

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA**LD-VC-CW- 160-2020**

Village Panchayat of Quelossim
through its Sarpanch, Mrs. Maria
Rita Souza, major, r/o. H.No.193,
Quelossim, Mormugao, Goa.

..... Petitioner.

Versus

1) State of Goa,
through its Chief Secretary,
Secretariat, Porvorim, Goa.

2) The Director,
Directorate of Panchayats,
Government of Goa,
Panaji, Goa.

3) M/s. Movaj Enterprises,
having its Regd. Office no.3,
Queens Garden,
Arunkumar Vaidya
Camp, Pune 411 001.

..... Respondents.

Mr. Nigel Costa Frias, Advocate for the Petitioner.

Mr. D. J. Pangam, Advocate General with Ms. Maria Correia,
Additional Government Advocate for Respondents No.1 and 2.

**Coram : M.S. Sonak &
Smt. M.S. Jawalkar, JJ.**

Date : 2nd November, 2020.

ORAL JUDGMENT : (Per M.S. SONAK, J.)

Heard Mr. Costa Frias for the Petitioner. Mr. D. Pangam, the learned Advocate General appears along with Ms. Maria Correia for Respondents No.1 and 2.

2. Rule. With the consent of and at the request of the learned Counsel for the parties, Rule is made returnable forthwith.

3. The challenge in this Petition is to the Memorandum dated 4/2/2020 issued by the Director of Panchayats in the context of the provisions of Section 47-B of the Goa Panchayat Raj Act, 1994 (said Act) and the Rules made thereunder.

4. The Memorandum dated 4/2/2020, which is challenged in this Petition, reads as follows :

*“ DIRECTORATE OF PANCHAYVATS
GOVERNMENT OF GOA
3rd Floor, 3rd lift, Junta House Panaji -Goa Phone no. ;
(0832) -2432826,2222586, Fax 2222863 e mail : dir-
panchagoa@NIC.IN Website : [wwwpanchayatgos.gov.in](http://www.panchayatgos.gov.in)*

No.15/22/VIG/DP/2019-20/1060 Dated :04/2/2020

MEMORANDUM

Sub: Execution of orders passed by the Higher Authorities

Attention of all Block Development Officers is drawn towards the above mentioned subject and for strict compliance as per the Goa Panchayat Raj Act 1994,

- 1. The Village Panchayats are functioning under the provisions of the Goa Panchayat Raj Act 1994 and the rules framed there under. The Director of Panchayats is the Head of the Department and is also the ex-officio Joint Secretary to the Government of Goa. By virtue of the Act, a separate Directorate of Panchayats has been set up and all the powers in respect of the Panchayati Raj have now been assigned to the Director. The Director of Panchayats exercises full control and supervision over the Panchayats through the Deputy Director of Panchayats and the Block Development Officers.*
- 2. Thus Directorate of Panchayats' oversees the entire administration of the Village Panchayats, Block Development Offices, Offices of the Dy. Director of Panchayats, Offices of Addl. Director of Panchayat North and South. In short, the Directorate of Panchayats is responsible for the effective implementation the Goa Panchayat Raj Act, 1994 and Rules Framed there under.*
- 3. There are various powers assigned to the Director, Addl. Director, Dy. Directors and Block Development Officers who exercise the same while acting as Quasi-Judicial authorities to hear the parties and pass orders as per Law. The orders passed by the higher authorities has to be executed by the Village Panchayat Secretaries as per section 47-B of the Goa Panchayat Raj Act 1994, within 30 days from the date of such orders.*
- 4. It is brought to notice of the undersigned that there are*

many orders passed by the higher authorities that remain non-executed for years causing great hardship to the litigants.

- 5. Further the courts of Deputy Director, Additional Director and Director of Panchayats hearing the parties and passing the orders should direct Village Panchayat Secretaries to execute the orders specifically and not by the village Panchayats. It is also learnt that the Village Panchayat Secretaries place such orders for necessary decision before the Panchayat bodies even after issuing orders by the competent authorities.*
- 6. Therefore to keep proper track of the orders passed by the officers and final execution of orders, the court of Addl. Directors, Dy. Directors are directed to issue copies of such order to the concerned Block Development Officers ,who in turn will monitor the execution of order as per Act. So also, a copy has to be marked to vigilance section of this directorate for information.*
- 7. Further, BDOs should direct the concerned Village Panchayat Secretaries to exercise the powers as per section 47-B of the Act to execute the orders passed by the higher authorities from time to time. Any lapse on the part of V.P Secretaries in execution of orders and directions issues by various officers will make them liable for action as per provisions of CCS(CCA) conduct Rules 1964 and appropriate action will be initiated for dereliction of duties.*

This is for strict compliance and necessary actions from all the concerned officers/officials of this Directorate

sd/-

(Narayan Gad)

Director of Panchayats,

Panaji-Coa.

