

IN THE HIGH COURT OF BOMBAY AT GOA**PUBLIC INTEREST LITIGATION WP NO. 19 OF 2015**

MAPUSA PEOPLE'S UNION, THROUGH ITS
SECRETARY SHRI JAWAHARLAL SHETYE
AND ANR.,

... Petitioners

V e r s u s

SHRI FRANCISCO CASIMIRO JERONIMO
AGNELO DE PINTO ESOUZA AND 10 ORS.

... Respondents

Mr. Gautam Pednekar, Advocate for the petitioners.

Mr. V. Rodrigues, Government Advocate with Mr. P. Dangui, Addl.
Government Advocate for the respondent nos. 5 and 11.

Coram:- F. M. REIS &
K. L. WADANE, JJ.

Date:- 17th March, 2016

ORAL ORDER

Heard Mr. Gautam Pednekar, learned counsel appearing for the petitioners and Mr. P. Dangui, learned Addl. Government Advocate appearing for the respondent nos. 5 and 11.

2. The above petition inter-alia seeks for an appropriate writ on the respondent no.1 as to in what authority he is occupying the Constitutional Office and a writ to all the remaining respondents to

show cause the legal authority of the office occupied by the respondent no.1 and also to direct by passing an order on the respondent no.1 to vacate the public office occupied by him in declaring the same to be occupied illegally being constitutionally invalid and void ab-initio.

3. The learned counsel appearing for the petitioners in support of the above petition has pointed out that this petition is a PILWP filed on the ground that the respondent no.1 who is a Minister in the State Council of Ministers has taken an invalid Oath while assuming office as a Minister. The learned counsel further submits that the petitioners learnt from the letter-head of the respondent no.1 in his capacity as a Minister that his name is shown as 'Advocate Francis D'Souza'. The learned counsel further pointed out that the petitioners also obtained a certificate of his birth which discloses the name of the respondent no.1 as 'Francisco Casimiro Jeronimo Agnelo de Pinto e Souza'. The learned counsel further pointed out that he has also obtained a marriage certificate of the respondent no.1 which also discloses the name of the respondent no.1 as 'Francisco Casimiro Jeronimo Agnelo de Pinto e Souza'. The learned counsel further submits that the passport of the respondent no.1 discloses the name of the respondent no.1 as 'Francico Casimiro Jeronimo Agnelo De Pinto E Souza'. The learned counsel also

pointed out that he has obtained information under Right to Information Act of the Oath taken by the respondent no.1 which according to him discloses that he has taken Oath stating his name as 'Francis Pedro Dsouza'. The learned counsel has thereafter taken us through the provisions of Article 164 of the Constitution of India to point out that a person can assume the office as a Minister only after taking an Oath in terms of Article 164(3) of the Constitution. The learned counsel further submits that the Oath taken by such Minister is in the form as provided in Schedule III of the Constitution which clearly discloses that the respondent no.1 has not taken his Oath in his correct name. The learned counsel further points out that the petitioners have also lodged a FIR on that count before the concerned Police Station and the matter is under investigation. The learned counsel further submits that as the Oath taken by the respondent no.1 is defective, the continuation of the respondent no.1 in the capacity as a Minister is illegal and ab-initio void and as such this Court may issue a writ of quo warranto against the respondent no.1 not to hold such office. The learned counsel in support of his submissions has relied upon the judgment of the Kerala High Court dated 03.03.2003 passed in case No.24476 of 2001 in the case of **Haridasan Palayil Vs Speaker, Kerala Legislative Assembly.**

4. We have considered the submissions of the learned counsel and we have also gone through the records. On the basis thereof, we find that the undisputed fact disclose that the respondent no.1 himself has taken the Oath as a Minister. The record further reveals that it is not disputed that the respondent no.1 is occupying the office as a Minister for above four years. The records also reveal that it is not the case of the petitioners that the respondent no.1 had in fact impersonated any other person while taking his Oath of office. In such circumstances, we find that under Article 164 of the Constitution of India, the Chief Minister is appointed by the Governor whereas the Ministers are appointed by the Governor under the advice of the Chief Minister and they hold office during the pleasure of the Governor who is the appointing authority and in fact has taken the Oath of the respondent no.1 and did not find any objection to the manner in which the Oath was taken by him. As such, it is not open for this Court to examine the correctness or otherwise of the allegation of the petitioners whether there is any defect in taking the Oath in the facts of the present case. Apart from that, it is not disputed that the Oath taken by the respondent no.1 is in the form as prescribed in Schedule III of the Constitution. The only objection raised by the petitioners is that the respondent no.1 had not disclosed his full name

while taking such Oath. The petitioners have not brought to our notice any provisions which clearly specified that the full name of the person has to be stated while taking such Oath. What is important is that the substance of the Oath as prescribed has been taken by the respondent no.1 as per Schedule III as provided by Article 164(3) of the Constitution of India and as such the question of any interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India would not at all be justified.

5. No doubt, as contended by the learned counsel for the petitioners, Art. 164(3) of the Constitution enjoins that before a Minister enters upon his office, the Governor shall administer to him the Oath of Office and secrecy according to the forms set out for the purpose in the third Schedule but at the same time, as pointed out hereinabove, Art. 164(1) of the Constitution also provides that the Chief Minister shall be appointed by the Governor and the other ministers shall be appointed by the Governor on the advice of the Chief Minister and the Ministers shall hold office during the pleasure of the Governor. It is, therefore, clear that the Chief Minister and other ministers shall hold office during the pleasure of the Governor. We may at once make it clear that it is not contended before us that the initial appointment of the respondent no.1

is bad for any reason. Therefore, it has to be taken that the respondent no.1 has been validly appointed in accordance with Art. 164(l) of the Constitution by the Governor of the State. In the context of Art. 164(l) of the Constitution it is for the appointing authority namely, the Governor to consider whether the respondent no.1 has committed any breach of Oath disentitling him to continue in office and, therefore, he should withdraw his pleasure. In other words, unless and until the Governor withdraws his pleasure, the Minister is entitled to hold the office. As the essential requirement for the issue of a writ of quo warranto, namely, that there is an usurpation of a public office at the time of appointment is admittedly lacking by accepting the initial appointment as valid, whether there was breach of Oaths of office and of secrecy disentitling the respondent no.1 from continuing in office has to be decided by the Governor and not by this Court, and as such there is no scope for issuing a writ of quo warranto in the facts of the present case.

6. In view of the above, the judgment of Kerala High Court relied upon by the learned counsel appearing for the petitioners is not applicable to the facts of the present case as the facts therein are that the person has taken Oath contrary to the form prescribed in Schedule III of

the Constitution of India. In the present case, it is not the contention of the petitioners that any words were added or deleted by the respondent no.1 while taking Oath as prescribed in Schedule III but the only contention as pointed out herein above is that the respondent no.1 had not disclosed his full name though he has stated the short form as shown in the electoral rolls. In such circumstances, the question of granting any relief to the petitioners in the above petition does not arise at all. The petition stands accordingly rejected.

7. As no notice was issued to the respondents and in the peculiar facts and circumstances of the case, the amount of Rs.1,00,000/- deposited by the petitioners is directed to be refunded to the petitioners. Registry is accordingly directed to refund the said amount of Rs.1,00,000/- to the petitioners.

K. L. WADANE, J.

F. M. REIS, J.

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