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

CIVIL WRIT PETITION NO.11782 OF 2018

Kunda Kishor Shingva	...Petitioner
Versus	
Dilip Jagannath Patil and Ors.	...Respondents

Mr.S.B.Thorat, for the Petitioner.

Mr.C.G.Gavnekar a/w Mr.Prashant Raul i/b Mr.P.R.Yadav, for the Respondent No.1.

Mr.S.D.Rayarikar, A.G.P for the Respondent Nos.2 and 3.

CORAM : REVATI MOHITE DERE, J.

DATE : 19th OCTOBER, 2018

P.C. :

1. Heard learned counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Respondents waive service through their respective Counsel.
3. By this Petition, the Petitioner has impugned the order dated 5th October, 2018, passed by the Respondent No.2 – District Collector,

Raigad at Alibag in Grampanchayat Dispute No.26 of 2017.

4. The principal grievance of the learned counsel for the Petitioner is that the District Collector, had not directed the Block Development Officer (B.D.O) to hold an enquiry. He submitted that under Section 7 of the Maharashtra Village Panchayats Act (hereinafter referred to as 'the said Act') it was incumbent on the Collector to direct the B.D.O to hold an enquiry and after receipt of the enquiry report, the Petitioner ought to have been communicated specific charges levelled against her alongwith a copy of the report. Learned Counsel for the Petitioner relied on the following Judgments; (i) ***Pratibha W/o. Sanjay Hulle v/s Additional Collector, Latur, Dist.Latur, passed by this Court (Coram:R.M.Borde, J.) in Writ Petition No.1083 of 2010, dated 16th April, 2010 and (ii) Sunil Daulat Patil v/s State of Maharashtra, passed by this Court (Coram:S.S.Shinde, J.) in Writ Petition No.3419 of 2013, dated on 4th December, 2013***, in support of his submission. He submitted that in the present case, the Collector had only issued a notice of hearing and that no enquiry was held by the B.D.O and nor was the Petitioner given an opportunity to deal with the charges levelled against her, in terms of the

law laid down by this Court.

5. Learned Counsel for the Petitioner, further submitted that the the Petitioner had shown sufficient cause for not holding the meeting and if the Respondent No.2 – District Collector, had directed the B.D.O to conduct an enquiry, the Petitioner would have had an opportunity to place all the material on record i.e. her medical certificate etc.

6. Learned Counsel for the Respondent No.1 opposed the Petition. He submitted that no such procedure as contemplated by the Petitioner i.e. of holding an enquiry by the B.D.O, much less sending a notice, setting out in detail the charges levelled as against the person, is contemplated, under Section 7 r/w Section 36 of the said Act. He submitted that no interference is warranted in the impugned order dated 5th October, 2018, passed by the Respondent No.2 – District Collector, Raigad, at Alibag, in Grampanchayat Dispute No.26 of 2017.

7. Learned A.G.P. was asked to take instructions as to the procedure adopted, when an Application under Section 7 r/w Section 36 of

the said Act, was filed. Learned A.G.P. submitted that the District Collector ought to have directed the B.D.O to hold an enquiry and thereafter, sent a notice to the Petitioner detailing the charges as against the Petitioner alongwith a copy of the report of the B.D.O. Learned A.G.P., on instructions, states that the District Collector will follow the procedure and pass appropriate orders, if the matter is remitted back to the District Collector.

8. Perused the papers as well as the impugned order. The Petitioner was elected as a Member of the Grampanchayat Damat-Bhadwal, in October, 2015, for the period 2015 - 2020. Since the post of Sarpanch for the Grampanchayat was reserved for 'Scheduled Tribes-Woman', and as the Petitioner fell in the said category, she was elected as the Sarpanch of the said Grampanchayat. As per Section 7 of the said Act, atleast four meetings of the Gram Sabha are to be held every financial year and on such date, at such time and place, and in such manner, as may be prescribed and if the Sarpanch or in his absence the Upa-Sarpanch fails without sufficient cause, to hold any of such four meetings, he/she shall be disqualified for continuing as a Sarpanch or, as the case may be Upa-

Sarpanch. The decision of the Collector on the question, whether or not there was sufficient cause, is stated to be final.

9. It appears that the Petitioner as a Sarpanch could not hold meetings during the period 24th April, 2017 to 25th May, 2017 as she had sustained a leg injury and had undergone surgery. Pursuant to the non-holding of the meeting as contemplated under Section 7(1) of the said Act, the Respondent No.1 herein, filed a complaint with the Respondent No.2- District Collector, being Grampanchayat Dispute No.26 of 2017. The said complaint/application was filed under Section 7(1) r/w Section 36 of the said Act. Although, in the said application, it was prayed for taking action under Section 39 of the said Act, learned counsel for the Respondent No.1 states that infact, the application/complaint was one under Section 7(1) r/w Section 36 of the said Act and not one under Section 39 of the said Act. It appears that on receipt of the said application/complaint, the District Collector sent a notice of hearing dated 20th December, 2017, to the Petitioner. The Petitioner filed her reply to the said notice, pursuant to which, the impugned order was passed and the Petitioner was disqualified as a Sarpanch.

