



Sonam

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.533 OF 2024

1. Mr. Rocque Noel Fernandez,
Son of late Alexio Fernandez,
Aged 65 years, Indian National,
R/o. H. No. 405/7, Vaiguin Waddo,
Nachinola, Bardez Goa.

2. Mr. Satish Govekar,
Son of Suresh Govekar,
Aged 50 years. Indian National,
R/o. I. No. 140/1, Jaidev Waddo,
Nachinola, Bardez Goa. ... PETITIONERS

Versus

1. Mr. Freddy Arcanjo Alfredo Fernandes
@Freddy Fernandes Presently Sarpanch of
Village Panchayat of Nachinola,
Resident of H. No. 453, Vaigin Waddo,
Nachinola, Bardez Goa. 403508.

2. Ms. Trupti R. Bandokar,
Ex-Sarpanch of Village Panchayat of Nachinola,
Village Panchayat of Nachinola,
Nachinola, Bardez Goa. 403508. ... RESPONDENTS

Mr. Shivraj Gaonkar with Mr. Prabhav Pravin Sirvoicar,
Advocates for the Petitioners.

Mr. Ashwin D. Bhobe with Mr. Rohit Frias and Ms. Shaizeen Shaikh, Advocates for Respondent No. 1

CORAM:- BHARAT P. DESHPANDE, J.

DATED :- 29th AUGUST, 2024.

ORAL JUDGMENT:

1. Rule.

2. Rule is made returnable forthwith. Matter is taken up for final disposal at the admission stage itself with the consent of the parties.

3. Present petition is filed challenging the order passed by the Revisional Court dated 26.04.2024 thereby remanding the matter to the Director of Panchayats to file proceedings as provided under Section 50 of the Goa Panchayat Raj Act, 1994 and after giving opportunity to both sides, decided the matter.

4. Petitioner filed proceedings before the Director of Panchayats challenging the violations of provisions of section 50 of the Goa Panchayat Raj Act, 1994 by the

Respondents being Sarpanch and Deputy Sarpanch. In the said proceedings, Respondents appeared and raised objection regarding mandate of the proceedings claiming that the same are infructuos. The Additional Director of Panchayats, disposed of the said proceedings by the order dated 13.06.2023, which the Petitioners challenged before the Revisional Court under Section 201-B of the Goa Panchayat Raj Act, 1994. After hearing the parties, the Revisional Court observed that there are defects in the notice issued to the Respondents at the initial stage itself and that such defects would go to the root of the matter.

5. The learned Revisional Court observed that the impugned order needs to be quashed and set aside and matter needs to be remanded to the Additional Director of Panchayats to follow mandate of Section 50 of the Goa Panchayat Raj Act, 1994. The Petitioners being aggrieved by the said order, preferred present petition.

6. Mr. Gaonkar would submit that first of all, the Respondents did not raise any objection with regard to prejudice or violations to principles of natural justice in compliance of no show cause notice being issued to them. He submits that Revisional Court took this issue on its own and passed the impugned order which is not permissible, as Respondents failed to raise such issue.

7. Mr. Gaonkar would submit that the Revisional Court has misinterpreted the observations of the Division Bench of this Court in the case of *Querobino Gomes v/s State of Goa and 3 ors* in Writ Petition No. 16/2001 decided on 15/1/2002. He submits that import of Section 50(4) would clearly go to show that the show cause notice referred therein is to be issued only if the concerned authority comes to the conclusion that the misconduct is proved. There is no question of issuing show cause notice if the Applicants failed to show misconduct on the part of the Respondents.

8. Mr. Gaonkar while placing reliance on the case of *State Bank of Patiala and others versus S. K. Sharma (1996) 3 SCC, 364*, would submit that the question of prejudice is required to be disclosed for the purpose of following the principles of natural justice and since the Respondents did not file any reply nor raised any aspect of prejudice for not issuing the show cause notice, such aspect ought not to have been considered by the Revisional Court on its own motion.

9. Rival contentions fall for determination.

10. Provisions of Section 50 of the Goa Panchayat Raj Act, 1994, reads thus:

“ 50. Resignation or Removal of Sarpanch or Deputy Sarpanch.—(1) The Sarpanch of the Panchayat may resign his office by writing under his hand addressed to the Director and the Deputy Sarpanch of the Panchayat may resign his office by writing under his hand addressed to the Sarpanch and in the absence of the Sarpanch to the Director.

(2) Every Sarpanch or Deputy Sarpanch of the Panchayat shall be deemed to have vacated his office forthwith if he ceases to be a member of the

Panchayat.

(3) Every resignation under sub-section (1) shall take effect on the expiry of ten days from the date of its receipt by the Director or the Sarpanch as the case may be, unless within the period of ten days he withdraws such resignation by writing under his hand.

(4) Every Sarpanch or Deputy Sarpanch of a Panchayat shall, after an opportunity is afforded for hearing him, be removable from his office as Sarpanch or Deputy Sarpanch by the Director for being persistently remiss in the discharge of his duties or misconducting himself or misuses or abuses the powers or exercising the powers not expressly vested in him by or under the Act or the rules framed thereunder and the Sarpanch or Deputy Sarpanch so removed who does not cease to be a member under sub--section (2) shall not be eligible for re-election as Sarpanch or Deputy Sarpanch for such period not exceeding five years as the Director may specify in his order.

