

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 360 OF 2014**

Mr. Edwin Rodrigues,
son of Mr. Jose F. P. Rodrigues,
major in age, Indian National,
resident of House No.39,
Curca-Canturim, Tiswadi Goa. ... Petitioner

V e r s u s

1. Mrs. Maria Leena Da Cunha,
Member of Ward No.II,
Village Panchayat of Curca,
Bambolim & Talaulim,
Tiswadi Goa,
resident of House No.100/A,
Santan, Talaulim, Tiswadi Goa.
2. The Village Panchayat Curca,
Bambolim & Talaulim,
through its Secretary,
having office at Curca-
Canturim, Tiswadi Goa.
3. The Secretary,
of Village Panchayat of Curca,
Curca-Canturim,
Tiswadi Goa. Respondents

Mr. Devidas J. Pangam, Advocate for the petitioner.

Mr. R. Menezes, Advocate for the respondent no.1.

Mr. Marvin D'souza and Mr. M. D'Souza, Advocates for the
respondent no.2.

Mr. Shirin Naik, Advocate for the respondent no.3.

**Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.**

Date:- 25th August, 2016

ORAL JUDGMENT (Per F. M. Reis, J)

Heard Mr. D. Pangam, learned counsel appearing for the petitioner, Mr. R. Menezes, learned counsel appearing for the respondent no.1, Mr. M. D'Souza, learned counsel appearing for the respondent no.2 and Mr. Shirin Naik, learned counsel appearing for the respondent no.3.

2. Briefly, the facts of the case as pointed out by the petitioner are that the respondent no.1 was elected as a panch member of the Village Panchayat of Curcam, Bambolim, in the year 2012. It is further contended that on 06.06.2013 a bull/cow fell in the well at Gujrabhat in Ward No.II within the jurisdiction of the Village Panchayat of Curcam Bambolim and Talaulim. The said bull/cow was removed from the well by the Fire and Emergency Services Department. The respondent no.1 fraudulently

according to the petitioner claimed that she has removed the said bull/cow and was entitled to be reimbursed an amount of Rs. 2000/- towards the said rescue operation. Accordingly, on 02.07.2013 a sum of Rs.2000/- was paid by the respondent no.2 which is entered in the cash book at item no.88. It is also the case of the petitioner that in the meeting held on 10.07.2013 of the panchayat, the said payment to the respondent no.1 came to be approved in the discussion held on the said date and the resolution was unanimously passed. It is further contended that the respondent no.1 has therefore suffered disqualification under Section 12(1)(d) read with Section 55(4) of the Goa Panchayat Raj Act, 1994 as a member of the respondent no.2 Panchayat, as the respondent no.1 could not have participated in the said meeting as she had a pecuniary interest in the said resolution. It is also pointed out that on 25.07.2013 the said sum of Rs.2000/- was returned back by the respondent no.1 to the respondent no.2 Panchayat though according to the petitioner, the respondent no.1 had suffered disqualification in terms of the said provisions of the Goa Panchayat Raj Act. The petitioner filed the above petition seeking disqualification of the respondent no.1.

3. The respondent no.1 filed her reply and disputed the said contentions. It is submitted that the present petition under Article 226 of the Constitution to disqualify the respondent no.1 in terms of Section 12(1)(d) read with Section 55(4) of the Goa Panchayat Raj Act, 1994 is frivolous and filed with malafides and oblique motive. It is further contended that the acts alleged have occurred in June-July, 2013 and the petition is filed in the year 2014 which is grossly belated. It is further pointed out that the petitioner has suppressed the correct facts and that apart from manipulation of typed copies of the documents relied upon by the respondent no.1, the petitioner is also disentitled for any discretionary relief. It is further pointed out that in the month of May-June, 2013, the Sarpanch of the respondent no.2 Mr. Ghanasham Vernekar, resigned from the office and as such a new Sarpanch was required to be appointed, wherein the respondent no.1 showed her desire to contest the election to the office of Sarpanch. It is further pointed out that at that time one Mr. Vikram Fatarpekar, a panch member also made it known that he too had interest in contesting such election. It is further pointed out that she received threats from Mr. Jenu Naik, Mr. Amit Tari, the

