

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 418 OF 2015**

Mrs. Georgina Isidorio Mascarenhas,
of major age, Indian National,
r/o H. No. 607, Dongrim,
Majorda, Salcete, Goa.

... Petitioner

Versus

1. The Goa State Election Commissioner,
Office of the State Election
Commissioner, having its office
at Altinho, Panaji, Goa.

2. Mr. Aleixo Arnolfo Pereira,
r/o H. No. 150, Francis Perera Ward,
Utorda, Majorda, Salcete, Goa.

... Respondents

Shri Vishnuprasad A. Lawande, Advocate for the Petitioner.

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

Respondent No. 2, in person.

CORAM:- C. V. BHADANG, J.

DATE:- 26th JUNE, 2015.

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. Shri Joshi, learned Counsel waives service on behalf of the first respondent. The second respondent, Shri Aleixo A. Pereira, in person. Heard finally with the consent of the parties.

2. By this petition, the petitioner is challenging the order dated 11.06.2015, passed by the first respondent, Goa State Election Commissioner in Petition No. 1/2015. By the impugned judgment, the Election Commissioner has disqualified the petitioner from being a Member of the Village Panchayat of Majorda-Utorda-Calata, Salcete Goa, under Section 10(f) of the Goa Panchayat Raj Act, 1994 (the Act of 1994, for short).

3. The brief facts are that the second respondent is a voter and is a resident of House No. 150 of Village Panchayat of Majorda-Utorda-Calata, Salcete, Goa. The petitioner happens to be an elected representative from Ward No. II of the said Village Panchayat. It is not in dispute that the husband of the petitioner, Isidorio Mascarenhas @ Eggie Mascarenhas, is a businessman and is in the business of supplying sound system. According to the case made out by the second respondent, before the first respondent (Goa State Election Commission), it was alleged that the meeting of the Gram Sabha was called on 12.04.2015, which was attended by the second respondent and by the elected representatives of the said Panchayat. The second respondent had raised the issue about hiring of mike/sound system

for the Gram Sabha meeting, from Isidorio Mascarenhas @ Eggie Mascarenhas, i.e. the husband of the petitioner. It was alleged that the petitioner informed that the said sound system was hired from one Henry Mascarenhas. It appears that the second respondent obtained certain information under Right to Information Act about the payments made to the persons from whom the sound system was hired for the Gram Sabha meetings for the past two years. In pursuance thereof, the second respondent obtained copies of certain receipts/vouchers.

4. According to the second respondent, Isidorio Mascarenhas @ Eggie Mascarenhas had supplied the sound system to the said Panchayat on 03.03.2015, 31.07.2014 and 12.11.2014. The receipt/voucher dated 03.03.2015 is in the name of Eggie Mascarenhas, while the rest of the two receipts are in the name of Isidorio Mascarenhas. It was further contended that till April, 2014, the said Panchayat was hiring sound system from Timothy Almeida, in respect of which the second respondent has obtained copy of one cash bill dated 28.04.2014. Sometime in the month of August, 2014, the petitioner using her undue influence of her official position as

Deputy Sarpanch, managed to hire the sound system from her husband, Isidorio Mascarenhas @ Eggie Mascarenhas.

5. It was further contented that the marriage between the petitioner and said Isidorio Mascarenhas @ Eggie Mascarenhas was solemnized under Communiao Dos Bens or Communion of Assets governed by the provisions contained in Articles 1098 and 1108 of the Portuguese Civil Code, 1860 and by virtue of the said provision and Section 5A of the Income Tax Act, 1961, the petitioner had an equal share in the income/profits made by her husband from his business. It was contended that the petitioner has thus, incurred disqualification from being the Member of the Panchayat under Section 10(f) of the Act of 1994. On behalf of the second respondent, reliance was placed on the decision of the Hon'ble Supreme Court in the case of **Zelia M. Xavier Fernandes E. Gonsalves Vs. Joana Rodrigues and Others**, reported in **AIR 2012 SC 988**. It was prayed that the petitioner be disqualified accordingly.

6. The petitioner appeared before the State Election Commission and filed her reply on 02.06.2015. On that day, the

Commissioner was reported to be unwell. Hence, the matter was adjourned to 22.06.2015. On that day, the petitioner filed a rejoinder to the reply of the second respondent, when the matter was adjourned for orders on 11.06.2015.

