

Santosh

RFEPORTABLE

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 735 OF 2017**

- 1) **SURENDRA GOVEKAR,**
son of Sazu Govekar, age 50 years,
resident of House No.455, Dabhol
Waddo, Chapora Anjuna, Bardez,
Goa.
- 2) **HANUMANT GOVEKAR,**
age 56 years, s/o. Uttam Govekar,
r./o. H.No.904/2, Monteiro Waddo,
Anjuna, Bardez, Goa.

... PETITIONERS

~ VERSUS ~

- 1) **VILLAGE PANCHAYAT OF
ANJUNA-CAISUA,**
through its Secretary, having office at
Anjuna, Bardez- Goa
- 2) **THE SECRETARY,**
Village Panchayat of Anjuna-Caisua,
Bardez-Goa.
- 3) **DIRECTOR OF PANCHAYAT,**
Directorate of Panchayats, 3rd Floor,
Junta House, Panaji-Goa.
- 4) **BLOCK DEVELOPMENT
OFFICER,**
Bardez, Government Administrative
Building, Mapusa, Bardez-Goa

... RESPONDENTS

APPEARANCES

FOR THE PETITIONER	Mr PA Kamat , <i>Advocate</i>
FOR RESPONDENT NO 1	Mr AD Bhobe , <i>Advocate</i>
FOR RESPONDENT NO 3 & 4	Mr P Dangui , <i>Additional Government Advocate</i>

**CORAM : G.S.Patel &
Nutan D. Sardessai, JJ.**

DATED : 13th September 2017.

ORAL JUDGMENT (per G.S. Patel J)

1. Rule, made returnable forthwith. Respondents waive service. By consent taken up for hearing and final disposal.
2. The Petitioner makes a grievance that the 1st Respondent, the Village Panchayat of Anjuna-Caisua and the 2nd Respondent, its Secretary, are persistently in default of the provisions of Section 54 and Section 113-A of the Goa Panchayat Raj Act, 1994 and also of the Goa Panchayats (Meetings) Procedure Rules 1996. It is also alleged that these Respondents have disobeyed a Government Circular dated 10th October 2003 regarding the calling and conduct of fortnightly Panchayat meetings.
3. Our intervention is sought under Article 226 of the Constitution of India for the issuance of a mandamus against Respondents No.1 and 2 to comply with the Act, Rules and the circular; to order the inclusion of details of every subject on the agenda in future Panchayat meetings; and finally to initiate disciplinary proceedings against the 1st and 2nd Respondents.

4. There is one compelling reason to dismiss the petition *in limine* and that is because although there are prayers for an issue of a mandamus, nowhere in the petition do we find an averment that the Petitioner has demanded justice, but justice has been denied to him. This is a very old and established principle in writ law, but it seems to have fallen out of fashion these days. This is not an idle averment. It is an essential prerequisite to the issue of a mandamus and the law in that regard is extremely well settled. In *RXA De Monte Furtado v Administrator*,¹ this Court said:

10. Petitioner prays, inter alia, for a writ of mandamus or a writ in nature of mandamus, commanding the respondents to deem that he still continues to hold a grade II post, that the impugned notification and orders shall not affect his services in any manner and that he be paid all the arrears of his salary from the date of the cancellation of his appointment to grade I post, it appears, however, that petitioner did not make, as he ought to have made, a demand for justice and that such a demand had been refused. Not even an assertion exists in the petition that a representation against the alleged violation of rights has been made and hence, petitioner having failed to make such a demand is not entitled to any writ of mandamus. In fact as observed by the Karnataka High Court in *A. Prabhacora Reddy v State*:

“as a matter of rule, no High Court will issue a writ of mandamus unless the aggrieved person has made a written demand on the authorities concerned to enforce what he claims to be his legal right”

the position having been made clear by the Supreme Court in the case of *Amrit Lal v. Collector* [(1975) 4 SCC 714 : A.I.R.