petitioner herein and others co-opted member of the respondent no.2 and Mr. Vikram Fatarpekar began to demand that she should withdraw from such contest. It is further submitted that as she was thereafter elected to the office of Sarpanch, the above petition has been filed with oblique motive. It is also pointed out that the documents produced on record before the Director of Panchayat, in another petition filed as soon as the respondent no.1 took over as a Sarpanch is substantially different from the copies produced before this Court. It is further pointed out that on 28.07.2013, an application was made by the petitioner's mother for transfer of house in the Panchayat records for the purpose of house tax. The respondent no.1 further points out that for the reasons stated therein she has reason to apprehend that as the petitioner did not accede to his demand to support the candidature of Mr. Vikram Fatarpekar, the above petition has been filed by the petitioner. It is further stated that on 06.06.2014 at about 20.20 hours, she received a phone call from one Mr. Kerkar, informing her that a bull/cow had accidentally fallen into a well. She further pointed out that she went to the site and found a bull/cow had fallen which had no

protective wall and the situation was precarious and as such, she asked for assistance from the persons who were present to deal with the situation. Accordingly, about 22 persons agreed to provide such assistance and got proper material such as rope, wood, bamboo etc. to carry out the operation for a remuneration of Rs.100/- each. Accordingly, the said person carried out the exercise and on account of the weight and size of the animal they were unable to make much progress and consequently, at 21.15 hours, finding that there was no option, she called the office of the Directorate of Fire and Emergency Services to provide necessary assistance. Accordingly, the respondent no.1 called them from her personal phone to carry out the operation. She has further pointed out that the basic refreshments were also provided to such persons of the Fire Services who had carried out such exercise and photographs were attempted to be taken of such bull. The persons who had assisted in carrying out such operation were duly paid the dues out of which 18 persons had accepted such sum while four others had declined the payment. She has further pointed out that on the next date, she informed the said fact to the then Secretary Mr. Timoteo

Fernandes who was functioning as a Secretary during the absence of Mr. Jenu Naik who had proceeded on leave. The said officiating Secretary informed her to present her request to the respondent no.2 for the expenses incurred in connection with the said operation. Accordingly, vide letter dated 25.06.2013, she placed before the Panchayat the fact that in the course of the aforesaid exercise, expenses of Rs. 2000/- have been incurred. She has further pointed out that the original page disclosing the names of the persons who had assisted the work attached to the letter dated 25.06.2013 has not been produced. She has further pointed out that she has asked for three documents under the Right to Information Act, to which the Secretary stated that the letter was available only with two annexures. She has denied that she has made false claim of Rs.2000/-. She has further pointed out that as the prescribed format for such payment was required to be made differently with the signatures of the persons who had received the amount, vide letter dated 06.07.2013, she informed that she wanted to withdraw the letter dated 25.06.2013. She has further stated that marking of the letter dated 25.06.2013 as Voucher No.88 was never known to

the said respondent. She has also pointed out that in the minutes held on 16.12.2012, different vouchers are produced where the numbers were not mentioned by the concerned Secretary. She has given different such instances as well as claimed that on careful perusal of the resolution dated 10.07.2014 in the minutes of the said resolution, there is no specific mention that the respondent no.1 had participated in any discussion on the voucher or either proposed or seconded such request of the respondent no.1. She has also pointed out that the minutes of the meeting have been manipulated and given specific particulars with that regard and are solely written by the Secretary of the respondent no.2 who has been writing as per his whims and fancies at a belated stage. She has disputed that she has pecuniary interest in any of the transaction and pointed out that she cannot be subjected to disqualification as claimed by the petitioner.