7. The Election Commissioner by impugned order came to the conclusion that the second respondent had established that the petitioner had incurred disqualification on account of the fact that her husband had supplied sound system for the Gram Panchayat meetings. In that view of the matter, the petition came to be allowed. Feeling aggrieved the petitioner has approached this Court.

8. I have heard Shri Lawande, the learned Counsel for the petitioner, and Shri Joshi, the learned Counsel for the first respondent. I have also heard Shri Alexio Pereira, the second respondent, who appears in person.

9. It is submitted on behalf of the petitioner that there was no proper opportunity of hearing granted to the petitioner before the State Election Commissioner. The learned Counsel has referred to the

copies of the proceeding sheets at pages 69 to 72, in order to point out that on 22.05.2015, the second respondent had filed a reply before the Election Commissioner, to the memo submitted by the petitioner herein. The petitioner had filed her reply to the main petition. It is submitted that as the State Election Commissioner was reported to be unwell, the case was adjourned for filing arguments. The matter was adjourned to 02.06.2015. It is submitted that on that day, the petitioner has filed her rejoinder to the reply of the second respondent. The matter was directly fixed for order and the impugned order came to be passed on 11.06.2015. The learned Counsel would submit that thus, the proceeding sheets do not show that there was any opportunity of hearing granted to substantiate the claim of the petitioner. It is submitted that the petitioner had specifically denied that the receipts produced alongwith the petition were issued by her husband and in that view of the matter, it was necessary for the Commissioner to conduct appropriate enquiry and frame proper points and then decide the matter.

10. It is submitted by the learned Counsel for the first respondent that, the Counsel for the parties were present on

02.06.2015, when the matter was adjourned to 11.06.2015 and the record and proceeding sheet would also show that the learned Counsel for the parties had signed the proceeding sheet and hence, they were aware that the matter was fixed for order on 11.06.2015. It is submitted that the petitioner cannot now turn around and claim that there was no proper opportunity granted for hearing. Alternatively, it is submitted by the learned Counsel that the first respondent would abide by the order that may be passed by this Court.

11. It is submitted by the second respondent, that it is an admitted position that Isidorio Mascarenhas @ Eggie Mascarenhas is the husband of the petitioner. It is submitted that the receipts dated 03.03.2015, 31.07.2014 and 12.11.2014, which were produced alongwith the petition, were obtained by the second respondent by taking recourse to the Right to Information Act and they being official documents could not be doubted. The second respondent also relied upon the copies of the proforma for General Ledger-Abstract Register (Form No. 1), in order to demonstrate that the payments made, vide receipts dated 03.03.2015, 31.07.2014 and 12.11.2014 are reflected

in the said General Ledger. It is submitted that thus, no exception could have been taken to the genuineness of the said receipts and payments made therein.

The second respondent has placed reliance on the decision of the Hon'ble Supreme Court in the case of **Maria Margarida Sequeria Fernandes and Others Vs. Erasmo Jack de Sequeria (dead) through LR's**, reported in **AIR 2012 SC 1727**, in order to submit that the Quasi Judicial Authority has to make an endeavour to find out the truth and it should be a "guiding star in the entire judicial process".

Reliance is also placed on the decision of the Hon'ble Supreme Court, in the case of **Kishore Vs. State of Uttar Pradesh and Others**, reported in **(2013) 2 SCC 398**, in order to submit that the parties cannot be allowed to abuse the process of the Court by taking false and frivolous plea. It is also submitted that, the fact that the petitioner was permitted to file reply would be sufficient compliance of principles of natural justice and insistence on oral hearing is not always necessary or justified.

The second respondent has also placed reliance on the decision of this Court in the case of **Mr. Zelia M. Xavier Fernandes**

E. Gonsalves Vs. Mrs. Joana Rodrigues and Others, reported in **2009(5) Bom.C.R. 74**, in order to submit that the Commissioner is not required to articulate detailed reasons. He therefore submits that the petition be dismissed.

12. I have given my anxious consideration to the rival circumstances and the submissions made. It is not in dispute that the petitioner at the relevant time was a Deputy Sarpanch of Village Panchayat of Majorda-Utorda-Calata, Salcete Goa and that Isidorio Mascarenhas @ Eggie Mascarenhas happens to be her husband. The fact that there was a meeting of the Gram Panchayat conducted on 12.04.2015, is also not in dispute. The sole ground on which the disqualification of the petitioner is sought, is based on Section 10(f) of the Act of 1994 which reads as under:

"10. Disqualification for membership — A person shall be disqualified for being chosen as, and for being, a member of the Panchayat if,—

- (a)....
- (b)....
- (c)....
- (d)....
- (e)....

