



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

WRIT PETITION NO. 6394 OF 2022

Sau. Anjali W/o Satish Shinde : **PETITIONER**
Aged about 50 years, Occ. Social Service,
R/o Savargaon, Tah. Narkhed,
Dist. Nagpur.

VERSUS

- 1 Zilla Parishad, Nagpur, **RESPONDENT**
Through its Chief Executive Officer,
- 2 Block Development Officer / Enquiry
Officer, Panchayat Samiti, Narkhed,
Tah. Narkhed, Dist. Nagpur
- 3 Sau. Parbati W/o Gunwant Kalbande,
Aged about 53 years, Occ. Business and
Member, Zilla Parishad, Nagpur

Mr. S.S. Ghate, Advocate for petitioner
Mr. V.D. Raut, Advocate for Respondent Nos.1 and 2

CORAM : BHARAT P. DESHPANDE, J.

DATE : 13th MARCH, 2024

ORAL JUDGMENT

Rule. Rule is made returnable forthwith. Heard the parties for final disposal with consent.

2. The challenge in the present petition is the order passed by the Divisional Commissioner, thereby rejecting the

application filed by the petitioner under Section 16(1)(i) of the Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961.

3. Mr. Ghatе, learned counsel for the petitioner would submit that the petitioner filed an application under Section 40 of the said Act, thereby seeking disqualification of the respondent No.3 on the ground that the said respondent No.3 is having direct / indirect interest in the works carried out by the said Panchayat.

4. Mr. Ghatе, learned counsel for the petitioner would submit that the provisions of Section 40 of the said Act empowers the Divisional Commissioner to decide such application and to pass necessary orders either disqualifying the said Member of the Panchayat or to reject the application. He submits that the said Divisional Commissioner has no authority to direct any subordinate Officer to conduct the fact finding enquiry and that too in absence of the petitioner. He submits that in the present matter, the Divisional Commissioner by an order dated 18/11/2021, directed the Chief Executive Officer of Zilla Parishad, Nagpur to conduct the enquiry and submit his report along with his opinion. The Chief Executive Officer of Zilla

Parishad by letter dated 10/12/2021, directed the Block Development Officer of the Panchayat Samiti, Narkhed to conduct the enquiry and to submit the report along with his opinion. The Block Development Officer was directed to submit his report along with his opinion directly to the Divisional Commissioner. Accordingly, the Block Development Officer of Panchayat Samiti, Narkhed submitted his report dated Nil along with covering letter dated 07/01/2022.

5. Mr. Ghate, learned counsel for the petitioner would submit that there is no power under Section 40 of the said Act with the Divisional Commissioner to delegate his powers to conduct an enquiry and call for such reports and that too behind the back of the petitioner.

6. The learned counsel for the respondent Nos.1 and 2 would submit that such reports were called only as fact finding report and after submitting such report, the application filed by the petitioner under Section 16 of the said Act was decided.

7. The provisions of Section 40 of the said Act reads thus:

“40. Disqualification of Councillors during term of office.

(1) Subject to the provisions of sub-section (2) of Section 62, if any Councillor during the term of his office-

(a) becomes disqualified under sub-section (1) [or (4)] of section 16, or

(b) is, for a period of six consecutive months (excluding in the case of the presiding authority the period of leave duly sanctioned) without the permission of the Zilla Parishad, absent from meetings thereof [or is absent from such meeting for a period of twelve consecutive months],

the office of such councillor, shall, notwithstanding anything contained in clause (c) [***] of sub-section (1) of section 9 becomes vacant

[***]

(2) If any question whether a vacancy has occurred under this section is raised either by the Commissioner *suo motu* or on an application made to him by any person in that behalf, the Commissioner shall decide the question [as far as possible] within ninety days from the date of receipt of such application; and his decision thereon shall be final. Until the Commissioner decides that the vacancy has occurred, the Councillor shall not be disabled from continuing to be a Councillor :

Provided that, no decision shall be given against any Councillor without giving him a reasonable opportunity of being heard.”

8. The petitioner filed an application under Section 16 of the said Act claiming that the respondent No.3 be disqualified since she has directly or indirectly herself or by her partners had share or interest in the work done by the order of the Zilla Parishad or in any contract with, by order on behalf of the Zilla Parishad as

provided in subsection 1(i) of Section 16. The petitioner's application under Section 40 of the said Act was taken up by the concerned Authority for the purpose of deciding it, however, the said authority and that too without intimating the petitioner directed the Chief Executive Officer of Zilla Parishad to conduct the enquiry on the issues raised by the petitioner and submit the report along with the opinion. The Chief Executive Officer of the Zilla Parishad further delegated such powers by directing the Block Development Officer of Panchayat Samiti, Narkhed to conduct the enquiry and submit the report directly to the Divisional Commissioner.

9. A perusal of Section 40 of the said Act as quoted above would clearly go to show that the disqualification is automatic on the finding that the person against whom such complaint is filed, is found involved in any of the clauses mentioned in subsection (1) of Section 16 of the Act.

10. The main contention in the present petition is that the concerned Authority, who has been given powers to conduct the enquiry / decide the application, has no authority to delegate such powers or to call for the fact finding report. The authority

deciding one of the clause of Section 16(1) of the said Act on the basis of a complaint is acting as *quasi* judicial authority. Such *quasi* judicial authority is not entitled to delegate his powers to the subordinate as no such power is mentioned in the Act. The present matter clearly goes to show that the learned Divisional Commissioner delegated his powers firstly to the Chief Executive Officer of Zilla Parishad, Nagpur by letter dated 18/11/2021 and that too behind the back of the petitioner. It is further surprising to note that the Chief Executive Officer of Zilla Parishad by his letter dated 10/12/2021, sub-delegated such powers to the Block Development Officers, Panchayat Samiti, Narkhed, thereby directing him to conduct enquiry and submit his report along with his opinion.

11. Thus in absence of such powers with the Divisional Commissioner, the entire exercise carried out by calling of the reports has to be considered as illegal and without any jurisdiction.

12. On this count alone, the petition needs to be allowed and the application filed by the petitioner needs to be remanded to the Divisional Commissioner to decide it in accordance with law

within a period of one month from the date of receipt of this order.

13. Rule is made absolute in the above terms.

14. The parties to act on the authenticated copy of this order.

(BHARAT P. DESHPANDE, J.)

MP Deshpande