

**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO. 187 OF 2015**

1. Mrs. Suhasini S. Govekar,  
W/o Surendra Govekar,  
Major of age, Indian,  
Pancha, V.P. Anjuna,  
r/o House No. 455/2,  
Dabolwaddo, Anjuna,  
Bardez, Goa.
  2. Mrs. Shital Dabholkar,  
w/o Satchitanand Dabholkar,  
major of age, Indian,  
Panch, V.P. of Anjuna,  
r/o House no. 323/A,  
Caisua, Bardez, Goa.
  3. Mr. Sandeep P. Chimulkar,  
s/o Pandurang Chimulkar,  
Major of age,  
r/o House No. 1110, Panch,  
V.P. Anjuna, Mazal Waddo,  
Anjuna, Bardez, Goa.
  4. Mr. Kashinath J. Shetye,  
s/o late Mr. Jayram Shetye,  
Major of age, Indian,  
Occupation, service,  
r/o 201, Raj Excellancy,  
Ribandar, Ilhas, Goa.
- ... Petitioners

Versus

1. The Goa State Election Commissioner,  
Goa State Election Commission,  
Altinho, Panaji, Goa.

2. Mr. Patrick Savio Almeida,  
s/o Marcelino F. Almeida,  
R/o House No. 1698/1,  
Gumal Waddo,  
Anjuna, Bardez-Goa.
3. The Village Panchayat of Anjuna Caisua,  
Through its Secretary,  
Anjuna, Bardez-Goa. ... Respondents

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Shri Preetam Talaulikar, Advocate for the Petitioners.

Shri Shashikant Narayan Joshi, Advocate for the Respondent No. 1.

Shri Sudesh Usgaonkar, Advocate for the Respondent No. 2.

None for Respondent No. 3.

**CORAM:- C. V. BHADANG, J.**

**DATE:- 26<sup>th</sup> AUGUST, 2015.**

**ORAL ORDER:**

By this petition, the petitioners are challenging the judgment and order dated 12.02.2015, passed by the Goa State Election Commission, thereby dismissing the petition filed by the petitioners, seeking disqualification of the respondent no.1 under Section 10 read with Section 11 of the Goa Panchayat Raj Act, 1994 (the Act, for short).

2. The brief facts are that the respondent no. 2 is elected as a Member from Ward No. 10 of Village Panchayat, Anjuna-Caisua on 16.05.2012. The petitioner nos. 1, 2 and 3 are the voters, as also the elected Members of Village Panchayat of Anjuna-Caisua. The petitioner no. 4 is said to be a public spirited individual and is a Government servant and he has taken up causes of vital importance to the public. The petitioners acquired the knowledge that the respondent no. 2 has got his birth registered at the Central Registry of Birth, Marriages and Deaths at Lisbon, under the Birth Registration No. 28-E-5/2006 on 05.05.2006. As such, according to the petitioners, respondent no. 2 has become a Portuguese National, since 05.05.2006 and ceased to be an Indian National. It was thus, claimed that respondent no. 2 was not qualified to contest the election of the Village Panchayat. In such circumstances, the petitioners approached the respondent no. 1 with an application under Sections 10 and 11 of the Act. Alongwith the petition, the petitioners produced various documents including the Birth Certificate. The petitioners prayed for a declaration that respondent no. 2 is disqualified to be elected, and/or to hold the office of Panchayat and/or as a Deputy

Sarpanch of the Village Panchayat of Anjuna-Caisua constituted under the Act.

3. The respondent no. 2 filed a reply and opposed the claim. The respondent no. 2 also raised certain preliminary objections about maintainability of the petition. It was contended that the petition as framed and filed is not maintainable and the remedy if any, is to file Election Petition under Sections 16 and 17 of the Act. It is contended that as the petitioners failed to take recourse, to the said remedy they cannot file the present petition, which is in the nature of an abuse of the process of the Court. The respondent no. 2 also denied the allegations on the basis of which the disqualification was sought for. It was contended that the petitioners and one Devanand Vassudev Shirodkar have already filed an Election Petition before the Administrative Tribunal. The respondent no. 2 also contended that the respondent no. 1 has no jurisdiction to entertain the petition as framed and filed.

4. The respondent no. 1 by the impugned judgment and order has dismissed the petition holding that the same is not

maintainable and that the respondent no. 1 has no jurisdiction to entertain any such petition. Feeling aggrieved, the petitioners are before this Court.

5. I have heard Shri Talaulikar, the learned Counsel for the petitioners, Shri Joshi, the learned Counsel for the respondent no. 1 and Shri Usgaonkar, the learned Counsel for the respondent no. 2. With the assistance of the learned Counsel for the parties, I have perused the impugned judgment and order.