To,

1) *The Block Development Officers [All]*

2) *The Village Panchayat Secretaries [All]*

Cc 1) *P.A Secretaries (Panchayats)*

2) *P.A OSD to Hon'ble Minister for Panchayats*”

5. After this Petition was instituted, the Director of Panchayats has issued a Circular dated 30/10/2020, which supersedes the Memorandum dated 4/2/2020, as well as the Addendum dated 18/9/2020, which had clarified the Memorandum dated 4/2/2020. Therefore, strictly speaking, the main relief in this Petition would either stand worked out or would not survive upon the issue of Circular dated 30/10/2020.

6. The Circular dated 30/10/2020, now issued by the Director of Panchayats in supersession of the Memorandum dated 4/2/2020 as clarified by Addendum dated 18/9/2020, reads as follows :

“ DIRECTORATE OF PANCHAYATS

GOVERNMENT OF GOA

*3rd Floor, 3rd lift, Junta House Panaji -Goa Phone no. ;
(0832) -2432826,2222586, Fax 2222863 e mail : dir-
panchagoa@NIC.IN Website : www.panchayatgos.gov.in*

No.15/22/VIG/DP/2019-20/6915 Dated : 30/10/2020

CIRCULAR

Sub: Execution of orders passed by the Higher

Authorities

In supersession of the Memorandum dated 04/02/2020, bearing No 15/22/VIG/DP/2019-20/1060 which was further clarified vide Addendum dated 18.09 2020, bearing No. 15/22/VIG/DP/2019-20/5969 the attention of all the Block Development Officers is drawn towards the guidelines enumerated herein on the abovementioned subject and for strict compliance as per the Goa Panchayat Raj Act 1994, t. The Village Panchayats are functioning under the provisions of the Goa Panchayat Raj Act 1994.

- 1. The Village Panchayats are functioning under the provisions of the Goa Panchayat Raj Act 1994 and the rules framed there under. The Director of Panchayats is the Head of the Department and is also the ex-officio Joint Secretary to the Government of Goa. By virtue of the Act, a separate Directorate of Panchayats has been set up and all the powers in respect of the Panchayati Raj have now been assigned to the Director. The Director of Panchayats exercises full control and supervision over the Panchayats through the Deputy Director of Panchayats and the Block Development Officers.*
- 2. Thus Directorate of Panchayats oversees the entire administration of the Village Panchayats, Block Development Offices, Office of the Dy. Director of Panchayats, Offices of Addl. Director of Panchayat North and South. In short, the Director of Panchayats is responsible for the effective implementation of the Goa Panchayat Raj Act, 1994 and Rules framed there.*
- 3. There are various powers assigned to the Director, Addl. Director, Dy. Directors and Block Development Officers who exercise the same while acting as Quasi-Judicial authorities to hear the parties and pass orders as per Law. The orders passed by the higher authorities has to be*

executed by the Village Panchayat Secretaries as per section 47-B of the Goa Panchayat Raj Act 1994, if the the Panchayat fails to execute the same within the time limit as specified in such orders and in case no time limit has been specified, within one month of passing such orders.

- 4. It is brought to notice of the undersigned that there are many orders passed by the higher authorities that remain non-executed for years causing great hardship to the litigants.*
- 5. Further the courts of Deputy Director, Additional Director and Director of Panchayats hearing the parties and passing the orders should direct Village Panchayat Secretaries to execute the orders specifically and not by the village Panchayats. It is also learnt that the Village Panchayat Secretaries place such orders for necessary decision before the Panchayat bodies even after issuing orders by the competent authorities.*
- 6. Therefore to keep proper track of the orders passed by the officers and final execution of orders, the court of Addl. Directors, Dy. Directors are directed to issue copies of such order to the concerned Block Development Officers, who in turn will monitor the execution of order as per Act. So also, a copy has to be marked to vigilance section of this directorate for information.*
- 7. Further, BDOs should direct the concerned Village Panchayat Secretaries to exercise the powers as per section 47-B of the Act to execute the orders passed by the higher authorities from time to time. Any lapse on the part of V.P Secretaries in execution of orders and directions issues by various officers will make them liable for action as per provisions of CCS(CCA) conduct Rules 1964 and appropriate action will be initiated for*

dereliction of duties.

