

vinita

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 173 OF 2024

Mrs. Vinita Vivek Naik, Wife of Mr. Vivek Naik, 40 years of age, married, in service, Indian National and R/at H. No. 217, St. Inez, Panaji-Goa.

....Petitioner.

Versus

1. State of Goa, Through its Chief Secretary, Having office at Secretariat, Porvorim, Bardez, Goa.

2. The Director, Directorate of Panchayats, Having office at Myles High, Corporate Hub, 5th Floor, Panaji-Goa.

.....Respondents.

Mr Deepak Gaonkar with Mr Dattaraj Gawas, Advocates for the petitioner.

Ms S. Kamat, Addl. Govt. Advocate for the respondents.

CORAM:
DATE:

BHARAT P. DESHPANDE, J.
17th APRIL 2024

ORAL JUDGMENT.:

1. Rule
2. Rule is made returnable forthwith.
3. Heard finally with consent.
4. On 13.2.2024, following order was passed: -

“1. Heard Mr. Goankar, learned Counsel appearing for the Petitioner and Ms. Kamat, learned Additional Government Advocate for Respondent Nos. 1 and 2.

2. The Petitioner is challenging the impugned Order dated 03.01.2024 by which the Director of Panchayat imposed a cost of Rs.5,000/- (Rupees Five Thousand Only), purportedly in compliance of the Order passed by the Division Bench of this Court in Writ Petition No. 737/2023 dated 31.10.2023.

3. The directions issued by the Division Bench and more specifically clause (c) of para 37 of the Order dated 31.10.2023 reads thus:-

(c) The Director of Panchayats must enquire into this lapse and fix responsibility for the delay in issuing the occupancy certificate to the Petitioner upon the concerned Secretary of the Village Panchayat of Chimbhel and recover the above amount of Rs.5000/- from such Secretary and pay the same to the Village Panchayat of Chimbhel. This exercise must be completed within three months from today. The Director must comply with the principles of natural justice and fair play. The Director of Panchayats must file a compliance report in this Court within three months from today;

4. Mr. Gaonkar, learned Counsel appearing for the Petitioner would submit that the Director of Panchayat issued a Memorandum addressed to the Block Development Officer, Tiswadi Block dated 17.11.2023 directing the said Block Development Office to enquire into the matter and submit a detailed comprehensive report alongwith the findings in the matter within 7 days from the receipt of the said Memorandum. The copy of this memorandum issued was furnished to the concerned Secretary of Village Panchayat of Chimbhel which includes the Petitioner. Accordingly, the Petitioner submitted her

detailed reply to the said Memorandum.

5. Mr. Gaonkar submits that no hearing was given to the Petitioner and that no enquiry was conducted either by the Block Development Officer or by the Director of Panchayat before passing the impugned Order.

6. Ms. Kamat, learned Additional Government Advocate appearing for the Respondents submit that no report is submitted by the Block Development Officer, however, only on the basis of reply filed by the Petitioner and other Secretaries the Order was issued.

7. Prima facie, it shows that the directions issued by the Division Bench of this Court, in para 37 are not complied with. There is no inquiry conducted by the Director of Panchayat by complying with the principles of natural justice and fair play. No such inquiry was conducted by the Block Development Officer as well. Thus it shows that by passing the impugned Order the authorities failed to comply with the directions issued by this Court in Writ Petition No.737/2023.

8. Mr. Gaonkar submits that even the Director of Panchayat exonerated the Secretary who was actually responsible for the delay in issuance of occupancy certificate by the perverse findings and imposed cost on the Petitioner.

9. In these circumstances, issue notice to the Respondent No. 2 directing him to file reply/affidavit as to why proceedings under the Contempt of Court should not be initiated against the Director of Panchayat and the Block Development Officer for not following the directions issued in Writ Petition No. 737/2023.

10. Reply to be filed within a period of two weeks.

11. Mr. Gaonkar submits that the Petitioner will deposit the amount of Rs. 5000/- imposed as cost under protest with the Panchayat within one week.

12. Petitioner is permitted to deposit such costs under protest and the same shall be subject to decision of

this Court.

13. Stand over to 28.02.2024.”

5. Respondent no.2, Director of Panchayat was asked to file an affidavit seeking explanation as to why proceedings under contempt should not be initiated for not following directions in Writ Petition No. 737 of 2023.

6. Though reply affidavit is filed by the Director of Panchayat, it is clear from the said reply that directions issued by the Division Bench of this Court in Writ Petition no.737 of 2023 decided on 31.10.2023 and more particularly in paragraph no. 37(c) are not at all complied with.

