

WP-1362/2021 dt 26/7/2021

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.1362 OF 2021 (filing)

1. Sanquelim Municipal Council,
Through its Chairperson,
Raya Vinayak Parsekar
Aged 31 years, s/o Vinayak Parsekar,
Indian National, r/o House No.5,
New wada, Gokul wadi, Sanquelim, Goa.
2. Dharmesh Prabhudas Saglani,
Aged 45 years, s/o late Prabhudas Saglani,
Indian National, r/o H. No. 850,
Gokhulwadi, Sanquelim, Goa.
3. Kunda Laxmikant Madkar
Aged 47 years, w/o Laxmikant Madkar,
Indian National, r/o House No. 519,
Dabel wada, Harvalem, Sanquelim, Goa.
4. Jyoti Praveen Blaggan
Aged 55 years, w/o Praveen Blaggan,
Indian National, r/o House No. 12/4,
Gokul wadi, Sanquelim, Goa.
5. Ansira Riyas Khan
Aged 32 years, w/o Riyas Khan,
Indian National, r/o House No. 100/1,
Dattawadi, Sanquelim, Goa.
6. Rajesh Vishram Sawal
Aged 43 years, s/o Vishram Sawal,
Indian National, r/o House No. 1312,
Viridi, Sanquelim, Goa.

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7. Rajendra Ameshkar,
Aged 53 years, s/o Ramesh Ameshkar
Indian, national,
r/o House No. 92, Maulingtad,
Sanquelim, Goa.

... Petitioners

Versus

1. State of Goa, through the
Chief Secretary, Government of Goa,
With office at Secretariat, Porvorim, Goa.

2. The Director of Municipal Administration,
With office at 6th Floor, Shramashakti Bhavan,
Patto-Plaza, Panaji, Goa 403001.

3. The Chief Officer,
Sanquelim Municipal Council,
Municipal Building,
Sanquelim, Goa.

... Respondents.

Mr. J.A. Lobo, *Advocate for the Petitioners.*

Mr. D.J. Pangam, *Advocate General with Mr. Deep Shirodkar, Addl. Govt. Advocate for Respondents No.1 and 2*

Mr. Kapil Kerkar, *Advocate for Respondent No.3.*

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

Reserved on: 22nd July 2021.

Pronounced on : 26th July 2021.

JUDGMENT : (Per M.S. Sonak, J.)

Heard Mr. Lobo for the Petitioners, Mr. D.J. Pangam, the

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learned Advocate General who appears along with Mr. Deep Shirodkar, Additional Govt. Advocate for Respondents No.1 and 2 and Mr. Kapil Kerkar for Respondent No.3.

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

3. Arguments were heard in this matter on 22nd July 2021 and the statements made by the learned Advocate General and the learned Counsel for Respondent No.3 were recorded in the order made on the very date, which read as follows :

“1. The matter is reserved for orders.

2. We record the statement of Mr. Kerkar, the learned Counsel appearing on behalf of the Chief Officer, Shri Deepak Vaigankar, that the Chief Officer will within one week from today withdraw his order bearing reference No.SMC/2021-22/223 dated 05.05.2021 which is referred at page 65 of the paperbook.

3. Further, we record the statement of Mr. Kerkar based on instructions of the said Chief Officer that he will comply with the resolution No.11 passed in the matter held on 07.05.2021, referred to in paragraph 15 of his affidavit, within one week from today. These statements have been made by Mr. Kerkar in the presence of Mr. Deepak Vaigankar, the Chief Officer, who is present in his chamber. These statements are accepted as undertaking to

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this Court.

4. Besides, the learned Advocate General has also stated that hereafter, the Chief Officer will attend the office at Sanquelim Municipal Council on all working days in the afternoon session, i.e. from 2:30p.m. to 5:30 p.m..

5. Mr. Vaigankar, the Chief Officer also confirms that he will attend his office at the Sanquelim Municipal Council on all working days in the afternoon session, i.e. from 2:30 p.m. to 5:30 p.m. punctually.

6. The learned Advocate General has also made a statement that the Director of Municipal will dispose of Case No. 10/798/2020-21/DMC/Councillor/444 within a period of fifteen days from today, by the compliance of principles of natural justice. The Director of Municipal Administration is now directed to act accordingly.

7. The petitioners are directed to place on record the full text of resolution dated 07.05.2021 by tomorrow. So also, the Chief Officer is directed to place on record the circular dated 09.05.2000 concerning the powers of the Chief Officer vis a vis Chairperson of the Municipal Councils. In fact, the Chief Officer should place on record the legible copy of circular dated 10.05.2000 as well.”

4. This Petition has been instituted by the Sanquelim Municipal Council (SMC) and 7, out of its 13 Councillors. The Council and the majority of the councilors complain that there is no full-time Chief Officer and further, the Chief Officer, who is presently appointed, refuses to follow the mandate of Section 74

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of the Goa Municipalities Act, 1968 (said Act) in the matter of implementation of the resolutions of the Council. Based on the various allegations set out in the petition, the Petitioners pray that the State be directed to appoint a full-time Chief Officer, that such Chief Officer follows the mandate of Section 74 of the Goa Municipalities Act (said Act) and the proceedings being Case No.10/798/2020-21/DMA/Councilors/135 be disposed of by the Director of Urban Development (Director) in a time-bound manner.

