

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 595 OF 2023

Mangesh Shamrao Tayade __ Vs. __ Chandrashekhar Daulatrao Chincholkar and ors

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Mr. S.V.Sohoni, Advocate for petitioner
 Mr. R.D.Karode, Advocate for Respondent No. 1/Caveator
 Mr. M.V.Bute, Advocate for Respondent Nos. 3 & 4
 Mr. N.R.Patil, AGP for Respondent Nos.5 & 6

CORAM : AVINASH G. GHAROTE, J.

DATE : 22/02/2023

1] On 7.2.23, after hearing the learned counsel for the petitioner and respondent no.1 on caveat, the following order was passed.

"1. Heard Shri S.V. Sohoni, learned counsel for the petitioner; Shri R.D. Karode, learned counsel for the respondent no.1 and Ms Tajwar Khan, learned Assistant Government Pleader for the respondent nos.5 and 6.

2. The petition challenges the order 30/09/2022 passed by the respondent no.5-Divisional Commissioner under Section 39 (1) of the Maharashtra Village Panchayats Act, 1959 (for short, "the MVP Act", hereinafter), whereby the petitioner was disqualified as a Sarpanch, on account of having done certain malpractices in the matter of procurement of material etc. (pg.83). The respondent no.6, in appeal, by his order dated 30/12/2022, has maintained the order of the respondent no.5.

3. It is contended by Shri S.V. Sohoni, learned counsel for the petitioner that in the instant matter the requirement of the first proviso to Section 39 (1) of the MVP Act has not been complied with, inasmuch as, according to him, the enquiry which is required to be conducted by the Chief Executive Officer (CEO) has been, in fact, conducted by the Block Development Officer (BDO) [pg.194] and the CEO, without independently applying his mind, has acted as a postman and submitted his report to the Commissioner (pg.37). He submits that such a course of action is not permissible, for which, he has relied upon a number of decisions, which are listed in his pursis dated 01/02/2023.

4. *Shri R.D. Karode, learned counsel for the respondent no.1, on caveat, supports the impugned order and submits by relying upon Diwakar s/o Bajirao Pachare Vs. Hon'ble Minister, Village Development and Panchayat Raj Division, Mumbai and others (Writ Petition No.1965/2022, decided on 09/011/2022); Sau. Leena Ramesh Dongarwar Vs. The Commissioner, Nagpur Division, Civil Lines, Nagpur and others (Writ Petition No.688/2016, decided on 21/09/2017); Smt. Meerabai w/o Daulatrao Gawali Vs. State of Maharashtra, through its Secretary, Deptt. of Rural Development, Mumbai and others (Writ Petition No.4450/2019, decided on 14/11/2019); Damayanti w/o Omprakash Tapadiya Vs. Ashok s/o Dadarao Thakare and others (Writ Petition No.4453/2019, decided on 09/12/2019); Pradip Shriram Pawar Vs. Divisional Commissioner, Amravati and ors. (Writ Petition No.4887/2021, decided on 10/12/2021); H.V. Nirmala Vs. Karnataka State Financial Corporation & Ors. 2009 (3) ALL MR 465; Rajendra s/o Radhakisan Raut Vs. The State of Maharashtra & Ors. 2022 (4) ALL MR 226 and Ram Sarup Mohan Singh Vs. The Deputy Commissioner, Rohtak and others, AIR 1971 Punjab and Haryana 408 Punjab and Haryana High Court (Principal Seat at Chandigarh) that it was permissible for the BDO to conduct a preliminary enquiry, based upon which, the CEO then could submit his report. He, therefore, submits that since such a course was permissible and the petitioner was duly noticed and had participated in the preliminary enquiry before the BDO as well as in the enquiry before the CEO and therefore, was granted due opportunity, no prejudice has been caused to the petitioner and therefore, on this count, the contention that the CEO has not conducted an enquiry is clearly misplaced.*

5. *The report of the BDO is at page 194 to 215 and the report of the CEO is at page 37 to 63. The learned counsel for the caveator was therefore asked to point out the difference in the two reports, which he is unable to do. The learned Assistant Government Pleader is also, at this stage, unable to point out the difference. This would prima facie indicate that the CEO has not applied his mind.*

6. *It is not in dispute that upon the instructions of the CEO, it would be permissible for the BDO to conduct a preliminary enquiry, which would be in the nature of collecting relevant material and placing the same before the CEO, however, since the proviso to Section 39 (1) of the MVP Act contemplates the holding of an enquiry by the CEO, the report by the CEO should indicate an independent application of mind to the material placed before him by the BDO, as collected by him. Prima facie, such exercise is found to be lacking, considering which, an arguable case is made out.*

7. *Issue notice for final disposal to the respondents, returnable on 20/02/2023.*

8. *Advocate Shri R.D. Karode waives service of notice for the respondent no.1 and Assistant Government Pleader Ms Tajwar Khan waives service of notice for the respondent nos.5 and 6.*

9. *The petitioner shall serve the respondent nos.2 to 4 by all modes of service permissible in law including Hamdast.*

10. *Shri Karode, learned counsel for the respondent no.1 as well as Ms Tajwar Khan, learned Assistant Government Pleader for the respondent nos.5 and 6, in view of the above observations, shall indicate in their reply what is the difference between the report of the BDO and that of the CEO.*

11. *As of date, no elections have been declared for the post of Member, for which the petitioner has been removed, and therefore, I am not inclined to accept the request for grant of stay. However, liberty is granted, in case there is a move to declare elections.*

2] Mr. Karode, learned counsel for the respondent no.1 in pursuance to the above order dated 7.2.2023 concedes to the position that there is no substantial difference between the report of Block Development Officer (pg.194) and that of the Chief Executive Officer (pg. 37) and that the report of the CEO does not indicate an independent application of mind.

3] The requirement of the proviso to Section 39(1) of the Maharashtra Village Panchayat Act would indicate that the enquiry as contemplated therein by the CEO is not an empty formality, but requires application of independent mind, which should be reflected from the enquiry report. It would therefore be axiomatic that the role of the BDO in such an enquiry, would be to assist the

CEO and not of conducting the enquiry himself. The report of the BDO in the instant case (pg. 194 to 215) indicates that it is the BDO who has conducted the enquiry and rendered an opinion, which has been accepted by the CEO.

4] This course of action was clearly not permissible, considering the language of the proviso to Section 39(1) of the MVP Act, considering which the report of the CEO would clearly stand vitiated and cannot form the basis of the order dated 30.9.2022 passed by Respondent No.5. That being the position, the impugned order dated 30.9.2022 is hereby quashed and set aside and the matter is remanded back to the Respondent No.5 for decision afresh, after compliance with the requirement of the proviso to Section 39(1) of the MVP Act.

5] Needless to say that the learned Divisional Commissioner shall decide the appeal by following due process of law within thirty day from the date of receipt of this order.

6] The petition is therefore allowed in the above term. No costs.

JUDGE

Rvjalit

Digitally sign byRAJESH
VASANTRAO JALIT
Location:
Signing Date:23.02.2023 19:07