

**IN THE HIGH COURT OF BOMBAY AT GOA**

LD-VC-CW-369 -2020

Virendra Shirodkar

...Petitioner

V e r s u s

Antonio Fernandes and ors.

...Respondents

Adv. Pronoy Kamat for the Petitioner.

Ms Sapna Mordekar, Addl. Government Advocate for Respondent no.10.

Adv. H. D. Naik for the Original complainant

**CORAM: DAMA SESHADRI NAIDU, J.****DATE: 18th December 2020.****ORDER:**

The petitioner is a panch member of the Village Panchayat. Until six months ago, he was the Sarpanch. The issue involves the illegal allocation of house numbers to certain disputed structures belonging to the eighth respondent. On a complaint, the learned Lokayukta adjudicated the issue and passed an order, dated 14/9/2020.

2. In that order, the Lokayukta has noted that the Sarpanch and other officer bearers, then at the helm of the affairs, entered into a conspiracy, for illegal gratification, and abused their position: illegally allotted house numbers to the eighth respondent's structures. Admittedly, the applicant was not the Sarpanch when that allotment of house numbers took place. And the learned Lokayukta did record this fact in the order.

3. As seen from the record, in para no.9 of the order, the Lokayukta observed thus :

“From the materials on record, it is apparent that Respondent no.2, the Sarpanch of Village Panchayat and Respondent no.3, the then Secretary of the Village Panchayat had entered into the conspiracy with the owner of the property obviously for illegal benefit by defrauding the provisions including the provision relating to CRZ. An appropriate criminal proceeding should be initiated against the Respondent no.2 and 3 respondent no.6 and 8.

4. Later, as to the role of the applicant, the Lokayukta has accepted that he has no role to play. But at the same time, it has observed that once a complaint received, the first applicant ought to have acted on it. In that context, the Lokayukta advised the first respondent and the other officer bearers to remedy the situation. But, in the end, the learned Lokayukta recommends thus:

“It is hereby declared under section 16A that the respondent no.1 should not continue to hold the office held by him.”

5. Shri P. Kamat, the learned counsel for the petitioner, submits that based on the Lokayukta's recommendation, the State, through the Competent Authority, has taken up the issue and notified the petitioner. On his appearance, according to Shri Kamat, the Competent Authority did not permit him to engage a counsel but allowed him to file his written submissions by 3 pm today. According to Shri Kamat, the Competent Authority is determined to pass orders without giving a proper opportunity to the petitioner. So, he wants the Court to interdict the proceedings until it

hears the matter comprehensibly once the respondents enter their appearance and place their defence on record. He also reminds me that this Court has already stayed the proceedings vis-à-vis the eight respondent.

6. Shri H. D. Naik, the learned counsel for the respondents no. 1 to 3, who are the contesting respondents, strenuously opposes any interim protection to the petitioner. According to him, the petitioner has abused the process and tried to mislead not only the Competent Authority but also this Court. To elaborate, he has submitted that all along the petitioner represented to the Competent Authority that the whole proceedings have been stayed. The fact, however, remains that the stay this Court granted earlier came to be modified later. That is, on 6/11/2020, this Court modified its interim order in the writ petition filed by the 8<sup>th</sup> respondent and confined it to him alone.

7. According to Shri Naik, though the petitioner has been aware of this fact, he has deliberately misrepresented before the Competent Authority as if there had been a blanket stay.

8. Shri Naik has also further pointed out that when this Court altered the interim order on 6/11/2020, the petitioner had sufficient time to approach this Court and to seek his legal remedy. But he waited until the last minute, and only when the Competent Authority insisted on the disposal of the matter, he rushed to this Court, concealing the facts.

9. The learned Additional Government Advocate also supports the

version the learned counsel for the respondent nos.1 to 3 has put forth.

10. Indeed, this Court, in a recent judgment, involving the procedure to be adopted under the Goa Lokayukta Act, has held that the parties to the proceedings there have no indefeasible right to insist on the right to have oral arguments. This Court has, in fact, held that it is the discretion of the authority concerned; even written submissions would suffice.

11. Here, the Competent Authority required the petitioner to file his written submissions. To be fair to the Competent Authority, he has not made up his mind as yet, nor has he even remotely indicated, in any manner, the decision he may take. The approach is unbiased.

12. It is too well established that there shall be no mandamus restraining any statutory authority from taking a decision if he has the power to take that decision. Of course, the Court can always exercise its judicial review to check the legality of that decision. So, this Court is disinclined to interdict the Competent Authority from adjudicating the matter.

13. That said, perhaps under a mistaken notion about the eventual outcome in the proceedings before the Competent Authority, the petitioner has taken recourse to this writ petition under Article 227 of the Constitution of India. I suppose the petitioner's conduct bona fide, to that extent. Therefore, in the interest of justice, I am only inclined to extend the time for the petitioner to file his written submissions before the Competent

Authority by two more days, for it is impossible for him to comply with the Competent Authority's directive by 3 pm., today.

14. That is, the petitioner shall file his written submissions by 21<sup>st</sup> December 2020 before the Competent Authority. Thereafter, it is open for the Competent Authority to rule on the issue.

15. Let us keep aside, for the time being, the allegations the petitioner faces: that he has tried to mislead the Competent Authority or this Court; or that he has approached this Court belatedly. There is *prima facie* material on record to hold that he has nothing to do with the maladministration the then office bearers have been accused of. Especially, the Lokayukta's observations in that regard are clear. Therefore, to adjust the equities, I observe that if the Competent Authority passes any order, that shall not be given effect to for three weeks, give the intervening vacation.

16. Post the matter after vacation for the parties to complete the pleadings.

Authenticated copy of this order be issued to the parties.

**DAMA SESHADRI NAIDU, J.**

**AP/-**