



IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.631 OF 2024

Mr. Jervis Fernandes,
Son of Joao Baptista Fernandes,
Aged 34 years, married,
Indian National,
R/o. H. No.69/A,
Gunneabhatt, Sanguem Goa. ... Petitioner
V/s.

1. Mr. Rumaldo Judas Agnelo Fernandes,
Aged 57 years, married, Indian National,
R/o. H.No.11, Behind Our Lady of Miracles
Church, Bamonsai, Sanquem, Goa.
2. Director of Municipal Administration
With office at Dempo Towers, First Floor,
Patto, Panaji, Goa. ... Respondents

Mr. J.A. Lobo, Advocate for the Petitioner.

Mr. V.A. Lawande with Mr. S. Prabhudessai and Mr. Atul Sadre,
Advocates for Respondent No.1.

Mr. Manish Salkar, Government Advocate for Respondent No.2.

CORAM: VALMIKI MENEZES, J.
RESERVED ON : 21st AUGUST, 2025

PRONOUNCED ON: 18th JUNE, 2026

JUDGMENT:

- 1.** Rule. Rule made returnable forthwith; the petition is disposed of with the consent of the parties.

- 2.** The short point, for my consideration is whether the Director of Municipal Administrator (DMA) is vested with powers, delegated or otherwise, under Section 44 of the Goa Municipalities Act, 1968 (Municipalities Act) to pass orders and exercise jurisdiction for removal of a Councillor from office for acts of misconduct or disgraceful conduct.

- 3.** The petition has been filed on the following short facts;

It is the case of the Petitioner that the Respondent No.1, who is a Councillor of the Ward No.1 of Sanguem Municipal Council from the year 2021 has allegedly fraudulently obtained a construction license for construction of a commercial and residential building in the property surveyed under survey no.02/07 of Sanguem village of Sanguem taluka and has acted contrary to the Construction license issued to him; it is alleged that despite directions

from the Deputy Town Planner, Quepem, the Chief Officer Sanguem Municipal Council failed to look into the matter. Several other allegations are made by the Petitioner against Respondent No.1 and his wife alleging several irregularities in the construction done by them, and in obtaining a false Caste Certificate, on the basis of which, corrupt practises are alleged during the contest of the election. On these allegations the Petitioner filed a Complaint dated 18.04.2023 to the DMA, Panaji against the Respondent No.1 which was also addressed on 28.06.2023 to the Chief Secretary, seeking redress and removal of Respondent No.1 from her office.

4. After hearing the Petitioner and the Respondent No.1, the DMA, Panaji vide its Judgement and order dated 29.09.2023, impugned herein, dismissed the said complaint on the ground that he had no jurisdiction to entertain this complaint under Section 44 of the Goa Municipalities Act,1968 and further held that such powers are vested in the Government. The Petitioner filed the present Petition seeking to set aside the order and for directions to the Director of Urban Development to decide the said Complaint in accordance with section 44 of the Municipalities Act.

SUBMISSIONS

5. The Advocate for the Petitioner, Mr. John Lobo submits that the Director has the power to make rules which is delegated vide Gazette Notification No.26/1/88-GA & C dated 29.08.1996. He further submitted that if the Director of Municipal Administration did not have the power to adjudicate upon the complaint then it should have forwarded the complaint to the Government for its decision. It is further submitted that the Director of Municipal Administration has been appointed as Secretary /Joint Secretary of the Government and the aforementioned Gazette Notification and the DMA acts as a delegate of the Government and is empowered to pass orders and take action in terms of Section 44 of the Act. To support his arguments, he placed reliance on ***Savio Norvin Menezes and 2 Ors V/s Union Of India and 2Anr***¹.

6. The Learned Advocate for the Respondent No.1, Mr V.A Lawande has advanced the following submissions:

- a. It was submitted that the power to delegate the functions of the Government under the Act must be specific, and the

¹ Judgement dated 04.04.2025 passed in Public Interest Litigation Writ Petition No.966 of 2025(F) in the High Court Of Bombay at Goa

Act does not confer any such delegation to the Government of Goa; it was further submitted that the Gazette Notification referred to by the Petitioner is not one which is issued pursuant to any powers of delegation under the Municipalities Act but is in the form of an executive decision by which the Directors and other officers of the Government have been appointed as Ex-Officio Secretaries and Joint Secretaries of the Government, only for the purpose of carrying out secretarial work and sign communications, orders and notifications on behalf of the Government, after receiving approval from the Secretary/Minister /Chief Minister. It was submitted that under the Municipalities Act, the powers under Section 44 vest exclusively with the Government of Goa, which, under the Rule of Business would be the concerned Minister or Cabinet or Secretary, and not the DMA, who has specific powers under Chapter IV of the Act.

