

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12667 OF 2025

Sau. Poonam Bharat Kudale,
Age: 31 Yrs. Occp: Business,
R/o. Hiware, Tal. Purandar,
Dist. Pune.

...Petitioner

Versus

1. The State of Maharashtra,
Through Minister of Rural Development,
Mantralaya, Mumbai, Maharashtra.
2. Divisional Commissioner,
Pune Division, Pune.
3. Chief Executive Officer,
Zilla Parishad, Pune.
4. Block Development Officer,
Panchayat Samittee, Purandar.
5. Ramdas Dattatray Kudale
6. Sagar Shivaji Kudale,

Res. 5 and 6 residing at Hiware,
Tal. Purandar, Dist. Pune.

...Respondents

Ms. Kirthika i/by Mr. Pratik Deshmukh, for the Petitioner.

Smt. Vaishali Nimbalkar, AGP for the Respondent Nos. 1 and
2 - State.

Mr. Pandurang Gaikwad (Patil), for Respondent Nos. 3 and 4.

Mr. Drupad Patil i/by Mr. Namit Pansare, for Respondent Nos.
5 and 6.

CORAM : **N. J. JAMADAR, J.**
RESERVED ON : **23rd DECEMBER 2025**
PRONOUNCED ON : **25th FEBRUARY 2026**

JUDGMENT:

1. Rule. Rule made returnable forthwith, and, with the consent of learned Counsel for the parties, heard finally.

2. By this petition under Article 227 of the Constitution of India the petitioner assails the legality, propriety and correctness of an order dated 19th August, 2025 passed by the Minister, Rural Development and Panchayatraj, Government of Maharashtra in Appeal No. VPM-2025/प्र. क्र. 07/2025, whereby the appeal preferred by the Respondents No. 5 and 6 – the Up-Sarpanch and Member of Village Panchayat – Hiware, against an order passed by the Divisional Commissioner, Pune removing the respondents from the post of Sarpanch and Member of the Village Panchayat in exercise of the power under Section 39(1) of the Maharashtra Village Panchayats Act, 1959, (“the Act, 1959”) came to be allowed by setting aside the said order of removal.

3. Shorn of unnecessary details, the background facts can be stated as under:-

3.1 In the general elections for Hiware Village Panchayat, the petitioner was elected as a member and Sarpanch of the Village Panchayat. The Respondent No. 5 was elected as Up-Sarpanch. The Respondent No. 6 was elected as a member of the Panchayat, constituted by nine members.

3.2 The petitioner lodged a dispute with Divisional Commissioner, Pune (R-2) and sought the removal of the Respondents No. 5 and 6 and the other members of the Village Panchayat, purportedly under Section 39(1) of the Act, 1959. The petitioner alleged various acts of misconduct, disgraceful conduct or negligence in the performance of their duties by Respondent Nos. 5 and 6 and the other members of the Panchayat. It was *inter alia* alleged that, the proceedings books of the meeting of the Village Panchayat were forged and fabricated, in the monthly meeting of the panchayat held on 23rd January 2023 an illegal resolution to confer the Signing Authority of the Sarpanch upon the Up-Sarpanch was passed though the said subject was not on the agenda of the meeting, false and forged documents were created to cause wrongful gain to the contractor and a wrongful loss to the Panchayat and by making false and motivated allegations the

petitioner was made to suffer inquiries, and hindrances were put in the discharge of her duties as the Sarpanch of the Panchayat.

3.3 Upon receipt of the said dispute, in accordance with the provisions contained in the proviso to Section 39(1), the Chief Executive Officer was directed to conduct an inquiry and submit a report to the Divisional Commissioner. Pursuant thereto, the Chief Executive Officer conducted an inquiry and submitted a report on 29th July, 2024.

3.4 The Chief Executive Officer reported that, the inquiry revealed that, in the monthly meeting of the Panchayat dated 23rd January 2023, the resolution to confer the Signing Authority of the Sarpanch upon the Up-Sarpanch/Respondent No. 5, was passed despite the Village Development Officer having apprised the members of the Panchayat that in view of the provisions contained in Section 38 and 57 of the Act, 1959 such resolution cannot be passed. The Respondent No. 6 was the proposer and the Respondent No. 5 was the seconder for the said resolution. However, since no guidance was received from the

Panchayat Samiti, Purandar, the said resolution was not implemented.