8. *Notwithstanding anything contained herein above, this Memorandum shall not prevent the orders passed by the Higher Authorities from being placed before the concerned Village Panchayat to decide whether the same is required to be challenged in accordance with law.*
9. *Further it is made clear that the present Memorandum shall not affect any party's right to challenge the Order of the Higher Authority, such as the Director of Panchayats, Addl. Director of Panchayats. Dy. Directors of Panchayats and Block Development Officers, in accordance with law.*
10. *In the event any stay injunction of/as against the Orders passed by the Higher Authority, is obtained by any party from any Court of law. then the said Orders of the Higher Authority shall not be executed by the Village Panchayat Secretaries.*

This is for strict compliance and necessary action from all the concerned officers/officials of this Directorate.

This is issued with the approval of the Government.

sd/-

(Narayan Gad)

*Director of Panchayats,
Panaji-Coa.*

To,

1) The Block Development Officers [All]

2) The Village Panchayat Secretaries [All]

Cc 1) P.A to Secretary (Panchayats)

2) OSD to Hon'ble Minister for Panchayats."

7. The learned Advocate General pointed out that in many

cases, despite directions from the Director of Panchayats, Addl. Director of Panchayats, Dy. Directors of Panchayats and Block Development Officers, it was noticed that the Panchayats do not take steps for implementation of such directions though they are bound to, nor do they take out proceedings to challenge such decisions. He pointed out that as a result, it is noticed that the parties securing favourable orders are left in lurch. He pointed out that this is the main purpose in issuance of the Circular dated 30/10/2020. It was never the intent of the State in any manner to prevent the Panchayats from challenging the decisions of the Director of Panchayats, Addl. Director of Panchayats. Dy. Directors of Panchayats and Block Development Officers, in case the Panchayats were genuinely aggrieved by the same.

8. The learned Advocate General points out that clauses 5, 6 and 7 of the Circular dated 30/10/2020 take care of the grievances made by the Petitioner in the present Petition. He points out that these clauses make it clear that the Panchayats will have not only the right, but opportunity of challenging the orders made by Director of Panchayats, Addl. Director of Panchayats. Dy. Directors of Panchayats and Block Development Officers, etc., in case the Panchayats are aggrieved by such decisions.

9. Mr. Nigel Costa Frias, however, pointed out that Clauses 5

of the Circular dated 30/10/2020, can be interpreted to mean that the Secretaries would not even place the orders made by the Director of Panchayats, Addl. Director of Panchayats, Dy. Directors of Panchayats and Block Development Officers, etc. before the Panchayats in order to enable the Panchayats to decide whether such orders should be challenged or not. He, therefore, submits that this position may be clarified, so that no ambiguity would survive.

10. The learned Advocate General pointed out to the provisions in Section 47-B of the said Act, which reads as follows :

"47-B. Execution of order by the Secretary.- Notwithstanding anything contained in section 47, the Secretary shall execute the order passed by any Authority in any appeal or petition made before such Authority under the provisions of this Act or Rules framed thereunder, if the Panchayat fails to execute the same within the time limit as specified in such order and in case no time limit has been specified, within one month of passing of such order".

11. The learned Advocate General pointed out that the Panchayats are required to execute the orders made by the Director of Panchayats, Addl. Director of Panchayats, Dy. Directors of Panchayats and Block Development Officers, within the time limit as specified by such authorities in their orders. In case no time limit is specified, then such orders are required to be implemented within 30 days. Section 47-B provides that where the Panchayat fails to

execute such orders within the time limit as specified in such orders, and in case no time limit has been specified, within one month of the passing of such order, only then the orders can be executed by the Secretaries. If the circular is read and construed along with Section 47-B of the said Act, then there is really no scope for any ambiguity.

12. Be that as it may, we clarify that the Secretary must place the orders made by the Director of Panchayats, Addl. Director of Panchayats, Dy. Directors of Panchayats and Block Development Officers, etc. before the Panchayat so that the Panchayat is in a position to either comply with such orders within the period specified or within one month, if no such period is specified or within the same period, to take decision whether such orders made are to be challenged before the appropriate forum and interim orders obtained. If, however, the Panchayats do not obtain any interim reliefs within the period specified for compliance or within one month, then the Secretaries, consistent with the provisions of Section 47-B of the said Act, will have to execute such orders.

13. Further, the circular now issued itself clarifies that execution of such orders by the Secretaries will not preclude the Panchayats from challenging such orders in accordance with law and from obtaining appropriate interim reliefs, if a case is made out.

14. According to us, with the clarification as aforesaid, this Petition can be disposed of.

15. Accordingly, we dispose of the Rule in this Petition. There shall be no order as to costs.

Smt. M.S. Jawalkar, J.

M.S. Sonak, J.