- b. It was further submitted that the scheme of Section 44 contemplates removal of a Councillor for acts of

misconduct or disgraceful conduct, which require, under sub-section 3, prior to making such order to be heard and to be given a notice; according to the Respondent, such powers are quasi-judicial or judicial in nature since they decide the rights of the Councillor to continue in office or suffer removal. It was then contended that the powers being of judicial nature, on a settled principle of law, can never be delegated by the Authority and to whom such powers are conferred. Reliance has been placed on the following judgements:

- i. ***Savita Chaudhary v/s State of Uttarakhand and Ors***²
- ii. ***State of Uttar Pradesh and Others v/s Z.U. Ansari***³
- iii. ***K.Kuppusamy and Anr v/s State of T.N and Ors***⁴

CONSIDERATIONS

7. For the purpose of deciding the issue involved in the petition, it would be necessary to first examine the scheme of the Act under

² 2018 SCC Online Utt 174

³ (2016) 16 SCC 768

⁴ (1998) 8 SCC 469

which specific powers have been conferred on different Authorities. The “Director”, has been defined under Subsection 11 of Section 2 to mean a person appointed by the Government to be the Director of Urban Development. The powers of the Director are specified in Chapter IV of the Act. Section 71 of this Chapter empowers the Government to notify in the Official Gazette the appointment of the Director of Urban Development as the Director and subsection 2 thereof provides for conferring the exercise of the powers in such Officer that may be designated under Section 71. The provision of Sub-Section 2 of Section 71 also provide that the Government, may by notification+ direct the powers of the Director (except power to make Rules) or his duties under the Act, under certain circumstances, to be exercised and performed by the Collector.

8. Sub Section 19 of Section 2 defines “Government” to mean the Government of Goa. The definition does not refer to any other Authority that may be designated for the purpose of exercising the powers to be exercised by the Government under the Act . Reading the entire scheme of the Act, there does not appear to be any power of delegation conferred upon the Government, of the

powers vested on it or the duties or functions conferred upon it ,to any other Authority under the Act. There being no such power under the Act, the Notification dated 29.08.1996, referred to by the Petitioner as delegation under which the DMA could exercise the powers conferred on the Government under Section 44 of the Act, on the face of it does not put into effect such delegation. In fact, reading of the Notification would reveal that the same is not a notification of delegation of powers but is one by which various officers of the Government are appointed as Ex-officio, Under Secretaries, Joint Secretaries and Additional Secretaries to the Government purely to carry out secretarial work and duties, and to appoint such Ex-officio, Under Secretaries, Joint Secretaries and Additional Secretaries to sign communications, orders and notifications on behalf of the Government; such signing of communications are to be done only with the approval of the Secretary/ Minister/ Chief Minister, who are the Government.

9. Reliance on the judgment of this Court in **Savio** (supra), in my opinion is misplaced for the following reasons. In that Judgment one of the arguments raised, as found in paragraph 9 thereof contends that the Ex-Officio, Joint- Secretary of the

Government could not usurp the powers of the Government under Section 29 of the Goa Education Act.

This argument was dealt with by this Court at paragraph 12, wherein this Court noted that under the very Notification now cited before us, the Joint Secretary was vested with powers and authorised to carry out the secretarial work on behalf of the Government and sign Notifications on behalf of the Government after taking approval from the Secretary/ Minister/Chief Minister. I also note that after perusing the provisions of Section 29 of the Goa Education Act that those are provisions which are purely of administrative nature and not anywhere akin to the powers conferred on the Government under Section 44 of the Municipalities Act which I will presently discuss.

10. The provisions of Section 44 of the Municipalities Act reads as follows:

44. Liability of Councillors to removal from office. (1) The Government may on its own motion or on the recommendation of the Council remove any Councillor from office if such Councillor has been guilty of any misconduct in the discharge of his duties, or of any disgraceful conduct.

(2) The Government may likewise remove any Councillor from office if such Councillor has in the

opinion of the Government become incapable of performing his duties as a Councillor:

Provided that no Councillor shall be removable under this sub-section for becoming incapable of performing his duties as the [] or the Vice ""[Chairperson), as the case may be.

(3) No resolution recommending the removal of any Councillor for the purposes of sub-section (1) or (2) shall be passed by a Council and no order of removal shall be made by the Government, unless the Councillor to whom it relates has been given a reasonable opportunity of showing cause why such recommendation or order, as the case may be, should not be made.

