

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.688 OF 2018

Aleixo Arnolfo Pereira

... Petitioner

Versus

The Collector and District Magistrate,
South Goa and 5 others

.... Respondents

Petitioner in person.

Mr. Dattaprasad Lawande, Advocate General with A.Prabhudessai,
Additional Government Advocate for Respondent Nos.1 & 2.

Mr. M.Amonkar, Central Government Standing Counsel for
respondent no.3.

Mr. C.A. Coutinho, Advocate for respondent no.4.

***Coram : M.S. Sonak &
Prithviraj K. Chavan, JJ.***

Date : 10 January 2019.

P.C. :

Heard the petitioner in person, Mr. Dattaprasad Lawande,
learned Advocate General appears for respondent nos.1 and 2, Mr.
Amonkar, learned Central Government Standing Counsel for
respondent no.3 and Mr. Coutinho, learned counsel appears for
respondent no.4.

2. For the order which we propose to presently make, the presence of respondent nos.5 and 6 is not necessary.

3. The petitioner alleges that respondent no.4 is not a citizen of India and, therefore, is disqualified from holding or continuing to hold the position of Panch, Village Panchayat of Majorda-Utorda-Calata.

4. The petitioner had lodged his complaint to respondent no.1, who had been delegated powers to inquire into the issues of citizenship under Section 9 (2) of the Citizenship Act, 1955 (for short "Act"). However, now, it is pointed out by both, the petitioner as well as the learned counsel appearing for the respondents, that respondent no.1, no longer has the powers to determine such issues.

5. Section 9 of the Citizenship Act, 1955 reads thus:

"9. Termination of citizenship.—(1) Any citizen of India who by naturalisation, registration or otherwise voluntarily acquires, or has at any time between the 26th January, 1950 and the commencement of this Act voluntarily acquired the citizenship of another country shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India:

Provided that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires, the citizenship of another country, until the Central Government otherwise directs.

(2) If any question arises as to whether, when or how any [citizen of India] has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf”.

[Emphasis supplied]

6. From the reading of Section 9 (2) of the said Act, it is quite clear that if any question arises whether, when and how any citizen of India has acquired the citizenship of another country, it shall be determined by such Authority in such manner having regard to the Rules of evidence, as may be prescribed in his behalf.

7. Upon our query, Mr. Mahesh Amonkar, learned Standing Counsel for the Central Government, states that the Authority referred to in Section 9 (2) of the said Act, is now the Under Secretary (Citizenship) Ministry of Home Affairs, North Block, New Delhi-110001. For the purpose of this order, we shall refer to this Authority as the ‘Competent Authority’.

8. In pursuance of the petitioner's complaint to respondent no.1, the proceedings had in fact commenced. However, now that respondent no.1 ceases to have any powers to determine questions under Section 9 (2) of the said Act, there is no point in the matter proceeding before respondent no.1 any further. The complaint of the petitioner will now have to be examined by the Competent Authority as aforesaid.

9. Mr. Pereira, however, submits that this Court should decide the issue whether respondent no.4 is a Citizen of India rather than relegate him to the alternate remedy under said Act. He relies upon *K.Venkatachalam Vs. A.Swamickan and anr.*¹, in order to submit that there is no bar to this Court entertaining the present petition under Article 226 of the Constitution of India. He relies upon the following passage from the judgment:-

“In view of the judgment of this Court in the case of Election Commission of India v. Saka Varikata Rao, AIR (1953) SC 210 it may be that action under Article 192 could not be taken as the disqualification which the appellant incurred was prior to his election. Various decisions of this Court, which have been referred to by the appellant that jurisdiction of the High Court under Article 226 is barred challenging the election of a returned

¹ (1999) 4 SCC 526

candidate and which we have noted above, do not appear to apply to the case of the appellant now before us. Article 226 of the Constitution is couched in widest possible term and unless there is clear bar to jurisdiction of the High Court its powers under Article 226 of the Constitution can be exercised when there is any act which is against any provision of law or violative of constitutional provisions and when recourse cannot be had to the provisions of the Act for the appropriate relief. In circumstances like the present one bar of [Article 329\(b\)](#) will not come into play when case falls under Articles 191 and 193 and whole of the election process is over. Consider the case where the person elected is not a citizen of India. Would the Court allow a foreign citizen to sit and vote in the Legislative Assembly and not exercise jurisdiction under Article 226 of the Constitution?”

[Emphasis supplied]

10. Obviously, there can be no bar to this Court entertaining a petition of this nature under Article 226 of the Constitution of India. However, as and by way of self imposed limitation, whenever there is an alternate and efficacious remedy available to the petitioner, this Court refrains from entertaining the petition under Article 226 of the Constitution of India, which is in the nature of extraordinary remedy. In fact, the passage referred to by Mr. Pereira itself states that the powers under Article 226 of Constitution of India can be exercised when there is any act, which is against any provision of law or violative

of constitutional provisions and *when recourse cannot be had to the provision of the said Act*. In the present case recourse can be very well had to be provision of the said Act to determine whether respondent no.4 is indeed an Indian Citizen or not. Even the query posed by the Hon'ble Apex Court in the last portion of the aforesaid passage proceeds on the admitted basis that member of the Legislative Assembly not being a citizen of India. In the present case, there is dispute as to whether respondent no.4 is a citizen of India or not. Such a dispute, involving facts may not be capable of resolution in proceedings under Article 226 of the Constitution of India. This is an additional ground to distinguish the ruling relied upon Mr. Pereira.

11. Mr. Pereira then refers the affidavit filed on behalf of respondent no.1, in which there is a statement that Mr. Anthony Joseph Milagres Vas was holder of Portuguese Nationality. He points out that the said Mr. Anthony Joseph Milagres is none other than the son of respondent no.4. Again, this is neither here or there because, it is always possible that the son is a Foreign National and the father continues to be Indian National and *vice versa*. This is neither the occasion nor the stage to go into the merits of the matter. The Competent Authority constituted in terms of Section 9 (2) of the said Act can be directed to look into the matter and there is no doubt that

the issue of citizenship of respondent no.4 will be determined by such Authority within the time frame indicated by us.

12. The petitioner now states that he will, within a period of two weeks from today, file a detailed complaint backed with documentary evidence before such Competent Authority. If such complaint is indeed filed then the Competent Authority is directed to dispose of such complaint on its own merits and in accordance with law as expeditiously as possible and in any case, within a period of three months from the date of its receipt. Needless to add that this Authority shall comply with the principles of natural justice and afford an opportunity of hearing to respondent no.4 in the matter.

13. Depending upon the outcome of the proceedings before the Competent Authority under Section 9(2) of the said Act, the petitioner can thereafter press for his further reliefs in relation to the disqualification of respondent no.4. Liberty, in that regard, is expressly reserved to the petitioner.

14. We make it expressly clear that we have not gone into the merits of the matter and, therefore, all contentions of all parties on the merits are kept open for the determination by the Competent

Authority.

15. The petition is accordingly disposed of in the aforesaid terms. There shall be no order as to costs.

Prithviraj K. Chavan, J.

M.S.Sonak, J.