

(2016) 11 BOM CK 0045
In the Bombay High Court
Case No : Writ Petition No. 8543 of 2015

Shri Amitkumar Nanasaheb Bhosale

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 22-11-2016

Acts Referred:

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

Citation : (2017) 2 BCR 108 : (2017) 1 MhLJ 800

Hon'ble Judges : R.M. Savant, J.

Bench : Single Bench

Advocate : Mr. S.D. Rayrikar AGP, for the Respondent Nos. 1 and 2; Mr. R.S. Kadam, Advocate, for the Petitioners; Mr. R.D. Rane, Advocate, for the Respondent Nos. 3 and 4; Deleted, for the Respondent Nos. 5 and 6

Final Decision : Partly Allowed

Judgement

R.M. Savant, J.(Oral) - At the outset the learned counsel for the Petitioners seeks deletion of the Respondent Nos. 5 and 6 from the array of the Respondents as they are formal parties. The said Respondent Nos. 5 and 6 are accordingly allowed to be deleted. Amendment to be carried out forthwith.

2. Rule, with the consent of the learned counsel for the parties made returnable forthwith and heard.

3. The writ jurisdiction of this Court is invoked against the order dated 16/06/2015 passed by the Hon'ble Minister for Rural Development, Government of Maharashtra by which order the Appeal filed by the Petitioners came to be dismissed and resultantly the order dated 12/04/2013 passed by the Divisional Commissioner, Pune Division, Pune came to be confirmed.

4. The facts giving rise to the filing of the above Writ Petition can in brief be stated thus :

The Petitioners herein were the members of the Gram panchayat Rukadi for the

term 2008 to 2012. The Respondent No. 7 herein is the resident of the said village Rukadi who had made an application to the Respondent No. 3 herein alleging various illegalities and irregularities committed by the Petitioners as members of the said Gram-panchayat. On receipt of the said application of the Respondent No. 7, the Respondent No. 4 herein i.e. the Block Development Officer forwarded the same to the Respondent No. 3 herein i.e. the Chief Executive Officer, Zilla Parishad, Kolhapur for taking action against the Petitioners under Section 39 of the Bombay Village Panchayat Act, 1958 (for short "the said Act"). The Petitioners in reply to the said application addressed a communication to the Respondent No. 3 inter alia stating their defence to the said application. It seems that the Respondent No. 3 forwarded his report to the Respondent No. 2 herein for the purpose of facilitating action to be taken under Section 39 of the said Act against the Petitioners. The Petitioners were thereafter called for hearing by the Respondent No. 2. The Respondent No. 2 by his order dated 12/04/2013 allowed the said application filed by the Respondent No. 7 and directed recovery of the amount of Rs.4,90,000/- as also directed that having regard to Section 39(2) of the said Act the Petitioners would stand disqualified for a period of not less than 5 years from the date of the said order.

5. The Petitioners aggrieved by the said order dated 12/04/2013 passed by the Respondent No. 2 filed an Appeal under Section 39(3) of the said Act before the State Government. The Appellate Authority i.e. the Hon"ble Minister for Rural Development, Government of Maharashtra by the impugned order dated 16/06/2015 has dismissed the said Appeal and thereby confirmed the order passed by the Respondent No. 2 herein under Section 39(2) of the said Act. As indicated above it is the said order dated 16/06/2015 passed by the Appellate Authority confirming the order dated 12/04/2013 passed by the Divisional Commissioner, Pune Division, Pune which is taken exception to by way of the above Petition.

6. The principal contention urged by the learned counsel for the Petitioners is that recourse to Section 39(2) could not have been taken by the Respondent No. 2 in view of the fact that the said provision is not attracted to the case of the Petitioners as the said provision applies only in the eventuality of the member, Sarpanch or Upa-Sarpanch resigning. It was the submission of the learned counsel for the Petitioners that in the instant case the Petitioners at the highest could have been removed for the remainder of the period of their term. However, since in the instant case by the time the Respondent No. 2 had passed the order dated 12/04/2013, the term of the Petitioners was already over, the Petitioners could not even be removed for the remainder of the period of their term.

7. The learned counsel for the Respondent Nos.3 and 4, and the learned AGP for the Respondent Nos.1 and 2 sought to justify the order passed by the Respondent No. 2 as confirmed by the order passed by the State Government i.e. the Hon"ble Minister for Rural Development in the Appeal.

8. The issue that arises for consideration is whether in the fact situation of the

present case where undisputedly the term of the Petitioners was already over by the time the Respondent No. 2 had passed the order, the Respondent No. 2 could have invoked the provision of Section 39(2) of the said Act. The said provision i.e. Section 39(2) as it stood prior to it being substituted on 21/12/2006 read thus :

"(2) The Standing Committee may subject to like condition disqualify for a period of 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 omission specified in subsection (1) :

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

After the substitution the said provision reads thus :

"(2) The Commissioner may subject to like condition disqualify for a period of 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 omission specified in subsection (1)"

Hence a plain reading of Section 39(2) of the said Act prior to the substitution and after the substitution would indicate that the same would be applicable in the event a member, Sarpanch or Upa-Sarpanch resigns and has been held guilty of the acts and commissions specified in subsection (1) of Section 39 of the said Act. In the instant case the Petitioners have completed their entire term i.e. from 20/08/2007 till 27/11/2012 and therefore the said Section 39(2) could not have been invoked against the Petitioners so as to disqualify them for the period of not exceeding five years from the date of passing of the order by the Respondent No. 2.

In so far as Section 39(1) is concerned, it can be invoked against the member, Sarpanch or Upa-Sarpanch and the said persons can be removed for the remainder of the period of their term if they are found guilty of the acts and omissions mentioned in the said provision. A useful reference could be made to the judgment of the Division Bench of this Court reported in 2005(2) Mh.L.J. 1093 in the matter of Narayan Atmaram Borase v. State of Maharashtra and others wherein it has been held that the only penalty that can be imposed is the removal for the remaining period and the penalty cannot traverse beyond the said period or term. Hence the said provision applies to a sitting member of the Gram-panchayat against whom the acts of omission or commission are alleged. As indicated above, the term of the Petitioners has come to an end on 27/11/2012 and the order has been passed by the Respondent No. 2 i.e. the Divisional Commissioner, Pune Division, Pune on 12/04/2013. Hence even under Section 39(1) of the said Act the Petitioners could not have been proceeded with as their term had already come to an end and in that sense the penalty which could have been imposed on the Petitioners under Section 39(1) could not have been so imposed.

9. The learned counsel for the Petitioners would also submit that the amount of Rs. 4,90,000/- has been recovered from the Petitioners by dividing the said amount amongst the 13 Petitioners. Hence according to him, the order in so far as the said aspect is concerned, has been implemented.

10. In my view, therefore, the impugned order dated 16/06/2015 passed by the Hon"ble Minister for Rural Development, Government of Maharashtra i.e. the Appellate Authority in so far as it confirms the order dated 12/04/2013 passed by the Respondent No. 2 herein imposing penalty under Section 39(2) would have to be quashed and set aside and is accordingly quashed and set aside. However the order in so far as the recovery of the amount of Rs. 4,90,000/- is concerned, the order is confirmed to the said extent. The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.