

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 662/2014**

Shri Prakash V. Gaude,
Nanus – Usgao, Ponda, Goa
son of deceased Vishwant Gaude,
aged 40 years, Indian National,
resident of House No.78,
Nanus, Usgaon, Ponda, Goa. Petitioner.

V/s.

1) The Village Panchayat at Usgaon-Ganje,
through its Secretary, having Office at
Usgao Ganje, Ponda, Goa.

2) Mr. Devanand Nanusker,
major in age, Indian National,
resident of House No.90/1,
Nanus – Usgao, Ponda, Goa. Respondents.

Mr. D. Pangam, Advocate for the Petitioner.

Mr. G. Teles, Advocate for the respondent No.2.

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

Date : - 07/09/2016.

ORAL JUDGMENT : (PER F.M. REIS, J.)

Heard Mr. D. Pangam, learned Counsel appearing for the
Petitioner and Mr. G. Teles, learned Counsel appearing for the

respondent No.2.

2. The petitioner by the above petition, *inter alia*, prays for a declaration that the respondent No.2 has incurred disqualification under Section 12(1)(d) of the Goa Panchayat Raj Act, 1994 and consequently, ceases to be a Member of the Village Panchayat of Usgao-Ganjam.

3. Briefly, the facts of the case, as stated in the petition, are that the respondent No.2 preferred an application dated 30/11/2012 before the respondent No.1 for permission to repair the house bearing House No.90/1. It is further contended that the said application was placed before the fortnightly meeting of the respondent No.1 and was passed unanimously. It is further the contention of the petitioner that as the respondent No.2 had pecuniary interest in such Resolution passed by the respondent No.1, the respondent No.2 stands disqualified from continuing to be a Member of the respondent No.1. It is further pointed out that consequently, appropriate directions be issued to the effect that the respondent No.2 ceases to be a Member of the respondent No.1.

4. The respondent No.2 has filed his reply, *inter alia*, disputing the contentions raised by the petitioners. It is the case of the respondent No.2 that he is not the owner of the subject-house and, as such, according to him, the question of contending that the respondent No.2 is to be disqualified in terms of Section 55(4) of the Goa Panchayat Raj Act, 1994 does not arise and consequently, the question of invoking the provisions of Section 55(4) of the Goa Panchayat Raj Act, 1994 would not arise. It is further pointed out that the permission which has been granted is only for the purpose of repairs which, according to the respondent No.2, does not attract any pecuniary interest to the respondent No.2. It is further pointed out that as the petitioner failed to establish that the respondent No.2 stands disqualified in terms of Section 55(4) of the Goa Panchayat Raj Act, 1994, the petition be accordingly rejected.

5. Mr. D. Pangam, learned Counsel appearing for the petitioner, in support of the petition, has pointed out that in terms of Section 55(4) of the Goa Panchayat Raj Act, 1994, no Member of a Panchayat shall either vote or take part in any discussion in respect of any matter where he has pecuniary interest. The learned Counsel has, thereafter, taken us through a copy of the Minutes of Meeting to point

out that the presence of the respondent No.2 in such meeting cannot be disputed. The learned Counsel has, thereafter, taken us through the application filed by the respondent No.2 for repairs of the subject-construction. It is pointed out that in the column, the name of the respondent No.2 figures as the owner of such construction. It is further pointed out that the application itself suggests that the repair permission was for the benefit of the respondent No.2 who has pecuniary interest in the resolution passed on 18/12/2012. The learned Counsel, as such, points out that the respondent No.2 be disqualified from continuing to be the Member of the respondent No.1.

6. On the other hand, Mr. G. Teles, learned Counsel appearing for the respondent No.2 has pointed out that there is no material on record to establish that the respondent No.2 is the owner of the subject-construction and consequently, the contention of the petitioner that the respondent No.2 stands disqualified is untenable. It is further submitted that the permission, at the most was for repairs which, by no stretch of imagination, can attract any pecuniary interest to the respondent No.2. It is further pointed out that the repairs would suggest that the construction was already in existence and, as such, according to him, as no new construction has been put up, the question

of the respondent No.2 incurring disqualification as he had pecuniary interest in the resolution, is misconceived. The learned Counsel has, thereafter, taken us through a Judgment of a Division Bench of this Court, in the case of *Vishal Shambu Volvoikar vs. State of Goa and ors.* reported in *2014 5 Mh LJ 529*, to which one of us (F.M. Reis, J.) is a party, wherein this Court has taken a view that in order to incur disqualification, the resolution should lead to some pecuniary interest. The learned Counsel, as such, submits that the petition be rejected.

