

IN THE HIGH COURT OF BOMBAY AT GOA

(LD-VC-CW-134/2020)

Rui Cardoso Petitioner.

Vs

Melwyn Fernandes and ors, Respondents.

Shri A. D. Bhobe, Advocate for the petitioner.

Shri P. Sawant, Advocate for the respondent no.2.

Shri D. Pangam, Advocate General with Shri S. P. Munj, Addl. Govt. Advocate for the respondent nos.8 and 9.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 14th August 2020.

P.C.

Yesterday the matter listed, I noticed none represented the 10th respondent—the Institution of Goa Lokayukta. Earlier, in one matter, Shri S. D. Padiyar, the learned advocate, appeared for the Institution. So Shri A. D. Bhobe, the petitioner's counsel, suggested that his name be printed in the cause list so he might appear if he had been instructed. He also volunteered to inform Shri S. D. Padiyar.

2. Then, I required the Registry to print Shri S. D. Padiyar's name in the cause list and had the matter posted for today. Today, too, none appeared for the Institution. Of course, the Institution as a quasi-judicial authority need not defend its orders unless it desires to do so. It is usually a proforma party for the *certiorari* purposes.

3. First, Shri Bhobe has submitted that Shri S. D. Padiyar has informed him that he has no instructions in the matter. Later, Shri S. D.

Padiyar himself appeared and told me that he is appearing only in one matter—and that is not this.

4. Heard Shri A. D. Bhohe, the learned counsel for the petitioner, and the learned Advocate General for the State.

5. The matter concerns illegal landfilling and unauthorised construction. The Sarpanch and the panch members faced the allegations of favouring the perpetrator. Indeed, the complainant accused the Secretary of abusing his power. After alleging maladministration, the complaint has sought from the Institution of Lokayukata the following, among other, reliefs:

(1) the ACB should register a crime against the respondents for their bypassing the rules and subverting the law to favour the person that raised the legal structures.

(2) To suspend the Village Panchayat Secretary, pending investigation.

6. After exhaustively analysing the facts and the law, the Lokayukta has recommended thus:

(1) the authorities concerned should register a crime against the Panchayat Secretary and the Sarpanch at the relevant time;

(2) the authorities should also take steps to suspend the Panchayat Secretary, besides considering the initiation of disciplinary proceedings;

(3) the 8th respondent should dispose of all matters pending before him pertaining to the 5th respondent expeditiously in four months.

7. Admittedly the petitioner, the Secretary of the Grampanchayat, is not a party to the proceedings. In fact, before the learned Lokayukta,

Gramapanchayat is the first respondent; it is a legal entity in its own right. True, it has been represented by the Secretary—that is, the petitioner. But his representation is *ex officio* and does not, *prima facie*, amount to any personal appearance or representation—officially as the secretary or individually *eo nomine*. That accepted, we cannot conclude that the petitioner is a party to the proceedings.

8. The Petitioner has filed this Writ Petition primarily contending that the order impugned offends the principles of natural justice for the petitioner has never defended himself before the learned Lokayukta.

9. The learned Advocate General representing respondent nos.8 and 9, that is the State, supports the petitioner and submits that the order does violate the principles of natural justice. According to him, the authorities have already suspended the petitioner based on the Lokayukta's recommendation. They have even registered a crime in FIR No.4/2020.

10. Indeed, the learned Lokayukta had been conscious that the petitioner was not a party to the proceedings. In this context, it has observed that Shri Cardozo was the Panchayat Secretary when the illegality took place; he was not “impleaded separately and specifically as a respondent”. According to Lokayukta, Shri Cardozo has been participating in the proceedings from the very inception, and he still continues to be the Panchayat Secretary. “As the Panchayat Secretary representing the Respondent No.1, he has had enough opportunity to defend the matter and explain the illegality” allegedly committed by him. So the Lokayukta

has not felt it necessary to implead Shri Cardozo, for there is “no embargo to make recommendations against him”.

11. That said, first, based on the impugned order, the Government has already suspended the petitioner. Second, the ACB has registered a crime against him, too. In the service jurisprudence, if an employee faces an allegation of misconduct, he may be suspended even before he is put on notice and the inquiry is initiated. But as to the registration of a crime based on misconduct in service—say, for being venial—we cannot apply the same standard.

12. Throughout, the petitioner, as the Panchayat Secretary, has represented the Gramapanchayat. And the acts attributed to the Panchayat are collective ones, not imputable to the petitioner alone. So the petitioner’s representing the Gramapanchayat, *prima facie*, does not amount to his being a party to the proceedings; much less does it provide an efficacious opportunity for the petitioner to explain the charges that may have been levelled against him.

13. As is well known a person may act in different capacities. His acting in one capacity cannot be taken as sufficient representation for the charges he may have faced in a different capacity. More particularly if the allegations affect the person’s integrity, reputation, and career prospects as a whole. A Gramapanchayat getting represented through a human agency differs from one of its employees committing irregularities.

14. I, therefore, *prima facie* reckon that the impugned order offends the principles of natural justice. At any rate, the issue needs deeper examination and meanwhile the position should not become *fait accompli*.

15. Under these circumstances, there shall be a stay of further measures in Crime No. 4/2020, though the petitioner's suspension needs no interference at this stage.

For completing the pleadings, post the matter on 28.8.2020.

DAMA SESHADRI NAIDU, J.

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