6. It is submitted by Shri Talaulikar, the learned Counsel for the petitioners that the respondent no. 1 has not recorded any reasons, while dismissing the petition. It is next submitted that once the respondent no. 1 had found that the issue of citizenship cannot be agitated or gone into by the respondent no. 1, it should have waited for the outcome of the petition, which was pending before the Central Government, at the instance of the petitioners on the issue of citizenship. It is next submitted that the reliance placed by the respondent no. 1 on a decision, in the case of **Hari Shanker Jain Prasad Vs. Sonia Gandhi**, reported in **AIR 2001**

**SC 3689** is misplaced, as the only preposition laid down therein is that the Court cannot take judicial notice of a foreign law. It is submitted that if, the view taken by the respondent no. 1 is accepted, the provisions of Section 11 of the Act would be rendered superfluous. He therefore, submitted that the impugned order deserves to be set aside.

7. It is submitted by Shri Talaulikar, the learned Counsel for the petitioners, that the petitioners could not approach the Administrative Tribunal within time, as they acquired the knowledge about the respondent no. 2, getting the birth voluntarily registered in the year 2013.

8. Shri Joshi, the learned Counsel for the respondent no. 1 has supported the order. It is submitted that the only ground is about the respondent no. 2 getting his birth voluntarily registered at Lisbon, Portugal on 05.05.2006, which is prior to the election. It is submitted that the ground that the respondent no. 2 was not qualified to contest the election, could only be agitated and gone into, in a petition filed under Section 16 of the Act. He therefore,

submitted that it has been rightly held that the petition as framed and filed was not maintainable.

9. Shri Usgaonkar, the learned Counsel for the respondent no. 2 has also supported the impugned order on similar grounds. It is submitted that the petitioners ought to have filed an Election Petition under Section 16 of the Act, if at all, they wanted to challenge the election. That, having not been done, would not permit the petitioners to file a petition under Section 11 of the Act. It is submitted that even otherwise, Section 11 of the Act contemplates reference of such a dispute to the Election Commission and the parties cannot approach directly.

10. I have considered the rival circumstances and the submissions made. A perusal of the impugned order shows that the respondent no. 1 had framed the following preliminary issues:

1. Whether the petitioners prove that the present petition is maintainable in order to decide the issue that the respondent no. 1 has acquired citizenship of another country ?

2. Whether the respondent no. 1 proves that the present petition is not maintainable ?

The Election Commissioner has answered Issue No. 1 in the negative and the Issue No. 2 in the affirmative.

11. During the course of arguments, it was not in dispute on behalf of the petitioners, that the petitioners had a remedy of filing the Election Petition on the ground, which the petitioners had approached the Election Commission. The submission was that the remedy for filing such an Election Petition had expired and therefore, the petitioners were required to approach the Election Commission with a petition under Section 10 read with Section 11 of the Act. For obvious reasons, the said submission cannot be accepted. If under law, the remedy of Election Petition is provided, the same cannot be circumvented on a ground that the limitation for filing an Election Petition had expired. It is trite that what cannot be done directly, cannot be achieved indirectly.

12. Section 16(1) of the Act, which is relevant for the purpose reads thus:

**“16. Election Petition.—** (1) *No election to fill a seat or seats in a Panchayat shall be called in question except by an election petition prescribed on one or more of the grounds specified in sub-section (1) of section 20 and section 21 to such authority as may be prescribed, by any candidate at such election or by any voter qualified to vote at such election together with a deposit of five hundred rupees as security for costs, within thirty days from, but not earlier than, the date of declaration of the result of the election of the returned candidate at the election, and if the dates of declaration of the results of their election are different, the last of these dates.”*

The Election Petition lies before the Administrative Tribunal. It can thus, be seen that remedy of the petitioners, if any, was to file Election Petition before the Administrative Tribunal. The petitioners having not done so, could not have approached the Election Commission purportedly under Section 10 read with Section 11 of the Act.

13. The respondent no. 1, thereafter, has considered the provisions of the Goa Panchayat Raj Act, 1994 and the Citizenship Act, 1951 alongwith Rules framed thereunder, in order to hold that the issue, whether the present respondent no. 2 has ceased to be an Indian Citizen and has acquired foreign citizenship, cannot be gone into, in such proceedings. The respondent no. 1 has referred to the decision of the Hon'ble Supreme Court in the matter of **Bhagwati Prasad Dixit Ghorewala Vs. Rajiv Gandhi**, reported in **AIR 1986 SC 1534**, in this regard. It has then referred to yet another decision of the Hon'ble Supreme Court in the case of **Lal Babu Hussain and Others Vs. Electrol Registration Officer**, reported in **1995 3 SCC 100**, in which, it has been *inter-alia* held that the determination of the question of citizenship, even for limited purpose of some other law has to be done by the Authority appointed under the Citizenship Act, in the light of the constitutional provisions and the provisions of the Citizenship Act, 1955.

Thus, on both these counts, namely, absence of jurisdiction to decide the issue of citizenship and as remedy of Election Petition being available to the petitioners, the respondent

no. 1 had come to the conclusion that the petition was not maintainable.

14. For the aforesaid reasons, I find that no case for interference with the impugned order is made out. In the result, the petition is dismissed.

15. In the circumstances, there shall be no order as to costs.

**C. V. BHADANG, J.**

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