7. We have considered the submissions of the learned Counsel and we have also gone through the records. Section 12(1)(d) and Section 55(4) of the Goa Panchayat Raj Act, 1994 read thus :

“ **12. Vacation of a 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 -

(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.”

The said provision has come up for consideration before this Court in a number of Judgments. In the case of *Akhada St. Estevam Village Development and Protection Samittee and ors. vs. Seema Rohidas Narvekar and ors*, reported in 2010 (3) Bom.C.R. 37, a Division Bench of this Court has observed at paras 22 and 23, thus :

“22. At this stage, it is useful to refer to the definitions of expressions "interest" and "pecuniary", as occurring in the Shorter Oxford English Dictionary, fifth edition; as also in Black's Law Dictionary, seventh edition. Expression "interest" as occurring in Shorter Oxford English Dictionary defines:

“The fact or relation of having a share or concern in, or a right to, something, esp. by law; a right or title, esp. to (a share in) property or a use or benefit relating to property; (a) share in something (b) participation in doing or causing something; (c) A financial share or stake in something; the relation of being one of the owners or

beneficiaries of an asset, company, etc.”.

The expression "interest" as occurring in Black's Law Dictionary defines:

“1. Advantage or profit, esp. of a financial nature, conflict of interest. 2. A legal share in something; all or part of a legal or equitable claim to or right in property, right, title, and interest”.

The expression "pecuniary" as occurring in the Shorter Oxford English Dictionary, defines:

“1. consisting of money; exacted in money, 2. Of or pertaining to money”.

The expression "pecuniary" as occurring in Black's Law Dictionary, defines

“Of or relating to money; monetary, a pecuniary interest in the lawsuit”.

23. Considering the provisions of Section 55(4) of the 1994 Act, and the complaint made by petitioner No. 2, the discussion undertaken in the meeting, coupled with the definitions of the terms "pecuniary" and "interest", as defined, we are of the view that the issue raised in the complaint was discussed in the meeting related to pecuniary interest of respondent No. 1 Smt. Seema Narvekar. We do find that a brave attempt was made by members of the Panchayat to protect respondent No. 1 from the clutches of the provisions of Section 55(4) by adopting Resolution No. 20 dated 28.6.09.”

In another Judgment of this Court, reported in 2010(5) Bom.C.R. 303, in the case of *Lenocio John Raicar vs. Martinho Francisco Rocha and ors.*, this Court has observed at para 11 thus :

“11. To attract the provisions of Sections 12 and 55, it is not necessary that the pecuniary interest is discussed by the Village Panchayat or disbursed by the very resolution. Nor is it necessary for these provisions to apply that the question discussed pertains to or involves the disbursement or accrual of the pecuniary interest. It is sufficient if the subject-matter of the question discussed or the resolution passed leads to or results or assists in the accrual of or has the effect of leading to, resulting in or assisting or has the potential to result or assist in enabling the member realizing the pecuniary interest.

The connection between the question discussed or the resolution passed on the one hand and the pecuniary interest on the other, must be proximate and real, not fanciful or too remote. It would depend upon the facts of each case. One test would be to examine whether the member would be able to or capable of realizing the pecuniary interest if an adverse decision on the question is rendered by the Village Panchayat.”

In yet another judgment dated 16/08/2010, passed in Writ Petition

No.295/2010, in the case of *Jagdish Bhobe vs. State of Goa and ors*, the Division Bench of this Court wherein one of us (F.M. Reis, J.) was a party, dealing with a Resolution concerning construction licence, has observed at paras 11 and 15, thus :

“11. In the case of *The Akhada St. Estevam Village Development and Protection Samittee and others (supra)*, this Court had considered the meaning of “pecuniary interest”. This Court in paragraph 24 held that to ensure purity of administration of local bodies, the provisions relating to disqualification should not receive an unduly narrow or restricted construction. The phrase used in sub-section (4) of Section 55 of the said Act of 1994 is “pecuniary interest”. The word “pecuniary” connotes “pertaining to money”. The expression “pecuniary interest”, therefore, necessarily means the interest which can be exacted in money or which is pertaining to money. The interest can be of different types. The interest can be in respect of a right in a property, benefit in a property or use of a property. If a person constructs a structure and the construction is sought to be demolished, it can be certainly stated that “pecuniary interest” of the person is affected, inasmuch as the demolition or destruction or damage to the structure will involve monetary loss.

To attract sub-section 4 of Section 55, actual monetary gain or accrual of benefit is not necessary. Participation in a discussion involving “pecuniary interest” is sufficient.

