

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 16/2001.

Querobino Gomes,
residing at Parac de Rachol,
Rachol, Salcete, Goa. ... Petitioner.

VERSUS

1. State of Goa,
through the Chief Secretary
with office at Secretariat,
Goa.
2. Director of Panchayats,
with Office at Panaji, Goa.
3. Joseph Vaz,
residing at Rachol,
Salcete, Goa.
4. Village Panchayat of Rachol,
with Office at Rachol,
Salcete, Goa. ... Respondents.

Mr. M.B. Da Costa with Mr. J.A. Lobo, Advocates
for the Petitioner.

Mr. V.P. Thali, Addl. Advocate General with Ms. S.
Linhares, Addl. Govt. Advocate for Respondents No.1 and
2.

Mr. Z. D'Souza, Advocate for the Respondent No.3.

CORAM: A. S. AGUIAR &
P. V. HARDAS, JJ.

DATE: 15TH JANUARY, 2002.

ORAL JUDGMENT (PER AGUIAR, J.)

The petitioner is a duly elected member of the Rachol Village Panchayat from Ward No.1 on 12th January, 1997 and was elected Sarpanch of the said Panchayat on 24th January, 1997. In the year 1998 the petitioner received a notice dated 17.8.1998 from the Director of Panchayat informing him that respondent No.3 who is panch in the said Panchayat had filed a

complaint under section 50(4) of the Goa Panchayat Raj Act and called upon the petitioner to remain present in the chamber of the Director on 9.9.98, failing which the matter would be heard and determined ex-parte. It appears that after the initial complaint was filed the complainant sought permission to carry out amendments and add new charges. The said amendment application was allowed despite the objection of the Petitioner. The Petitioner filed his reply to the application under Section 50(4) of the Goa Panchayat Act as amended on 8.06.2000. After replies were filed, the Director of Panchayat heard arguments on both sides. It is the case of the Petitioner that at no point of time he was served with any notice to show cause why he should not be removed from office and as to why he should not be eligible to be re-elected as Sarpanch.

2. By Order dated 30.11.2000 the petitioner was removed from office as Sarpanch of Village Panchayat of Rachol. The said order further directed that the petitioner shall not be eligible for re-election as Sarpanch for a period of three years from the date of receipt of the order. In the said judgment and order, the Director of Panchayats, Panaji, Goa held the petitioner Sarpanch persistently remiss in discharging his duties; that he had misconducted himself and misused powers vested in him under the Act; that he

had abused the powers vested in him under the Act and/or exercised powers not vested in him by the Act. It was further held that the petitioner Sarpanch after having issued notice to stop construction had failed to place the matter of illegal construction by Mr. Anthony D'Cruz/Miss Ana Maria Vaz before the Panchayat meeting and had granted permission for repairs without any resolution from the Panchayat, when in fact such powers were vested in the Secretary; further that the petitioner had not complied with the directions issued by the Block Development Officer to take immediate action to stop the construction carried out by one Caetano Oliveira; that he had failed to stop construction and to place the matter before the Panchayat; further that the Sarpanch issued N.O.C. for repairs/construction of dwelling house without plans personally when such power was in fact vested in the Secretary and that he issued such permission and issued N.O.C. without carrying out site inspections; that the Sarpanch failed to convene and hold meeting of Panchayat in June, 1998 and other such acts. On the basis of the aforesaid allegations/averments, the Director of Panchayat had held that the petitioner was remiss in his duties and not fit to be continued as Sarpanch and thereupon passed an order removing the petitioner from the Office of Sarpanch and also holding that the petitioner shall not be eligible for

re-election as Sarpanch for a period of three years from the date of receipt of the Order.

3. It is the case of the petitioner that no show cause notice was served upon him as to why the said order should not be passed and therefore the said order is illegal and contrary to the rules of natural justice, inasmuch as the Director did not issue show cause notice on the petitioner as to why such penalty should not be imposed; that the said impugned order of the Director of Panchayat is arbitrary and violative of the rules of natural justice and also of Art.14 of the Constitution of India. It is further the contention of the petitioner that Section 50(4) of the said Act requires that the Sarpanch should be persistently remiss in the discharge of his duties. The Director of Panchayats failed to appreciate that the Panchayat function at the village level and they do not receive or have access to proper advice from qualified persons and therefore the finding of the Director that the Petitioner was persistently remiss in the discharge of his duties was unwarranted and illegal. The petitioner further points out that he had given explanation for his actions and that even otherwise the nature of the acts complained of are of minor irregularities which do not justify imposition of harsh penalty, that too without warning and without show cause notice. It is

