

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.535 OF 2022

Shri Raghoba S. Gawade
S/o Shantaram Gawade,
aged 55 years,
Indian National, Farmer,
Married, R/o H.No. A-11,
Gawade-Wada, Mandrem,
Pernem Goa.

... Petitioner

Versus

1 Goa State Election Commission
Altinho, Panaji Goa.

2 Mamlatdar of Pernem Taluka
Returning Officer
Pernem Taluka
Pernem Goa.

3 Mr Prashant Vasant Naik,
H.No.B 42, Naikwada,
Mandrem Goa.

4 Gopinath Purushottam Naik
B-46, Naikwada, Mandrem Goa

5 Luis Duming Fernandes
Satchebhatlem, Mandrem Goa

6 Sandesh Anant Kerkar
H.No.B-97/A, Naikawada, Mandrem,
Pernem, Goa 403 527

7 Shantaram Keshav Naik
Naikwada, Mandrem Goa.

8 Sidharth Suryakant Gawade
H.No.A-1, Gawadewada,
Mandrem, Pernem Goa.

...Respondents

Mr Vishnuprasad Lawande and Mr Parimal Redkar, Advocates for the
Petitioner.

Mr D. Pangam, Advocate General, with Mr P. Arolkar, Additional
Government Advocate for Respondent No.2.

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ**

DATED: 10th JANUARY 2023

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

1. Heard. Mr Lawande appears along with Mr P. Redkar for the
Petitioner. Mr D. Pangam, learned Advocate General, appears along
with Mr P. Arolkar, learned Additional Government Advocate for
Respondent No.2.

2. Leave to amend the cause title by indicating Respondent No.3
with the correct name as Prashant Vasant Naik instead of Prakash
Vasant Naik. Amendment to be carried out immediately.

3. The Petitioner seeks a writ of quo-warranto for removing
Respondent No.3 as the Member/Pancha from the Village Panchayat
of Mandrem, Pernem Goa.

4. Mr Lawande submits that Respondent No.3's name was earlier included in the Mandrem Legislative Assembly Constituency electoral roll. However, on 05.01.2022, his name was included in the electoral roll of the Mapusa Legislative Assembly Constituency. He submits that this was, in all probabilities, pursuant to an application made by Respondent No.3 for such change. However, by taking advantage of the fact that Respondent No.3's name continued in the electoral roll of the Mandrem Legislative Assembly Constituency, Respondent No.3 contested and got elected as a Pancha from the Panchayat of Mandrem Constituency.

5. Mr Lawande submits that Respondent No.3 played fraud in the electoral process. He deliberately suppressed the factum of change at his instance. Mr Lawande accepted that the electoral rolls for the Legislative Assembly are to be taken as a base for elections to the Panchayats. He pointed out that the electoral rolls for Legislative Assembly are prepared under the Representation of the People Act 1950. Therefore, he relied on Section 17 of the R.P. Act, 1950, which provides that no person shall be entitled to register in the electoral rolls for more than one constituency.

6. Mr Lawande relied on the decision of the learned single Judge of Madhya Pradesh High Court in ***Suresh Choudhary Vs Atarlal Verma and others***,¹ where a writ of quo- warranto was issued after it

1 (2006) 3 MPLJ 506

was found that the returned candidate suppressed the facts about his disqualification. He also relied on *K. Venkatachalam Vs A. Swamickan and another*² to submit that the powers of the Constitutional Court under Article 226 of the Constitution are always retained, and there is no bar to issue a writ of quo-warranto simply because no recourse was taken to the remedy of an election petition within the period prescribed.

7. Based upon the above submissions, Mr Lawande urged to issue a writ of quo-warranto.

8. The learned Advocate General submitted that the qualification for membership in a Panchayat is provided under Section 9 of the Goa Panchayat Raj Act, 1994. He pointed out that every person whose name is in the list of voters referred to in Section 13 of the wards in a Panchayat shall, unless disqualified under this Act or under any other law for the time being in force, be qualified to be elected from any ward in that Panchayat. He submitted that since Respondent No.3's name was very much existing in the concerned electoral roll, Respondent No.3 was not disqualified from getting elected. In such circumstances, he submits that a writ of quo-warranto cannot be issued.

