

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

WRIT PETITION NO. 5895 OF 2021

Bharatbhushan Sonajirao Kshirsagar .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Ms. P. S. Talekar, Advocate h/f Talekar and Associates, Advocate for the Petitioner.

Shri D. R. Kale, Incharge G.P. for Respondent Nos. 1 and 2.

Shri R. S. Deshmukh, Senior Advocate i/by Shri Sayyad Tausif Yaseen, Advocate for the Respondent No. 5.

**CORAM : S. V. GANGAPURWALA AND
S. G. DIGE, JJ.**

DATE : 23RD DECEMBER, 2021.

FINAL ORDER :

. The petitioner is elected President of the Municipal Council, Beed. The petitioner assumed office in December 2016. The respondent No. 5 filed proceedings U/Sec. 55(A) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short "Act of 1965") before the State Government to remove the petitioner from his office as a President. It appears that, the Hon'ble Minister for Urban Development Department issued notice. Subsequently, the Hon'ble Minister for Urban Development Department transferred the proceedings to the State Minister. The petitioner is assailing the order/endorsement dated 03rd March, 2021 transferring the proceedings to the State Minister. The

petitioner also assails the communication dated 05.03.2021 calling for the report in respect of complaints against the petitioner from the Collector Beed for deciding proceedings U/Sec. 55(A) of the Act of 1965.

02. Miss Talekar, the learned advocate for the petitioner strenuously contends that, the complaint filed by the respondent No. 5 is politically motivated. The brother of the petitioner belongs to the Shivsena party, whereas the respondent No. 5 belongs to Nationalist Congress Party. To settle the personal and political scores, the complaint U/Sec. 55(A) of the Act of 1965 is filed. The learned advocate submits that, the State Minister is from N.C.P. and for that reason matter has been transferred by the Hon'ble Minister for Urban Development to the State Minister.

03. Miss Talekar, the learned advocate further contends that, as per the Rules of Business framed under Article 166 of the Constitution of India under signature of the Hon'ble Governor complaint ought to have been dealt with and decided by the Hon'ble Minister and could not have transferred the same to the State Minister. The Rules of Business under Article 166 of the Constitution are framed under the orders of the Hon'ble Governor. The Hon'ble Minister does not have power to alter the business rules. Instructions regarding business of the Government issued under Rule 15 of the Maharashtra Government Rules of Business made under Article 166 of the

Constitution defines the minister incharge as the minister appointed by the Hon'ble Governor to be incharge of the Department of Government to which the case belongs. The case has to be decided by the Minister incharge. As such, it is only the Minister for Urban Development Department, who is competent to decide the same. He does not possess any power to delegate the decision to the State Minister. Under Rule 15 of the Instructions the powers to supplement the instructions are also required to be issued by the Hon'ble Governor on the advise of the Hon'ble the Chief Minister. Reliance is also placed on Clause 10(1) of the Instructions framed by the Hon'ble Governor that the Minister Incharge of the Department shall be primarily responsible for the disposal of the business pertaining to that department or part of the department. In view of that, it was erroneous on the part of the Hon'ble Minister to delegate the powers. The learned advocate relies upon the judgment of the Apex Court in a case of Smt. Godavari Shamrao Parulekar Vs. State of Maharashtra and others reported in *AIR 1964 SC 1128*.

04. The learned advocate further submits that, the delegation of powers has to be in a manner as prescribed under the Statute. The rules of business do not empower the Hon'ble Minister to alter the business rules inter alia could not have transmitted the matter to the State Minister. The learned advocate further submits that, no reasons are mentioned while transmitting the matter to the State Minister. Every action of the State or its instrumentality must be informed by reasons found either in the

order impugned or contemporaneous record, without which the same is open for judicial review. To buttress the submissions, the learned advocate relies upon the judgment of the Apex Court in a case of M. J. Sivani and others Vs. State of Karnataka and others reported in *(1995) 6 SCC 289*.

05. The learned advocate further submits that, the proceedings U/Sec. 55(A) of the Act of 1965 are quasi judicial proceedings. Powers to decide the quasi judicial proceedings cannot be delegated.

