

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

955 WRIT PETITION NO.4985 OF 2019

KETAN SITARAMJI GORAKSHAK
VERSUS
THE STATE OF MAHARASHTRA AND ORS.

.....
Mr.V.D.Sapkal, Advocate for Petitioner.

Mr. K.S.Patil, A.G.P. for R - 1 to 4.

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CORAM : V.L.ACHLIYA, J.

DATE : 26/04/2019

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ORAL ORDER :

1. Learned counsel for petitioner seeks leave to delete the names of respondent Nos. 5 to 12. Leave granted. Necessary deletion be carried out forthwith.
2. Learned A.G.P. accepts the notice for respondent Nos. 1 to 4.
3. By consent the petition is taken up for final disposal at the stage of admission.
4. Mr. Sapkal, learned counsel for petitioner submits that respondent No. 2 has grossly erred in delegating the powers to respondent No. 4 to hear and decide the complaint/petition made by the complainant u/s 14 of the Maharashtra Protection of People from Social Boycott [Prevention, Prohibition and Redressal] Act, 2016 [for short, 'said Act']. By

referring the provisions of the said Act, learned counsel submits that in absence of powers to delegate the authority to subordinate official, the respondent No. 2 should not have conferred/delegated the statutory powers vested in him to respondent No. 4 to decide the complaint.

5. It is further submitted that the petitioner has enrolled his name to perform the marriage with Kum. Shradha Rajesh Yadav who belong to his caste and community. Both of them are major in age and entitled to perform the marriage as per their choice. The group marriage of the members of their community has been arranged on 07/05/2019 at Aurangabad. The petitioner has enrolled his name to perform his marriage with Kum. Shradha in the group marriage ceremony organized by his community. Due to the complaint lodged by the father of girl, the members of his caste and community i.e. Jat Panchayat have refused to register his name and perform his marriage with the daughter of the complainant. The complainant – father of said girl has abandoned his wife and children since last 15 years. Since the President and members of Caste Panchayat refused to perform the marriage in the group marriage ceremony organized on 07/05/2019, the petitioner approached to respondent No. 2 with an application u/s 14 of the said Act. The respondent No. 2 in stead of deciding the application and exercising

the powers vested u/s 14 of the said Act, forwarded the application to respondent No. 4 i.e. the Tahsildar by delegating his powers to respondent No. 4 for deciding the same. Respondent No. 4 has rejected the application vide order dated 15/04/2019 and directed to delete the name of the petitioner from the list of persons to perform marriage on 07/05/2019 organized by community of the petitioner. Being aggrieved by the order dated 15/04/2019, the petitioner has preferred this petition.

6. Learned A.G.P. appearing on behalf of respondent Nos. 1 to 4 fairly accepted that u/s 14 (2) of the said Act, the respondent No. 2 could not have delegated his authority to respondent No. 4 to decide the application filed by petitioner with respondent No. 2.

7. On due consideration of the submissions advanced in the light of sections 13 and 14 of the said Act, I am of the view the order passed by respondent No. 4 is not sustainable in law. Sections 13 and 14 of the said Act reads as under :

" 13. *Power to prevent certain acts* :

Upon receiving the information of the offence of social boycott under this Act a police officer may, -

(a) remove, or cause to be removed,

any barricade or obstruction erected or placed in any place if such police officer has reasonable ground to believe that the barricade or obstruction was so erected or placed in order to be used for the purpose of committing an offence under this Act; or

(b) open or cause to be opened any gate or door, if such police officer has reasonable ground to believe that such gate or door has been closed for the purpose of committing an offence under this Act.

14. Police officer to take action - (1)

Where the Collector or District Magistrate, as the case may be, receives information that there is likelihood of convening of unlawful assembly for imposition of social boycott, he shall, by order, prohibit the convening of any such unlawful assembly and doing of any such act towards the commission of any offence under this Act by any person in any areas as may be specified in the order.

(2) The Collector or District Magistrate, as the case may be, may take such steps as he thinks necessary to give effect to such order, including giving of appropriate

directives to the police authorities.”

8. Thus, the plain reading of the provisions quoted above reflect that once the Collector/District Magistrate receives information that there is likelihood of convening of unlawful assembly for imposing of social boycott, he is expected to take necessary steps to prohibit the convening such unlawful assembly or doing any such act punishable under the said Act. Sub section (2) of section 14 of the said Act further provides that the Collector/District Magistrate is also expected to take necessary steps to give effect to the orders passed by him under sub section (1) of section 14 of the said Act including the directions to the police authorities. So also section 14 (2) of the said Act no way empowers the District Magistrate/Collector to delegate the powers to any of his sub-ordinate official to deal with the application filed u/s 14 of the said Act. No-doubt, in exercise of powers u/s 14 (1) of the said Act, the Collector/District Magistrate may issue appropriate orders/directions to their sub-ordinate official to prevent formation of such unlawful assembly, social boycott, etc. But issuance of direction itself not sufficient to delegate its authority to his subordinate official.

9. Thus, the impugned order passed by respondent No. 4 is not sustainable in law for the sole reason that the same has been passed without the authority

vested in him to deal with the application received u/s 14 of the said Act.

10. In the result, the petition deserves to be allowed and the matter needs to be remanded back for fresh decision to be heard and decided by respondent No. 2. Accordingly, the impugned order is set aside. The petitioner is directed to appear before the Collector/District Magistrate, Aurangabad on 29/04/2019 at 3.00 p.m. On appearance of the petitioner, respondent No. 2 is directed to decide his complaint/application after giving due opportunity of hearing to the petitioner and pass the appropriate order as deem fit and proper in the circumstances of the case.

11. It is expressly made clear that this Court has not examined the case of the petitioner on merit as to the relief/direction sought u/s 14 of the said Act. All contentions raised in the petition are kept open to be raised and decided by respondent No. 2.

12. The petition stands disposed of in above terms. The parties to act upon the authenticated copy of this order.

[V.L.ACHLIYA]
JUDGE

KNP.