5. The Petitioners have pleaded that the ruling faction of the SMC is not supported by the ruling party in the State Government and, therefore, through the offices of the Chief Officer and the Director of Urban Development/Municipal Administration hurdles and hindrances are created in the day-to-day functioning of the SMC. The Petitioners have pleaded that they had to institute Writ Petition No.8/2021, seeking a direction to hold elections to Ward No.IX, which was being delayed. Thereafter, the Petitioners had to institute Writ Petition No.213/2021 since, the statutory authorities were delaying the conduct of the meeting to consider the No-Confidence Motion against the earlier Chairperson, who was holding on to the office despite losing the support of the majority of the Councillors. The

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Petitioners have placed on record the Judgment and Order dated 9/4/2021 passed in Writ Petition No.213/2021 in support of their averments.

6. The Petitioners have pleaded that the Petitioners were compelled to institute Writ Petitions No.1055/2021, 1074/2021, and 1177/2021, complaining about the misuse of State machinery and statutory powers to prevent the councilors from attending the meeting to consider the motion of no-confidence against the earlier Chairperson. The Petitioners have relied upon orders dated 15/4/2021, 16/4/2021, and 6/5/2021 made in the said Petitions by this Court.

7. The Petitioners have pleaded that in the meeting of the SMC held on 7/5/2021, several resolutions were passed. In terms of Section 74 of the said Act, the Chief Officer is mandated to take steps to give effect to all the decisions or resolutions of the Council. Despite this statutory provision, the Chief Officer, only to hinder the functioning of the SMC, has taken no steps to give effect to all the decisions or the resolutions of the SMC. The Petitioners have relied on a Circular dated 10/5/2000, issued by the Secretary (Urban Development) on the subject of powers of the Chief Officer *vis-a-vis* the Chairperson of a Municipal Council and contended that the Chief Officer, in the present case,

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has acted in breach of the statutory provisions and the directions contained in this circular.

8. The Petitioners have pleaded that by a representation dated 21/5/2021, addressed to the Director of Urban Development, the Petitioners complained about non-execution of the resolutions of the SMC and sought directions to the Chief Officer to comply with the resolutions in their letter and spirit. Mr. Lobo submitted that even the Director is only interested in delaying proceedings to see that the council does not smoothly function.

9. The Petitioners have contended that the Chief Officer, issued an order bearing reference No.SMC/2021-22/223 dated 5.5.2021 requiring all the staff of the SMC to obtain proper noting/consent of the Chief Officer before presenting any file/files to the Chairperson/Vice-Chairperson/Councillor and in case, there is any need to forward any file to any authority/section, the same shall be routed through the Chief Officer. The Petitioners have contended that no files can be accessed by the Chairperson or the Councillors due to this order dated 5/5/2021 and further, the Chief Officer is rarely present at the SMC for the files to be routed through him. The Petitioners have contended that the order dated 5/5/2021 has no statutory basis and the Chief Officer has clearly acted in excess of the power vested in him under the

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said Act.

10. The Petitioners have also pleaded that the Director of Urban Development has entertained Case No.10/798/2020-21/DMA/ Councillor/444, instituted by some of the Councillors, who are in minority and is now not disposing of the proceedings after making some vague and unreasoned order. The Petitioners have pleaded that all this is a concerted ploy to hinder the functioning of the SMC only because the ruling faction at the SMC is not aligning with the ruling faction in the State administration.

11. The Director of Municipal Administration has filed an affidavit on 1st July 2021, denying the allegations in the Petition. In the context of the proceedings pending before the Director, the Director has not clarified whether the notice dated 21/5/2021 amounts to any stay on the implementation of certain resolutions taken on 7/5/2021 or not. The Director has, however, stated that he will dispose of the proceedings before him expeditiously. As noted earlier, even the learned Advocate General has made a statement that the Director of Urban Development will dispose of the proceeding in Case No.10/798/2020-21/DMA/ Councillor/444 within 15 days from 22.07.2021.

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12. Mr. Deepak Vaigankar, the Chief Officer and Respondent No.3 has also filed an affidavit in this matter. He has also denied all the allegations in the Petition. He has submitted that certain specified resolutions were taken at the meeting dated 7/5/2021 were stayed by the Director. He has stated that in so far as Resolution No.11 is concerned, he has not implemented the same on account of the pandemic situation and in the exercise of powers vested in him under Section 74(ii) of the said Act. He has pleaded that the Petitioners are in habit of making false allegations against the Petitioners in order to pressurize the Chief Officers and dominate them, so as to succumb to their illegal demands and that this Petition has been filed prematurely by misinterpreting the provisions of the said Act.

13. The Chief Officer has also pleaded that he is available in the SMC every Wednesday and Friday from 2.00 p.m. to 6.00 p.m. He has also pleaded that no files are kept pending by him and that the Chief Officer is not concerned with any ruling faction or otherwise and that he is concerned only about the duties entrusted to him under the said Act. He also pleaded that the Petitioners have '*misconceived*' the provisions of Section 74 of the said Act. He has made a categorical averment that he has implemented all the resolutions, except the one mentioned in

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paragraph 15 of the affidavit. He has stated that he has adhered to the procedure prescribed in circulars issued by the Director of Municipal Administration and has followed the same in its letter and spirit.