9. The rival contentions now fall for our determination.

2 (1999) 4 SCC 526

10. The elections, qualifications, and disqualifications as members of a Panchayat are matters governed by the Goa Panchayat Raj Act, 1994 (the said Act). Section 13 of the said Act provides that subject to the provisions of sub-section (1), the electoral roll of the Legislative Assembly of the State for the time being in force for such part of the wards of a Panchayat shall be deemed to be the list of voters for such Panchayat wards. Section 9 of the said Act provides that every person whose name is in the list of voters referred to in Section 13 of the wards in a Panchayat shall, unless disqualified under the said Act or under any other law for the time being in force, be qualified to be elected from any ward in that Panchayat. Proviso deals with reserved seats with which we are not concerned in the present Petition.

11. Section 10 provides for disqualification for membership. It provides that a person shall be disqualified for being chosen as, and for being, a member of the Panchayat, if any of the circumstances set out in clauses (a) to (g), are attracted. In this Petition, there are neither any pleadings nor was any contention advanced about Respondent No.3 being covered by any of the circumstances in clauses (a) to (g) of Section 10 of the said Act.

12. Admittedly, Respondent No.3's name is enrolled in the electoral roll for Mandrem Legislative Assembly Constituency. Therefore, considering the provisions of Sections 9, 10, and 13 of the said Act, no case of Respondent No.3 being disqualified either for being chosen as

or being a member of the Panchayat of Mandrem has been made out. In such circumstances, a writ of quo-warranto cannot issue to unseat Respondent No.3 as a member of the Village Panchayat of Mandrem.

13. The record shows that Respondent No.3's name appears in the electoral roll for the Mapusa Legislative Assembly and Mandrem Legislative Assembly. However, there is nothing on record to even remotely indicate that the Petitioner, at the time of revision of electoral rolls or after Respondent No.3's name was included in the electoral roll for the Mandrem Legislative Assembly, objected to such inclusion. Moreover, no proceedings were taken out by the Petitioner for deleting Respondent No.3's name from the Mandrem Legislative Assembly electoral rolls. The only excuse offered is the Petitioner's unawareness of the inclusion. Based upon such an excuse, the Petitioner cannot now question the election of Respondent No.3 as a member of the Mandrem constituency by simply alleging fraud or suppression on Respondent No.3's part.

14. Even otherwise, no case of fraud or suppression is made out. The record discloses that Respondent No.3's wife objected to including her and her husband's names in the Mapusa Legislative Assembly Constituency electoral rolls. The learned Advocate General pointed out that the Block Level Officer, on a field visit, reported that Respondent No.3 and his wife had indeed shifted their residence to the Mandrem constituency. Based on such report, Respondent No.3's

name was included in the electoral roll for the Mandrem Legislative Assembly constituency. There is no element of fraud involved in this exercise.

15. Mr Lawande vaguely alleges that the above exercise was completed beyond the period of limitation prescribed under the R.P. Act 1950 or that no specific order was passed on Respondent No.3's wife's application for change. This contention has not been substantiated. In any case, the Petitioner, who chose not to object to such inclusion within the prescribed period of limitation, cannot be permitted to raise such contentions and, based on the same, to question the election of Respondent No.3. At least a writ of quo-warranto cannot issue based upon such argument and in such circumstances.

16. The decision in *Suresh Choudhary* (supra) is distinguishable because the candidate had already been declared disqualified in that case. However, such a factum of disqualification was suppressed by the candidate. It is in such circumstances a writ of quo-warranto was issued. Similarly, in *K. Venkatachalam* (supra), the Court held that an MLA elected by impersonation, which constituted fraud, could not continue as an MLA merely because no election petition was filed within the prescribed period of limitation. Such circumstances do not exist in the present case. Therefore, two decisions relied upon by Mr Lawande are entirely distinguishable.

17. Instead, the controversy raised in this Petition is covered against the Petitioner by the decision of the Hon'ble Supreme Court in *Baburao Vs Manikrao and Another*³. In the said case, the challenge was precisely that the returned candidate was disqualified because his name appeared in electoral rolls of more than one constituency in defiance of provisions of Section 17 of the R.P. Act 1950. Yet, the Hon'ble Supreme Court held that no such disqualification could be inferred.

