

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

WRIT PETITION NO. 1539 OF 2015

The Sarpanch,
Grampanchayat Tembu,
Taluka : Karad, Dist. Satara.

... Petitioner

v/s

Shri Vinod Laxman Bhandare,
Residing at : Post Tembhu,
Taluka: Karad, Dist. Satara.

... Respondent

Mr.S.B. Deshmukh for the petitioner.

Mr.Nitin Kulkarni along with Avinash Belge for the respondent.

CORAM: N.M. JAMDAR, J.

DATED : 7 OCTOBER 2015

ORAL ORDER:

By this petition, the Petitioner - Sarpanch of Grampanchayat, Tembhu, is challenging the judgment and order passed by the Labour Court, Satara, rejecting the application filed by the Petitioner under Rule 26(2) of the Industrial Disputes (Bombay) Rules, 1957, for restoration of the Reference which was disposed of in favour of the Respondent.

2 At the instance of the Respondent, a Reference came to be made to the Labour Court, Satara, bearing Reference (IDA) No.13

of 2004. The Labour Court passed an award on 13 December 2007 allowing the Reference and directing reinstatement of the Respondent with full back wages. By a resolution dated 19 December 2001, the Grampanchayat had appointed the Respondent as a Clerk and he had completed 240 days service when by an oral order his services were terminated on 17 November 2003. The Labour Court noted that none appeared for the Petitioner in spite of service. The Labour Court accepted the contentions of the Respondent and proceeded to pass the award.

3 The Petitioner thereafter filed a Review Application No.2 of 2008 which was rejected by the Labour Court by an order dated 25 November 2008 on the ground that the Labour Court did not have power to review its decision. Thereafter a writ petition was filed by the Petitioner bearing No.1666 of 2009 which was disposed of by an order dated 2 March 2009 permitting the Petitioner to file an application under Rule 26 of the Industrial Disputes (Bombay) Rules, 1957. Thereafter the Petitioner filed Application (IDA) No.1 of 2009 which has been rejected by the impugned order.

4 Rule 26 of the Industrial Disputes (Bombay) Rules, 1957 reads as under:

“Rule 26.: Board, Court, Labour Court, Tribunal or Arbitrator may proceed ex-parte.- (1) If without sufficient cause being shown, any party to a proceeding before a Board, Court, Labour Court, Tribunal or an Arbitrator fails to attend or be represented, the Board, Court, Labour Court, Tribunal or Arbitrator may proceed ex-

parte.

(2) where any award, order or decision is made ex-parte under sub-rule (1), the aggrieved party, may, within thirty days of the receipt of a copy thereof, make an application to the Board, Court, Labour Court, Tribunal or an Arbitrator, as the case may be, to set aside such award, order or decision. If the Board, Labour Court, Tribunal or Arbitrator is satisfied, that there was sufficient cause for non-appearance of the aggrieved party, it or he may set aside the award, order or decision so made and shall appoint a date for proceeding with the matter:

Provided that, no award, order or decision shall be set aside on any application as aforesaid unless notice thereof has been served on the opposite party.”

Sub-rule (1) states that, if any party fails to attend without sufficient reason, the Court may proceed ex-parte. The Court is empowered to restore the proceedings in case there is sufficient cause for non-appearance.

5 In the application filed by the Petitioner, sufficient cause has been pleaded as under :

(1) Due to ex-parte order, the Applicant bound to reinstate to the Opponent with full back wages, without sufficient reason. In fact, on part of the applicant, there is no fault to decide ex-parte matter by the Applicant. If application is allowed, then there is no loss of the Opponent.

(2) The Gramsevak is a Administrative Head of the Grampanchayat, but the Opponent has not made party to Gramsevak in original matter, hence on this ground original

matter is not maintainable against the Applicant Grampanchayat.

(3) Notice of original matter, Ref. I.D.A. No.13/2004 was not received by the Grampanchayat. Inward register maintained by the Applicant Grampanchayat, but till today notice of appearance in the original reference No.13/2004 was not received by the Grampanchayat and naturally it is not enrolled in inward register. Hence, the Grampanchayat unable to appear in Ref. No.13/2004.

(4) At the time of original matter Ref.No.13/2004, Sunita Bhandare was Sarpanch of the Grampanchayat and she is close relative of Respondent. As per the information, Sunita Bhandare was received a notice of original matter and the said fact was suppressed by her with ill intention, co-operation with the Applicant. Naturally, the Grampanchayat cannot appear in the original matter. The Grampanchayat cannot pass resolution for appearance in Ref.I.D. No.13/2004, due to above circumstances. The Grampanchayat has taken appropriate administrative action against Sunita Bhandare. Hence there is no fault of the Grampanchayat, in non-appearance in original matter.