further submitted by the petitioner that elections to the Panchayat were held on 12th January, 1997 and under Section 42 of the said Act the members of the Panchayat shall hold office for a term of 5 years. Section 48 provides that the term of Office of the Sarpanch and Deputy Sarpanch of the Panchayat shall cease on the expiry of his term as member of the Panchayat. The term of the Panchayat therefore expired on 12th January, 2002 i.e. after the expiry of five years. It is the contention of the petitioner that the order of the Director in as much as it holds that the petitioner shall not be eligible for re-election for a period of three years from the date of receipt of the Order dated 30.11.2000 is without jurisdiction and illegal. It is further submitted that Section 46 of the Act provides that at the first meeting of the Panchayat the members of the Panchayat shall elect from amongst themselves a Sarpanch and Deputy Sarpanch. Section 51 of the Act provides that every Sarpanch or Deputy Sarpanch shall forthwith be deemed to have vacated his office if a resolution expressing want of confidence in him is passed by a majority of a total members of the Panchayat at a meeting specially called for the purpose. No such resolution shall be taken into consideration unless it is signed by the majority of the members. The petitioner has also thrown a challenge to the constitutionality validity of Section

50(4) of the said Act which empowers the executive to remove an elected person from office and declare him to be ineligible for re-election as the same is violative of Art.14 and Part IX of the Constitution of India and that Section 50, sub-section (5) inasmuch as it empowers the executive to remove an elected member from membership of the Panchayat is also violative of Art.14 and Part IX of the Constitution of India. It is the contention of the petitioner that the procedure provided for removal of an elected member in sub-sections 4 and 5 of Section 50 is arbitrary and not fair and just and violative of Art.14 of the Constitution of India.

4. Before the Court, learned Advocate for the petitioner Mr. De Costa had submitted that the respondents have not produced any document on record to substantiate that the show cause notice was served on the petitioner to explain the irregularities. Similarly there was no show cause notice of arrival of finding of guilty or of penalty to be imposed. It is further contended by the petitioner that if he has exercised powers he was not vested with, he did so in ignorance of the law. Reference is made to the Office Memorandum dated 27th May, 1997 wherein the powers exercisable under Section 47 of the amended Act are shown to exercisable by the Village Panchayat Secretary

and that new Section 113-A provides that the Village Panchayat Secretary was also authorised to exercise and perform the duties stated therein. It is pointed out that for the first time the powers of Secretary were specified in the Office Memorandum and that therefore before the said amendment to the Act, the role of the Village Panchayat was not clear. It is contended that under Section 113-A the Secretary was to report to the Block Development Officer any illegal act or misconduct or misuse or abuse of powers or any infringement of the powers of this Act by the Sarpanch or Deputy Sarpanch or the members of the Panchayat as soon as the same comes to his knowledge and also it was the duty of the Secretary to ensure due compliance of the provisions of the Act and the rules framed thereunder by the Panchayat and the Sarpanch, Deputy Sarpanch or a member. It is pointed out that the Secretary had at no time reported any such illegal acts or misconduct or misuse or abuse of powers to the Block Development Officer. It is further contended that each Panchayat is provided with a qualified Secretary who advises and gives proper guidance under the said Act and therefore no grievance could have been made that the Sarpanch petitioner had done anything against the advice of the Secretary nor done any alleged acts of misconduct as Sarpanch. Therefore there is no substance in the complaint regarding the alleged misconduct of the

Sarpanch petitioner. It is further contended that from the acts of the petitioner on the basis of which action for removal has been taken it could not be said that the petitioner Sarpanch had been persistently remiss in the discharge of his duties by misconducting himself or misusing powers. Further that even if the defaults are taken as proved, the same could not be said to be persistent defaults. Lastly that since no show cause notice or initiation of proceedings was sent to him and no show cause notice issued before arriving at finding of guilt and also no show cause notice regarding the punishment to be imposed was served, the said order is one infringing the rule of natural justice.

5. Aggrieved by the Order dated 30th November, 2000, the petitioner has preferred the present petition on 22nd January, 2001. This Court was pleased to issue Rule and the matter was to be tagged along with Writ Petition No.330/99 where the challenge to the action of the Director of Panchayat was mainly based on violation of the provisions of sub-sections (4) and (5) of Section 50 of the Goa Panchayat Raj Act and the principle of natural justice. So far as the present case is concerned, the challenge is restricted only to the violation of the provisions of sub-section (4) of Section 50 of the Act and the principle of natural justice. The principal ground of challenge is that the

