

(2024) 09 BOM CK 0045

In the Bombay High Court

Case No : Writ Petition Nos.1783, 1784, 2000, 2064 Of 2023

Amitkumar S/O. Bhimrao Bankar

APPELLANT

Vs

Additional Divisional Commissioner, Nagpur Division, Nagpur
And Another

RESPONDENT

Date of Decision : 12-09-2024

Acts Referred:

Maharashtra Village Panchayats Act, 1958 — Section 13, 13(3), 14(1)(h), 16(2), 182

Citation : (2024) 09 BOM CK 0045

Hon'ble Judges : Anil L. Pansare, J

Bench : Single Bench

Advocate : D. S. Jagyasi, V. S. Mishra, K. Jhamb, D. V. Chawhan, N. Y. Thengre, D. Verma

Final Decision : Disposed Of

Judgement

Anil L. Pansare, J.

1. Rule. Rule is made returnable forthwith. Heard finally with consent of learned counsel for the parties.

2. Respondent No.2, in each petition, suffered disqualification under Section 14(1) (h) of the Maharashtra Village Panchayats Act, 1958 (hereinafter referred to as the, "Act of 1958"), for failure to pay taxes due to the Gram Panchayat within three months from the date on which the amount of taxes was demanded. The Collector, Chandrapur, on 10.10.2022, passed order of disqualification. The order of Collector was successfully challenged in terms of Section 16(2) of the Act of 1958. Thus, the Additional Commissioner, vide orders dated 18.01.2023, set aside the order passed by the Collector. These orders have been challenged in the present petitions.

3. It is the contention of the petitioners that in terms of Section 16(2) of the Act of 1958, the appeal lies before the Commissioner, however, in the present case, the appeal has been entertained by Additional Commissioner. According to

petitioners, the impugned orders are, therefore, without an authority and are unsustainable in the eyes of law.

4. Thus, the question involved in these petitions is, whether the Additional Commissioner is/was empowered to entertain the appeal in terms of Section 16(2) of the Act of 1958. Section 16(2) reads thus:

"16. Disability from continuing as member:

(1)

(2) If any question whether a vacancy has occurred under this section is raised by the Collector suo motu or an application made to him by any person in that behalf, the Collector shall decide the question as far as possible within sixty days from the date of receipt of such application. Until the Collector decides the question, the member shall not be disabled under sub-section (1) from continuing to be a member. Any person aggrieved by the decision of the Collector may, within a period of fifteen days from the date of such decision, appeal to the Commissioner, and the orders passed by the Commissioner in such appeal shall be final:

Provided that, no order shall be passed under this sub-section by the Collector against any member without giving him a reasonable opportunity of being heard."

5. Section 16(2) of the Act of 1958 was amended on 19.07.2018 and the words, "State Government", were replaced by "Commissioner". Thus, prior to 19.07.2018, the appeal under Section 16(2) would lie before the State Government.

6. Learned Government Pleader has invited my attention to the Government notification dated 20.04.1977 which indicate that the State Government, in exercise of powers under Section 182 of the Act of 1958, had delegated its power to the Commissioner vide notification dated 08.12.1970. The State Government in exercise of powers conferred under Section 13(3) of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as "MLR Code") has then, vide aforesaid notification dated 20.04.1977, delegated powers of the Commissioner to the Additional Commissioner. Accordingly, for all these years, the powers delegated by the State Government to the Commissioner to deal with the matters under various provisions, including Section 16(2) of the Act of 1958, were exercised by the Additional Commissioner within his jurisdiction. He submits that the amendment to Section 16(2) of the Act of 1958 will not take away the powers so delegated to the Additional Commissioner.

7. The effect of delegation of powers under the MLR Code has been considered by the Division Bench of this Court in the case of Vimal Bhimrao Rathod Vs. State of Maharashtra and Ors, 2009 (3) Mh.L.J. 546. A reference was made to the Division Bench to consider, "Whether Additional Commissioner is legally competent to exercise appeal powers under Section 16(2) of the Act of 1958". The Division Bench referred to the provisions of the Act of 1958, the notification

dated 20.09.1977 issued by the State Government and Section 13 of the MLR Code and observed thus:

"13. Plain reading of provisions of sub-section (3) of section 13 of the Code shows that it empowers the State Government to confer powers, duties and functions exercised by the Commissioner on the Additional Commissioner not only under the provisions of the Land Revenue Code, but also under any law for the time being in force by issuing notification in the Official Gazette in this regard. Notification dt. 20-4-1977 has been issued by the State Government in exercise of powers conferred on it under above referred sub-section (3) of section 13 of the Code and therefore, even if by virtue of notification dt. 11-11-1995 issued by the State Government in exercise of powers under section 182(1) of the BVP Act, powers under section 16(2) of the BVP Act are delegated in favour of Commissioner, that does not take away power and jurisdiction of the State Government to issue notification under sub-section (3) of section 13 of the Code, empowering the Additional Commissioner to discharge the duties and functions exercised by the Commissioner not only under the Code alone, but also under the BVP Act; since the Commissioner, Additional Commissioner, Assistant Commissioner, Collector, Additional Collector, Tahsildar etc. are all Officers of the Revenue Department of State Government.