7. Directions issued by the Division Bench in paragraph 37 in the said Writ Petitioner reads as under:-

“37. Accordingly, we dispose of this petition by making the following order:

(a) The Secretary of the Village Panchayat of Chimbel (R-2) is directed to issue an occupancy certificate, as undertaken by him to the Petitioner within three days;

(b) The Village Panchayat of Chimbel must pay costs of ₹5000/- to the Petitioner within 15 days;

(c) The Director of Panchayats must enquire into this lapse and fix responsibility for the delay in issuing the occupancy certificate to the Petitioner

upon the concerned Secretary of the Village Panchayat of Chimbél and recover the above amount of ₹5000/- from such Secretary and pay the same to the Village Panchayat of Chimbél. This exercise must be completed within three months from today. The Director must comply with the principles of natural justice and fair play. The Director of Panchayats must file a compliance report in this Court within three months from today;

(d) The Director of Panchayats is directed to issue a Circular to all the Panchayats in the State of Goa apprising them of the provisions of the Goa (Right of Citizens to Time-Bound Delivery of Public Services) Act, 2013 and the notification issued thereunder. The Circular must incorporate the relevant extract from the notification concerning the Panchayats; this is to ensure that public services are rendered to the people of Goa within the timelines prescribed under the said Act;

(e) The Director of Municipal Administration must also issue a Circular in similar terms as above to all the Municipal Councils and Corporations in the State of Goa for the effective implementation of the provisions of the Goa (Right of Citizens to Time-Bound Delivery of Public Services) Act, 2013 and the notification issued thereunder;

(f) The Director of Panchayats and the Director of Municipal Administration must issue the above Circulars within three months from today and file compliance reports in this Court.”

8. Learned counsel Mr. Gaonkar appearing for the petitioner submits that memorandum was issued by Director of Panchayat dated 17.11.2023 addressed to Block Development Officer of Tiswadi and copy was forwarded to the petitioner, with a direction to submit explanation to the Block Development Officer. He submits that accordingly petitioner has submitted explanation to the Block Development Officer on 27.11.2023 stating therein that the petitioner was not working as secretary at the relevant time. However, without conducting any inquiry as directed by the Division Bench of this Court and without giving any opportunity of being heard, the impugned order was passed on 3.1.2024 thereby directing the petitioner to pay an amount of Rs.5,000/- .

9. Reply filed by respondent no.2 would clearly go to show that directions issued by the Division Bench were not complied with in later and spirit and only a farce has been conducted to show that notice is issued and explanation is called.

10. Memorandum dated 17.11.2023 was not directly issued to the petitioner, however it was addressed to Block Development Officer. Similarly petitioner was not called upon for any hearing before the Director of Panchayat. Reply filed by the petitioner and address to Block Development Officer was only considered for the purpose of passing of impugned order. This itself shows that even the Director

of Panchayat failed to adhere to the directions issued by this Court

11. Inquiry which was required to be conducted by the Director of Panchayat was in respect of dereliction of duties by the secretary which were pointed out before the Division Bench of this Court while deciding the Writ Petition No. ⁷³⁷373 of 2023. Since such dereliction of duties was on the part of the secretary of the panchayat and since no action was taken against such officer, who was not party to the said proceedings, directions were given to inquire into the lapse and fix responsibility for the delay in issuing the occupancy certificate. Thus Director of Panchayat was duty bound to inquire into and fix the responsibility.

12. Such directions were issued to respondent no.2. It was necessary for the Director to adhere to the principles of natural justice while conducting inquiry and by giving an opportunity to the petitioner or any other officer concerned before passing of the order. However, impugned order clearly goes to show that no opportunity was given except seeking explanation. Besides explanation given by the petitioner has not been considered at all.

13. Reply affidavit though filed seeking apology from this Court for not following directions, it is clear from the conduct of the respondent no.2 that such directions were taken too casually and no opportunity was given to the petitioner of hearing before passing of

the order.

14. Accordingly, impugned order needs interference.

15. However, since, directions were given by the Division Bench, respondent no.2 is duty bound to comply with such directions. Accordingly respondent no. 2 is further directed to comply with paragraph 37(c) of the order passed by the Division Bench.

16. However, it is made clear that such directions were not complied with and only farce is made about inquiry. Hence, Registry is directed to place the matter before the Division Bench in Writ Petition No.⁷³⁷~~373~~ of 2023 for further direction and compliance, as there is clear disobedience on the part of respondent no.2.

17. The impugned order is hereby quashed and set aside. Respondent no. 2 must comply with the directions found in Writ Petition no.⁷³⁷~~373~~ of 2023 and more particularly in paragraph 37(c) of the order. It is needless to say that while inquiring into the matter, respondent no. 2 shall follow principles of natural justice and fair play.

18. Rule is made absolute in above terms.

19. Registry to place the copy of this order before the Division Bench in Writ Petition No. ⁷³⁷~~373~~ of 2023 for the purpose of further directions.

20. Amount which has been deposited by the petitioner before the village panchayat shall remain with the panchayat till the inquiry is over and if it is found that the petitioner is not at fault, director shall order for refund of such amount.

BHARAT P. DESHPANDE, J.

Corrections carried out as
per order dated 9th May
2024.

Sd/-
PA

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS
NAIK
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