14. The rival contentions now fall for our determination.

15. From the orders made in several Petitions instituted by the Petitioners and referred to above, the following position emerges :

(a) The SMC comprises in all 13 Councillors;

(b) The earlier Chairperson had the support of six councilors including Shri Damodar Ghadi, who expired on 21/11/2020;

(c) Since the State Government was taking no steps to hold bye-elections and, further since the Chairperson who, according to the Petitioners, had already lost the majority, was continuing to cling to office, the Petitioners instituted Writ Petition No.8/2021, seeking directions for holding bye-elections, expeditiously;

(d) Though the Councillor Damodar Ghadi expired on 21/11/2020, bye-elections were held only on 20/3/2021. In the meanwhile, the Chairperson, who according to the Petitioners, had lost majority support, continued to cling to power despite the

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loss of majority support;

(e) On 18/3/2021, the Petitioners requisitioned the Director to convene a special meeting to consider a No-Confidence Motion against the earlier Chairperson; The Director failed to fix this crucial meeting at some early date, thereby enabling the earlier Chairperson to cling to power despite having lost majority.

(f) Faced with this unreasonable delay even in holding a meeting to consider the Motion of No-Confidence, the Petitioners had to institute Writ Petition No.213/2021. In the said Petition, the Petitioners had pleaded that the Councillor, who was elected on 22/3/2021, was also their supporter and consequently, there was no doubt that the earlier Chairperson had lost the support of the majority.

(g) This Court, by its Judgment and Order dated 9/4/2021, accepted the case of the Petitioners and directed holding of the meeting to consider the Motion of No-Confidence on 16/4/2021;

(h) Since, an attempt was made to disqualify one of the Councillors on the eve of the meeting scheduled on 16/4/2021, some of the Petitioners were forced to approach this Court by instituting Writ Petition No.1055/2021 (filing). On 15/4/2021, this Court stayed the proceedings for disqualification of the

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Petitioner therein.

(i) Undeterred, yet another attempt was made to disqualify another councilor barely hours before the crucial meeting. Some of the Petitioners were again forced to institute Writ Petition No.1074/2021 (filing) and request that the same be taken up urgently on 16/4/2021 since the meeting was scheduled in the afternoon session i.e. at 2.30 p.m. on 16/4/2021.

(j) By order dated 16/4/2021, the disqualification proceedings were stayed, so that even the Petitioners in Writ Petition No.1074/2021 could attend the meeting scheduled on 16/4/2021 at 2.30 p.m. This Court observed that at least prima facie this was an attempt to overreach the orders of this Court.

(k) As if this subversion of democratic principles was not enough, it was alleged that one of the Councillors was sought to be arrested and had to secure an anticipatory bail to attend the meeting scheduled on 16/4/2021.

(l) The Petitioners have also placed on record order dated 6/5/2021 in Writ Petition No.1177/2021 (filing) to point out that even electricity and water connections to the premises of one of the Councillors, was sought to be disconnected and had to be restored through court orders.

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(m) Ultimately, there is no dispute that the meeting to consider the Motion of No-Confidence took place on 16/4/2021 and the earlier Chairperson was voted out.

(n) In the fresh elections that ensued, Shri Raya Vinayak Parsekar was elected as the Chairperson.

(o) This Petition has been instituted by Shri Raya Vinayak Parsekar in his capacity as the Chairperson of the SMC and six other Councillors. Therefore, the Petitioners represent at least for the present, the majority of the Councillors at the SMC.

16. The allegations of obstructions and hindrances to the functioning of the SMC are required to be considered in the context of the aforesaid background and the number of times the Petitioners had to approach this Court complaining about the subversion of the democratic process and secure orders so that the earlier Chairperson who was clinging to power had to yield and the Chairperson having the support of the majority of the councilors was installed. The Petitioners allege that now, after all this, from the very first meeting of the council, obstructions, and hindrances are being created to their functioning, through the offices of the Chief Officer and the Director of Urban Development/Municipal Administration who are openly hostile.

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17. According to us, at least the Chief officer has given good cause to sustain such allegations. The material placed on record by the petitioners and the chief officer himself does suggest that the Chief Officer, besides being openly and unduly hostile to the Chairperson and the majority of the elected councilors, has exceeded his authority and even refused to implement the resolutions and decisions of the council. The Chief officer has made some orders without the authority of law to render the smooth functioning of the council difficult. The situation is compounded by the fact that the Chief officer holds other charges and therefore is unavailable on a full-time or even sufficient time basis to attend to the council works. Even the language used by the Chief officer in his affidavit and his reply to the Director also creates an impression that he is unduly and openly hostile to the Chairperson and the majority of the elected councilors and has not properly understood the role assigned to him under the Goa Municipalities Act and his position qua the Chairperson and elected councilors.

18. Concrete instance referred to by the Petitioners concerning the Director is that the Director has entertained the Case No.10/798/2020-21/DMA/Councillor/444, instituted by the Councillors, who are in minority and without giving any

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opportunity of hearing to the SMC or the Petitioners herein, expressed an opinion that the execution of Resolution Nos. 2, 20(9), 20(13) and 20(18) adopted in the councils meeting dated 7.5.2021 is liable to be prohibited. The Petitioners allege that the Director, after expressing his ex-parte opinion gave a long returnable date. The Petitioners have contended that there are no reasons in the order expressing such opinion and the order is in breach of the proviso to Section 293(2) of the said Act provides that no order shall be passed under Section 293 (1) by the Director, without giving a person who is likely to be affected, a reasonable opportunity of being heard.

