

Dusane

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

WRIT PETITION NO.4509 OF 2021

Dnyaneshwar N. Kushare

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

BHALCHANDRA
GOPAL
DUSANE

Digitally signed by
BHALCHANDRA
GOPAL DUSANE
Date: 2022.08.23
10:44:32 +0530

Mr. Chintamani K. Bhongoji for Petitioner.

Mr. K.S. Thorat, AGP for State - Respondent.

Mr. Tushar Sonawane for Respondent Nos. 3 and 4.

Mr. Sunil Gangan a/w Mr. Swapnil Shikhar i/by RMG Law Associates for
Respondent No. 5.

Mr. Prashant Hagare for Respondent no. 7.

Ms. Chaitrali Deshmukh for Respondent No.9.

**CORAM : S.V. GANGAPURWALA &
MADHAV J. JAMDAR, JJ.**

DATED : 20TH AUGUST 2022

P.C. :

1. The Petitioner was issued L.O.I. for underground storage of the petroleum products/establishment of a retail outlet.
2. The learned counsel for the Petitioner submits that the predecessor of the Petitioner of the plot was granted No Objection Certificate by the

Gram Panchayat in the year 2015, where the Petitioner was issued the LOI. However, the same is refused to the Petitioner because of the political interference. Respondent no.7, at the relevant time was the Deputy Sarpanch of the village/Gram Panchayat and she was interested in getting the retail outlet. Even before Respondent no.5 cancelled the LOI of the Petitioner, Respondent no.7 had made an application to Respondent no.5. This shows the personal interest of Respondent no.7. Today Respondent no.7 is the Member of the Gram Panchayat and she has exercised her clout in getting the NOC of the Petitioner rejected. According to the learned counsel, the Respondent no. 5 has also erred in cancelling LOI of the Petitioner and issuing LOI to the Respondent no.7. The act of Respondent no.5 is arbitrary.

3. Learned counsel for Respondent no.5 submits that the Respondent no.5 is a private company. In view of that the writ petition would not be tenable against Respondent no.5.

4. Learned counsel for the Gram Panchayat submits that the Gram Panchayat has also not issued NOC to Respondent no.7. In view of that allegation of the Petitioner of the Gram Panchayat colluding with

Respondent no.7 is erroneous. No decision has been taken by the Gram Panchayat to issue NOC to Respondent no.7. Gram Sabha has taken decision not to issue NOC to the Petitioner.

5. The Gram Panchayat functions under the supervision of the Zilla Parishad. The learned counsel for the Zilla Parishad submits that notice has been given to Respondent no. 3 in respect of all these activities calling for explanation from Respondent no.3. An enquiry against Respondent no.3 is pending.

6. It is trite that the Gram Panchayat cannot show favouritism to any one party. The Gram Panchayat has to act fairly. It is the local sub authority.

7. Only because Respondent no.7 is the Member of the Gram Panchayat, the Gram Panchayat cannot take a different decision. Certainly the Gram Panchayat is required to consider all the norms.

8. It appears that because for two years, the Gram Panchayat did not take any decision on the application of the Petitioner, the LOI issued in favour of the Petitioner was cancelled by Respondent no.5.

9. It is also for the Respondent no.5 to consider whether NOC of the Gram Panchayat is mandatory or not. It is further submitted that out of eight authorities, seven authorities granted NOCs in favour of the Petitioner for the retail outlet.

10. In the light of above, we pass following order:-

O R D E R

- i) The Gram Panchayat Kundalgaon shall take fresh decision with regard to the case of the Petitioner for issuance of NOC on the subject plot, preferably within two months.
- ii) The Respondent no.5 shall not take further steps till the Gram Panchayat takes the fresh decision on the cause of the Petitioner for issuance of NOC.
- iii) Depending upon the decision taken by the Gram Panchayat, further steps be taken by Respondent no.5.
- iv) The enquiry against the Gram Sevak commenced by the Zilla Parishad may continue independently.
- v) The Writ Petition is disposed of. No costs.

(MADHAV J. JAMDAR, J.)

(S.V. GANGAPURWALA, J.)