3.5 Secondly, the Respondent No. 5 / Up-Sarpanch and other members of the Village Panchayat were found guilty of misconduct in not taking a decision on the expenditure of Women and Child, Backward Classes and Persons with disability Welfare Funds on the ground that, the guidance on the resolution dated 23rd January 2023 regarding the signing authority was awaited.

3.6 Thirdly, on 25th February 2022, the monthly meeting of the Panchayat was held under the Chairmanship of the Respondent No. 5 / Up-Sarpanch, though there was no quorum and, thus, the Respondent No. 5 and the concerned Village Officer were responsible for holding such meeting in breach of the provisions contained in Rule 9 of the Bombay Village Panchayat (Meeting) Rules, 1959.

3.7 After appraisal of the aforesaid report and the other material on record and hearing the parties, by an order dated 31st December 2024, the Divisional Commissioner allowed the dispute filed by the petitioner, and the Respondent No. 5 was removed from the post of Up-

Sarpanch and Member, and Respondent No. 6 was removed from the post of Member of the Panchayat.

3.8 The Divisional Commissioner was of the view that, though the other members had supported the resolution to confer the Signing Authority on the Up-Sarpanch, instead of Sarpanch, yet, they cannot be held liable. However, the Respondent No. 6, who was the proposer and the Respondent No. 5, who was the seconder, were liable for passing the said illegal resolution despite the Village Officer cautioning the Panchayat against passing such resolution. Likewise, the Respondent Nos. 5 and 6 were guilty of misconduct in deferring the expenditure of the funds meant for Women and Child, Backward Classes and Persons with disability, on the pretext that, the guidance on the resolution passed in the meeting dated 23rd January 2023 was awaited. The Divisional Commissioner held that, the charge of holding the meeting on 25th February 2022, under the Chairmanship of the Respondent No. 5, without quorum cannot be said to have been proved as it was debatable whether the fifth member of the Panchayat was not present in the said meeting.

4. Being aggrieved, the Respondent Nos. 5 and 6 preferred an appeal before the State Government under Section 39(3) of the Act, 1959.

5. By the impugned order, the Minister, Rural Development and Panchayatraj was persuaded to allow the appeal. The Minister observed that, since the resolution to transfer the Signing Authority was not implemented, the alleged misconduct attributed to the Respondent Nos. 5 and 6 cannot be said to be of such degree as to entail their removal under Section 39 of the Act, 1959. Thus, the order of removal of Respondent Nos. 5 and 6 was set aside.

6. Being aggrieved and dissatisfied with the order passed by the State Government in Appeal, the petitioner has invoked the writ jurisdiction.

7. I have heard Ms. Kirthika the learned Counsel for the petitioner, Ms. Vaishali Nimbalkar – the learned AGP for the Respondent Nos. 1 and 2 – State, Mr. Pandurang Gaikwad the learned Counsel for the Respondent Nos. 3 and 4, and Mr. Drupad Patil the learned Counsel for the Respondent Nos. 5 and 6, at some length. The learned

Counsel for the parties took the Court through the material on record.

8. Ms. Kirthika the learned Counsel for the petitioner mounted a multifold challenge to the impugned order. First and foremost, Ms. Kirthika would urge that, the impugned order suffers from a clear non-application of mind and borders on an order sans reasons. The Minister has simply reproduced the report of the CEO and the findings of the Divisional Commissioner and, thereafter, in the ultimate paragraph set aside the well reasoned order passed by the Divisional Commissioner by merely recording that, the alleged misconduct was not serious enough to warrant the removal of Respondent Nos. 5 and 6. Ms. Kirthika would urge, the anxiety and haste on the part of the Minister to set aside the order of removal is manifested in the second judgment and order dated 03rd November 2025 delivered in the very same appeal. On this count alone, according to Ms. Kirthika, the impugned order deserves to be quashed and set aside.

9. Secondly, the Minister was not at all justified in downplaying the grave misconduct by taking refuge in the

fact that the resolution to transfer the Signing Authority was not acted upon. The gravity of the misconduct can be gauged from the fact that the said resolution was passed despite the Village Development Officer apprising the Members of the Panchayat that under the provisions of the Act, 1959, such course was illegally impermissible.

10. Thirdly, the Minister had not at all adverted to the other counts of misconduct. Deliberate failure to expend the funds of the Village Panchayat meant for the development of Women and children, Backward Classes and Persons with disability, was a serious misconduct for which the Divisional Commissioner had found the Respondent Nos. 5 and 6 guilty. The Appellate Authority has not at all delved into the said aspect of the matter and, by recording flimsy reasons, set aside the order of removal.