19. Although there is ambiguity in the notice dated 21/5/2021 that transcribes the ex-parte order, it is reasonable to proceed on the basis that the Director has stayed the execution of Resolution Nos.2, 20(9), 20(13), and 20(18) adopted by the SMC in its meeting held on 7/5/2021. The learned Advocate General also submitted that the Director has stayed the execution of such resolutions by way of an ad-interim relief. The learned Advocate General also made a statement that the case will be disposed of by the Director after hearing the Petitioners, within 15 days. He submits that there is sufficient power in the Director to grant ad-interim relief of this nature, even without hearing the affected

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parties.

20. In this case, we do not propose to go into a larger issue as to whether the Director, while exercising power under Section 293 of the said Act has powers to grant ex parte ad-interim relief. At least Section 293 of the said act does not give any such specific power to the Director to do so. Rather, the proviso to Section 293(2) states that “no order” shall be passed under sub-section(1) by the Director against any person without giving him a reasonable opportunity of being heard. The learned Advocate General however contends that if there is the power to suspend the execution or prohibit the execution of a resolution, then, there is always incidental power to stay the execution of such resolutions, pending the final decision in the matter.

21. Section 293(1) refers to “suspend execution” or prohibit doing so. The proviso to Section 293(2) refers to “any order” that can be made under section 293(1) and further provides that “no order” shall be made without giving the person affected a reasonable opportunity of being heard. Therefore, the issue as to whether the Director, whilst exercising the power under Section 293 can grant ex parte ad-interim relief or not, is debatable. Besides, the existence of power is one thing and its use for bonafide purposes is quite another. The issue, need not be gone

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into in the present case, now that the learned Advocate General has stated that the main proceedings will be disposed of by the Director within 15 days.

22. In any case, even if it is assumed that the Director has powers to grant ex parte ad-interim relief under Section 293 of the same Act, some reasons have to be indicated by the Director whilst exercising such powers. At least, the notice dated 21/5/2021 indicates no reasons for the exercise of such powers. The notice also does not indicate as to why it was not possible to serve even a short notice upon the Petitioners and what was the urgency to make such an ex parte order. For instance, Resolution no.20(18) that the Director has stayed ex-parte had only rejected an application made by one Gosavi for financial assistance to repair her house because there was no such provision made by the council. Now at least we fail to understand what was there in this resolution to stay ex-parte and further what is the effect of such stay order.

23. Having regard to the circumstances referred to in paragraph (15), Mr. Lobo's contention that such exercise is only to obstruct the smooth functioning of the council cannot be outright rejected. This contention is therefore kept open. Even the issue as to whether the Director can grant ex parte ad interim order under

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Section 293(1), is kept open. Further, even assuming that such powers are vested in the Director, the Director cannot exercise such powers without indicating brief reasons that are reflective of application of mind. In the present case, the Director has not bothered to indicate any reasons or give a short returnable date.

24. Mr. Lobo, the learned Counsel for the Petitioners has submitted that after all efforts to see that the Petitioners do not gain control of the council failed, now, the efforts are being made to see that the council is unable to function or that the implementation of the resolutions of the council is frustrated by the Director and the Chief Officer, who are not acting independently and, in any case, flouting the provisions of the said Act.

25. The Petitioners have given the following specific instances concerning the Chief Officer and his non-cooperation when it comes to the smooth functioning of the SMC :

(a) That despite there being no clear stay from the Director, the Chief Officer failed to take steps to implement the resolutions and decisions of the council taken in the meeting held on 7/5/2021;

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(b) That even though there was no stay to the execution of resolution No.11 in the meeting held on 7/5/2021, the Chief Officer, for ulterior reasons, has refused to implement the same;

(c) The Chief Officer issued an order dated 5/5/2021, preventing any of the staff members of the council from giving access or placing the files before the Chairperson of the council unless the same are routed through the Chief Officer.

(d) The Petitioners have pointed out that the Chief Officer is rarely available and, therefore, the functioning of the council has been brought to halt by the issuance of the order dated 5/5/2021, which has no legal or statutory basis whatsoever.

(e) The Petitioners have also referred to the language used by the Chief officer in his affidavit and the reply filed before the Director to urge that the Chief Officer is openly hostile and bent on obstructing the functioning of the council.

26. The Petitioners have also made several other allegations, but since the adjudication of the same would involve disputed questions of fact, we refrain from going into such other allegations. However, the aforesaid allegations, except perhaps the one at (a) above have been made good by the Petitioners by

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placing sufficient material on record. Even the material place by the Chief Officer supports the allegations made by the Petitioners.