(5) Kisan Santu Pawar was Gramsevak of the applicant Grampanchayat. He had number of additional charge of Grampanchayat, namely, Mirvewadi, Panchud, Koregaon, Soyapur. Hence due to over burden of administrative work of above Grampanchayat, Shri Pawar unable to attend Grampanchayat Tembhu regularly. Hence the applicant Grampanchayat has not given any information about original matter. Naturally, original matter decided ex-parte.

First two grounds are on the merits of the complaint. Thereafter the Petitioner has stated that the notice of the original Reference was not received by the Grampanchayat. Notice was not entered in the inward register, hence Grampanchayat was unable to appear in

the Reference. The Petitioner has not stopped at that but proceeded to allege that, one Sunita Bhandare was the Sarpanch of the Grampanchayat at the relevant time. She was aware of the notice and she being close relative of the Respondent, colluded with the Respondent and suppressed the receipt of notice and the Grampanchayat could not appear in the matter. It is then stated that Grampanchayat had taken appropriate administrative action against Sunita Bhandare, hence there is no fault on the part of the Grampanchayat. Then it is stated that the Gramsevak was overburdened and therefore Gramsevak also could not assist the Grampanchayat and, therefore, the Grampanchayat was not able to get any information about the original matter.

6 Generally the Court may take lenient view towards the public body such as the Grampanchayat. However, it is not necessary to be over liberal with the public bodies, especially when rights of someone else are involved.

7 The Petitioner has not come to the Court stating that there was a mistake on its part, and it being a public body a lenient view be taken. The entire foundation of the case is fraud and collusion on the part of the ex-Sarpanch. It is stated that the notice was not received by the Grampanchayat *per se* but was received by the Sarpanch who was made party, who deliberately did not forward it to the Grampanchayat. The Labour Court found that the aspect of collusion, for want of any sufficient evidence, has not been proved. Learned counsel for the Petitioner submitted that the fact that the

ex-Sarpanch was relative of the Respondent is established and that itself would establish the collusion. This submission cannot be accepted. Charges of collusion and fraud alleged against the ex-Sarpanch, if proved, would amount to grave dereliction of duty on her part, with serious consequences. Such allegation cannot be made so casually. Nothing is shown except the relationship to show that there was any collusion on the part of the Sarpanch. This finding of fact cannot be disturbed.

8 In the application, a specific statement has been made that Grampanchayat has already taken appropriate administrative action against the Ex-Sarpanch. This statement is consciously made to emphasize that the Grampanchayat is independent in the matter and action is taken against the guilty person. However, administrative action is taken against the ex-Sarpanch. It is not even initiated. Thus, the affidavit has boldly made an incorrect statement on oath. Thus, in spite of the entire foundation of the case being misconduct of the ex-Sarpanch, no action is taken against her. Not only that, an attempt is made to mislead the Court that the Grampanchayat has also taken action against the Respondent. If the argument of the learned counsel for the Petitioner is that the cause of Grampanchayat can be represented not through Sarpanch but through the Secretary of the Panchayat as per Section 60 of the Act, then the application for restoration and even in this petition is pursued by the subsequent Sarpanch. This litigation appears more of a political nature than agitating the cause of the Panchayat.

9 Once a public body has taken a stand of imputing fraud and collusion, which are serious allegations against the head of its institution, it brings upon itself a heavy burden to discharge the same. The subsequent Sarpanch who has affirmed this application ought to have been careful. In fact, he has made false statement on oath that Grampanchayat has already taken prompt action against the ex-Sarpanch. In the circumstances, if the Labour Court refused to exercise its discretionary powers, it cannot be faulted. It may appear harsh that an ex-parte order remains unchallenged. But a public body cannot be permitted to take false stands.

10 Learned counsel for the petitioner submitted that the Panchayat is different from the Sarpanch and merely because Sarpanch has received the summons it does not mean the Grampanchayat has received the summons. He submitted that on this ground alone restoration ought to have been granted. As stated earlier, had this been the only ground taken in the application without any incorrect statement it would have been a different matter, though it is doubtful whether on that ground alone the application could have been restored. To emphasize again, when a public body takes stand on its oath, it should be more circumspect and ought not to act as a private individual. If it does, it relinquishes its status as a public body to ask for indulgence on that ground.

11 Taking over all view of the matter, therefore, in my opinion,

no interference in writ jurisdiction is required. The termination of the Respondent is of the year 2004 and only on the ground of so called fraud of the ex-Sarpanch, the Award is not implemented for the last 11 years. There is no merit in this petition, and it is rejected.

(N.M.JAMDAR, J.)