14. The State Government in exercise of power under section 182(1) of the BVP Act delegated appellate powers vested in it under section 16(2) of the BVP Act in favour of the Commissioner. By virtue of provisions of section 182(1), the State Government is legally entitled to delegate the said appellate power even in favour of any other Officer of the Revenue Department including Additional Commissioner, by issuing appropriate notification in this regard under section 182(1), by withdrawing the notification dt. 11-11-1995. Similarly, the provisions of sub-section (3) of section 13 of the Code empowers the State Government to confer upon Additional Commissioner duties and functions exercised by the Commissioner not only under the provisions of the Code, but under any law for the time being in force which includes the BVP Act.

15. It is necessary to consider that the power vested in the State Government under section 182(1) of the BVP Act is distinct and different than the one vested in the State Government under sub-section (3) of section 14 of the Code. Under section 182(1) of the BVP Act, power of delegation vested in the State Government is restricted and can be exercised only in respect of provisions of the BVP Act. Whereas, the power vested under sub-section (3) of section 13 of the Code is of general nature which empowers the State Government to confer duties and functions exercised by the Commissioner not only under the provisions of the Code, but also under any other law for the time being in force (which includes the BVP Act) on Additional Commissioners, by issuing notification in the Official Gazette in this behalf. Since the power vested in the State Government under section 182(1) of the Act and under section 13(3) of the Code operates in different and distinct areas, exercise of power by the State

Government under these respective provisions does not result in any kind of inconsistency or conflict with each other or with the provisions of either of the Acts. Hence, we are of the view that the State Government is wholly competent to do so. It is also pertinent to note that petitioners have not questioned validity of the notification dt. 20-4-1977 issued by State Government in exercise of powers under sub-section (3) of section 13 of the Code.”

8. The Division Bench, thereafter, has answered question in the affirmative. In other words, the Division Bench has held that the Additional Commissioner is legally competent to exercise the appellate powers under Section 16(2) of the Act of 1958.

9. The only issue, that requires answer now is, the consequence of amendment dated 19.07.2018 to Section 16(2) of the Act of 1958, by which the words, “State Government” are replaced by the word, “Commissioner”.

10. It is the contention of the petitioners that prior to the amendment, the State Government was empowered to hear the appeal and by virtue of Section 182 of the Act of 1958, the State Government was authorized to delegate its powers to revenue officers and, accordingly, the Commissioner or Additional Commissioner were empowered to entertain the appeals under Section 16(2) of the Act of 1958. By way of amendment, the appeal now lies before the Commissioner. There is no provision in the Act of 1958, by virtue of which the Commissioner can delegate his powers to Additional Commissioner or any other revenue officer and, therefore, reliance cannot be placed on the notification dated 20.04.1977 to contend that the powers of Commissioner stand delegated to the Additional Commissioner.

11. I do not find substance in the aforesaid argument. The State Government has delegated powers in terms of Section 13(3) of the MLR Code, which reads thus:

“13. Powers and duties of Revenue Officers.

(1) & (2)

(3) The Additional Commissioner and the Assistant Commissioner, and the Additional Collector and the Additional Tahsildar shall each exercise within his jurisdiction or part thereof such powers and discharge such duties and functions of the Commissioner, the Collector or, as the case may be, the Tahsildar under the provisions of this Code or under any law for the time being in force, as the State Government may, by notification in the Official Gazette, direct in this behalf.

12. As could be seen, the Additional Commissioner is required to exercise, within his jurisdiction or the part thereof, such powers and discharge such duties and functions of the Commissioner under the provisions of MLR Code or under any law for the time being in force as the State Government, by notification in official gazette, direct in this behalf.

13. The State Government, vide notification dated 20.04.1977, has directed the Additional Commissioner to exercise within his jurisdiction the powers, duties and functions conferred on the Commissioner under the provisions of the Act of 1958, which includes the provision under Section 16(2). The Additional Commissioner is duty-bound to exercise these powers in terms of Section 13(2) of the MLR Code. The Division Bench in Vimal's case has held that the power vested under sub-section (3) of section 13 of the Code is of general nature which empowers the State Government to confer duties and functions exercised by the Commissioner not only under the provisions of the Code, but also under any other law for the time being in force (which includes the BVP Act) on Additional Commissioners, by issuing notification in the Official Gazette in this behalf. Accordingly and in terms of Government notification dated 20.04.1977, the powers of Commissioner are being exercised by the Additional Commissioner within his jurisdiction. Present case is one of such case where Additional Commissioner has exercised powers under Section 16(2) of the Act of 1958.