(4) In every case the Government makes an order under sub-section (1) or (2), the Councillor shall be disqualified from becoming a Councillor, or a Councillor or member of any other local authority for a period of five years from the date of such order.

11. This provision provides for the grounds on which the Councillor may be removed from the office. The two grounds stated therein are if the Councillor is found guilty of any misconduct in the discharge of his duties or if he has indulged in disgraceful conduct. If such grounds are proved, the Councillor may be removed from office and as a consequence thereof, under Sub-section 4 of Section 44, the Councillor shall stand disqualified from becoming a Councillor or a member of any other local authority for 5 years from the date of such order. Thus, from the very scheme of Section 44, if allegations /grounds stated in sub-

section 1 thereof are proved, an order holding such Councillor guilty of any one of the grounds is visited with very serious consequences of removal from office followed by disqualification for a period of 5 years. It is settled law, that where a provision of such nature, visits the elected representative with removal and disqualification, such powers, which are exercised after an inquiry or appreciation of evidence in proof of the grounds, are to be construed to be of judicial or quasi-judicial nature.

12. The legislature, in its wisdom has conferred such a power to be exercised under section 44, in the Government, and in no other Authority. As referred by me earlier, various other Authorities under the Act, including the Director are specifically defined and their powers and duties are limited to those stated in the Act. There is no manner of conferring power under Section 44, which is exclusively vested in the Government, or on any other authority under the Municipalities Act. As discussed in the preceding paragraphs under the Municipalities Act, there is no power to delegate the functions and powers conferred upon the Government to any other authority. Obviously therefore, neither can the Notification dated 29.08.1996, relied upon by the Petitioner be

construed to delegate such powers nor can one construe, mere appointment of the DMA as Ex-officio Joint Secretary of the Government to have the powers to act in capacity of the Government.

13. Further, it is a settled principal of law that where a provision of law confers a judicial or quasi-judicial power upon an Authority, and even more so in the absence of powers to delegate, such Authority can never delegate this power to any other Authority. Following are the relevant paragraphs of some of the judgments which refer to this principle.

- i. The Supreme Court in **Bombay Municipal Corporation V/S Dhondu Narayan Chowdhary**⁵ whilst dealing with the said principle has held as under:

3. No question has been raised that any of the amendments is ultra vires so the words of Section 68 must be reasonably construed. It goes without saying that judicial power cannot ordinarily be delegated unless the law expressly or by clear implication permits it. In the present case the amendment of Section 68 by inclusion of

⁵ 1965 SCC OnLine SC 12

delegation of the functions of the Commissioner under Sections 105-B to 105-E does indicate the intention that the judicial or quasi-judicial powers contained in Chapter 6-A were expressly intended to be delegated. To the delegation as such there can be no objection. What is objected to is the provision, both in the section as well as in the order of delegation, that the exercise of the function is to be under "the Commissioner' control" and "subject to his revision". These words are really appropriate to a delegation of administrative functions where the control may be deeper than in judicial matters. In respect of judicial or quasi-judicial functions these words cannot of course bear the meaning which they bear in the delegation of administrative functions. When the Commissioner stated that his functions were delegated subject to his control and revision it did not mean that he reserved to himself the right to intervene to impose his own decision upon his delegate. What those words meant was that the Commissioner could control the exercise administratively as to the kinds of cases in which the delegate could take action or the period or time during which the power might be exercised and so on and so forth. In other words, the administrative side of the delegate's duties were to be the subject of control and revision but not the essential power to decide whether to take action or not in a particular case. This is also the intention of Section 68 as interpreted in the context of the several delegated powers. This is apparent from the fact that the order of the delegate amounts to an order by the Commissioner and is appealable as such. If it were not so the appeal to the Bombay City civil court would be incompetent and the order could not be assailed. The order of the delegate was the order of the Commissioner and the control envisaged both in Section 68 and the order of delegation was not control over the decision as such but over the administrative aspects of cases and their disposal. No allegation has been made that the Commissioner intervened in the decision of the case or improperly influenced it. In these circumstances the order impugned in the appeal cannot be sustained.

