
(2008) 03 BOM CK 0054
In the Bombay High Court
Case No : Writ Petition No. 1310 of 2008

Pushpa Waghade

APPELLANT

Vs

Additional Commissioner and Others

RESPONDENT

Date of Decision : 24-03-2008

Acts Referred:

Citation : (2008) 5 MhLj 104

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

Bench : Single Bench

Advocate : A.V. Gawande, for the Appellant; P.B. Deshmukh, for respondent Nos. 4 to 9 and S.B. Ahirkar, AGP for respondent Nos. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

A.H. Joshi, J.—Rule. Rule is made returnable and is heard by consent.

2. The petitioner is challenging the order passed by the Additional Commissioner, Amravati Division, Amravati, in appeal filed by the petitioner challenging the order of the Collector rejecting the dispute, and upholding motion of no confidence.

3. The challenge as argued, and spelt out in the petition, can be summarized as under:

(a) While issuing notice by the Tahasildar to the members of special meeting, mandatory procedure laid down under Rule 2(2) of Sarpanch and Up-Sarpanch Vote of No Confidence Rules has not been followed inasmuch as annexure of requisition notice was not provided to the petitioner, and thus on this count alone, the order is vitiated.

(b) The notices of the meeting has not been served properly to the members and more particularly to the petitioner as per provisions of relevant rules resulting in depriving the petitioner of the opportunity of mustering the support and removing the misunderstanding of the members, and hence, the motion is

carried by violating the principle of natural justice.

(c) That the order is passed by the Officer who is not appointed as Additional Commissioner, who is rather holding the post of Dy. Commissioner Revenue substantively, and is only "in-charge officer." Hence, the order is non est being passed under sub-delegated powers.

As to legality of service of notice:

4. The grievance as is that is spelt out from the contents of the dispute raised before the Collector that "the notice as required under Sub-rule (1) of Rule 2 has not been served".

5. It is seen from the perusal of the Annexure-A that the intention to initiate the motion of no confidence is duly disclosed. The reasons have been assigned. It has been addressed to Tahasildar and signed by the six persons.

6. It is seen that any objection has not been raised or agitated relating to contents and form of Annexure-A.

7. It is seen from Annexure-B that it calls upon the petitioner to attend the meeting of Panchayat on 17-11-2001 at 1 p.m., convened to prove the vote of No Confidence Motion.

8. It is alleged that this notice is not in the proper form.

9. On perusal of Annexure-B, it is seen that there is a foot note which reads to the effect "SAHAPATRA : NOTICE", in vernacular. This fact is not challenged in the dispute which was raised before the Collector or even in present petition. It is only orally urged that the copy of notice of vote of No Confidence Motion is not annexed.

10. The manner in which the challenge is raised before the Collector can be spelt out from ground No. iv reads as follows:

That as per the mandatory provisions of the Bombay Village Panchayat Act, it is incumbent on the part of the respondent No. 1 that the notice of special meeting for motion of no confidence is to be given in the prescribed manner, however, in the instant case the notice of special meeting is not in the prescribed manner and more so is without any reasons and agenda of the meeting. Thus, on this count also the impugned resolution of no confidence against the appellant is liable to be quashed and set aside.

(Quoted from page 23 of the Writ Petition Paper Book)

11. Through this ground, all that the petitioner urges is that the notice of special meeting of vote of No Confidence Motion has to be given in the "prescribed manner" however, that the notice is "not given in the prescribed manner".

12. The ground as raised describes adjectively. The pleadings do not lend and provide factual statement to support the challenge to the effect that the

particular document i.e. copy of notice of motion was not given.

13. A vague averment that the notice has not been given "in accordance with" law would attribute conclusion, but it has to be based on the specific narration of factual foundation, which is totally missing.

14. It can be seen from the grounds (B) and (C) raised in appeal before the Additional Commissioner, that the same deficient form and style of pleading has been repeated. In the result, what is done is to plead merely conclusions or inferences that too vaguely and in the form of adjectives, without averring factual foundation of narration of deficiencies on facts.

As to Delegation of Powers:

15. Insofar as the aspect of sub-delegation is concerned, the petitioner has submitted before this Court that the Divisional Commissioner is the authority empowered to hear appeal under Bombay Village Panchayat Act.

16. It is admitted that the Additional Commissioner has been vested with the powers, and if it be so who has exercised this power of delegation, which according to the petitioner is a delegation.

17. It is not shown as to whether the Additional Commissioner has been vested with the powers or has been delegated with powers. Since the petitioner urges that Additional Commissioner is himself a delegatee, it could have been convenient rather only way to prove the point urged by production of copies of notifications by which the delegation to Additional Commissioner, is allegedly done. The petitioner has not done so, and yet he chooses to be fervent only in oral arguments.

18. Next allegation is that the exercise of powers by a person who is in- charge amounts to delegation by a Officer whose duties the in-charge Officer is performing.

19. On the basis of self made assumption that the powers have been delegated to the Additional Commissioner, it is urged that "an in-charge Officer" is not empowered to act "furtherance to the powers allegedly delegated or even vested with the original Officer" charge of whose functions is being exercised by person/officer acting while "in-charge".

20. No material is placed on record to suggest that the order was passed by the Additional Commissioner who was not authorized to act as Additional Commissioner. Orders of appointing or authorizing him to act as an in-charge too are not placed on record.

21. Reading of the impugned order reveals that it has been passed by Additional Commissioner. The signatory has signed as the Additional Commissioner, and there are no allegations made in the petition that he was not seen appointed or authorized to act as Additional Commissioner.

22. It is not a case that the delegation or vesting of powers is by "persona designata". Vesting of powers is thus, liable to be regarded as ex officio in absence of evidence to the contrary.

23. In the light of the above discussion, the conclusions which emerge are that the petitioner has failed even to barely plead much less proved exact deficiency or short fall in the notice which would render the notice of No Confidence Motion illegal and would vitiate the motion.

Presumption of actions taken in Routine Official Course:

24. In view of the petitioner's failure to bring material on record to the contrary, the order passed by in-charge Additional Commissioner for all purposes will have to be construed to be an action taken in good faith and an order passed in due course of performance of duties, and due authority of law. Absence of authority cannot be presumed. The actions taken by the Public Officer in routine official course have to be presumed to be passed according to law. This presumption would be rebuttable, however, in absence of material to the contrary being sought and brought on record, the proposition that there is no authority cannot be accepted just for the sake of asking. The petitioner could have used provision of Right to Information Act, and secured copies of relevant orders, and either given up the challenge or if found worth could have pressed those on proper foundation.

25. The practice of arguing the points without foundation needs to be deprecated. The habit of arguing and furnishing as such prepositions without prior exploration of facts, and without foundation of facts and documents is a practice or habit which results in wrestling time of Court, and needs to be deprecated.

Conclusions:

26. That all is done is the bare description in the nature of adjectives and the allegations are totally devoid of description of the deficiency on facts.

27. The point of delegation is taken as a chance argument without shouldering the responsibility of proper pleading and without discharging the burden to prove it.

28. The grievance as to delegation is also argued and pressed with vagueness, and is not even academic in nature. It is not proved that the delegation is actually done. In these premises, petition finds no merit and it is dismissed with costs.