15. As stated earlier, the Block Development Officer found that the illegal structure of the house on survey No.145/7 was made by the fourth respondent, his father and mother. There is no further challenge to the order under Section 66(6) of the said Act of 1994 by the fourth respondent, though the order records that the fourth respondent was carrying out the illegal construction. The appeal preferred by the fourth respondent did not succeed. In the panchanama recorded by the Block Development Officer, the value of the structure is shown to be Rs.4,00,000/- approximately. Thus, in the subject of grant of permission/regularisation of extension of house on the said property, the fourth respondent had pecuniary interest. As stated earlier, the order of the Dy. Director of Panchayats dated 22nd April, 2010 records that admittedly the structure was illegal. On 24th February, 2010, the subject of grant of permission/licence in respect of the same structure came up before the Village Panchayat and that admittedly, the fourth respondent was present in the meeting of the Panchayat and has voted. It is not the case of the fourth respondent that he had not participated or voted. Thus, it is crystal clear that

clause (d) of sub-section (1) of Section 12 of the said Act of 1994 is attracted in the present case, as the fourth respondent in the meetings held on 2nd February, 2010 and 24th February, 2010 has voted and/or has taken part in the discussion on the subjects No.4(2) and 3(C) respectively in which he had “pecuniary interest”. In fact, the fourth respondent presided over the meetings as the Sarpanch. Thus, the fourth respondent incurred disqualification and, therefore, the seat shall be deemed to have become vacant.”

Taking note of the ratio laid down therein, once it is established that the Member has taken part in passing the resolution wherein he has a pecuniary interest, he would meet the requirement of Section 12(1)(d) read with Section 55(5) of the Goa Panchayat Raj Act, 1994 to be liable for disqualification in terms thereof and his seat would be deemed to be vacant.

8. The Apex Court, in a Judgment reported in **(2012) 3 SCC 188**, in the case of ***Zelia M. Xavier Fernandes e Gonsalves vs. Joana Rodrigues and others***, has observed at paras 8 and 21 thus :

“ 8. Section 11 provides that if any question arises as to whether a member of a panchayat has

become subject to any disqualification referred to in Section 10, it shall be referred to the State Election Commission for decision and its decision thereon shall be final. The purpose and object of providing for disqualification for membership of the panchayat in clause (f) of Section 10 is to ensure that there is no conflict between the private interest of the member and his duty as a member of the panchayat. It is based on general principle of conflict between duty and interest. Insofar as the present matter is concerned, we have to consider the applicability of clause (f) of Section 10 to the extent, “he has ... indirectly any share or monetary interest in ... any contract ... by or on behalf of the panchayat” in the fact situation noticed above.

21. While considering Section 15(l) of the CP Municipalities Act which provided for the disqualifications to the elections of the Municipal Committees, this Court in *Gulam Yasin Khan vs. Sahebrao Yeshwantrao Walaskar* (AIR 1966 SC 1339) held that the purpose and the object of prescribing several disqualifications in that provision is to ensure the purity of the administration of the Municipal Committees and in that sense the different clauses of disqualifications should not receive unduly narrow or restricted construction. We also hold the view that the

prohibition in Section 10(f) should not receive unduly narrow or restricted construction. In what we have considered above, the answer to the first question must be in the affirmative and it must consequently be held that the appellant has incurred disqualification under Section 10(f) of the 1994 Act. We hold accordingly.”

9. In the present case, perusal of the application filed by the respondent No.2 clearly reveals that the respondent No.2 himself disclosed that he was the owner of the subject-construction. The fact that the repairs of the building would enhance the value and utilisation of the structure and consequently, creates a pecuniary interest to the respondent No.2 cannot be disputed. In such circumstances, as the fact that the respondent No.2 had taken part in the meeting held wherein the resolution to grant permission for repairs of the subject-construction was approved, has not been disputed, we find that the respondent No.2 would stand disqualified in terms of Section 12(1)(d), read with Section 55(5) of the Goa Panchayat Raj Act, 1994 and consequently, ceases to be a Member of the concerned Panchayat.

10. In view of the above, we pass the following :

ORDER

- (I) The Writ Petition is allowed.
- (II) Rule is made absolute in terms of prayer clauses (A) and (B).

NUTAN D. SARDESSAI, J.

F.M. REIS, J.

At this stage, Mr. G. Teles, learned Counsel appearing for the respondent No.2 prays for stay of operation of the Judgment passed today.

In the peculiar facts and circumstances of the case, operation of the aforesaid Judgment is stayed for a period of six weeks from today, subject to the respondent No.2 not voting in the meetings of the concerned Panchayat.

NUTAN D. SARDESSAI, J.

F.M. REIS, J.

ssm.