11. Lastly, Ms. Kirthika would urge, even the charge of holding the meeting on 25th February 2022 without quorum can be said to have been duly proved from the material on record. Ms. Kirthika laid emphasis on the fact that, the said conduct demonstrates an intent to usurp the authority of the Sarpanch. Therefore, the impugned order,

being wholly perverse, deserves to be quashed and set aside.

12. Ms. Nimbalkar the learned AGP attempted to support the impugned order. It was submitted that, inadvertently the second order dated 03rd November 2023 was released from the office of the Minister. However, there is no change in the second order from the first one.

13. Mr. Drupad Patil, the learned Counsel for the Respondent Nos. 5 and 6, made a strenuous effort to support the impugned order. It was submitted that, the Minister might not have recorded elaborate reasons, but the reasons are sufficient to sustain the impugned order.

14. Elaborating the submissions, Mr. Drupad Patil would urge, the resolution dated 23rd January 2023 to transfer the Signing Authority was forwarded to the Panchayat Samiti for seeking guidance. The said resolution was never acted upon. Thus, neither the interest of the Village Panchayat can be said to have been jeopardized nor the authority of petitioner to act as a Sarpanch eroded. Since the resolution was never acted upon, the Minister was

justified in observing that, the alleged misconduct was not so serious as to warrant the removal of the Respondent Nos. 5 and 6.

15. Mr. Patil would further submit that, the context of the matter cannot be lost sight of. On 17th July 2023, a motion of 'no confidence' was passed against the petitioner by a majority of seven Members for various acts of omission and commission, prejudicial to the Village Panchayat Administration, attributed to the petitioner. It is only thereafter on 27th July 2023, the petitioner lodged the dispute with the Divisional Commissioner, by way of a counter-blast.

16. Mr. Patil would submit that, since the Divisional Commissioner had found the Respondent Nos. 5 and 6 guilty of alleged misconduct in relation to passing of the said resolution dated 23rd January 2023 and the decision to defer the expenditure under the development scheme for the specified categories, awaiting the guidance of Panchayat Samiti, and, as a matter of fact, at no point of time, the said resolution was acted upon by the Village Panchayat, the conduct attributed to the Respondent Nos.

5 and 6 does not fall within the tentacles “misconduct or disgraceful conduct” within the meaning of Section 39(1) of the Act, 1959. To buttress this submission, Mr. Patil placed reliance on the judgment of a learned Single Judge of this Court in the case of *Ankush Achutrao Raut & Ors. Vs. State of Maharashtra & Ors*¹.

17. Mr. Patil further submitted that, the elected representatives of the Panchayat cannot be unseated on the basis of motivated allegations. A clear case of proved misconduct must be made out. To this end, Mr. Patil placed reliance on a judgment of the Supreme Court in the case of *Ravi Yashwant Bhoir Vs. District Collector, Raigad & Ors.*².

18. I have given anxious consideration to the aforesaid rival submissions. To start with the contours of the power of removal of a Sarpanch, Up-Sarpanch or Member of a Village Panchayat. Section 39 of the Act, 1959, which envisages the removal of any Member, Sarpanch or Up-Sarpanch of Village Panchayat, reads as under:-

1 2022 (1) Mh.L.J. 202

2 (2012) 4 SCC 407

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

.....

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. The phraseology of aforesaid Section indicates that the Commissioner is empowered to remove from office a Member or Sarpanch or Upa-Sarpanch, who has been found 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. After specifying the grounds on which a Member, Sarpanch or Upa-Sarpanch can be removed from the office, the first and second proviso to sub-Section (1) envisage a two-stage inquiry. Under the first proviso, the Chief Executive Officer or the Deputy Chief Executive Officer, as the case may be, has to hold an inquiry after giving due notice to the Panchayat and the person concerned; the latter is entitled to a reasonable opportunity of hearing. Post such inquiry, the Chief

Executive Officer has to submit a report to the Divisional Commissioner.

20. Under the second proviso, the Divisional Commissioner, in turn, is enjoined to again afford a reasonable opportunity of hearing to the person to whom the notice of removal was given and against whom a report has been submitted by the Chief Executive Officer. Only after such inquiry, the Divisional Commissioner is empowered to take a decision on the report submitted by the Chief Executive Officer.