18. In *Baburao* (supra), unlike in the present case, an objection was raised before the returning officer that the nomination be rejected because the candidate's name appeared in the Legislative Assembly Constituencies of Nilanga and Latur. The returning officer overruled the objection. Even the application for revision of the electoral roll before the Chief Electoral Officer was turned down. After the candidate was declared elected from the Nilanga constituency, an election petition was filed. The main ground was that the returned candidate stood disqualified because his name was in the electoral rolls of more than one constituency. It was also contended that the returned candidate was not "*ordinarily resident*" in the constituency in which he was elected. This election petition was dismissed, and the dismissal was questioned before the Hon'ble Supreme Court.

3 (1999) 5 SCC 38

19. The Hon'ble Supreme Court held that the High Court was correct in rejecting the contention that the candidate was disqualified from contesting from the Nilanga constituency as his name was found in the electoral rolls of two constituencies. The Court held that for the purposes of the 1950 Act, Sections 17 and 18 might be mandatory. For example, to object to including the name in the electoral roll. But there is nothing to suggest in Section 16 of the 1950 Act that if a person's name is found in more than one constituency, that would automatically entail disqualification from contesting in any one of the constituencies.

20. The Hon'ble Supreme Court held that Section 2(1)(e) of the Representation of the Public Act, 1951 refers to disqualification under Section 16 of the 1950 Act alone while interpreting the word '*elector*' and has not mentioned any contravention of Section 17 as disqualification. Doubtless, Section 17 of the 1950 Act expressly states that no person shall be entitled to be registered in the electoral roll for more than one constituency. But if a person's name finds a place in more than one constituency, it does not automatically entail disqualification under Section 16. The objection under Section 17 could have been successfully raised to prevent the candidate's name from being included in Nilanga Constituency. The Hon'ble Supreme Court also held that, having regard to Section 100 of the 1951 Act, it was not possible to declare the candidate's election void under any one of the grounds set out therein.

21. Mr Lawande tried to distinguish the above decision by alleging that there was deliberate suppression on the part of Respondent No.3, which was, according to him, not the position considered by the Hon'ble Supreme Court in *Baburao* (supra). As noted above, this case of deliberate suppression has not been made out. In any case, based upon such distinction, the precedential value of *Baburao* (supra) cannot be diluted. The principle in *Baburao* (supra) is squarely applicable to the Petitioner's challenge in this Petition. Based upon the same, no relief can be granted to the Petitioner.

22. In *Bimal Kaur Khalsa Vs Sujan Singh*⁴, in the context of the interpretation of the provisions of Sections 16 and 17 of the R.P. Act 1950, it was held that Section 16(1) does not contain any disqualification to the effect that if a person is registered as an elector in one constituency, he cannot be registered as such in another constituency. Under sub-section (2) of Section 16, the name of an elector can be struck off from the electoral rolls in case he suffers from disqualification(s) mentioned in sub-section (1) after he has been registered as an elector.

23. In *Kabul Singh Vs Kundan Singh*⁵ and *Hari Prasad Mulshankar Trivedi Vs V. B. Raju*⁶, the Hon'ble Supreme Court has considered and ruled on evidentiary value and finality assigned to the

⁴ AIR 1987 Punjab and Haryana 145

⁵ AIR 1970 SC 340

⁶ AIR 1973 SC 2602

entries of names in the electoral roll. Based upon consideration of the provisions of the R.P. Act 1950, the Hon'ble Supreme Court has held that the contention about some parties not being ordinarily resident in any of the Parliamentary constituencies in the State or that the candidates having not fulfilled the conditions for being entered into the electoral rolls of any Parliamentary constituencies cannot be considered for determining whether the candidates were disqualified from being elected or not. Since the Act provides complete machinery to enquire into such matters, it is that machinery must be resorted to, and the names got deleted or included in the electoral roll. This aspect has also been considered in *Bimal Kaur Khalsa* (supra). In the present case, no serious argument was raised about Respondent No.3 not being ordinarily resident in Mandrem. In any case, considering the law on the subject, such an argument could not have been considered in this Petition.

24. For all the above reasons, we dismiss this Petition. However, there shall be no order for costs.

BHARAT P. DESHPANDE, J

M. S. SONAK, J

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