

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.196 OF 2021 (FILING)

- 1) Shri Shivram S. Malik
son of Shri Sadanand G. Malik,
32 years of age,
resident of House No.484, Varcha Wada,
Varche Harvalem, Sanquelim,
Goa 403505
- 2) Shri Sharad R. Malik
son of Shri Rauji Vaman Malik,
48 years of age,
resident of House No.2101, Kelbaiwada,
(Khalchawada), Harvalem,
Sanquelim, Goa
- 3) Shri Rajaram J. Malik
son of Shri Jairam Mahadev Malik,
60 years of age,
resident of House No.491, Upper Harvalem,
Sanquelim, Goa
- 4) Shri Dasharath Surya Malik
son of Shri Surya Sakharam Malik,
58 years of age,
resident of House No.750, Upper Harvalem,
Sanquelim, Goa
- 5) Shri Sahadev Surya Malik
son of Shri Surya Babaji Malik,
44 years of age,
resident of House No.1320, Harvalem,
Sanquelim, Goa 403505
- 6) Shri Sagar Sagun Malik
son of Shri Sagun Govind Malik,

36 years of age,
resident of House No.473, Upper Harvalem,
Sanquelim, Goa 403505

..Petitioners

Versus

- 1) State of Goa
through the Joint Secretary (Revenue),
Revenue Department, Secretariat,
Vidhan Sabha Complex, Porvorim,
Bardez Taluka, Goa
- 2) The Director of Civil Administration/Collector
Collectorate, North Goa,
Panaji, Tiswadi Taluka,
Goa
- 3) The Administrator of Comunidades,
North Zone,
Near El Capitan Center,
Mhapsa, Goa
- 4) Mahadev A. Malik,
son of Shri Arjun Malik,
of full age,
resident of House no.429, Varche,
Harvalem, Sankhali, Goa
- 5) Tulshidas B. Malik
son of Shri Babi Malik,
of full age,
resident of Varche,
Harvalem, Sankhali, Goa.

...Respondents

Mr. Rui Gomes Pereira, Advocate for the Petitioners.

Mr. Devidas J. Pangam, Advocate General with Mr. Deep D. Shirodkar, Additional Government Advocate for the Respondents No. 1 to 3.

Mr. B. Pacheco, Advocate for the Respondents No. 4 and 5.

**CORAM: REVATI MOHITE DERE &
SMT. M. S. JAWALKAR, JJ.**

Date: 30th November, 2021

ORAL JUDGMENT: (Per: Revati Mohite Dere, J.)

Heard learned counsel for the respective parties.

2. Rule. Rule is made returnable at the request and with the consent of the parties forthwith.

3. By this petition, the petitioners have sought the following substantive reliefs:

'(A) to issue a Writ in the nature of Mandamus or any other appropriate Writ, order or direction ordering Respondent nos. 1 & 2 to withdraw the impugned order dated 16.03.2021 (Exhibit A);

(B) to issue a Writ in the nature of Certiorari or any other appropriate Writ or order quashing and setting aside the impugned order (Exhibit A) dated 16/03/2021;'

4. The principle grievance of the petitioner is that the respondent No.1 had not complied with the mandate of Article 70(1) of the Code of Comunidade (hereinafter for the sake of

brevity referred to as the 'Code') which contemplates personal hearing to be given to the defendants in the inquiry. Learned Advocate General opposes the petition.

5. Perused the papers. The petitioners are the members(components) of the Comunidade of Harvalem. The petitioners were elected to the post of Managing Committee of the Comunidade of Harvalem for the triennium 2018-2021 inasmuch as, the petitioner No.1 was appointed as the President; petitioner No.2, as Attorney; petitioner No.3, as Treasurer; petitioner No.4, as Substitute President; petitioner No.5 as Substitute Attorney; and the petitioner No.6, as Substitute Treasurer. Admittedly, the Managing Committee of the Comunidade of Harvalem is governed by the Code of Comunidade (Goa, Daman & Diu Legislative Diploma no.2070). It appears that this Court, whilst disposing of Writ Petition No.549 of 2019 vide order dated 16.07.2019 had directed, the respondent No.3 therein i.e. the Administrator of Comunidade to dispose of the two complaint lodged by two members of the said Comunidade, with respect to the illegal allotment of plots. It was made clear by the Court, that the said petition i.e. Writ Petition No.549 of 2019, was not examined on the merits and as such all contentions of all parties were left open

to be decided by the Administrator of Comunidade in accordance with law and on its own merits. Vide the said Order the Administrator was to also afford opportunity of hearing to the respondent Nos.6 to 11 in the said writ petition, who were the Managing Committee members, since certain allegations were made against them and notices were to be issued to the allottees, before any decision was taken on the complaints.