(f) he has directly or indirectly any share or monetary interest in any work done by or to the Panchayat or any contract or employment with, under or by or on behalf of, the Panchayat;"

13. In the case of **Zelia M. Xavier Fernandes E. Gonsalves** (supra) the question before the Hon'ble Supreme Court was whether the appellant therein could be having indirect share or monetary share in the contract of her husband with the concerned Village Panchayat. The Hon'ble Apex Court after considering the provisions of Articles 1098 and 1108 of the Portuguese Civil Code came to the conclusion that the wife by operation of law becomes entitled to the share in the profits of the contract awarded by the Village Panchayat. It was also held that prohibition in Section 10(f) of the Act of 1994 should not receive unduly narrow or restricted construction.

14. Thus, in the present case the material question would be whether the Commissioner could have justifiably placed reliance on the three receipts i.e. the receipts/vouchers dated 03.03.2015, 31.07.2014 and 12.11.2014, particularly, in view of the specific denial by the petitioner and without affording adequate opportunity to the

petitioner to justify and establish her defence. It may be mentioned at this stage that the copy of the General Ledger-Abstract Register (Form No. 1) was not produced before the Election Commissioner and that document is for the first time produced before this Court. Be that as it may, the short question with which this Court is concerned is, as to whether on the basis of the documents produced herein, including the copies of record and proceedings, it can be said that sufficient opportunity was granted, to the petitioner and if not, what order ?

15. There cannot be any manner of dispute with the preposition that the primary objective of any judicial/quasi judicial proceeding/enquiry is to find out the truth. The judicial/quasi judicial authority is to ensure that no party is allowed to abuse the process of the Court. However, whether in a particular case, there was adequate opportunity of hearing granted or not, is always a question of fact confined to the facts and circumstances of each case. To a query, whether there are any rules governing the procedure to be followed by the State Election Commissioner, while conducting an enquiry under Section 10(f) of the Act of 1994, it was submitted at the Bar

that, there are none. Thus, the State Election Commissioner has to follow appropriate procedure having regard to the controversy/issue involved before it in a particular case. It is needless to mention that if, during the course of such enquiry, the Election Commissioner finds that any of the parties have knowingly made a false statement or taken a false defence, the concerned authority can take appropriate action, as may be permissible in law.

16. A bare perusal of the proceeding sheet shows that on 22.05.2015, the parties filed certain pleadings and the matter was adjourned as the Commissioner was reported to be unwell. It was adjourned to 02.06.2015. It would be significant to note that order-sheet dated 02.06.2015 does not show that there was any effective hearing on that day, except that the learned Counsel for the petitioner has filed rejoinder to the reply of the second respondent dated 22.05.2015. In so far as the aspect of the said proceeding being signed by the learned Counsel for the petitioner, is concerned, it is submitted that the petitioner had raised a preliminary objection to the maintainability of the petition before the Election Commissioner and the petitioner was under impression that the matter is fixed for order

on the preliminary objection. On a careful consideration of the proceeding sheets and the impugned order passed by the Election Commissioner, I am of the considered view that adequate opportunity was not afforded in the matter, particularly when the genuineness of the receipts was specifically challenged and disputed on behalf of the petitioner. As noticed earlier, the copy of the General Ledger-Abstract Register (Form No. 1) was not produced before the State Election Commissioner. It was produced for the first time before this Court. It is trite that the impugned order cannot be tried to be supported on the basis of additional material/documents produced before this Court. In such circumstances, I find that the matter could be remanded to the State Election Commission so that the parties get appropriate opportunity of hearing including opportunity to produce documents.

17. In the circumstances, the following order is passed:-

- (a) The petition is allowed.
- (b) The impugned judgment and order dated 11.06.2015 passed by the first respondent is hereby set aside.
- (c) The Petition No. 1/2015 before the State Election Commission is restored to file and is

remanded for a fresh decision, in accordance with law.

(d) The State Election Commissioner shall afford appropriate opportunity of hearing to the parties (including opportunity to produce documents) and then proceed to decide the petition, in accordance with law.

(e) It is made clear that the Election Commissioner would be at liberty to call for the records from the Gram Panchayat for the purpose of the said enquiry.

(f) The petitioner and the second respondent to appear before the Goa State Election Commission on 30.06.2015. The State Election Commissioner shall complete the enquiry as expeditiously as possible and preferably, within a period of one month. The parties to co-operate for the time bound disposal of the proceedings.

18. Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

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