- ii. The decision of this Court in **Anjali Shinde v/s Zilla Parishad and 2 Ors**⁶ is as follows:

10. The main contention in the present petition is that the concerned Authority, who has been given powers to conduct the enquiry / decide the application, has no authority to delegate such powers or to call for the fact finding report. The authority deciding one of the clause of Section 16(1) of the said Act on the basis of a complaint is acting as quasi judicial authority. Such quasi judicial authority is not entitled to delegate his powers to the subordinate as no such power is mentioned in the Act. The present matter clearly goes to show that the learned Divisional Commissioner delegated his powers firstly to the Chief Executive Officer of Zilla Parishad, Nagpur by letter dated 18/11/2021 and that too behind the back of the petitioner. It is further surprising to note that the Chief Executive Officer of Zilla Parishad by his letter dated 10/12/2021, sub-delegated such powers to the Block Development Officers, Panchayat Samiti, Narkhed, thereby directing him to conduct enquiry and submit his report along with his opinion.

11. Thus in absence of such powers with the Divisional Commissioner, the entire exercise carried out by calling of the reports has to be considered as illegal and without any jurisdiction.

⁶ Order dated 13.03.2024 in Writ Petition No.6394 of 2022 by the High Court of Bombay at Nagpur

- iii. In **Savita Chaudhary** (supra) the Uttarakhand High court dealt with the same principle in undergoing paragraphs:

9. Under the said notification the State Government has retained with itself the power under Section 138 of the Uttarakhand Panchayati Raj Act regarding removal or suspension of Chairman of Zila Panchayat. Admittedly, in the present case, the powers have not been delegated and, in fact, have been retained by the State Government. In any case, the powers contained under the proviso to Section 138 are quasi-judicial powers which cannot be delegated and wherein an opportunity of hearing is to be given to a Chairman by the State Government, before any adverse order is passed against him.

10. It is the settled position of law that judicial or quasi judicial powers cannot be delegated. Therefore, in any case, even under Section 146 or Section 185, the State Government could not delegate these powers to any other person. These powers have to be retained and exercised by the State Government.

- iv. The discussion on the said principle of the Uttarakhand High Court in **Mohd Naved v/s State of Uttarakhand and Ors**⁷, is quoted below:

(a) JUDICIAL POWER CANNOT. ORDINARILY. BE DELEGATED:

⁷ 2020 SCC Utt 236

20. *On the question whether the power conferred on the Government, to place the Gram Pradhan and others under suspension, can be delegated to the District Magistrate, it is necessary, at the outset, to understand what the word "delegation" means. "Delegation" is defined in Black's Law Dictionary as "the act of entrusting another with authority by empowering another to act as an agent or representative". In P. Ramanatha Aiyar's, The Law Lexicon, "delegation" is defined as "the act of making or commissioning a delegate" Delegation, generally, means parting of powers by the person who grants the delegation, but it also means conferring of an authority to do things which otherwise that person would have to do himself. (Sidhartha Sarawgi v. Board of Trustees for the Port of Kolkata) Delegation may be defined as the entrusting, by a person or body of persons, of the exercise of a power residing in that person or body of persons, to another person or body of persons, with complete power of revocation or amendment remaining in the grantor or the delegator. Delegation often involves the granting of discretionary authority to another, but such authority is purely derivative. The ultimate power always remains in the delegator and is never renounced. (Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. v. The Asstt. Commissioner of Sales Tax; and Sidhartha Sarawgi.*

21. *Delegatus Non Potest Delegare means that a delegate has no power to delegate. The said maxim indicates a rule of construction of a statute or other instrument conferring an authority. Ordinarily, a discretion conferred by a statute on any authority is intended to be exercised by that authority, and by no other. But the intention may be negated by any contrary indication in the language, scope or object of the Statute. (The Barium Chemicals Limited v. The Company Law Board and Sidhartha Sarawgi). This maxim is sometimes invoked as if it embodied some general principle that made it legally impossible for statutory authority to be delegated. In reality there is no such principle, and the maxim plays no*

real part in the decision of cases, though it is sometimes used as a convenient label. Its proper home is in the law of agency, but even here there are wide exceptions. (Administrative Law by H.W.R. Wade & C.F. Forsyth Seventh Edition).

24. An element which is essential to the lawful exercise of judicial power is that it should be exercised by the authority upon whom it is conferred, and by no one else. Normally, Courts are rigorous in requiring the power to be exercised by the precise person or body stated in the statute. The principle is strictly applied, even where it causes administrative inconvenience, except in cases where it may reasonably be inferred that the power was intended to be delegable. (Administrative Law-by H.W.R. Wade & C.F. Forsyth Seventh Edition). Bereft of the empowering statute authorizing delegation of statutory power, the repository of that statutory power should exercise that power himself. That cannot be delegated. He may, for such purpose, issue a commission, even to a subordinate in the official hierarchy, to supervise, or/and authorize further action to be taken, but this can be only under his control and orders. Delegation, in such cases, is impermissible. (Sundaram BNP Paribas Home Finance Ltd. v. State of Kerala). The general objections to delegation apply with special force to judicial functions, particularly if they affect personal liberty or are disciplinary. (Administrative Law-by H.W.R. Wade & C.F. Forsyth -Seventh Edition).