06. Miss Talekar, the learned advocate further submits that, the order of the Standing Committee inter alia Standing order is violative of Article 166 of the Constitution. Article 166 provides for specific procedure. All the executive actions of the Government of a State shall be expressed to be taken in the name of the Hon'ble Governor. The Standing Order permitting the Cabinet Minister to assign special case for deciding appeals and quasi judicial matters to the State Minister is contrary to the constitutional mandate. The same in any case is vague and without guidelines, the same is not permissible. Any amendment to the conduct of business rules that are framed by the Hon'ble Governor has to be undertaken by the Hon'ble Governor in pursuance to Rule 15 of the Conduct of Business Rules. Said powers could not have been exercised by the Hon'ble Minister.

07. The learned advocate further contends that, calling for the

report from the Collector is erroneous. Three times reports have been called. The Collector has already forwarded a report exonerating the petitioner of any act complained. Only because the Hon'ble Minister is not getting a favourable report, again and again reports are called.

08. Mr. R. S. Deshmukh, the learned Senior Advocate for the respondent No. 5 and the learned Incharge Government Pleader for respondent Nos. 1 and 2 submit that, Rules of Business are directory in nature. To substantiate their contention reliance is placed on the judgment of the Apex Court in a case of Narmada Bachav Andolan Vs. State of Mahadya Pradesh reported in (2011) 12 SCC 333. Further reliance is placed on the judgment of the Full Bench of this Court in a case of Chandrakant Sakharam Karkhanis Vs. State of Maharashtra reported in AIR 1977 Bom. 193 to submit that, the provisions of Article 166 of the Constitution are directory in nature and the Rules framed by the Governor under Clause (3) of the Article 166 of the Constitution must be regarded having been framed for more convenient transaction of business of the Government and are directory in character and not mandatory and any non-compliance thereof would be a mere procedural defect but would not confer any right upon any citizen to, approach the Court under Article 226 of the Constitution.

09. It is further submitted that, as per Rule 16 of the Rules of Business, instructions are issued for more convenient transaction of business of the Government of Maharashtra. Under Clause

(4), the Minister incharge may give such directions as he thinks fit for disposal of cases in the department. The powers have been exercised by the Cabinet Minister and the matter is delegated to the State Minister to decide the disqualification proceedings. No illegality is committed.

10. Relying upon the judgment of the Apex Court in a case of Gullapalli Nageshwara Rao and others Vs. Andhra Pradesh State Road Transport Corporation and another reported in *AIR 1959 SC 308* the learned senior advocate submits that, the procedural rules made by the Hon'ble Governor for the convenient transactions of the business of the State Government apply also to the quasi judicial acts. No distinction can be made so far as rules of business are concerned with regard to the quasi judicial or executive and administrative act. The petitioner is trying to prolong the matter for one or the other reason and not allowing the proceedings to proceed further. No prejudice would be caused to the petitioner if the matter is dealt with by the State Minister or the Hon'ble Cabinet Minister. The petitioner's term would end in February 2022 and that is why the petitioner is trying to prolong the matter for one or the other reason.

11. We have considered the submissions canvassed by the learned advocate for the respective parties.

12. The present petition is filed basically on two grounds : (1) transmitting the matter to the State Minister by the Hon'ble

Cabinet Minister and (2) calling for the report from the Collector.

13. The matter initially was with the Hon'ble Cabinet Minister. As per the Rules of Business framed under Article 166 of the Constitution and applicable to the Maharashtra Government, the cases referred to in IIInd Schedule shall be brought before the council and is required to be dealt with by the Minister Incharge. The Minister Incharge means the Minister appointed by the Hon'ble Governor to be incharge of the department of the Government to which case belongs. The said definition finds place under Clause 1(v) of the Instructions.

14. Under Clause 4 of the instructions of the Governor of Maharashtra, the Minister Incharge may by means of standing orders give such directions as he thinks fit for the disposal of cases in the Department. The Minister Incharge has transmitted the case to the State Minister.