6. The respondent No.3-The Administrator of Comunidades, North Zone Vide order dated 02.12.2020, disposed of the said complaints. The operative part of the said order reads thus:

“In exercise of the powers conferred under Art. 125(13) of Code of Comunidade, I hereby propose the dismissal of President of the Managing Committee of Arvalem Comunidade, the dissolution of the elected part of the same in terms set forth in Code of Comunidades. Also propose for dismissal of Attorney of Comunidade under Art. 75 of Code of Comunidades.

It is also proposed for appropriate action against illegal encroachment and constructions done on the land of the Comunidade as mentioned herein and hence approval is sought from the Director of Civil Administration under amended Art.371 & 372 of Code of Comunidades for summary eviction of the encroachers.

Hence under facts and circumstances the matter is referred to the Govt. of Goa through The Director of Civil Administration for necessary approval.”

7. Being aggrieved by the said order dated 02.12.2020, the petitioner No.1 and the Comunidade preferred appeals (Comunidade Appeals No. 2/2021 and 1/2021) respectively before the Administrative Tribunal at Panaji, which are pending.

8. On 19.03.2021, the petitioner No.1 received the impugned order dated 16.03.2021 passed by the respondent No.1, by which, the respondent No.1 dismissed the President and dissolved the elected part of the same and directed the Administrator of Comunidade, North Zone, to look after the administration till a new Managing Committee was elected.

9. According to learned counsel for the petitioners, not only the said order is contrary to the mandate of Article 70(1) of the Code of Comunidade, but is violative of the principles of natural justice, inasmuch as, no opportunity of personal hearing was afforded to the petitioners. Mr. Pereira submits that no notice with respect to suspension was given by respondent No.3 to petitioner Nos.4 to 6 herein, nor, any notice with respect to dismissal was served on the petitioners, by the respondent No.1. Learned counsel for the petitioners submits that the said impugned order is a non-speaking order, arbitrary and contrary to the various provisions of the Code of Comunidade.

10. Admittedly, no personal hearing was afforded to the petitioners. The same is also not disputed by the learned Advocate General. However, according to the learned Advocate General, no hearing was required to be given to the petitioners as the Administrator had conducted an inquiry and had heard the petitioners, before making the recommendation of dismissal.

11. It appears that the respondent No.1 has dissolved the Committee vide order dated 16.03.2021 only on the basis of the report submitted by the Administrator. The said impugned order is based on the inquiry report submitted by the Administrator under Article 153(3) of the Code of Communitade recommending dismissal of the President and dissolution of the elected part, in terms of Article 125(13) of the Code of Communitade; dismissal of Attorney in terms of Article 74 of Code of Communitade and eviction of encroachers by the Director of Civil Administration in terms of Article 371 and 372 of Code of Communitade. It appears that pursuant thereto, the respondent No.1 in exercise of its powers conferred under Section 74 and Article 153(3) of Code of Communitade, dismissed the President and dissolved the elected part of the same and directed the Administrator of Communitade, North Goa to look after the administration till a new Managing Committee is elected.

12. The short question in the present petition that arises for consideration is whether the petitioners ought to have been heard by the respondent No.1.

13. Article 70(1) of the Code of Communitade reads as under:

'Art.70-

1. The elected part of the committee may only be dissolved by the Governor-General after conducting an inquiry in which it is proved that its performance was against the interests of the comunidades. In this inquiry the defendants must be given a hearing.'

14. Having regard to the said provision, we are of the opinion, that the respondent No.1 could not have dissolved the elected part of the Committee without giving an opportunity to the petitioners of being heard. As noted above, no hearing was afforded to the petitioners. Dismissal or dissolving an elected part of the Committee entails and invites serious and drastic consequences and hence, it is imperative for the Government to hear the affected party, i.e. the defendants in the inquiry.

15. The Supreme Court in the case of ***Sahara India (Firm) Lucknow v/s. Commissioner of Income Tax, Central-I***

*And Another*¹ in para 19 observed as under:

'19. Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial.'

