

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 634 OF 2017

Mrs. Prachi Narayan Naik,
w/o. Narayan Datta Naik,
aged years, Housewife,
R/o. H.No.278/1(3),
Savarfond Sancoale – Goa. Petitioner

Versus

- 1) State of Goa, through
its Chief Secretary,
having Office at
Secretariat, Porvorim,
Bardez- Goa.
- 2) The Returing Officer / Mamlatdar
Mormugao- Goa.
- 3) Mr. Satish R. Prabhu
Ponda, Goa.
- 4) The State Election Commissioner,
Altinho Panaji Goa.
- 5) Mrs. Socorina Vales
Resident of H.No.42, Zorint Wada,
Sancoale Goa.
- 6) Director of Panchayat,
Junta House, 3rd Floor,

Panaji- Goa.

- 7) Mrs. Alina Saldanha,
Member of Legislative Assembly,
Cortalim Constituency, Near Govt.
Health Centre,
Cansaulim- Goa.
 - 8) Mr. Ligo Montero
Residing near St. Anthony Chapel,
Fondai, Chicalim – Goa.
 - 9) Dikshak Naik,
Resident of Quellosim
Cortalim, Goa.
 - 10) Mr. Clifford Vaz,
Resident of Mangoor Hill,
Vasco- Goa.
 - 11) Mr. Joial Fernandes
Resident Near Govt. Primary
Health Centre,
Cansaulim – Goa.
- Respondents

Mr. S.S. Kantak, Senior Advocate with Mr. Athnain Naik and Ms. Aleesha Dos Reis Falcao, Advocates for the petitioner.

Mr. D.J. Pangam, Advocate General with Mr. V. Sardessai, Additional Government Advocate for the respondents Nos. 1,2 and 6.

Mr. D.J. Pangam and Mr. P. Sawant, Advocates for the respondent No.3.

Mr. S.D. Lotlikar, Senior Advocate with Ms. J. Karn, Advocate for the respondent No.5.

Coram:- M. S. SONAK &

NUTAN D. SARDESSAI, JJ.

Date :- 26th September, 2019

ORAL JUDGMENT: (Per M.S. Sonak,J).

Heard Mr. S.S. Katak, learned Counsel with Mr. Athnain Naik and Ms. Aleesha Dos Reis Falcao, learned Advocates for the petitioner, Mr. D.J. Pangam, learned Advocate General with Mr. V. Sardesai, learned Additional Government Advocate for the respondents Nos. 1,2 and 6, Mr. D.J. Pangam and Mr. P. Sawant, learned Advocates for the respondent No.3.and Mr. S.D. Lotlikar, learned Senior Counsel with Ms. J. Karn, learned Advocate for the respondent No.5.

2. The challenge in this petition is to the election of respondent No.5 as a member of the Village Panchayat of Sancoale. Mr. Katak, learned Senior Counsel for the petitioner submits that in this case the recount was vitiated for several reasons and this is a case of fundamental breach of the provision of the Panchayat Raj

Act, 1994 and the Rules made thereunder. He submits that the recount in the present case, was vitiated by what he chooses to describe the principle of scotomisation which was adopted by the Returning Officer when it came to the recount of the votes.

3. In this case we have perused the various allegations in the petition as well as the response filed by the contesting respondents. According to us, disputed questions arise, which may not be possible to be resolved in the exercise of our extraordinary jurisdiction under Article 226 of the Constitution of India. What described as fundamental violations of the provisions of the said Act and the Rules may also involve adjudication into factual disputes before we can determine whether such violations are indeed made out by the petitioner.

4. At the time of admission of this petition on 5th September, 2017, we had made the following order:

" 1. *Heard.*

2. *Shri Kantak points out that the petition makes out a case that the prescribed Rules and the procedures for the conduct of the Panchayat elections were not followed in the recently held Panchayat election of Sancoale Village. He submits that the provisions of the Goa Panchayat Raj Act, 1996 & the Goa Panchayat and Zilla Panchayat (Election Procedure) Rules, 1996 have been violated in at least in two respects: first, that a vote once declared invalid was, subsequently said to have been valid; and,*

that in contravention of the Rules, during the counting process there was a person other than the candidate and his election agent present in the vote counting premises.

3. *We are mindful that the Petitioner may well have an alternate remedy, but at this stage it is difficult to say whether that remedy is equally efficacious, particularly if it is found that there is such a fundamental violation of the Rules and the Act. The kind of violations Shri Kantak describes seem to us to go to the root of the matter.*

4. *Hence, Rule returnable on 4th October 2017.*

5. *As to interim relief, Shri Kantak fairly points out that the elected candidates have taken oath. Hence, no interim relief. However, the parties are put to notice that the election of the successful candidates may be subject to the outcome of this petition."*

5. The aforesaid order was made on the basis that there might not be much disputes on facts. However, from the returns filed, we note that there are serious disputes involved on facts and therefore, we may not be able to resolve such disputes in the exercise of our jurisdiction under Article 226 of the Constitution.

6. Besides, we are mindful of the provisions not only under the Panchayat Raj Act, 1994 but also in Article 243 (O) of the Constitution which provide that disputes relating to elections to Panchayats must ordinarily be resolved by recourse to the remedy of election petition, which remedy, is in fact, provided under the Panchayat Raj Act, 1994.

7. For the aforesaid reasons and without dwelling into the merits of the rival contentions, we dismiss this petition but grant liberty to the petitioner to institute election petition in terms of the provisions of the Panchayat Raj Act, 1996 and the Rules made thereunder.

8. Mr. Kantak, learned Senior Counsel for the petitioner states that such election petition will be instituted within 15 days from today before the appropriate authority which we are informed is the Administrative Tribunal.

9. If such election petition is indeed instituted within 15 days from today, then, we only observe that after the results were declared on 02/07/2017, this petition was instituted on 10/07/2017 and has remained pending in this Court till date. Taking into consideration our order dated 05/09/2017 as also the further orders made from time to time, we observe that the petitioner, has been bonafide prosecuting these proceedings before this Court.

10. Accordingly, we observe that the Tribunal before whom the election petition may be filed will take into consideration the above aspect.

11. However, we add that all the contentions of all the parties are left open to be decided by the Tribunal in accordance with law.

12. With the aforesaid observations we dismiss this petition.
13. There shall however no order as to costs.
14. All concerned to act on the basis of an authenticated copy of this order.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

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