show cause notice clearly disclosed that the Director of Panchayat had foreclosed his mind even before hearing the petitioner; that the opportunity to show cause had not been given and that the Director of Panchayat had pre-decided the issue and held that the alleged rights of irregularities/illegalities had been proved and, as such, purportive opportunity given was sham and consequently the Order dated 30th November, 2000 was illegal, null and void. The contention is that the perusal of the show cause notice indicates that the opportunity given to the petitioner was only to show cause why he should not be removed from the Office of Sarpanch. No opportunity was at all given to the petitioner to show that the acts of irregularities as alleged against him should not be held as proved. The further submission is that the show cause notice which purported to give opportunity to the petitioner to show cause why he should not be removed from the Office of Sarpanch did not give any opportunity to the petitioner as to why he has to be debarred and made ineligible for election as Sarpanch of the said Panchayat i.e. the Village Panchayat of Rachol, Salcete for a period of three years from the date of the Order. It is pointed out that the Order dated 30th November, 2000 with the conclusions arrived at by the Deputy Director that the respondent/petitioner herein is not fit to continue as Sarpanch is based on the

complaint made by the said respondent No.3 and the reply of the petitioner. The petitioner was given no opportunity to show cause against the said conclusions arrived at by the Deputy Director of Panchayat on the mere basis of the averments made by the complainant and therefore why he should not be removed from office and ineligible for re-election as Sarpanch.

6. Section 50, sub-section (4) of the Panchayat Raj Act reads as follows:-

" (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."

7. Learned Advocate for the petitioner has submitted that the impugned Order is liable to be set aside for the following reasons:

(A) In addition to removal of Sarpanch on the grounds stipulated in Section 50(4) of the Act, a person so removed is also liable to incur disqualification of being ineligible to be re-elected as such for a period not exceeding five years as ordered by the Director of Panchayat at his discretion. Further, he is also liable to be removed as a Member of

the Panchayat also with a liability of being disqualified or being ineligible to be re-elected as a Member for a period not exceeding five years as ordered by the Director in his discretion. Section 50(4) does not either expressly or by necessary implication exclude the application of principles of natural justice and has to be read as an integral part of the said Section;

(B) The expression "opportunity" before being removed and made ineligible for re-election is not restricted only to defend the allegation on merits, but also to show cause against the penalties proposed to be imposed;

(C) Opportunity must mean reasonable opportunity and this opportunity must be meaningful and effective. The person likely to be adversely affected has to be informed not only of the ground on which the action is proposed to be taken together with the material relied upon, but also necessarily be informed precisely and specifically of the nature of penalty to be imposed. This reasonable opportunity would include the opportunity to defend the allegation by cross-examining the complainant, if any, and witnesses, if any, whose statements are relied upon in support of the allegations as also to lead both documentary and oral

evidence by examining himself on material and relevant witnesses to refute the allegations;

(D) The Show Cause Notice which has to be read into sub-section (4) of Section 50, apart from calling on the person to whom the notice is issued to show cause in the matter of removal, must also call on the party to show cause as to why the maximum period or other substantial period of disqualification or ineligibility for election should not be imposed. In the instant case, this has not been done and, consequently, the order is liable to be quashed and set aside.

8. On the other hand, on behalf of the Respondents, it has been submitted that it is not a requirement of this opportunity that the petitioner should be allowed to cross-examine the witnesses and/or to lead oral evidence. It is further contended that the sub-section itself provides for an opportunity. The question therefore of reading the principles of natural justice need not be gone into. Further that sub-section (4) contemplates the maximum period for which a person can be disqualified or made ineligible for election which period can even go beyond the period of the term for which he was elected and that being the case, such a person knows the period for which he can be removed

and, in these circumstances, it is not a requirement that a party must also be given an opportunity of showing cause in the Show Cause Notice itself as to why he should not be removed for a period of five years. It is contended that once reasons are given for removal, no separate reasons are required to be given so far as the period of disqualification or re-election as Sarpanch is concerned, it is purely consequential and at any rate, the order would disclose that there are reasons.

9. On behalf of the respondents it was contended that pursuant to the Notice (Exh.P-2) dated 17th August, 1998 the petitioner had filed his reply. Therefore he was given an opportunity of being heard. That the Order of the Panchayat is not assailable under Articles 226 and 227 of the Constitution. Reliance is placed on *Bathutmal Raichand Oswal v. Laxmibai R. Tarta* and another reported in (1975) 1 S.C.C., 858, *Mohd. Yunus v. Mohd. Mustaqim and others* reported in A.I.R. 1984 S.C., 38, *Chandavarkar Sita Ratna Rao v. Ashalata S. Guram* reported in A.I.R. 1987 S.C., 117, etc. in support of the contention that the High Court should not interfere with the finding, except if the findings are perverse and not based on any material evidence and results in manifest injustice. It is further contended relying on the decision reported in

Estralla Rubber v. Dass Estate (P) Ltd. reported in (2001) 8 S.C.C., 97 and Sugarbai M. Siddiq and others v. Ramesh S. Hankare (dead) by LRS. (2001) 8 S.C.C., 477 that the High Court in an application under Art.227 of the Constitution, has to see whether the lower Court/Tribunal has jurisdiction to deal with the matter and if so, whether the impugned order is vitiated by procedural irregularity; in other words, the Court is concerned not with the decision but with the decision making process. It is further contended that Section 50(4) does not contemplate giving notice for imposing the penalty.