4. The respondent no.2 has also filed reply disputing the contentions and allegations made against him and submitted that the minutes and the documents were duly prepared. He has also

stated that the inward number of the letter dated 25.06.2013 clearly shows that only two annexures were annexed to the said letter and the contention of the respondent no.1 that three annexures were annexed is false. He has also stated that pursuant to the letter dated 04.07.2013, the respondent no.1 vide letter dated 24.07.2013 forwarded a cheque of Rs.2000/- thereby accepting the fact that she is in receipt of a sum of Rs.2000/-. He has also denied the allegation that the minutes of the meeting have been kept blank by him in the capacity as a Secretary but however stated that the proceedings are written as per the decision of the Panchayat body while meeting is conducted and the decisions of the Panchayat are recorded.

5. The respondent no.2 has also filed another affidavit in reply and stated that the Secretary of the Panchayat is as per law also the Custodian of all the records. They have also stated that for a long time the said Secretary Mr. Jenu Naik was in the habit of not writing the minutes during the conduct of the meeting but used to do so thereafter.

6. The respondent no.3 has also filed reply. Affidavit in rejoinder in response to the affidavit in reply filed by the respondent no.1 came to be filed by the petitioner.

7. Mr. D. Pangam, learned counsel appearing for the petitioner has strenuously argued that the fact that the petitioner was present at the subject meeting held on 10.07.2013 cannot be disputed. He has further pointed out that the petitioner was present at the meeting where the resolution to confirm the payment of Rs.2000/- was approved by the Panchayat. It is also stated that the respondent no.1 has pecuniary interest in the resolution as Rs.2000/- was approved as payable to the respondent no.1. The learned counsel has pointed out that as such she has incurred disqualification in terms of Section 12(1)(d) of the Goa Panchayat Raj Act. The learned counsel has minutely taken us through the records to point out that on 25.06.2013 she had claimed the amount which was paid to her by voucher No.88 on 04.07.2013. It is also submitted that the said amount was refunded by cheque by the respondent no.1 only on 24.07.2013 which by itself does not

absolve her from the disqualification for being part of the meeting held on 10.07.2013. The learned counsel further points out that the records reveal that the bull was retrieved by the Fire Services and not by the respondent no.1 as claimed. It is further pointed out that there is no record to show that any amount was disbursed for any work carried out by the respondent no.1. It is further pointed out that as such the respondent no.1 had pecuniary interest in the resolution passed on 10.07.2013 and merely because she has refunded the amount would not disentitle the petitioner to file the above petition for disqualification. In support of his submissions he has relied upon the judgments of this Court reported in **2010(3) Bom. C.R. 37** in the case of **Akhada St. Estevam Village Development and Protection Samittee and others V/s Seema Rohidas Narvekar and others**, **2010(5) Bom. C. R. 303** in the case of **Lenocio, John Raicar V/s Martinho, Francisco Rocha and others**, **2011(3) Bom. C. R. 484** in the case of **Mohan Vithal Dabhale V/s Santosh Vasant Morajkar and others** and judgment dated 26.02.2014 passed in Writ Petition No. 541 of 2013 in the case of **Dyaneshwar Narso Naik V/s State of Goa and others**.

8. On the other hand, Mr. R. Menezes, learned counsel appearing for the respondent no.1 points out that there are serious disputed questions of fact with regard to the subject minutes of the alleged resolution and as such evidence would have to be recorded as the respondent no.1 desires to cross examine the petitioner as well as the Secretary with regard to the inconsistency in the records of the Panchayat. It is also submitted that the Secretary has the habit of leaving spaces and not recording the minutes during the progress of the meeting which itself shows that the records are manipulated. The learned counsel points out that the Secretary was hostile to the respondent no.1 as she has not acceded to the request of the petitioner not to contest the election of the post of Sarpanch. It is further pointed out that the respondent no.1 has withdrawn her claim for the amount vide letter dated 04.07.2013 and as such the question of placing the alleged voucher at the subject meeting for approval on 10.07.2013 is a fabrication at the instance of the respondent no.3. It is further pointed out that there were number of vouchers which were approved on the said date and there was no discussion with that regard nor the agenda records that discussion

would take place about the reimbursement of the amount to the respondent no.1. The learned counsel further pointed out that vide letter dated 24.07.2013 the cheque was returned as the petitioner has already withdrawn the claim vide letter dated 06.07.2013. The learned counsel further pointed out that there are disputed questions of fact which arise in the present petition besides the petition being barred by laches and as such deserves to be rejected.