27. Now, in so far as the resolution Nos. 2, 20(9), 20(13), and 20(18) are concerned, we cannot fault the Chief Officer for not executing such resolutions because he was justified in carrying an impression that the execution was stayed by the Director. There is no justification offered by the Chief Officer, however, why the remaining resolutions were not implemented by him. Particularly, when it comes to Resolution No.11, adopted in the meeting held on 7/5/2021, clearly there was no stay or restraint from the Director for the execution of the same. In terms of Section 74(1) (b) of the said Act, the Chief Officer was duty-bound to take steps to give effect to this decision or resolution of the council. The explanation offered by and on behalf of the Chief Officer betrays his understanding of the legal position and also gives an insight into what he perceives his position to be vis-à-vis the Chairperson and the elected councilors.

28. In defense, Mr. Kerkar firstly tried to urge that there was no resolution No.11 adopted in the meeting dated 7/5/2021 and that there was only a note sent to him by the Chairperson. This contention is misconceived and contrary to the record. The resolution was produced by Mr. Lobo and thereafter this frivolous

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contention was fortunately abandoned by Mr. Kerkar. Incidentally, this was not even the contention raised by the Chief Officer in paragraph 15 of his lengthy affidavit. The Chief Officer, in paragraph 15 has pleaded that he did not execute the resolution Nos. 2, 20(9), 20(13), and 20(18) on account of the stay granted by the Director and then has proceeded to state that he did not execute resolution No.11 because of the pandemic situation *in the exercise of powers vested in him under Section 74(ii) of the said Act.*

29. There is no Section 74(ii) under the said Act. Possibly what the Chief Officer meant, was Section 74(2) of the said Act. Mr. Kerkar clarified that there was a typographical error in the affidavit and the Chief Officer did mean Section 74(2) of the said Act as his source of power to refuse implementation of resolution no. 11. Section 74(2) of the said Act, however, reads as follows :

“74.(2) The Chief Officer may, with the sanction of the Council, delegate any of the powers or duties or functions conferred or imposed upon or allotted to him by or under this Act, to any municipal officer or servant.

Provided that such delegation shall be subject to such limitations, if any, as may be prescribed by the Council and also to the control and revision by the Chief Officer”

30. Now, there is absolutely nothing in Section 74(2) of the said Act which vests the power in the Chief Officer to refuse implementation of the decisions or the resolutions of the

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Councils. The Chief Officer, in his lengthy affidavit, has used extremely harsh language against the Petitioners and contended that the Petitioners are bent upon *misconstruing* or '*misconceiving*' the provisions of the said Act. According to us, this is a clear case where the Chief Officer has himself misconstrued the provisions of Section 74(2) of the said Act and has attempted to usurp some power unto himself which, at least the provisions of Section 74(2) of the said Act, never vested in him. Mr. Kerkar was unable to point out any other provision under the said Act, in terms of which the Chief Officer could have refused to implement the resolutions of the council.

31. Ultimately, the Chief Officer, through his Advocate Shri Kerkar, made a statement before us that he will implement resolution No.11 within one week. We have accepted this statement as an undertaking and directed the Chief Officer to implement resolution No.11 within a week without any further excuses. The Petitioners have thus succeeded in establishing that the Chief Officer, in breach of the provision of Section 74, has failed to take steps to give effect to resolution No.11 adopted by the SMC in its meeting held on 7/5/2011.

32. The Chief Officer issued the order dated 5/5/2021 directing all the staff of the SMC to obtain proper noting/consent

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of the Chief Officer prior to presenting any file/files to the Chairperson/Vice-Chairperson/Councillor. By the said order, he further directed that in case, there is any need to forward any file to any authority/section, then, the same shall have to be routed through the Chief Officer. The Petitioners have also made a reference to a note by one of the Councillors Ms. Ansira Khan dated 22/4/2021, in which she complained about the refusal to produce files/documents before her by the Municipal Officer on the ground that the Chief Officer has instructed them to do so. The Petitioners also referred to the notings put up by the Chief Officer hindering the movement of files and thereby rendering access to the Chairperson and elected councilors difficult.

33. Now that the Chief Officer has not pointed out any provision under the said Act in terms of which he could have issued the order dated 5/5/2021. The effect of the said order is indeed to create hurdles in the functioning of the council. The effect of the said order is to undermine the statutory position of the Chairperson and the elected Councillors and, to some extent, subordinate them to the Chief Officer. The effect of the said order is to deny the free access to the Chairperson, Vice-Chairperson, and the Councillors to the files of the council unless the same are routed through the Chief Officer.

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34. The Petitioners complain that the files cannot be accessed because of such orders/notings made by the Chief Officer, insisting upon routing of the files through himself. The approach of the Chief Officer indeed appears to be that no files can move in the council without his approval and then he is hardly available to give such approvals at the council office. The order dated 5.5.2021 is indeed an instance of unauthorized obstruction by the Chief Officer to the smooth functioning of the council. The Chief Officer was not justified in virtually denying access to the files to the Chairperson, Vice-Chairperson, and the Councillors. Curiously, all such issues arise only after the Petitioners assume control and commence functioning.

35 . The Chief Officer, realizing that his order dated 5/5/2021 was indefensible, made a statement before this Court that the same will be withdrawn within one week. Mr. Kerkar attempted to explain that the Chief Officer issued such an order so that there is some record of the movement of files. The maintenance of a record is no doubt important. But this explanation is nowhere to be found in the Chief Officer's affidavit. Having regard to the other circumstances and the attitude of the Chief Officer, this explanation appears an afterthought. In any case, Mr. Kerkar was unable to point out any legal provision under which the Chief

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officer could have issued such an order, even assuming his objective was innocuous.