25. Even a statutory power to delegate functions, expressed in wide general terms, will not necessarily extend to everything. In the case of important judicial and disciplinary functions the court may be disposed to construe general powers of delegation restrictively. (Administrative Law-by H.W.R. Wade & C.F. Forsyth-Seventh Edition). No judicial tribunal can, ordinarily, delegate its functions unless it is enabled to do so expressly or by necessary implication. (Barnard v. National Dock Labour Board, and Pradyat Kumar Bose v. The Chief Justice, Calcutta High Court). Save

specific conferment of power of delegation by a Statute, the quasi-judicial power conferred on the State Government under Section 138(4) and its first proviso, to place the Gram Pradhan and others under suspension, could not have been delegated by it to another

45. In Dhondu Narayan Chowdhary Section 68(1) of the Bombay Municipal Corporation Act, 1888 (for short the "1888 Act") stipulated that any of the powers, duties or functions conferred or imposed upon or vested in the Commissioner, by any of the Sections mentioned in Sub-Section (2), may be exercised, under the Commissioner's control and subject to his revision and to such conditions and limitations, if any, as he shall think fit to prescribe, by any municipal officer whom the Commissioner generally or specially empowered in writing in this behalf; and in each of the said Sections, Sub-Sections and clauses, the word "Commissioner" shall, to the extent to which any municipal officer is so empowered, be deemed to include such officer. Section 68(2) provided that the Sections, referred to in Sub-Section (1), included Section 105B and, under Sub-Section (1), the Commissioner could, notwithstanding anything contained in any law for the time being in force, by notice, order that that person in occupation of the whole or any part of the premises shall vacate them within one month of the date of the service of the notice.

48. As held by the Supreme Court, in Dhondu Narayan Chowdhary, judicial power cannot, ordinarily, be delegated unless the Statute either expressly or by necessary implication permitted it; and, in the absence of any challenge to the vires of the provision, it should be reasonably construed. The words, "any of the powers, duties and functions", used in Section 68(1) of the 1888 Act, were construed as indicating the intention that the judicial or quasi-judicial powers, contained in Chapter VI-A, were expressly intended to be delegated. The words "all or any of its powers", used in Section 146 of the Act, also show that the

power of suspension, under Section 138 of the Act, is expressly indicated to be delegated.

49. In. Udai Bhan Singh², the Sub-Divisional Officer had passed an order under Section 95(1) (gg) of the U.P. Panchayat Raj Act placing the Appellant-Gram Pradhan under suspension pending further proceedings under Clause (g) of Section 95(1). It was contended on behalf of the appellant that the power of suspension, under subsection (gg), was a quasi-judicial power and, unless there was a specific provision in the Act itself permitting delegation of the specific quasi-judicial power. there could be no delegation of such a power. A Division Bench of the Allahabad High Court held that the decision of the Supreme Court, in Dhondu Narayan Chowdhary, merely held that judicial power cannot be delegated unless the law expressly or by clear implication permits it; even if the power to suspend, under subsection (gg), is held to be a quasi-judicial power, the decision of the Supreme Court did not help the appellant; Section 96-A of the Act expressly empowered the State Government to delegate all or any of the powers conferred by the Act upon it; the power to suspend, under subsection (gg), was one of the powers under the Act, and it was clearly covered by the provisions of Section 96-A; the decision of the Supreme Court did not support the contention that there must be a specific provision in the Act permitting delegation of quasi-judicial power; the provisions of Section 96-A empowered the Government to delegate all or any of the powers, including the powers under subsection (gg) of the Act; the State Government had, by notification dated 4-8-1974, delegated the power exercisable by it under subsection (gg) to the Sub-Divisional Officers; and the Sub-Divisional Officer was, therefore, empowered to pass the order of suspension.

14. Based upon the aforementioned principle there can be no manner of interpreting that the powers under Section 44 of the

Municipalities Act, can be or have been delegated to the DMA. Even otherwise, merely because the Petitioner filed his complaint to the wrong Forum, the DMA is not obliged to forward the same to the Government, since the requirement of Section 44 is that it is exclusively the Government who should decide the question of removal of a Councillor and his disqualification. The DMA has therefore rightly rejected the complaint as being not maintainable before him.

15. For all the reasons stated above, the Writ Petition stands dismissed. Rule is discharged.

VALMIKI MENEZES, J.