

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3833 OF 2017

Sau. Mandatai Madhukar Varute	]	Petitioner
Vs.		
The Block Development Officer & Ors.	]	Respondents

Mr. G.M. Savgave, for the petitioner.
Mr. R.D. Rane, for respondents No. 1 and 2.
Mr. S.D. Rayrikar, A.G.P, for respondent No.3.
Ms. Pooja Joshi i/b Mr. S.R. Ganbavale, for respondents No.4 to 20.

CORAM : R.G. KETKAR, J.

DATE : 18TH APRIL, 2017.

P.C.

Heard Mr. Savagave, learned Counsel for the petitioner, Mr. Rane, learned Counsel for respondents No.1 and 2, Mr. S.D. Rayrikar, learned A.G.P for respondent No.3 and Ms. Joshi, learned Counsel for respondents No. 4 to 20 at length.

2. By this petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated

22nd November, 2016 passed by respondent No.3, Divisional Commissioner, Pune Division, Pune, as also the judgment and order dated 13th January, 2017 passed by the Hon'ble Minister, Rural Development Department, State of Maharashtra, Mantralaya, Mumbai.

3. By these orders, the Authorities have removed the petitioner as 'Sarpanch' as also Member of Grampanchayat, Amjai Varvade, Taluka Radhanagari, Dist. Kolhapur [For short 'Panchayat'].

4. In support of this petition, Mr. Savgave submitted that respondent No.2, Chief Executive Officer, Zilla Parishad, Kolhapur [for short 'C.E.O'] has no authority to delegate his powers to respondent No.1 Block Development Officer [for short 'B.D.O']. He relied upon first proviso to Section 39 of the Maharashtra Village Panchayats Act [for short 'Act'.] as also decision of this Court in the case of **Nimba Yadav Bhoi Vs. President, Standing Committee Zilla Parishad, Jalgaon and others, 2002 (3) Mh. L. J. 466** and in particular, paragraph 15 thereof.

5. Mr. Savagave further submitted that no notice was issued to the Panchayat. He further submitted that second proviso to Section 39 of the Act lays down that 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 within a period of one month from the date of receipt thereof. In the present case, respondent No.2 C.E.O submitted report dated 23rd June, 2016 and the Commissioner had passed an order on 22nd November, 2016 i.e well beyond the period of one month. He submitted that second proviso to Section 39 of the Act is mandatory and failure to comply the same will vitiate the order passed by the Commissioner.

6. On merits, he submitted that the charges levelled against the petitioner are not duly proved and the Authorities were not, therefore, justified in passing the impugned orders. He has taken me through the charges framed against the petitioner on 8th February, 2016 and submitted that the findings recorded by the Authorities pertain to charge No.2 only. Lastly, he submitted that C.E.O authorized B.D.O to hold preliminary inquiry. He submitted that C.E.O has no authority to delegate powers to B.D.O for

holding preliminary inquiry. The report submitted by C.E.O is based upon the report submitted by B.D.O. He, therefore, submitted that the petition requires consideration.

7. On the other hand, Mr. Rane supported the impugned orders. He has produced original record for perusal of the Court. He submitted that by communication dated 4th March, 2016, C.E.O sought orders of Divisional Commissioner for initiating proceedings under Section 39 of the Act. In pursuance thereof, on 21st March, 2016, Commissioner, Pune Division, Pune, directed C.E.O to issue notice to the concerned persons, give hearing to them and submit objective report. In pursuance thereof, on 26th May, 2016, C.E.O issued notice to the petitioner and the complainants as also to Grampanchayat. On 3rd June, 2016, Shri Prakash Ramchandra Powar, Gramsevak of Grampanchayat, petitioner herein and respondents among others were present before C.E.O. On 13th June, 2016, the petitioner gave letter to C.E.O authorizing her husband Madhukar Varute, Member of Grampanchayat to argue the case on her behalf. On 23rd June, 2016 after considering the report submitted by B.D.O dated 21st January, 2016, as also after considering the documents produced during the course of hearing,

as also considering oral and written submissions, C.E.O submitted report setting out therein that the petitioner has misused her post of Sarpanch and, therefore, recommended her removal under Section 39 of the Act. In short, he submitted that C.E.O himself has, after following necessary procedure, submitted report for removal of the petitioner as Sarpanch of Panchayat. He has also taken me through the impugned orders and submitted that no case is made out for interfering with concurrent findings recorded by the Authorities.