36. Mr. Kerkar, on instructions stated that the Chief Officer, after withdrawing the order dated 5. 5.2021 will now maintain a register of files so that there is a proper record of the movement of files and the files are not lost or destroyed. According to us, the Chief Officer should undoubtedly maintain proper registers so that the files are not lost or destroyed and there is a proper trace on the movement of files. However, there was neither any justification nor did the Chief Officer show any legal provision under which he could have issued the order dated 5/5/2021. If the Chief Officer consistent with his statement does not withdraw the order dated 5/5/2021 within one week, the same to stand quashed.

37. Section 74(1)(a) provides that the Chief Officer, subject to the control, direction, and supervision of the Chairperson, supervise the financial and executive administration of the Council and exercise such powers and perform such duties and functions as may be conferred or imposed upon him or allotted to him by or under the said Act. The Chief Officer is also duty-bound to take steps to give effect to all the decisions or resolutions of the Council. The Chief Officer is also duty-bound to cause to

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be maintained and supervise the accounts and registers of the Council. The Chief Officer is required to report to the Chairperson and the Committee concerned all cases of fraud, embezzlement, theft, or loss of municipal money and property. He has the power to exercise supervision and control over the acts and proceedings of all the officers and servants of the Council. But, again this will have to be subject to the control, direction, and supervision of the Chairperson.

38. Precisely because there were clashes between the Chief Officers who are Government Servants and the Chairpersons of the Council who are elected representatives, the Secretary (Urban Development) issued the circular dated 10/5/2000, which reads as follows :

“ Dated: 10th May 2000

CIRCULAR

*Subject: Powers of Chief Officers vis-a-vis
Chairperson of the Municipal Councils.*

Representations have been received from some of the Chairpersons of the Municipal Councils stating that the Chief Officers are not sending the files to them whenever they are called for. The entire matter of the duties and the powers of Chief Officers vis-a-vis Chairpersons of the Municipal Councils and their role under the Goa Municipalities Act, 1959 (Act 2 of 1959) as amended from time to time, has been examined in consultation with the

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Law Department and the following clarifications are issued:-

1. A harmonious interpretation of various sections of the said Act, particularly sections 2(33), 51(1)(b), 59(1)(d), 74(1)(a), and 74(1)(b), reveals that the Chief Officer of a Municipal Council has to function subject to the control and supervision of the Chairperson. In terms of section 59 of the said Act, the Chairperson of a Council shall, inter alia, watch over the financial and executive administration of the Council. Further, the administration of a municipal area shall vest in the Council in terms of section 51 of the Act. Though some of the functions are vested in the Chief Officer then the issuance of construction permissions, issuance of demolition notices, etc., all those powers are subject to the supervision and control of the chairperson. The scheme of the Act enjoins that the Chief Officers have to actively assist and advise the Council and not to treat a rival centre of power within the municipal administration. The powers of taking action over the malfunctioning of the municipal councils vests in other authorities like the Director of Municipal Administration. Such powers cover suspension of the execution of any order or resolution of a council on certain grounds or the by the Director of Municipal Administration under Section 293, appointment of the municipal administrator, and in extreme cases dissolution of the Council under Sections 293 and 300(3) respectively by the Government. The only situation where the Chief Officer can independently submit a report to the Director of Municipal Administration over and above the hand of the Chairperson or the Council is under Section 46(3).

It is, therefore, hereby directed that all the Chief Officers should honour the orders of the Chairpersons

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in all matters relating to the municipal administration. The Chairpersons and the Councils will, in turn, be responsible, naturally, for the delays in deciding cases and consequences following as per the provisions of the laws in force. As per the Right to Information Act, 1997 (Goa Act 28 of 1997), all the citizens have the right of access to information and obtain certified copies thereof of the documents of the municipal records if they wish to do so.

2. *The above instructions are issued in supersession of previous instructions to the contrary on the subject.*

3. *The receipt of this Circular may be acknowledged.*

Sd/-

(A. VENKATRATNAM)

SECRETARY URBAN DEVELOPMENT”

39. Mr. Kerkar submitted that the above circular was modified by Circular dated 9/5/2001, which reads as follows :

“ *Dated:- 09/05/2001*

CIRCULAR

Sub: Powers of Chief Officers vis-a-vis Chairpersons of the Municipal Councils.

Attention of all the Chairpersons and the Chief Officers of the Municipal Councils is invited to Circular No.3/13-6/95/UDD/224 dated 10th May, 2000 whereunder certain clarifications were issued as regards the powers of the Chief Officers vis-a-vis the Chairpersons. Consequent upon the issue of the said circular, it has come to the notice of the Government that Chairpersons of some of the Councils have issued orders directing the Chief

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Officers to submit all the files pertaining to construction, house tax, trade licences, etc., to the Chairpersons for prior approval before issue of any permission and further cautioned the Chief Officers of disciplinary action in case of non-compliance taking shelter under the directives contained in the Circular dated 10/5/2000 that the Chief Officers should honour the orders of the Chairpersons in all matters relating to the municipal administration. In the light of above, it is felt necessary that the matter needs further clarification so as to ensure smooth day to day functioning of the Council within the ambit of law.

