IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 332 OF 2014

Shri Narayan Datta Naik,
son of Datta Naik,
aged 46 years,
Indian National,
r/o Sancoale Goa.
H.No.278/1(3) Savarfond,
Sancoale Goa. …. Petitioner

V e r s u s

1. Village Panchayat of Sancoale,
   through its Secretary,
   having office at Panchayat House,
   Sancoale, Salcete Goa.

2. Shri Derick Peter Jose Maria Vales,
   of major age,
   r/o H. No.42, Zorint Vaddo,
   Sancoale Goa.

3. Shri Jose Maria Albert Vales,
   of major age,
   r/o H.No.42, Zorint Vaddo,
   Sancoale Goa.

4. State of Goa,
   through Secretary,
   Panchayat Secretary,
   having office at
   Porvorim, Bardez Goa. …. Respondents

Mr. Shivan Desai, Advocate for the petitioner.

Mr. D. Pangam, Advocate for the respondent no.2.

Mr. P. Faldessai, Addl. Government Advocate for the respondent no.4.

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

Date:- 2nd August, 2016

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

Heard Mr. Shivan Desai, learned counsel appearing for the petitioner, Mr. D. Pangam, learned counsel appearing for the respondent no.2 and Mr. P. Faldessai, learned Addl. Government Advocate appearing for the respondent no.4.

2. Briefly, the facts of the case are that the respondent no.2 is elected as a member from the Ward No. 2 of the respondent no.1 Village Panchayat in the year 2012. According to the petitioner, the respondent no.3 is the owner of the house situated in the property surveyed under No. 258/1, Plot No.4 of Village Sancoale. It is further the case of the petitioner that the respondent no.2 resides in the said house and the respondent no.3 is also the owner of the workshop named and styled as 'Daniel Marine and Mechanical Workshop', wherein the respondent no.2 also has business interest. It is further the contention of the petitioner that the respondent no.3 has requested for grant of an occupancy certificate in respect of the said workshop which was listed in the agenda for the meeting of the respondent no.1 on 14.06.2012. It is further the case of the petitioner that in the meeting held on

the said date, a resolution was passed unanimously to grant such occupancy certificate to the respondent no.3. It is also pointed out that the minutes of the meeting held on 14.06.2012 granting the said occupancy certificate were thereafter confirmed on 29.06.2012. It is also pointed out that the application was made by the respondent no.3 to the respondent no.1 for issuing an NOC for three phase electricity connection to the workshop and that in the minutes of the meeting of the respondent no.1 on 15.10.2013, the issue of assessment was discussed and it was decided that the total amount of tax would be a sum of Rs.50,000/-. The said minutes of the meeting were confirmed on 31.10.2013. It is further pointed out by the petitioner that the respondent no.2 had illegally participated in the meetings held on 14.06.2013 and 15.10.2013 wherein the said decision was taken. It is further pointed out that the petitioner had a pecuniary interest in the said resolution as the respondent no.3 is the father and the owner of the said house, wherein the respondent no.2 presently resides. The petitioner has also pointed out that the respondent no.2 has taken an illegal advantage and benefit from the resolution granting the occupancy certificate to the respondent no.3 who is the father of the respondent no.2 which would itself indicate the pecuniary interest and as such, the respondent no.2 ought not to have participated in such meetings. It is further pointed out that the respondent no.2 has business interest in the workshop owned by the respondent no.3 and as such he is direct beneficiary of such resolution. It is further pointed out that the respondent no.2 has taken undue advantage and benefit of his position in the Village Panchayat to get the said resolution passed by influencing such decision and as such he is liable to be disqualified being the member of the respondent no.1 in terms of Section 12(1)(d) of the Panchayat Raj Act.

3. The respondent no.2 has filed his reply disputing the said contentions. He has disputed the authenticity of the minutes of the meeting as according to him, the petitioner has been forcing the Secretary to write the minutes of the meeting as per his say and that the Secretary has complained against the petitioner for forcing him to write the minutes in a particular manner. It is further pointed out that the respondent no.3 who is the father of the respondent no.2 owns the said house and the workshop which is the subject matter of the present petition. It is also pointed out that the workshop belongs and it is operated by the respondent no.3 and the respondent no.2 does not have any business transaction therein. He has further pointed out that the resolution which was passed in respect of the business interest of the respondent no.3, the respondent no.2 has no pecuniary interest therein. Disputing the other allegations of the petitioner, the respondent no.2 has pointed out that he is not liable to be disqualified of being the member of the Village Panchayat as contended by the petitioner. The petitioner also filed rejoinder disputing the allegations that he had induced the Secretary to write the minutes as claimed by the respondent no.2. He has also disputed the

affidavit of the Secretary dated 07.05.2014 being false and motivated. He has also pointed out that the said Narayan Ajgaonkar had published in the Gomantak dated 26.03.2015 an apology and a statement withdrawing the affidavit dated 07.05.2014. He has also pointed out that the respondent no.2 is personally involved in the supervision of the workshop and the respondent no.2 resides in the said house.