21. Sub Section (1-A) prescribes the disqualifications which the order of removal may entail. Sub Section (2) empowers the Commissioner to disqualify the person who has resigned from the office as a member, Sarpanch or Upa-Sarpanch for a period not exceeding six years if such person has been found guilty of acts and omissions specified in Sub Section (1). Under sub Section (3) of Section 39, any person aggrieved by an order passed by Commissioner under Sub Sections (1) and (2) may prefer an Appeal to the State Government.

22. In a sense, Section 39 of the Act, 1959 is a self contained Code in the matter of removal of a person from the office of member, Sarpanch or Upa-Sarpanch of Village Panchayat. Grounds on which a person can be removed from those offices have been specified. A mechanism of holding an inquiry, after affording a reasonable opportunity of hearing, has been prescribed. Decision of the Divisional Commissioner is amenable to an Appeal before the State Government.

23. The Act, however, does not define the terms, “misconduct”, “disgraceful conduct”, or “neglect”, which are used in Clause (i) of Sub-Section (1) of Section 39 of the Act, 1959. These expressions take color from the context of the duties which a member, Sarpanch or Upa-Sarpanch has to perform under the provisions of the Act, 1959. Whether a particular act or omission would amount to misconduct, disgraceful conduct or neglect would turn upon the facts of a given case.

24. A profitable reference, in this context, can be made to the three bench judgment of the Supreme Court in the case of *‘State of Punjab and Ors Vs. Ram Singh Ex.*

*Constable*³, wherein the import of the term “misconduct” was expounded with reference to the definition in the Black’s Law Dictionary and P. Ramanatha Aiyar’s Law Lexi-con. The observations in Paragraph Nos. 5 and 6 are material and hence extracted below:

5. Misconduct has been defined in Black's Law, Dictionary, Sixth Edition at page 999 thus :

.. "A transgression of some established an definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offence but not negligence or carelessness."

Misconduct in office has been defined as :

.."Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. The term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

P. Ramanatha Aiyar's the Law Lexicon, Reprint Edition 1987 at p.821 `misconduct' defines thus:-

"The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and

3 JT 1992 (4) SC 253

has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskillfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected."

6. Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, willful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve....."

(emphasis supplied)

25. In the case of *Arun Achutrao Raut (supra)*, on which reliance was placed by Mr. Patil, a learned Single Judge of this Court, after adverting to the aforesaid decision in the case of *Ram Singh (supra)*, observed that, the definition of “misconduct” sounds and implies a wrongful intention and it being relative term, it is to be construed with reference to the subject matter. It literally means wrong conduct or improper conduct or transgression of some established and definite rule of action. The expression, “misconduct” being used in Section 39(1)(i) of the Act, 1959 is to be understood to mean an act which must be willful in character and not a negligence or carelessness.

26. While appreciating the crucial aspect as to whether the acts and omissions attributed to the petitioner constitute “misconduct” within the meaning of Section 39(1) (i) of the Act, 1959, the Court has to be also sensitive to the fact that an elected representative cannot be permitted to be removed from the office on tenuous grounds. The statutory requirements must be strictly fulfilled. Undoubtedly, if misconduct or disgraceful conduct is proved, an elected representative must be removed from

the office lest public interest would be severely jeopardized. At the same time, it is necessary to bear in mind that the removal of an elected office bearer not only entails civil consequences for the said person but the electoral college such person represents is also deprived of representation in the local self governing body / legislature by a person of their choice. It is, therefore, imperative that the grounds of removal or disqualification are clearly established and the procedure prescribed in the governing statute is scrupulously followed before an elected office bearer is removed from his office. The decision making process has to be in conformity with the principles of natural justice and the person concerned must get an efficacious opportunity to meet the indictment.

27. A profitable reference can be made to a three Judge bench judgment of the Supreme Court in the case of *Nisar Ahmad Ibrahim Khan Vs. Deolali Cantonment Board and Ors*⁴., wherein the Supreme Court postulated the law as under:

“14. There is no common law of elections. The proceedings calling in question the validity of an election are purely statutory proceedings. An election contest is not an action

4 1987 (Supp) SCC 562

at law or a suit in equity, but is purely a statutory proceeding unknown to the common law and that the Court possess no common law power. It is trite proposition that in such proceedings statutory requirements must strictly be established. It is also well settled that the success of a candidate who has won at an election should not be lightly interfered with.”