¹ 1982 SCC OnLine Bom 316 : (1983) 2 LLN 623 : 1983 Lab IC 1329.

1975 S.C. 538] wherein their Lordships, once again, affirmed the rule, recognized by them in *Kamini Kumar v. State of West Bengal* [(1972) 2 SCC 420 : A.I.R. 1972 S.C. 2060], **that a demand for justice and its refusal must precede the filing of a petition asking for a direction or writ of mandamus.**

(Emphasis added)

5. Mr Kamat seeks leave to amend. We grant leave. Amendment to be effected forthwith in Court without need of reverification.

6. As far as the Circular is concerned, a copy is at Exhibit A with a typed copy at pages 10-A to 10-B. On the face of it, the circular seems to require that in every Panchayat Agenda there should be complete details of construction licences, files to be discussed, purchases to be made, expenditure to be incurred and so on. The circular says that Panchayat Members should have access to such files and correspondence under discussion. It is on this basis that it is submitted that the Agenda itself of every meeting must necessarily contain not just the heads of the items to be taken up for discussion, but every single detail such as every single construction licence proposal or application, individual correspondence etc. All of this is sought to be traced to Section 113-A of the Act. Unfortunately Section 113-A does not contain any such requirement. Sub-clause (iii) makes it necessary that the Panchayat Secretary must place all correspondence before the Sarpanch and also for information of all members “during the meeting”. It then requires the finalisation of the Agenda. Nothing in this section mandates that the Agenda itself must contain every little detail of every item to be discussed. Annexure C to the petition at page 13 is a Notice dated 22nd July 2017 of a meeting of the 1st Respondent

Panchayat called on 31st July 2017. There are 11 distinct agenda items, apart from the 12th general one. The 11 items each constitutes a distinct head for discussion.

7. On behalf of the Petitioner it is suggested that this agenda is faulty because the various matters under each head have not been disclosed in the Agenda. We do not believe this is necessary. We note that the Goa Panchayat Raj (Meeting) Procedure Rules 1996 require an intimation of the meeting to be in Form A. This is referenced by Rule 4 which says that the Secretary must give at least seven clear days' notice of any ordinary meeting and send to all Members intimation of the place, date and time of and the business to be transacted at such meeting. That is notice is to be in Form A. Form A only speaks of a listing of a agenda items. Nothing in these Rules either requires the detailing of every item of business as part of the Agenda. Rule 8 says that non-agenda business cannot be transacted and all business in the meeting must be in the order in which it is listed in the Agenda.

8. Obviously, the Government Circular cannot travel beyond the Act and the Rules, nor impose conditions not contemplated by either. Companies and trusts are not required by their separate governing statutes to provide in the Agenda every minute detail. We see no reason why such an onerous burden should be placed on a panchayat. Undoubtedly the Agenda must mention every head of business proposed to be transacted, for instance, considering applications for building permission. It is sufficient if these applications are available for inspection. The Respondents, including the 3rd Respondent, make it clear that if any Member of the Panchayat seeks inspection of any or all matters covered by an

agenda item these will be made available to him within 24 hours of the request being received. Copies may also be obtained on payment of the necessary copying charges. We accept this statement.

9. The next grievance made is that Minutes, when finalised, are not filed with the BDO within 10-day period mandated by Rule 34 of the Meeting Rules. There is no doubt that this time limit must be adhered to and the 1st and 2nd Respondents state that they will do so. This statement is also accepted.

10. Further Mr. Bhobe volunteers on behalf of Respondents No.1 and 2 should the Petitioner want copies of the unconfirmed or confirmed Minutes of any meeting, he should apply in writing and he will be entitled to inspect the copies at the Panchayat Office within the next 48 hours. If he desires a copy of the minutes, this will be made available to him within three working days and on payment of the necessary charges.

11. In our considered view, there is nothing further that is demanded of us in this petition. The petition is accordingly disposed of in these terms and Rule is discharged accordingly. There will be no order as to costs.

NUTAN D. SARDESSAI J.

G. S. PATEL J.