4. Mr. Shivan Desai, learned counsel appearing for the petitioner has submitted that it is well settled that even an indirect interest would be pecuniary interest to be liable to be disqualified in terms of Section 12(1)(d) of the Panchayat Raj Act and consequently, according to him as the respondent no.2 was in fact present at the time of the meeting wherein the resolution was passed to grant the occupancy certificate to the respondent no.3 and the house tax in respect of the workshop, the respondent no.2 is liable to be disqualified. The learned counsel further pointed out that even indirect interest is pecuniary interest and considering that the respondent no.3 is the father of the respondent no.2, any benefit to the respondent no.3 would definitely inure to the benefit of the respondent no.2. The learned counsel further submits that this Court has taken a view that even assuming that the permission for construction of a house belonging to the wife, the husband who is the member of the Panchayat would be disqualified as he has a moiety share in such assets. The learned counsel as such points out that the

respondent no.2 should be disqualified in terms of the said provisions of the Act.

5. On the other hand, Mr. D. Pangam, learned counsel appearing for the respondent no.2 has disputed the said contention. The learned counsel has submitted that there is no evidence on record to show that the respondent no.2 has any interest either in the subject house or the subject workshop. It is further pointed out that merely because the respondent no.2 is the son of the respondent no.3, who is the owner of the house as well as the workshop, there is implied pecuniary interest of the respondent no.2 is not at all justified. The learned counsel further pointed out that the minutes book has been manipulated at the instance of the petitioner and consequently, reliance thereon is not at all be justifiable. The learned counsel further pointed out that mere personal interest cannot be considered to be pecuniary interest and consequently, as the petitioner has failed to establish any pecuniary interest in the subject resolution, the above petition be accordingly dismissed.

6. We have considered the submissions of the learned counsel and we have also gone through the records. The undisputed facts which emerged from the records produced by the parties are that the respondent no.3 is the father of the respondent no.2; the respondent no.2 is the member of the Village Panchayat of the respondent no.1; the respondent no.2 was in fact

present when the resolution was passed to grant the occupancy certificate as well as for assessment of house tax in respect of the workshop of the respondent no.3. There is no material produced on record to show that the respondent no.2 had derived any interest or right either in the house or workshop belonging to the respondent no.3. Though the petitioner contend that the respondent no.2 has business interest in the workshop, there is no material on record to substantiate such claim. The only contention of the petitioner is that as the respondent no.2 is the son of the respondent no.3, he would naturally derive a pecuniary interest in respect of the resolution passed by the Panchayat in connection with the subject house and the workshop.

7. In this connection, this Court in the judgment dated 26.02.2014 passed in **Writ Petition No. 569 of 2013** in the case of **Vishal Shambu Volvoikar Vs State of Goa and others,** has taken a view that merely because the son who is the member of the Panchayat was present when the resolution in connection with the establishment belonging to the father was being discussed, it does not incur disqualification. It has further been noted therein that in the judgment reported in **AIR 1966 SC 1339** in the case of **Gulam Yasinkhan V/s Sahebrao Yashwantrao Wajaskar,** the Supreme Court has laid down the parameters of the interpretation of the term 'pecuniary interest' wherein it has been held that it cannot mean sentimental or friendly interest and that it must be an interest of pecuniary or material or

of a similar nature. It has also exalted the Courts to interpret the term "*pecuniary interest"* upon an objective of the legislation of the Village Panchayat which is to ensure the purity of administration of local bodies so that it should not receive an unduly narrow or restricted construction. In the judgment reported in **2015(4) Mh.LJ 509** in the case of **Dhrupadabai Laxmanrao Mhaske V/s Additional Commissioner, Amravati and others,** the learned Single Judge of this Court while dealing with pecuniary interest has also taken a view that even though the father may want to welfare of his son, such interest cannot be considered to be pecuniary interest and it has observed at para 6 thus :

> "**6**. It has been held in the aforesaid decision that, "the interest to which the clause refers cannot mean mere sentimental or friendly interests; it must mean interest which is pecuniary, or material or of similar nature. If the interest is of this latter category, it would suffice to incur disqualification even if it is indirect". It has further been held that, "even if, we were to adopt a liberal construction of section 15(1), we cannot escape the conclusion that the interest or share has to be in the contract itself. The person sought to be

> disqualified must "own such share or interest". When we are enquiring as to whether the appellant is interested directly or indirectly in the employment of his son we cannot overlook the fact that the enquiry is not as to whether the appellant is interested in the son, but the enquiry is whether the appellant is interested in the employment of the son. The distinction between the two enquiries may appear to be subtle, but, nevertheless, for the purpose of construing the clause, it is very relevant. Considered from this point of view, on the facts proved in this case, we find it difficult to hold that by mere relationship with his son, the appellant can be said to be either directly or indirectly interested in his employment".

8. In the present case, as already pointed out herein above, merely because the respondent no.2 is the son of the respondent no.3, who is the owner of the subject premises and workshop would not itself be a case to hold that the respondent no.2 has a pecuniary interest in terms of the provisions of Section 12(1)(d) of the Panchayat Raj Act. There is no cogent

evidence on record to disclose that the respondent no.2 was carrying out business in the workshop of the respondent no.3 and merely sentimental or friendly interest cannot be termed to be a pecuniary interest to unseat the respondent from being a member of the Village Panchayat as he has been appointed in a duly democratic process. In view of the above, we find no merit in the above petition which stands accordingly rejected. Rule stands discharged.

NUTAN D. SARDESSAI, J. **F. M. REIS, J.**

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