9. Mr. Pangam, learned counsel appearing for the petitioner in rejoinder has pointed out that there are no disputed questions of fact as according to him the records itself suggest that the respondent no.1 had pecuniary interest in the resolution wherein she has participated. The learned counsel further pointed out that based on the records, the above petition can be conveniently disposed of holding that the respondent no.1 stand disqualified from being the member of the concerned Panchayat.

10. Upon hearing the learned counsel appearing for the respective parties, the undisputed facts of the case are that the

respondent no.1 is a member of the Village Panchayat of Curcam, Bambolim, who was duly elected in the year 2012. The fact that a bull/cow fell in the well on 06.06.2013 after 8.00 p.m. in ward no.II within the jurisdiction of the said Panchayat is also not disputed. Though it is contended that the bull/cow was removed with the assistance of the Fire and Emergency Services Department, the fact that the respondent no.1 was associated with the removal of such animal cannot be disputed. There is no material on record to dispute or doubt about the correctness of the payment of a sum of Rs.2000/- towards the expenses for carrying out such operation of the removal of a bull/cow by the respondent no.1 and as such the respondent no.1 was entitled for the reimbursement of such amount from the Local Panchayat. Though it is contended by the petitioner that such expenses could not have been incurred as the removal was carried out by the Fire Services, we find that the genuineness of such payment has never been put in doubt considering that for carrying out such operation out of pocket expenses are normally incurred. Apart from that, the respondent no.1 in her affidavit has clearly stated that after she received the phone call, she engaged

about 22 persons to start the exercise of removing the bull/cow from the well and as they found it difficult on account of its weight she was forced to call the Fire Brigade only thereafter at about 9.15 p.m. She has also stated in her affidavit that the Officiating Secretary informed her that she can make her claim for such expenses from the respondent no.2 and that vide a letter dated 25.06.2013 she informed the Panchayat that she incurred such expenses. She has also pointed out that as the prescribed form for receiving such claim was different and she had to obtain the signatures of the persons who had received the amounts, she informed by a letter dated 06.07.2013 that she wanted to withdraw the letter dated 25.06.2013. There are allegations by the respondent no.1 about manipulation of the minutes recorded by the respondent no.3. There is some material produced by the respondent no.1 in support of such allegations and as such, the respondent no.1 wanted to cross examine the concerned deponent with that regard which Mr. Pangam, learned counsel appearing for the petitioner has opposed and pointed out that it was not required or necessary to do so. Prima facie, there is some ambiguity in the minutes produced

on record, and as we find that relying upon such minutes without being subjected to cross examine would not at all be justified. This Court has already taken a view that when there are serious disputed questions of fact, the Court can allow the party to lead oral evidence in support of their rival contentions. As the petitioner did not want that the deponent of the affidavit be subjected to cross examine as the genuineness and authenticity is seriously disputed based on the material on record, we find that such documents cannot conclusively establish the genuineness of the allegations that the payment of a sum of Rs.2000/- to the respondent no.1 was approved at the meeting in question held on 10.07.2013. Apart from that, the fact that the respondent no.1 had withdrawn her claim by a letter dated 06.07.2013, is not in dispute. In such circumstances, the question of passing such resolution without placing such letter on record would itself creates a doubt with regard to the genuineness of the allegations of the petitioner to disqualify the respondent no.1 from being a duly elected representative of the Village Panchayat in terms of Section 12(1)(d) read with Section 55(4) of the Goa Panchayat Raj Act, 1994.

