

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1164 OF 2018

Edwin Mascarenhas

.Petitioner

Versus

Kamla Prasad Yadav And 2 Ors.

...Respondents

**Mr. Dhaval Zaveri and Mr. S. Karmalkar, Advocates for the
Petitioner.**

**Mr. S. D. Lotlikar, Senior Advocate with Ms. S. Kenny, Ms.
Apeksha Kalokhe and Ms. Pallavi Shirodkar, Advocates for
the Respondent No.1.**

Mr. Zeller De Sousa, Advocate for the Respondent No.2.

**Mr. Deep D. Shirodkar, Additional Government Advocate
for the Respondent No.3.**

**CORAM: M. S. SONAK &
R. N. LADDHA, JJ.**

DATED: 6th April, 2022

ORAL ORDER: (Per. M. s. Sonak, J.)

Heard Mr. Dhaval Zaveri, learned counsel for the petitioner, Mr. S.D. Lotlikar, learned Senior Advocate appears with Ms. S. Kenny for respondent no.1, Mr. Zeller De Sousa, learned counsel appears for respondent no.2, Mr. Deep D. Shirodkar, learned Additional Government Advocate appears for

respondent No.3.

2. The petitioner, by instituting this petition had sought for a writ of *quo warranto* in the matter of respondent no.1 functioning as the Member of Village Panchayat of Chicalim. It was the case of the petitioner that the respondent no.1 has incurred disqualification under clause (d) of section 12(1) r/w with Section 55(4) of the Panchayat Raj Act, 1994.

3. Earlier, there was no Authority provided under the Act before whom such disputes of disqualification under Section 12(1)(d) of the said Act could be adjudicated. However, learned counsel for the parties place on record the Gazette Notification containing The Goa Panchayat Raj (Amendment) Act, 2021. Section 3A of this Amendment Act reads as follows:

'3A. Amendment of section 12.-- In section 12 of the principal Act, in sub-section (2), for the expression "clause (b) or clause (c)", the expression "clause (b), clause (c) or clause (d)" shall be substituted.'

4. In terms of the aforesaid Amendment, now, the Block Development Officer is competent to adjudicate the issues of disqualification under Section 12(1) (d) of the said Act.

5. Since earlier the petitioner had no remedy, this petition was entertained. Even a Commissioner was appointed to record evidence since it would have been difficult for this Court to adjudicate disputed questions of fact. The Commissioner has filed a report.

6. Learned counsel for the parties agree that this Commissioner's report together with the evidence led by the parties could now be considered by the Block Development Officer should this matter be sent to the Block Development Officer for adjudication.

7. Accordingly, this petition is disposed of by directing the Block Development Officer to decide the issue of disqualification of respondent no.1 under Section 12(1)(d) r/w. Section 55(4) of the said Act. The pleadings in this writ petition should be treated as pleadings before the Block Development Officer. Similarly, the Commissioner's report, i.e. the evidence led before the Commissioner should be treated as evidence led before the Block Development Officer. The Block Development Officer should dispose of the matter as expeditiously as possible and in any case not later than 15.05.2022.

8. Learned counsel for the petitioner and the respondents

state that the parties whom they represent or their advocates will appear before the Block Development Officer on 12.04.2022 at 04:00PM and file an authenticated copy of this Order. The Block Development Officer to take cognizance of this Order and to proceed accordingly.

9. We make it clear that we have not adjudicated into the rival contentions and, therefore, all contentions of all parties on merits will have to be adjudicated by the Block Development Officer.

10. Mr. Zaveri, learned counsel for the petitioner states that he will obtain copies of the petition, pleadings, documents and place the same before the Block Development Officer on or before 12.04.2022. Mr. Lotlikar, learned Senior Advocate states that the petitioner can also prepare a paperbook so that the matter can be expeditiously heard and disposed of. Mr. Zaveri states that even this will be supplied on or before 12.04.2022.

11. This petition is disposed of in the aforesaid terms.

R. N. LADDHA, J.

M. S. SONAK, J.