



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

WRIT PETITION NO. 7551 OF 2018

Kashinath S/o. Motiramji Lonkar,
aged about 42 years, Occupation :Agriculturist,
R/o. At Post : Kotamba, Tah. Selu,
District : Wardha.

.... **PETITIONER.**

// **VERSUS** //

1. The State Minister,
Rural Development Department,
Mantralaya, Mumbai-32.
2. The Additional Commissioner, Nagpur
Division, Nagpur, Civil Lines, Nagpur,
Tahsil and District : Nagpur.
3. The Zilla Parishad, Wardha, through its
Chief Executive Officer, Wardha,
Tahsil and District : Wardha.
4. Gram Panchayat Kotamba, through its
Secretary, at post Kotamba, Tah. Selu,
Distt. Wardha.
5. Ravindra Narhari Kotambar, Ward No.2,
Mahure Lay-out, Selu, Tah. Selu, Dist.
Wardha.

.... **RESPONDENTS.**

Shri S.N.Gaikwad, Advocate for Petitioner.
Shri T.A.Mirza, A.G.P. for Respondent Nos. 1 and 2.
Shri S.K.Bhoyar, Advocate for Respondent No.5.

CORAM : Z.A.HAQ, J.
DATED : NOVEMBER 21, 2018.

ORAL JUDGMENT :

1. Office note shows that the respondent No.3-Zilla Parishad and respondent No.4-Gram Panchayat, Kotamba are served. None appears for these respondents.

2. Heard Shri S.N.Gaikwad, Advocate for the petitioner, Shri S.K. Bhoyar, Advocate for the respondent No.5 and Shri T.A. Mirza, A.G.P. for the respondent Nos. 1 and 2.

3. **RULE.** Rule made returnable forthwith.

4. The petitioner takes exception to the order passed by the learned Additional Commissioner, Nagpur Division and the order passed by the Hon'ble Minister removing the petitioner from the post of Sarpanch and Member of Gram Panchayat on the ground of misappropriation of the funds.

The petitioner has raised various grounds, one of it being that the enquiry as mandated by Section 39(1) of the Maharashtra Village Panchayats Act, 1958 is not conducted by the Chief Executive Officer. The submission on behalf of the petitioner is that though the Chief Executive

Officer submitted report of enquiry under Section 39(1) of the Maharashtra Village Panchayats Act, 1958 he has in fact neither conducted any enquiry independently nor has applied his mind while preparing the report. It is pointed out that the Chief Executive Officer had deputed Block Development Officer of Panchayat Samiti, Seloo for an enquiry and the Block Development Officer conducted enquiry and submitted report which is reproduced verbatim by the Chief Executive Officer in his report dated 18th January 2018. After examining the two reports, I find substance in the contentions of the petitioner. It is apparent that the Chief Executive Officer has not discharged the statutory obligations as per Section 39(1) of the Maharashtra Village Panchayats Act, 1958 . The learned advocate for the petitioner has rightly relied on the judgment delivered by this Court in the case of *Nimba Vs. Standing Com. Z.P. Jalgaon*, reported in **2002 (3) Mh.L.J. 466** to support his argument that the impugned orders are unsustainable as they are passed without there being compliance of the mandatory provisions of Section 39(1) of the Maharashtra Village Panchayats Act, 1958.

5. Hence, the following order:

- i) The impugned orders are set aside.
- ii) The matter is remitted to the Additional Commissioner, Nagpur Division, Nagpur for considering the matter afresh, in accordance with law.

- iii) The petitioner and the respondent No.5 shall appear before the Additional Commissioner, Nagpur on 14th December 2018 at 11.00 a.m.
- iv) In the meantime, the petitioner shall serve copy of this judgment on the respondent Nos.3 and 4 and file affidavit of compliance before the Additional Commissioner, Nagpur Division, Nagpur before the next date.
- iv) The respondent Nos. 3 and 4 shall also appear before the learned Additional Commissioner, Nagpur Division, Nagpur on 14th December 2018 at 11.00 a.m.
- v) The learned Additional Commissioner, shall decide the matter according to law till 15th January 2019.

Rule is made absolute in the above terms. In the circumstances, the parties to bear their own costs.

The learned A.G.P. shall intimate the Additional Commissioner, Nagpur Division, Nagpur about this judgment immediately.

JUDGE

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