11. Apart from that, we shall also examine whether reimbursement of an amount payable to the Panchayat member is a pecuniary interest which can lead to the disqualification in terms of Section 12(1)(d) of the Goa Panchayat Raj Act. Section 12(1)(d) and Section 55(4) of the Goa Panchayat Raj Act read thus :

“12. Vacation of seat by members.--

(1) if a member of a Panchayat.--

(a).....

(b).....

(c).....

(d) votes or takes part in discussion in contravention of the provisions of sub-section (4) of Section 55, his seat shall be deemed to be or to have become, as the case may be, vacant.”

“55. Quorum and Procedure.--

(1).....

(2).....

(3).....

(4) No member of a Panchayat shall vote on, or take part in the discussion of, any question coming up for consideration

at a meeting of a Panchayat, if the question is one in which, apart from its general application to the public, he has any pecuniary interest, and if the person presiding has such an interest, he shall not preside over the meeting when such question comes up for consideration.”

12. It cannot be disputed that removing a bull/cow from a well and incurring expenses with that regard are generally for the benefit of the public. The respondent no.1 cannot have any personal interest in removing such animal which had accidentally fallen in the well during the night time and her involvement therein was for the benefit of the people from the concerned ward. In these circumstances, the expenses incurred by the respondent no.1 have to be reimbursed by the respondent no.2. The main thrust to examine is whether an elected member of the Panchayat would stand disqualified for voting or participating in a discussion at a meeting where the concerned member had a pecuniary interest in such resolution which would lead to unseat a duly elected panch member. For deciding the question as to whether one has a

pecuniary interest or not, what is relevant is whether such person would actually obtain a monetary gain. By receiving a reimbursement of the actual or out of pocket expenses payable by the respondent no.2 would not lead to pecuniary gain thereby being liable to be disqualified in terms of Section 12(1)(d) of the Goa Panchayat Raj Act. In the present case, it cannot be disputed that the respondent no.1 who was duly elected panch member is expected to perform her duties in solving the difficulties or problems of the public in the concerned ward of the Panchayat. In performance of such duty, any amounts spent has to be reimbursed by the respondent no.2 to the concerned member. Receiving such reimbursement cannot give any pecuniary gain to the concerned panch which would lead to pecuniary interest in terms of Section 55(4) of the Goa Panchayat Raj Act.

13. In such circumstances, we find that even assuming the participation of the respondent no.1 at the concerned meeting is accepted, merely because she was present in the meeting wherein reimbursement of an amount admittedly spent by the respondent

no.1 towards the removal of an animal which had fallen in the well to avoid cruelty to such animal as well as to the owner of such animal and for the benefit of the public cannot result in any pecuniary interest which would lead to disqualification in terms of Section 12(1)(d) of the Goa Panchayat Raj Act. This is specially in view of the fact that it cannot be disputed that the respondent no.1 had spent such amount to engage the workers in assisting the exercise of removing such animal. Considering the view we have taken herein above, the judgments relied upon by Mr. Pangam, learned counsel appearing for the petitioner are not applicable to the facts of the present case. The facts therein clearly disclose that the concerned member had direct or indirect pecuniary interest in the resolution in question therein. As such, in view of the above, we find that the petitioner has failed to establish that the respondent no.1 has incurred disqualification from continuing to be a member of the concerned Panchayat in terms of Section 12(1)(d) read with Section 55(4) of the Goa Panchayat Raj Act, as records reveal that the respondent no.1 did not have a pecuniary interest in the subject resolution. As pointed out herewith above, the amount if any,

receivable by the respondent no.1 was to meet the expenses admittedly incurred by such respondent for discharging her duties as a member of the concerned Panchayat for the benefit of the public at large.

14. Hence, we find no merits in the above petition and as such, the question of exercising our extra ordinary jurisdiction under Article 226 of the Constitution of India based on the disputed questions of fact referred to herein above to unseat a duly elected member of a Local Panchayat would not at all be justified. Hence, the petition stands rejected.

NUTAN D. SARDESSAI, J

F. M. REIS, J

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