The Goa Municipalities Act, 1968 (Act 7 of 1969), envisages certain statutory powers to be executed by the Chief Officer/Chairperson of Municipal Council, Director of Urban Development Department and the Government. Each aforesaid authority has a definite role to play in furtherance of public interest.

*Although, in terms of section 74 of the said Act, 1965 the Chief Officer, while exercising powers conferred in him are performing duties and functions as may be imposed and allotted to him under the Act, does so subject to the control, direction and supervision of the Chairperson, this does not empower the Chairperson to direct the Chief Officer to submit the cases for prior approval unless such prior approval is required under the provisions of the Act, Rules or bye-laws. **Although, for general supervision, the Chairperson can call for any file for perusal, powers under Section 74 do not entitle the Chairperson to pass statutory order on any matter for which the Chairperson is not specifically empowered under any of the provisions of the Act, rules or bye-laws. Thus, the Chairperson and the Chief Officer of the Council are to perform their functions within the***

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provisions of the said Act, and powers conferred on the Chief Officer under any specific provision, cannot be diluted by resorting to the general provisions of Section 74 of the said Act.

The Circular dated 10th May, 2000, was issued so as to ensure that the Chief Officer, Chairperson and the Council should not function as rival centres of power within the Municipal Administration and not create further restriction of powers of any one authority. Accordingly, it is enjoined on and to function strictly within the ambit of law.

Sd/-

*(A. Venkataratnam)
Secretary (UD)”*

40. The Petitioners have placed on record a communication dated 4/10/2013, enclosing the minutes of the meeting of the Chairpersons/Chief Officers of all Municipal Councils held under the Chairmanship of Hon'ble Deputy Chief Minister/ Minister (Urban Development) on 16/9/2013. In this meeting, there was discussion on the coordination between Council and Administration and after, detailed discussion, the following decisions were taken:-

“ (i) All Inward Correspondence should also be placed before the Chairperson.

(ii) Replies to Writ Petitions, legal suits before any Court or legal Authority should also be shown to the Chairperson before filing.

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(iii) All Audit Reports to be placed before the Chairperson.

(iv) Reports of inspections carried out by Municipal staff to be placed before the Chairperson before action is taken by the Chief Officer.

(v) Replies to LAQs to be shown to the Chairperson.

(vi) Proposed demolition to be brought to the notice of the Chairperson before carrying out the same.

(vii) Construction/Licence/Occupation files to be placed before the Chairperson before issuing. The Chairperson to return the files within a period of three days with or without observations. The Chief Officers to take cognizance of observations if any and decide on the same.

The Hon'ble Dy. Chief Minister/Minister (UD) has convened the next review meeting of the Municipal Councils on 4th December, 2013. The Hon'ble Dy. Chief Minister/Minister (UD) tanked all participants and instructed the Director to issue necessary Circulars by incorporating the decisions.”

41. For the present, we do not deem it appropriate to take cognizance of the above meeting dated 4th December 2013. Based however on the aforesaid two circulars, as also the provisions of the said Act, it is quite clear that the Chief Officer has to function subject to the control, direction, and supervision of the Chairperson, when it comes to financial and executive administration of the Council. No doubt, there are provisions

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under the said Act which confer independent powers on the Chief Officer and when it comes to exercise of those powers, the Chief Officer will have to act independent of the Chairperson or the Councillors, as the case may be. However, in the matters of financial and executive administration of the Council, the Chief Officer is subject to the control, direction, and supervision of the Chairperson. The Chief Officer must, under no circumstances act like some rival power center in the council.

42. Even under Section 74(2) of the said Act, the Chief Officer may, only with the sanction of the Council, delegate any of the powers or duties or functions conferred or imposed upon or allotted to him by or under this Act, to any municipal officer or servant. The proviso to sub-section (2) of Section 74 provides that such delegation shall be subject to such limitations if any, as may be prescribed by the Council and also to the control and revision by the Chief Officer. All this indicates that in matters of financial and executive administration, the Chief Officer has to function subject to control, direction, and supervision of the Chairperson.

43. Ultimately, the Chief Officer has to remember that the Chairperson and other Councillors of the Council are elected

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members. The role of the Chief Officer, unless, otherwise, specified under the provision of the said Act, is to take steps to give effect to all the decisions or resolutions of the Council. The Chief Officer must assist the Chairperson and the elected councilors in the discharge of their lawful functions. The Chief Officer is not expected to take any sides or act under dictation while discharging this role. No doubt, when it comes to the discharge of duties and functions that the said Act has assigned exclusively and independently to him, the Chief Officer has to assert his independence and act accordingly. This is the scheme of the said Act that binds all the functionaries under the said Act. The Chief Officer, in his affidavit, has made bold but bald assertions about his compliance with the provisions of the said Act and the above circulars. But the orders made by him and his unjustified refusal to implement even the resolutions of the Council that were admittedly not stayed belies such assertions and suggests otherwise.

44. The Chief Officer, in this case, has used extremely strong language in his affidavit and reply before the Director. For instance, the Chief Officer, in paragraph 9 of his affidavit has gone to the extent of alleging that the Petitioners, which include the Chairperson and majority of the elected Councillors, are in

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the habit of making any false allegations against the Chief Officers in order to pressurize the Chief Officers, dominate them, so as to succumb to their illegal demands and that the present petition has been filed prematurely by misinterpreting the provisions of the said Act.