14. The question may arise, whether the notification dated 20.04.1977 is applicable to the subsequent Acts or amendments like in the present case, Section 16(2) of the Act of 1958 was amended on 19.07.2018. The answer should be in the affirmative, for the following reasons.

15. Section 13(3) of the MLR Code provides that the Additional Commissioner shall exercise within his jurisdiction such powers and discharge such duties and functions of the Commissioner under the provisions of the MLR Code or any law for the time being in force, as the State Government, by notification in official gazette, directed in this behalf. The expression, 'for the time being in force', will have to be understood in the context in which it has been used.

16. Section 13 of the MLR Code deals with the powers and duties of the revenue officer. Sub Section (1) thereof provides that the revenue officer above the rank of Tahsildar shall exercise powers and discharge the duties and functions conferred and imposed on them under the MLR Code or any law for the time being in force. The proviso to Sub Section (1) provides that Tahsildar shall exercise such powers as may be delegated to him by Collectors under the general or special order of the State Government. Sub Section (2) provides that the revenue officer shall also exercise such powers and discharge such duties and functions as the State Government may by an order in writing, confer or impose on them, for the purpose of carrying out the provisions of any law for the time being in force. Scope of Section (3) has been already discussed above.

17. It could be thus gathered from Section 13 of the MLR Code that the revenue officers are required to exercise various powers and discharge various duties and functions under the provisions of the MLR Code and under other laws viz. Act of 1958, Mamlatdar's Courts Act, 1906, The Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, the Maharashtra Zilla Parishads And Panchayat Samitis Act, 1961 and so on. Considering the powers, duties and functions of the revenue officers, Section 13 provides for delegation of powers for implementation

of provisions of the MLR Code as also the other laws. If the delegation of powers is to be extended to other laws, the phraseology, "laws for the time being in force", would necessarily mean the law in force from time to time and not the laws in force only at a fixed point of time i.e. the date on which the notification was published, particularly when the subsequent laws or amendments do not provide for special qualification that would preclude/forbid Additional Commissioner to exercise the powers of Commissioner.

18. The clue for such an interpretation can be taken from the judgment of the Supreme Court in the case of *Management of M.C.D. v. Prem Chand Gupta*, AIR 2000 SC 454, wherein the Supreme Court expressly rejected a similar argument that for construing regulation of conditions of service, only relevant rules in force at that time must be looked into. It was held that the phrase "rules for the time being in force" occurring in Regulation 4(1) of Delhi Municipal Corporation Service Regulations of 1959, means rules in force from time to time and not rules in force only at first point of time in the year 1959, when service regulations are promulgated.

19. Thus, the "laws for the time being in force" would mean the laws in force from time to time and not laws in force only at first point of time. That being so, the argument that subsequent to amendment in the year 2018, the Additional Commissioner has no powers to entertain the appeal under Section 16(2) of the Act of 1958, is without any substance and is accordingly rejected.

20. Accordingly, and for the purpose of clarification, it is hereby held that even after amendment to Section 16(2) of the Act of 1958, the powers of Commissioner stands delegated to the Additional Commissioner by virtue of Government Notification dated 20.04.1977.

21. On merit, the common ground for disqualification of respective respondent No.2, is that they have failed to pay taxes due to Gram Panchayat within three months from the date of demand.

22. For this purpose, I will refer to the facts of Writ Petition No.1783/2023. The tax invoice was dated 18.06.2021 amounting to Rs.1238/- (page 25). The copies of tax invoices were served on respondent No.2 on 18.06.2021. Tax has been, however, paid on 12.10.2021 i.e. after about 115 days. The Collector, Chandrapur, therefore, had passed an order of disqualification under Section 14(1) (h) of the Act of 1958.

23. This order was challenged in terms of Section 16(2) of the Act of 1958. Additional Commissioner has relied upon the affidavit of the employee of Gram Panchayat which was filed belatedly. The employee stated that when he had distributed the tax invoices to the petitioner, the petitioner had not written date below signature. The employee has further stated that Secretary of Gram Panchayat had later on called him at his house and instructed him to write a date on the backside of the invoice and accordingly, he has written the date – 18.06.2021. The Additional Commissioner has then observed that the Collector

has not taken cognizance of this evidence. He further noted that had the employee made false statement, he would have been removed from the service but has been not removed. Thus, the Commissioner found substance in the affidavit of the employee. The Commissioner has also noted that the signature and the date bear different inks. Accordingly, the Additional Commissioner took a view that it is not possible to ascertain the exact date when the tax invoices were served on the petitioner. The appeal was accordingly allowed by setting aside the order of Collector.