15. The Apex Court in a case of **Narmada Bachav Andolan Vs. State of Mahadya Pradesh** (supra) has observed that, Rules of Business to the extent that did not involve financial implications are directory. It has been further observed by the Apex Court, that the business rules are not mandatory and are administrative in nature for governance of the business of the Government. The Apex Court has also held that the delegation is permissible and rules of business are directory in nature and that the delegation of power is permissible. The exception is the case financial

implications, then the business rules are mandatory.

16. The Full Bench of this Court also in a case of **Chandrakant Sakharam Karkhanis Vs. State of Maharashtra** (supra) has observed that the provisions of Article 166 of the Constitution itself are directory and not mandatory. The Full Bench further observed that the business rules framed by the State Government in exercise of powers conferred by Clause 2 and 3 of Article 166 of the Constitution will have to be regarded as directory. Clause 3 of Article 166 of the Constitution in term provides that business rules which are to be made by the Governor for regulating conduct of business of Government are intend for more convenient transaction of the business of the Government of the State and these rules also provide for allocation amongst Minister of the said business, in so far as it is not business in respect of which the Governor is or by or under this Constitution required to act in his discretion. The Full Bench further held that, It will thus appear clear that these Business Rules are intended for the more convenient transaction of the business of the Government and therefore ordinarily it will be difficult to take the view that these Business Rules framed under clauses (2) and (3) of [Article 166](#) of the Constitution are of a mandatory nature and any non compliance thereof would be a mere procedural defect, but would not confer any right upon any citizen to, approach the Court under [Article 226](#) of the Constitution.

17. The Apex Court in a case of **Gullapalli Nageshwara Rao and others Vs. Andhra Pradesh State Road Transport Corporation and another** (supra) held that the concept of a quasi judicial act implies that the act is not wholly judicial. It describes only a duty cast on the executive body or authority to conform to norms of judicial procedure in performing some acts in exercise of its executive power. The procedural rules made by the Governor for the convenient transaction of business of the State Government apply also to quasi-judicial acts, provided those 'Rules conform to the principles of judicial procedure.

18. In a case of **Sadashivrao Mandalik Kagal Taluka Sahkari Sakhar Karkhana Ltd. Vs. The State of Maharashtra** reported in *(2012) 3 Bom CR 749*, relied by the learned advocate for the petitioner, the Division Bench of this Court held that, the rules made by the Governor under Clause 3 of Article 166 of the Constitution are for more convenient transaction of business with regard to the steps that do not involve financial implication and are directory in nature.

19. In exercise of powers conferred by Rule 15 of the Maharashtra Government Rules of business made by the Governor under Article 166 of Constitution, the Governor of Maharashtra issued instructions for more convenient transaction of the business of the Government of Maharashtra. Clause 4 of the said instructions permits the Minister incharge by means of Standing Order to give such directions as he thinks fit for the

disposal of cases in the Department. In the light of said clause, the Minister Incharge was within his powers to delegate and/or transmit the matter to the Minister of State. It cannot be said that he did not possess the power to delegate or transmit the matter to the State Minister. The said powers seem to be legitimately complied. In the light of that, the Governor under the instructions as referred to in Clause 4 of the instructions empowers the Minister incharge to delegate the matter to the department. In the present case, he has transmitted the case to the Minister of State. The same does not appear to be in flagrant violation of Article 166 of the Constitution and the Business Rules.

20. So far as second challenge calling for report from the Collector is concerned, the reports have been called by the Minister from the Collector for factual purposes. The Minister, naturally is required to consider the report of the Collector. If the petitioner is not implicated in the report, the petitioner may take up that stand before the Minister where the matter is pending. The petitioner will have every opportunity to controvert the report from the Collector, if it is against him. Merely because for more than two times reports are called itself would not be sufficient to quash the reports or the proceedings.

21. The parties shall appear before the Hon'ble Minister of State on 05th January, 2022.

22. In the light of the above, we do not find case to be made out so as to invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India. The writ petition is disposed of. No costs.

[S. G. DIGE, J.]

[S. V. GANGAPURWALA, J.]

bsb/Dec.21