(5) A Sarpanch or Deputy Sarpanch removed from his office under sub-section (4) may also be removed by the Director from the membership of the Panchayat for such period not exceeding five years as the Director may specify in his order.”

11. Perusal of the above provisions, would go to show that it deals with removal or disqualification of the Sarpanch or Deputy Sarpanch. Section 50(4) deals with removal of Sarpanch or Deputy Sarpanch by the Director of Panchayats

on the ground of persistently remmis in the discharge of his duties or mis-conducting himself or misuses or abuses the powers or exercising powers not expressly vested in him under the Act.

12. Sub Section (5) would thus provide removal of such Sarpanch or Deputy Sarpanch from the office could be for the period of 5 years as specified in the order.

13. The above provision came up for consideration before the Division Bench in the case of *Querobino Gomes* (supra) wherein Petitioner being elected as Sarpanch received notice from the Director of Panchayats regarding filing of the complaint against him under Section 50 of the Goa Panchayat Raj Act, 1994 and to call him to remain present in the office by the Director. It was also his case that at no point of time he was served with any notice to show cause why he should not be removed from the office and as to why he should not be eligible to be re-elected as Sarpanch.

14. In this context and after considering provisions of sub Section 4 and 5 of Section 50 of the Goa Panchayat Raj Act, 1994 it is observed in paragraph No. 12 as under:

“12. The question arises whether the show cause notice itself must also indicate the period of disqualification and should such disclosure of the period of disqualification be after coming to the conclusion that the party is guilty or can the same be imposed simultaneously with the serving of the show cause notice. Sub-section (4) of Section 50 seems to imply that the period disqualification to be

imposed must be simultaneous with the show cause notice and the party should be informed of the period for which he is sought to be removed and it seems therefore that the reasonable opportunity to be given must also include notice to the party to whom the show cause notice is issued that he is to be disqualified or made ineligible for the period for which the show cause notice is required. In the present case, no such opportunity appears to have been given to the petitioner. Hence the petitioner who filed reply to the show cause notice could not complain about the period of disqualification on account of the failure of the first respondent to disclose the term for which he was to be disqualified and this has resulted in hampering his defence. Thus it appears that there was failure on the part of the first respondent to comply with the requirement of reasonable opportunity including the notice of removal and the period of removal from the Office as Sarpanch. The duty to state reasons is normally

held to be mandatory and therefore decision not supported by adequate reasons requires to be quashed and remitted to the deciding authority. The Apex Court in Shri Pragdas Umar Vaishya V. Union of India and others (1967 Mah.L.J.981) noted that an administrative order of quasi-judicial authority which has civil consequences, must disclose the reasons for his decision. If the reasons are not given, the order is liable to be quashed.”

15. The observations of the Division Bench would clearly go to show that the provisions of Section 50(4) mandate that simultaneous notice/show cause notice is required to be issued to the Sarpanch or Deputy Sarpanch disclosing the period of disqualification which could be mostly for misconduct or other charges. The above contention is squarely binding this Court as well as the Trial Court.

16. Learned Revisional Court in paragraph No. 29 to 32, discussed about observations of the Division Bench and rightly observed that the notice/show cause notice is required to be given simultaneously. It is further observed that if such notice is not given, the entire proceeding would stand vitiated.

17. Contention of Mr. Gaonkar is that this aspect was not raised by the Respondents and even before the Revisional Court no issue with regard to prejudice was raised and therefore, Revisional Court was wrong in taking up such aspect in the case of *State Bank of Patiala and others* (supra).

18. The observations of the Apex Court after considering landmark decision in the case of *Tripathi V/s Supreme Court of India* clearly describe different types of options available to the Court and prejudice caused to the respective parties in the matter. Apex Court observed that in case no show cause notice is given before dismissal of the employee, it would be a clear violation of the principles of natural justice.

19. There is no doubt that the Respondents did not raise the issue of absence of show cause notice. However, it is also clear from the records that upon receipt of the notice of the violations complained, the Respondents appeared and

raised objection to the tenability of the proceedings on the ground that it is infructuous.

20. The learned Director of Panchayats has accepted such contention. There was no question of filing any reply on merits so they did not raised aspect of non compliance of Section 50(4) specifically, with regard to the show cause notice showing period of disqualification.

21. The Petitioners by filing revision challenged the order of Director of Panchayats before the Revisional Court, demonstrating as to how the order was bad. However, the fact is clear from the impugned order that the learned Revisional Court remanded the matter to the Director of Panchayats for the purpose of compliance of Section 50 of the Goa Panchayat Raj Act, 1994 and in view of the decision of the Division Bench in the case of ***Querobino Gomes***(supra). Thus, infact the Petitioners would be having one more opportunity of challenge before the Director of Panchayats and that to after issuing show cause notice as

provided under Section 50(4) of the Goa Panchayat Raj Act, 1994. In such circumstances, the Petitioners cannot claim any illegalities or prejudice to the principle of natural justice. An opportunity is given to the Petitioners to put forth their case for the mis-conduct as well as for disqualification and accordingly, the impugned order needs no interference.

22. For the reasons discussed above, the petition stands dismissed.

23. Since, the matter is remanded to the Director of Panchayats, it is expected that the matter should be disposed of as early as possible, and within a period of 6 months of the receipt of the order of this Court.

BHARAT P. DESHPANDE, J.