cannot read it into the section. That is clearly not the object of the provisions.

8. This does not mean that the authorities concerned cannot proceed against the petitioner for whatever are the serious irregularities committed by him. It will be certainly open to them to proceed against him to recover this amount by taking appropriate steps in accordance with law, either in the Civil Court or in the Criminal Court for whatever offences that would be disclosed as a result of his misappropriation of fund. That is altogether a different aspect of the matter.

9. As far as scheme of the section is concerned, it does not permit any action beyond the period of the term and that being so, we will have to accept the submissions of Shri Warma, learned Advocate for the petitioner that the impugned orders which prevent the petitioner from functioning as a Sarpanch are bad in law.

10. The petitioner has been subsequently elected Sarpanch of the very village and in view of the orders passed by the Standing Committee and the Additional Commissioner, charge of the said post was taken back from him and it is presently given to the Upa-Sarpanch. No new Sarpanch has been elected. This fact is not disputed by Shri Bagul.

11. This being the position, the petition is allowed. The impugned orders passed by the Standing Committee as well as the Additional Commissioner, are quashed and set aside, in terms of prayer Clause (B) of the petition. It is also directed to the concerned respondents authorities to hand-over charge of the post of

Sarpanch to the petitioner.

12. Rule is made absolute accordingly, with no order as to costs.