10. From the language of sub-section (4) of Section 50 of the said Act, it is clear that the expression "opportunity" therein would mean reasonable opportunity in tune with the principle of natural justice and depending on the facts and circumstances of the case and the nature of the material being considered by the authority in the Show Cause Notice. In the instant case, in the show cause notice all that was being considered was the documentary evidence on record and the provisions of the Act, Rules, Instructions etc. In these circumstances, the question of either calling on the complainant for being made available for cross-examination does not arise. The Authority has only acted on the complaint and the Show Cause Notice

is based on the said complaint and inspection of the documents of the Panchayat. All the documents and instances on which the Respondent No.1 would rely upon and considered while coming to the prima facie conclusion were made known to the Petitioner. The petitioner was then the Sarpanch of Respondent No.4, Village Panchayat of Rachol. Hence the question of permitting cross-examination of the witnesses of the complainant would not have arisen. Similarly, the question of permitting oral evidence to be led by the Petitioner herein did not arise.

11. Sub-Section (4) of Section 50 further shows that as a part of this opportunity, respondent No.1 was required to issue show cause notice before removing the petitioner as Sarpanch. The said Section further stipulates that once removed, the Sarpanch or Deputy Sarpanch shall also not be eligible for re-election for such period not exceeding five years as the Director may specify in his Order. In other words, the period of disqualification though statutorily fixed, a discretion is conferred on the first respondent namely whether the disqualification should be for a maximum period of five years or for a lesser period and once there is a discretion, it is clear that the power must be exercised non-arbitrarily and the authority before whom the order is challenged, must be able to satisfy

based on the record that the first respondent had taken into consideration relevant facts and not irrelevant facts. That the material on record has been made available to the petitioner. In other words, an objective satisfaction based on material available. Therefore the duty to give reasons is implicit in sub-section (4) of Section 50.

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.

13. In *Siemens Engineering & Manufacturing Co. of India Ltd. v. The Union of India and another* ((1976) 2 SCC 981), the Apex Court observed that: "where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons". "The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic

principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."

14. In T.R. Thandur v. Union of India and others (1996) 3 SCC 690, the Apex Court observed that in the absence of express statutory provisions, the requirement of recording reasons in writing is implicit as every State action must satisfy the rule of non-arbitrariness.

15. Insofar as the petitioner's conduct as Sarpanch is concerned, the perusal of the order would show that no reasons are given as to why the petitioner was made ineligible for re-election for three years. The various acts in respect of which the petitioner was charged and show cause notice was issued were in respect of acts committed as Sarpanch. The duties and powers under the Act are distinct and different from that of a member. It is no doubt true that under sub-section (5) if the Sarpanch is removed from his office under sub-section (4), he may also be removed from membership. In the present case, of course, the order is only of the removal of Sarpanch and his disqualification for re-election as Sarpanch for a period of three years. The petitioner's membership as Sarpanch is not

affected. However, the disqualification for re-election of the petitioner as Sarpanch for the period of three years is a discretionary order. Perusal of the reasons of the impugned order shows that there is no discussion insofar as the period of disqualification of the Petitioner for re-election as Sarpanch is concerned. The entire observations in the order are in respect of findings that the petitioner was guilty of abuse of powers. To the extent that no reasons are given in the order for disqualification of the petitioner for a particular period, the principle of natural justice have not been followed.

16. Ordinarily, we would have remanded the matter back to Respondent No.1 to specify the reasons for disqualifying the petitioner for re-election for a period of three years and not a lesser period. Further in view of the impending elections to the Panchayat and to election of Sarpanch and Deputy Sarpanch thereafter, we do not find it appropriate to pass such an order as the petitioner who has not been disqualified as a member would nevertheless under the said Order be debarred for standing for elections as Sarpanch. In view thereof we do not propose to interfere with the findings of the Director of Panchayats/Respondent No.2. However, we restrict the period of his disqualification for re-election as Sarpanch till 31.12.2001.

17. Rule accordingly made absolute partly. There shall be no order as to costs.

(A. S. AGUIAR)
JUDGE.

sl. (P. V. HARDAS)
JUDGE.