
(2009) 12 BOM CK 0088

In the Bombay High Court

Case No : Letters Patent Appeal No. 482 of 2009 in Writ Petition No. 4463 of 2008

Mohd. Izaz Abdul Rafique

APPELLANT

Vs

Additional Commissioner and Others

RESPONDENT

Date of Decision : 02-12-2009

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 182, 182(1), 182(4), 182(5)

Citation : (2010) 2 ALLMR 355 : (2010) 1 BomCR 77

Hon'ble Judges : A.R. Joshi, J;A.H. Joshi, J

Bench : Division Bench

Advocate : J.B. Kasat, in Letters Patent Appeal No. 482 of 2009 in Writ Petition No. 4463 of 2008, Letters Patent Appeal No. 485 of 2009 in Writ Petition No. 4462 of 2008 and Letters Patent Appeal No. 528 of 2009 in Writ Petition No. 4461 of 2008, for the Appellant; D.B. Yengal, Asstt. Govt. Pleader for respondent nos. 1 to 3, 6, 8 in Letters Patent Appeal No. 482 of 2009 in Writ Petition No. 4463 of 2008, Letters Patent Appeal No. 485 of 2009 in Writ Petition No. 4462 of 2008 and Letters Patent Appeal No. 528 of 2009 in Writ Petition No. 4461 of 2008, for the Respondent

Final Decision : Dismissed

Judgement

A.H. Joshi, J.—In view that the pleadings are complete, appeals are taken up for hearing.

2. Heard learned Adv. Mr. J.B. Kasat for the appellants and learned Asstt. Govt. Pleader for respondents concerned. Perused the record.

3. Orders challenged in these appeals are passed by learned Single Judge in various Writ Petitions. The question which is argued is common in all appeals and, therefore, all these appeals are heard and decided by a common judgment.

4. The point, which is stressed, as was done before Single Judge, is:

As to whether Shri S.L. Ahire, Deputy Commissioner [Employment Guarantee

Scheme], Amravati, has powers to pass orders for deciding the appeal, though he was put into charge of the post of Additional Commissioner, Amravati?

5. Bone of contention is that the order dated 29th September, 2008 sanctioning leave to the Additional Commissioner does not result in appointment of Shri S.L. Ahire, Deputy Commissioner [EGS], as Additional Commissioner.

6. The foundation of the submission is that the powers of Commissioner were delegated by the State Govt., to the Additional Commissioner. Since the Additional Commissioner was not in the office, the cases were decided by Deputy Commissioner Shri S.L. Ahire. According to the appellants, as Shri Ahire was never appointed as Additional Commissioner, the orders passed by him while he was holding additional charge of the post of Additional Commissioner are, in fact, orders passed by a Deputy Commissioner, in whom the powers are not vested or delegated and, therefore, orders passed by him are passed without powers and are without jurisdiction.

7. It is, therefore, urged that the orders subject-matter are passed by a Deputy Commissioner, and not by Additional Commissioner.

8. It is also not in dispute that Shri S.L. Ahire was put into additional charge of the office held by Shri S.G. Malakollikar [the incumbent holding the post of Additional Commissioner] by order dated 29th September, 2008.

9. The appellants are adhering to the designation of Shri S.L. Ahire, Deputy Commissioner [EGS], Amravati, ignoring the fact that Shri Ahire was put into charge held by Shri S.G. Malakollikar unrestrictedly.

10. Plain reading of the order dated 29th September, 2008, by which Shri S.L. Ahire, Deputy Commissioner [EGS] was directed to hold additional charge of the post held by Shri Malakollikar reveals that it did not prevent Shri S.L. Ahire from performing any functions.

11. The challenge, which is based on contention that the orders, which were impugned in the Writ Petitions, were passed by a Deputy Commissioner, and not Additional Commissioner is, thus, based upon a fiction that the Deputy Commissioner has no power and capacity to function as Additional Commissioner in spite of the fact that he was put into the charge of the said post.

12. Next point of challenge that is argued is based on Section 182 of the Bombay Village Panchayats Act.

13. According to the appellants, Section 182 of the Bombay Village Panchayats Act provides for delegation of powers by the Commissioner or Collector to an officer not below the rank of Mamlatdar, Tahsildar, Naib-Tahsildar or Mahalkari, and subject to general or special orders of the State Govt., however, such delegation has to be done by a notification in the Official Gazette. Based on this provision of law, learned Adv., for the appellants has argued that Section 182(1) contemplates a notification in the Official Gazette.

14. Appellants further urge that the posting of Shri Ahire with charge of Additional Commissioner is alternative to delegation which has not been notified in Official Gazette, and it is, therefore, ultra vires and exercise of powers by him is without jurisdiction.

15. This Court has scrutinized the submission, based on Section 182 of the Bombay Village Panchayats Act. The text of Section 182 can be simplified in following manner:

Section 182(1):

[1] State Govt. can delegate its powers.

[2] Delegation can be done to Commissioner or any other officer.

[3] The delegation has to be by Official Gazette.

Section 182(4):

[1] Commissioner or Collector may delegate the powers.

[2] The delegation shall not be done to an officer below the rank of Mamlatdar, Tahsildar, Naib-Tahsildar or Mahalkari.

Section 182(5):

[1] Chief Executive Officer may delegate any of his powers.

[2] Delegation can be done to any officer working under Zilla Parishad.

[3] Delegation can be in relation to powers exercisable by him under the Act.

16. It is pertinent to note that barring a Gazette Notification, which is prescribed u/s 182(1), other Sub-sections, namely 182(4) and 182(5), do not prescribe any notification of delegation in the official gazette.

17. What emerges from Section 182(1) as well as Section 182(4) is that Section 182(4) permits delegation of powers exercisable by Commissioner or Collector under the Act. Law does not explicitly make any provision as to vesting of powers already done with Additional Commissioner.

18. It is seen from undisputed record that the entrustment of charge of the post of Additional Commissioner to Shri S.L. Ahire, Dy. Commissioner [EGS] is done by a Memorandum issued by the State Govt. It is not an order of delegation either by the Commissioner or by the Additional Commissioner himself.

19. The contention that a Dy. Commissioner does not have power by virtue of said designation and post, is perfectly legal. It is, however, clear that Shri Ahire, Dy. Commissioner, did not on his own motion suo moto take the reins of the charge of the post of Additional Commissioner.

20. It is vivid that Shri S.L. Ahire, Dy. Commissioner, was officially put into charge of the post of Additional Commissioner. There were no barriers on his

exercise of powers, and so long he was holding the charge of the post, he was for all purposes Additional Commissioner, equipped with all legal powers, functions, duties, jurisdiction etc.

21. It is not shown that for appointing an individual as Additional Commissioner, or for asking to hold charge of the said post, a formal notification in the Official Gazette is required.

22. It is not in dispute that the Office of Additional Commissioner do not vest in a particular individual as a persona designata.

23. Therefore, the case at hand cannot be regarded to be a case of delegation of powers by Additional Commissioner or Commissioner, or even by the State Govt.

24. The technicality relied upon may be a submission full of ingenuity, yet does not have legal foundation.

25. In these premises, appeals have no merit, and are rejected with costs.