10. The question raised in the aforesaid Petition is, whether the Respondent No.2 - District Collector had followed the procedure as contemplated i.e. directed the B.D.O. to hold an enquiry, and after receipt of the enquiry report, whether any show-cause-notice was issued to the Petitioner, containing specific charges levelled against the Petitioner alongwith a copy of the B.D.O's report. Admittedly, the aforesaid was not done by the Respondent No.2. It is pertinent to note, that this Court in ***Pratibha Sanjay Hulle (Supra)***, whilst dealing with a similar situation, has observed in para 4 as under:-

“4. *I have perused the impugned order passed by the Collector. The very first paragraph of the order makes a reference to the application received by the Collector on 7-7-2009. The order also records that in pursuance to receipt of the application, the Block Development Officer was directed to hold enquiry and the report of enquiry was received on 31-8-2009. While passing the order, the Additional Collector has referred to the application stated to have been received by on 29-6-2009 from one Dhondiba and other members of the Village Panchayat and the said application is stated to have been allowed. Petitioner has made a grievance that she has not been served with proper notice of enquiry nor has she received the copy of the complaint mentioned in the impugned order. On*

perusal of the report of enquiry conducted by the Block Development Officer, it transpires that the application received by the Collector on 29-6-2009 appears to have been transmitted to the Block Development Officer for conducting enquiry. Notice issued by the office of Additional Collector, Latur does not make any reference to the date of the application whereas, according to the petitioner, the copy of complaint annexed at Exh. D on page 47 dt. 4-8-2009 has been transmitted to her alongwith the notice. Neither the complaint dt. 7-7-2009 nor the complaint dt. 29-6-2009 appears to have been transmitted to the petitioner. Notice issued by the Collector on 11-9-2009 also does not disclose the charges. Petitioner therefore was handicapped in tendering her reply as no charges were indicated by the Collector. The procedure adopted for holding enquiry appears to be improper. Affidavit in reply has been presented by the Additional Collector, Latur who has decided the matter and has passed the impugned order. The answering respondent in terms has admitted that the complaint received on 4-8-2009 is transmitted to the petitioner. It is further stated in the reply that the complaints received by the Additional Collector on 29-6-2009 and 4-8-2009 were transmitted to respondent no.2 i.e. the Block Development Officer for conducting enquiry. However, it has not been stated in the affidavit that the complaints received by the Additional Collector either on 29-6-2009 or on 7-7-2009 were forwarded to the petitioner. In the absence of transmission of the complaints on which reliance is placed by the authorities for

initiating action against the petitioner, final order is not sustainable. The Additional Collector has dealt with the matter in most casual manner and the impugned order passed by the Additional Collector demonstrates non-application of mind. The proceedings are conducted by the officials in most casual manner and in utter disregard to the provisions of law which has necessitated this court to cause interference in the matter. Applications and the complaints received by the authorities were not transmitted to the petitioner although enquiry is initiated against her and an action involving penal consequences of her removal from the office has been taken. I cannot restrain myself from commenting on the conduct of the Additional Collector in dealing with the matter. Notice issued by him also demonstrates his utter non-application of mind and shows his culpable callousness. The notice issued on 11-9-2009 merely calls upon the petitioner to appear in the office of Additional Collector on 29-9-2009. The petitioner has not been informed about the charges. Infact, it was the responsibility of the deciding authority, after receipt of the application, to direct holding of enquiry by Block Development Officer and, after receipt of the report of enquiry, the petitioner ought to have been communicated specific charges alongwith the copy of the report. Observance of such transparent procedure enables the person against whom the charges are levelled to tender proper explanation and answer the charges. In the absence of observance of such procedure, enquiry initiated cannot be said to be proper. The person against whom

enquiry is initiated is entitled to know as to what are the charges levelled against him.”

(emphasis supplied)

11. Having regard to the aforesaid, it is pertinent to note, that the Petitioner in the present case, was denied the right to deal with the charges levelled as against her. As observed in ***Pratibha Sanjay Hulle (Supra)***, it is the responsibility of the deciding authority, on receipt of the application, to direct holding of an enquiry by the Block Development Officer and, after receipt of the report of enquiry, the deciding authority ought to have communicated the specific charges alongwith a copy of the report, to the Petitioner. As further observed by this Court, that observance of such transparent procedure enables the person against whom the charges are levelled to tender proper explanation and answer the charges and in the absence of observance of such procedure, enquiry initiated cannot be said to be proper.

12. The facts in the present case also reveal, that the Petitioner was not given an opportunity to present her case before the B.D.O., nor did

the notice which was issued by the Authority, contain the charges levelled against the Petitioner. In the absence of the observance of such procedure, the order passed by the Authority cannot be said to be tenable. The Petitioner who is sought to be disqualified must be given an opportunity to present her case and to show sufficient cause before the enquiry officer i.e. before the B.D.O.

13. Having regard to what is stated herein-above, the Petition ought to succeed. Accordingly, the impugned order dated 5th October, 2018, passed by the Respondent No.2 – District Collector, Raigad at Alibag in Grampanchayat Dispute No.26 of 2017, is quashed and set aside and the Grampanchayat Dispute No.26 of 2017, is restored back to its original file.

14. The Petitioner is permitted to amend the application/complaint to delete the reference to Section 39 of the Maharashtra Village Panchayats Act. The Respondent No.2- District Collector, Raigad at Alibag, to follow the procedure i.e. direct the B.D.O. to hold an enquiry. On receipt of the said report of the B.D.O, the District Collector to issue notice to the Petitioner, setting out specific charges, if any, as against the Petitioner

alongwith a copy of the report of the B.D.O and thereafter, after hearing the parties, pass appropriate orders.

15. The parties to appear before the Respondent No.2-District Collector, Raigad at Alibag, **on 15th November, 2018, at 3.00 p.m.,** after which the District Collector will give dates convenient to him.

16. Rule is made absolute in above terms. All contentions of all the parties are kept open.

17. The District Collector, Raigad at Alibag, to dispose of the Grampanchayat Dispute No.26 of 2017, as expeditiously as possible and in any event by 28th February, 2019. The Appropriate Authority to hand over the charge back to the Petitioner, till the outcome of the dispute.

18. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)