45. The Chief Officer has not bothered to furnish even a shred of material in support of such serious allegations. The allegations have been made without any sense of responsibility. Such unsubstantiated allegations are not to be made by Government Servants against elected representatives unless there is some cogent material to back the same. The Chief Officer is not some rival councilor that he should so viciously attack the Chairperson under whose control, supervision, and direction the Chief Officer is to function when it comes to executive and financial matters. In response to the Chairperson's complaint to the Director, the Chief Officer has made similar unsubstantiated allegations using harsh language. The Chief Officer has gone to the extent of stating that the Chairperson by only filing a complaint before the Director has abused his position and *therefore strict action be contemplated against the chairperson as contemplated under the Goa Municipality Act.* This means that the Chief officer will disregard the Chairperson, the elected

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councilors, the resolutions of the council and if the Chairperson complains about this to the Director, then this Chief officer will allege abuse of powers by such Chairperson and even propose strict action.

46. The Chief Officer, in his affidavit and his reply before the Director, has alleged quite repeatedly that the Petitioners have misconstrued the provisions of the said Act. As noted earlier, not the Petitioners, but it is the Chief Officer who has grossly misinterpreted the provisions of Section 74 of the said Act. The Chief Officer has acted in breach of the provisions of the said Act and the circulars issued by the Secretary(urban development). The strong words used by the Chief Officer against the Chairperson and the majority of the elected councilors perhaps apply to the conduct and the role of the Chief Officer in the present case. Ultimately, the Chief Officer accepted his lapses and undertook to withdraw his order dated 5.5.2021 and to implement resolution No.11. Having regard to the undertaking of the Chief Officer, the Petitioner's complaint dated 21.05.2021 to the Director stands substantially redressed and can be now formally disposed of by the Director.

47. From the perusal of the affidavit filed by the Chief Officer,

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we are inclined to agree with Mr. Lobo that the Chief Officer entertains an impression that he is supreme when it comes to the administration of the Council, and the Chairperson and other elected Councillors are virtually subservient or subordinate to him. According to us, the Secretary (Urban Development) must take serious note of the conduct of this Chief Officer and the affidavit and reply filed by him and consider counseling him about his powers and duties under the said Act and how he should interact with the Chairperson and other elected Councillors of the council. The Secretary (Urban Development) must also consider whether this Chief Officer should be shifted to some other Council, having regard to his functioning in the present Council and the affidavit/reply filed by him, making unsubstantiated allegations against the Chairperson and the other Councillors.

48. The said Act requires the State to appoint a Chief Officer to a Council. The larger question of whether such an officer has to be a full-time officer without any other additional charge can be gone into in an appropriate matter in the future. For the present, we accept the statement of the learned Advocate General that the Chief Officer will attend the SMC on all working days, in the afternoon session i.e. between 2.30 p.m. to 5.30 p.m., so that the immediate complaint of the Petitioners is redressed. The learned

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Advocate General submits that presently, the Administration is involved in combating the pandemic. He submits that there is a shortage of officers. He submits that eight other Councils have Chief Officers holding additional charge of some other posts. Having regard to all these factors, we do not deem it appropriate, presently, to go into the larger issue as to whether the State Government has to invariably appoint a full-time Chief Officer in the Councils.

49. For all the aforesaid reasons, this Petition is disposed of by making the following order :

(A) The statement made by the learned Advocate General that the Chief Officer shall report for duties at the SMC on all working days in the afternoon session i.e. 2.30 p.m. to 5.30 p.m., is accepted. The Respondents will have to take necessary steps to ensure that there is compliance with this statement.

(B) The statement made by the Chief Officer that he will withdraw order No. SMC/2021-22/223 dated 5.5.2021, within one week, is accepted. The Chief Officer to issue formal orders within one week. If, no such orders are issued, the order dated 5/5/2021 to stand quashed, without the necessity of further reference to this Court.

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(C) The statement of the Chief Officer that he will implement resolution No.11 adopted by the SMC in its meeting dated 7/5/2021 within one week, is accepted. The Chief Officer, consistent with his statement/undertaking, will have to take steps for implementation of the said resolution.

(D) The statement made by the learned Advocate General that the Director of Urban Development will dispose of Case No.10/798/2020-21/DMA/ Councillor/444 within 15 days from 22/07/2021, is accepted and the Director of Urban Development to act based on the same.

(E) The Secretary (Urban Development) to consider the issue of retention of Shri Deepak Vaigankar, as Chief Officer of the SMC, and comply with other directions in paragraph 47, within 30 days from today and take appropriate decision on this issue. A compliance report to be filed in this Court on or before 1st September 2021.

(F) The Chief Officers of the Municipal Councils are directed to discharge the duties imposed upon them under Section 74 of the Goa Municipalities Act, 1968 and further, comply with the directions contained in the Circulars dated

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10/5/2000 and 9/5/2001 in their interactions with the Chairpersons of the Municipal Councils.

50. There shall be no order as to costs. All concerned to act on an authenticated copy of this order.

SMT. M.S. JAWALKAR, J.

M.S. SONAK, J.

SANTOSH S MHAMAL

Digitally signed by SANTOSH S MHAMAL
Date: 2021.07.26 11:01:24 +05'30'