8. I have heard the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Section 39 of the Act reads thus:

“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 or any disgraceful conduct, or of neglect of or incapacity to perform his duty, or is persistently remiss in the discharge thereof. A Sarpanch or Upa-Sarpanch so removed may at the discretion of the Commissioner also be removed from the Panchayat, or
- (ii) remove from office the member, Sarpanch or as the case may be, Upa-Sarpanch if not less than twenty percent, of the total number of voters in the village who have paid all dues of the Panchayat regarding taxes on buildings and lands and water charges,

make a complaint that the annual accounts and the report of the expenditure incurred by the *Panchayat* on the development activities are not placed before the *Gram Sabha*, and the information thereof is not displayed on the notice board as required by sub-section (1) or (1-A) of Section 8:"

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.]

9. A perusal of Section 39 shows that Commissioner is empowered to remove from office any member or any Sarpanch or Upa Sarpanch who has been guilty of misconduct in discharge of his duties. First proviso thereto lays down 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 concerned person has been given a reasonable opportunity of being heard and thereafter, the Chief Executive Officer submits his report to the Commissioner. The Inquiry officer has to submit his report within a period of one month.

10. In the present case, after receipt of the complaint, C.E.O has directed B.D.O to hold preliminary inquiry and submit report. In pursuance thereof, B.D.O had submitted report dated 21st January, 2016. By order dated 21st March, 2016, Commissioner directed C.E.O to submit report after following procedure laid down therein. In pursuance thereof, on 26th May, 2016, C.E.O issued notice to the concerned parties fixing date of hearing and to remain present on 3rd June, 2016. A perusal of Roznama dated 3rd June, 2016, shows that the petitioner as also Gramsevak Prakash Powar were present among others. It, therefore, cannot be said that notice was not issued to Panchayat.

Matter was thereafter heard by C.E.O. After considering the complaint, preliminary report submitted by B.D.O, as also documents produced during the course of hearing before him and the written and oral submissions, C.E.O prepared report dated 21st June, 2016 recommending removal of the petitioner under Section 39 of the Act.

11. Mr. Savagave submitted that the preliminary inquiry conducted by B.D.O is vitiated as C.E.O had no authority to delegate his powers to B.D.O to conduct preliminary inquiry. Mr. Savagave was not in a position to substantiate this submission on the basis of the provisions of the Act. He was not in a position to demonstrate that any provision prohibits C.E.O from calling upon B.D.O to conduct preliminary inquiry.

12. Mr. Savagave further submitted that Inquiry Officer namely, C.E.O did not submit his report within a period of one month as contemplated in the first proviso and the Commissioner did not pass order within one month from the receipt thereof as contemplated by second proviso. Time stipulated in the first and second proviso is mandatory and failure to comply time schedule

vitiates the entire proceedings. He relied on the decision in the case of **Nimba Yadav Bhoi** (supra), in particular, paragraph 15 thereof. Paragraph 15 reads thus:

“15. There is no doubt that the Chief Executive Officer under the Samitis Act is duly empowered to delegate his powers under certain circumstances. However, the said provision clearly disclose that a delegation of powers can be in relation to the powers or duties or functions which are imposed upon or vested in the Chief Executive Officer by or under the Samitis Act and not under any other Act. The function which has been entrusted to the Chief Executive Officer under Section 39(1) of the said Act is not power or duty or function imposed upon the Chief Executive Officer under the Samitis Act. The enquiry which is contemplated by the Chief Executive Officer under proviso to Section 39 (1) is in relation to the conduct of the Sarpanch and the said inquiry has nothing to do with any of the functions or duties of the Chief Executive Officer under the Samitis Act. Besides, it is well established principle of law that any authority bestowed with judicial or quasi judicial powers under a statute cannot delegate his powers except when specifically permitted under the statute. In other words, when the statute prescribes that a particular officer has to exercise the power thereunder, then such powers must be exercised by that officer, and that officer alone, and none else except and unless the statute by express words or by necessary implication permits delegation of such powers, and in which event such powers may also be exercised by the delegatee if the delegation is in accordance with the terms of the statute and not otherwise”.

13. In the present case, I have already observed that C.E.O has conducted inquiry and after giving notice as also after giving hearing to the concerned parties submitted report. It, therefore,

cannot be said that there is failure to comply requirements of the provisions of the Act. In view thereof, decision relied upon by Mr. Savagave does not assist the petitioner in any manner.

14. Apart from that, it is settled principle of law that mere use of the word 'shall' does not ipso facto mean that the said provision is mandatory unless consequences are provided for not complying the said provision. A perusal of Section 39 and in particular, first and second proviso thereof does not indicate that any consequences are provided for not holding inquiry and submit the report within a period of one month. In view thereof, it cannot be said that the first and second proviso of the Act are mandatory. On merits, both the Authorities have concurrently held that charges levelled against the petitioner are proved. After considering the material on record, I do not find that any error is committed by the Authorities. Hence, no fault can be found in the impugned orders. Petition fails and the same is dismissed.

[R.G. KETKAR, J.]