24. The learned counsel for the petitioner submits that the Additional Commissioner lost sight of the fact that the Peon, who has been examined, is a close relative of respondent No. 2. The counsel for respondent No.2, is the one who has identified him below affidavit. He further submits that the Additional Commissioner has also ignored the report dated 24.05.2022 filed by the Secretary stating therein the true and correct facts which indicate that the respondent No. 2 has failed to pay the taxes within stipulated time.

25. The counsel further submits that the inquiry under Section 16 is summary in nature and, therefore, is to be decided expeditiously on the basis of documents placed on record and not by permitting the parties to lead evidence. In support, he has relied upon judgment passed by the coordinate Bench of this Court in the case of *Rahul Raju Kulsange .Vs. Additional Collector, Nagpur and Ors.* 2022 (2) Mh.L.J.555, wherein this Court taking stock of various judgment has held thus:

"15. It is, thus, apparent, a plain reading of the language of section 16(2) and the proviso thereto, of the M.V.P. Act, would indicate that the enquiry under section 16(2) of the M.V.P. Act, has to be summary in nature restricted to the observations of the principles of natural justice and cannot be converted into an enquiry of an adversarial nature, requiring evidence to be led by permitting parties and witnesses to be examined and cross-examined, by reading into it such a requirement. Such a concept, would be totally alien to the nature of enquiry, as contemplated under section 16 of the M.V.P. Act as an enquiry of an adversarial nature was not intentionally provided by the legislature while enacting section 16 of the M.V.P. Act, though it was aware, that the disqualification would result, in denial of a right vested in the elected member, due to his election.

16 & 17.

18. In my considered opinion, the issue as regards the nature of enquiry under section 16 of the M.V.P. Act, has been considered and decided in *Vishwas Laxman Bhagat (supra)*, which holds that it is summary in nature and the argument that the Collector while following the principles of natural justice would be bound to record evidence and give an opportunity to the other side to rebut the same, has been rejected, which is a judgment of the learned Division Bench of this Court, which has not been brought to the notice of the Courts, which have rendered the judgment in *Lalita, Hanumant Sahebrao Patil, Mandabai (supra)*. The Courts

rendering these judgments were also not called to dilate upon the nature of enquiry to be conducted under section 16(2) of the M.V.P. Act and therefore could be said to be per incuriam to Vishwas Laxman Bhagat (supra). In so far as Vivek (supra) is concerned, which is earlier in point of time, the view taken in Vivek (supra) being that of a learned Division Bench of this Court, shall prevail. The leading of evidence, as indicated in these judgments, thus has to be construed as filing of documents, substantiating the plea raised for disqualification, and the defence taken thereto, and not otherwise.”

26. Thus, the Court has held that nature of inquiry under Section 16 of the Act of 1958 is summary in nature and cannot be converted into an inquiry of adversarial nature requiring evidence to be led by permitting the parties and witnesses to be examined and cross-examined.

27. In the present case, the Additional Commissioner has relied upon affidavit of Peon, which can be said to be an evidence led in support of case of respondent No.2. Firstly, no such evidence could be led in terms of judgment in Rahul Kulsange’s case and secondly, if at all the evidence was to be considered, the petitioners ought to be given an opportunity to cross-examine the said witness. The Additional Commissioner has ignored this position of law. He has further not taken into account the report submitted by Secretary of Gram Panchayat. Thus, his order is not sustainable.

28. At the same time, the order passed by Collector also does not indicate that the statement made by the Peon on affidavit was considered. The Collector may refuse to accept the evidence but there has to be finding with reasons for the same because if what has been said by the Peon is correct then not only that he will attract penal action for tampering with the record of Gram Panchayat viz. tax invoices where he has inserted date below the signature of the recipient, but also that the respondent may not be guilty of evading tax or of not paying same within stipulated time. The matter, therefore, will have to be relegated back to the Collector.

29. Resultantly, the Writ Petitions are partly allowed. Orders dated 18.01.2023 passed by Additional Commissioner, Nagpur in V.P.A.Nos.28/2022-23, 27/2022-23, 26/2022-23 and 25/2022-23 are quashed and set aside. Orders dated 10.10.2022, passed by Collector, Chandrapur in Gram Panchayat Case Nos.6/2022, 1/2022, 4/2022 and 5/2022 of mouja Kaleta, Tq. Brahmapuri, Dist. Chandrapur set aside. Gram Panchayat Case Nos.6/2022, 1/2022, 4/2022 and 5/2022 are restored on the file of Collector, Chandrapur for consideration afresh, in accordance with law and in the light of what has been said in the body of order.

Parties shall appear before the Collector, Chandrapur on 26.09.2024.

Rule is disposed of in the above terms. No order as to costs.