(emphasis supplied)

28. In the case of *Ravi Yashwant Bhoir (supra)*, on which reliance was placed by Mr. Patil, the Supreme Court highlighted the care and caution that is required to be observed while removing an elected office bearer from the office and the jurisprudential foundation for such circumspection, in the following words :

....“ 34. In a democratic institution, like ours, 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 or he is removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office bearer sought to be removed.

35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be

represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (Vide: Jyoti Basu & Ors. v. Debi Ghosal & Ors., AIR 1982 SC 983; Mohan Lal Tripathi v. District Magistrate, Rai Bareilly & Ors., AIR 1993 SC 2042; and Ram Beti etc. etc. v. District Panchayat Rajadhikari & Ors., AIR 1998 SC 1222).

36. In view of the above, the law on the issue stands crystallized to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office bearer but his constituency/electoral college is also deprived of representation by the person of his choice.

37. A duly elected person is entitled to hold office for the term for which he has been elected and he can be removed only on a proved misconduct or any other procedure established under law like 'No Confidence Motion' etc. The elected official is accountable to its electorate as he has been elected by a large number of voters and it would have serious repercussions when he is removed from the office and further declared disqualified to contest the election for a further stipulated period."....

(emphasis supplied)

29. In view of the aforesaid legal position, the pivotal question as to whether the Respondent Nos. 5 and 6 have committed misconduct within the meaning of Section 39(1) of the Act, 1959, in the context of the acts which have emerged in the inquiry conducted by the Chief Executive officer and the findings thereon by the Divisional Commissioner, is required to be answered.

30. At the outset, the submission of Ms. Kirthika that, the impugned order suffers from the vice of non-application of mind, and is sans reasons, cannot be said to be unfounded. The Minister had made no effort to come in close quarters with the reasons ascribed by the Divisional Commissioner. After copious narration of the facts, contentions of the parties and order passed by the Divisional Commissioner, the Minister has allowed the Appeal by a general observation that, he agreed with the contentions raised by the appellants/Respondent Nos. 5 and 6 herein. The only reasons that can be discerned from the impugned order are that, the resolution dated 23rd January, 2023 was not acted upon and the misconduct attributed to the Respondent Nos. 5 and 6 was not serious. The consideration by the Minister is far from satisfactory.

Nonetheless, this Court is inclined to consider the merits of the matter and determine whether a case for removal under Section 39(1) of the Act, 1959, was made out.

31. The acts in relation to alleged misconduct of Respondent Nos. 5 and 6 are borne out by the record in the form of the minutes of the meeting of the Village Panchayat; the sanctity of which is not seriously contested. The two counts on which the Divisional Commissioner found Respondent Nos. 5 and 6 guilty of misconduct were principally based on the conduct of the Respondent Nos. 5 and 6 as reflected in the minutes of the meeting dated 23rd January, 2023 and 29th March, 2023.

32. In the meeting dated 23rd January, 2023, while the subject of changing the specimen signature of the Village Development officer was being discussed, the Respondent No. 6 Sagar Kudale proposed that, the authority of the Sarpanch to sign the documents on behalf of the Village Panchayat be given to Respondent No. 5 - Ramdas Kudale, Up-Sarpanch. The seven members of the Village Panchayat passed the said resolution unanimously.

33. What exacerbates the situation is fact that, the Village Development Officer apprised the Panchayat that in view of the provisions contained in Section 38 and 57 of the Act, 1959, such a resolution cannot be passed and, yet, the Panchayat passed the said resolution. It was further resolved that, the DSC of the Village Panchayat be newly obtained in the name of Up-Sarpanch. Respondent No. 5 Ramdas Kudale was the seconder for the said resolution proposed by the Respondent No. 6 – Sagar Kudale.

34. In view of the provisions contained in Section 38(1) of the Act, 1959, the executive power, for the purpose of carrying out the provisions of the said Act and the resolutions passed by the Panchayat, vests in Sarpanch, and only in the absence of Sarpanch, the powers and duties of the Sarpanch, save as may be otherwise prescribed by rules, be exercised and performed by the Up-Sarpanch. Under Section 57(3) of the Act, 1959, the Secretary and Sarpanch are jointly responsible for the custody of the Village fund, village water supply fund and the other monies received on behalf of the Panchayat and shall jointly operate them for the purposes

enumerated therein, including authorization of payments, and issue of cheques.