16. Similarly, in *S. L. Kapoor v/s. Jagmohan And Others*² the Apex Court in para 7 observed as under:

*'7. The old distinction between a judicial act and an administrative act has withered away and we have been liberated from the psittacine incantation of "administrative action". Now, from the time of the decision of this Court in **State of Orissa v. Dr. (Miss) Binapani Dei**, "even an administrative order which involves civil consequences.... must be made consistently with the rules of natural justice". What are civil consequences? The question was posed and answered by this Court in **Mohinder Singh Gill v. Chief Election Commissioner, New Delhi**, Krishna Iyer, J., speaking for the Constitution Bench said (at pp. 308-309): (SCC p. 440, para 66).*

But what is a civil consequence, let

¹ (2008) 14 SCC 151

² (1980) 4 SCC 379

us ask ourselves, by passing verbal booby-traps? “Civil consequences” undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence.

The learned Judge then proceeded to quote from BLACK'S LEGAL DICTIONARY and to consider the interest of a candidate at a parliamentary election. He finally said: (SCC p. 441, para66)

The appellant has a right to have the election conducted not according to honour or hubris but according to law and justice. And so natural justice cannot be stumped out on this score. In the region of public law locus standi and person aggrieved, right and interest have a broader import.'

17. In the case of **Sahara** (supra), it was observed that rule of *audi alteram partem* must be observed and pre-decisional hearing has to be given. Infact, the Apex Court observed in the said case that exercise of power under Section 142(2-A) leads to serious civil consequences and, therefore, even in the absence of an express provision in Section 142(2-A) of the Income Tax Act, either, affording an opportunity of pre-decisional hearing to an assessee and in the absence of any express provision in Section

142(2-A) barring the same, i.e. of giving of a reasonable opportunity to an assessee, the requirement of *audi alteram partem* has to be read into the said provision. It was further held that post-decisional hearing contemplated under Section 142(3) of the Income Tax Act did not obviate the necessity of pre-decisional hearing, as the hearing under Section 142(3) does not amount to a full review of the original order. Accordingly, the Apex Court held that the order under Section 142(2-A) passed without affording pre-decisional hearing was bad in law.

18. In the present case, Article 70(1) of the Code itself mandates that hearing should be afforded to the defendants in the inquiry. As noted above, admittedly no hearing was afforded to the petitioners, who were the defendants in the inquiry. By the Impugned Order, the President was dismissed and the elected part of the same was dissolved, entailing serious civil consequences.

19. Considering the drastic consequences that such an order entails, it was imperative for the respondent No.1 to afford a personal hearing to the petitioners, before passing the order. The drastic civil consequence of the Impugned Order is that under clause (3) of Article 70 of the Code, the members of the Managing Committee affected by the dissolution shall not be re-

elected before completing nine years from the dissolution. Infact, Article 70(1) of the said Code clearly stipulates such a hearing.

20. However, despite the said mandate, respondent No.1 has failed in its duty to comply with the same i.e. of giving hearing to the petitioners. The underlying principle of 'natural justice', is to check arbitrary exercise of power by the State or its functionaries. The said principle, implies a duty to act fairly, i.e. fair play in action. The Apex Court in ***A. K. Kraipak v. Union of India***, observed that the aim of rules of natural justice is to secure justice or put it negatively, to prevent miscarriage of justice. The respondent No.1 having failed to give a hearing to the petitioners in terms of the mandate of Section 70(1) of the Code, the Impugned Order cannot be sustained.

21. Accordingly, the impugned order dated 16.03.2021 passed by the Joint Secretary (Revenue), Revenue Department, Government of Goa is quashed and set aside. The matter is remitted back to the Joint Secretary(Revenue) so as to enable the Joint Secretary (Revenue) to give a hearing to all the parties, i.e., the petitioners and the private respondents, having regard to the mandate of Article 70(1) of the Code of Communitade.

22. All parties to appear before the Joint Secretary (Revenue) on 07.12.2021 at 11:30AM after which, the Joint Secretary (Revenue) to give dates convenient to him and the parties.

23. It is made clear that we have not gone into the merits of the case and, as such, all contentions of all parties are kept open. If an adverse order is passed as against the petitioners, the same shall not be given effect to for a period of two weeks from the date of the said order.

24. Rule is made absolute on the aforesaid terms. Petition is disposed of accordingly.

25. All parties to act based on the authenticated copy of this order.

M. S. JAWALKAR, J.

REVATI MOHITE DERE, J.