35. The only factor which weighed with the Minister was that, the said resolution was not acted upon, as guidance was awaited from the Panchayat Samiti. It would be contextually relevant to note that, vide communication dated 21st June 2023, the Block Development Officer informed the Sarpanch and the Village Development Officer, Hiware that, in view of the provisions contained in Section 38, while the Sarpanch is in office, the Up-Sarpanch cannot discharge the functions of the Sarpanch and, thus, no action could be taken pursuant to the said resolution, dated 23rd January, 2023.

36. Mr. Patil submitted with tenacity that, since the resolution was not acted upon, the act of passing the resolution, by itself, cannot amount to misconduct. I find it difficult to accede to this submission unreservedly.

37. Whether the resolution was acted upon or not cannot be the sole barometer for testing the legality of the conduct. The intent with which the resolution was passed, assumes

critical salience. Incontrovertibly, the resolution was passed not only in teeth of the provisions contained in Sections 38 and 57 of the Act, 1959, but despite the caution being administered by the Village Development Officer. By brute majority, an effort was made to divest the duly elected Sarpanch of the executive power of the Village Panchayat vested in her by law. Divesting the authority of the Sarpanch, conferred by law, by resorting to an illegal action cannot but be a grave misconduct. The resolution falls foul both on legality as well as wrongful intention to usurp power and authority of the Sarpanch in an illegal manner.

38. Even the submission that the resolution was not acted upon falls through, if considered in the context of the second count of the alleged misconduct. The material on record indicates that, in the meeting of the Village Panchayat held on 29th March 2023, when the subject of incurring the expenditure under the priority areas like, Women and Child Development and Backward Classes Development and Welfare of Persons with disability, was discussed, the Respondent No. 5 – Ramdas Kudale and Respondent No. 6 Sagar Kudale raised objection that, since

the guidance of the Panchayat Samiti in relation to the Resolution to transfer the executive power dated 23rd January 2023 was awaited, the decision on the expenditure of the funds be deferred.

39. The aforesaid conduct of the Respondent Nos. 5 and 6 belies the claim of the Respondent Nos. 5 and 6 that the resolution dated 23rd January 2023 was not acted upon. The resolution passed in the meeting dated 29th March 2023 in relation to the expenditure of the funds, underscores the extent to which the functioning of the Village Panchayat was paralyzed by insisting that, the executive power of the Village Panchayat vested in the Sarpanch, by law, be transferred to the Up-Sarpanch.

40. The Minister thus committed a grave error in holding that, though an illegal resolution was passed, yet, it would not entail the consequence of removal because the said resolution was not acted upon. The attendant conduct and wrongful intent of the Respondent Nos. 5 and 6 were completely ignored by the Minister. The Minister ought to have been alive to the devious design with which the resolution was moved and seconded by the Respondent

Nos. 5 and 6. A clear intent to arrogate the authority of Sarpanch, while she was still holding the office, was evident.

41. For the foregoing reasons, the submissions of Mr. Patil that, the mere passing of the resolution did not amount to misconduct does not merit acceptance. An effort was made by Mr. Patil to then urge that, since the other members of the Village Panchayat who had supported the resolution were exonerated, the Respondent Nos. 5 and 6 could not have been held guilty of misconduct. The submission is required to be recorded to be repelled. The Divisional Commissioner has rightly held that, the Respondent Nos. 5 and 6 were the driving force behind the said resolution and the resultant destabilization of the Village Panchayat Administration. They were the proposer and the seconder. Moreover, the Respondent No. 5 – Ramdas Kudale, was to be the principal beneficiary of the said illegal resolution.

42. The conspectus of the aforesaid consideration is that, the impugned order cannot be sustained. Resultantly, the impugned order deserves to be quashed and set aside and

the order of removal passed by the Divisional Commissioner deserves to be restored.

43. Hence, the following order:-

:: O R D E R ::

i] The Writ Petition stands allowed.

ii] The impugned order passed by the State Government stands quashed and set aside.

iii] The order dated 31st December, 2024, passed by the Divisional Commissioner removing the Respondent Nos. 5 and 6 in exercise of the power under Section 39(1) of the Maharashtra Village Panchayats Act, 1959, from the post of Up-Sarpanch and Member, stands restored.

iv] Rule made absolute to the aforesaid extent.

v] No costs.

[N. J. JAMADAR, J.]

At this stage, the learned Counsel for the Respondents seeks stay to the execution and operation of the impugned order.

In the light of the view this Court has taken in the judgment oral application for stay does not deserve to be countenanced. Hence, the oral application stands rejected.

[N. J. JAMADAR, J.]