



Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.73 OF 2025

MORENO HILARIO JOSEPH
SALDANHA FERNANDES

... PETITIONER

Versus

ANTHONY D SOUZA AND 6 ORS.

... RESPONDENTS

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

Mr. Siddharth Samanth, Additional Government Advocate for Respondent No. 4 and 8.

**CORAM:- BHARATI DANGRE &
NIVEDITA P. MEHTA, JJ.**

DATED :- 07th July 2025

ORAL ORDER (Per Bharati Dangre, J.)

1. By the present petition, the petitioner has raised a challenge to the election of respondent no. 2 to the post of President of Comunidade of Calangute-Goa, on the ground that it is in blatant violation of his statutory rights. The petition specifically claims that the conduct of the respondent nos. 4 and 5 as well as the Presiding Officer i.e. respondent no. 6 and the Clerk of the Comunidade of Calangute i.e. respondent no. 7 have been

undemocratic, all the while, and the declaration of respondent no. 1 as President is by an illegal, arbitrary and an undemocratic process, as it is alleged that there is large scale infirmity in the process that is conducted and the irregularities which are evident on the face of the record, vitiate the entire process followed by respondent no. 6 in conducting the purported elections.

2. We have heard Mr. Lawande, learned counsel for the petitioner and Mr. Samant, learned Additional Government Advocate for the State Authorities.

The elections for the post of President with which we are concerned for the Comunidade of Calangute were held on 29.12.2024 at 10:30 a.m. and the minutes of the meeting form a part of the petition.

It is pertinent to note that upon the elections being conducted on 29.12.2024, the petitioner applied for certified copy of the minutes of the meeting and the same were received by him on 02.01.2025, i.e. before the expiry of period of 5 days from the date of conduct of the elections.

On the basis of the minutes, it is urged before us by

Mr.Lawande, learned counsel for the petitioner that what process was followed during the conduct of the elections and specifically, since he is concerned with the process of election of the President, is doubtful as the minutes record as below:-

“The presiding officer after scrutinizing the above proposal as per able component list and voters list, put them for voting before present members, and as a result shri Antonio Francisca A. de souza got fifty four votes (54) and shri Moreno H.J.F. Saldanha got fifty three (53) votes and accordingly shri Antonio Francisca A. de souza got more votes therefore declared elected for the post of effective president for the triennium 2025-2028.”

3. It is vehemently argued before us that the minutes of the meeting clearly record that there was a list of 110 members who were present but as far as the post of President is concerned, the candidate was declared elected, i.e. respondent no. 1, secured 54 votes and number of votes secured in the favour of the petitioner was mentioned to be 53, with no clarity as to how the votes were cast and how they were counted.

Inviting our attention to Article 48 of the Code of

Comunidade, it is the specific submission advanced on behalf of the petitioner that there is a mandate that all the elections shall be held by open ballot, with a specific stipulation that each list should have one name for the effective member, and another one for his substitute.

In absence of the vote being cast as contemplated by “open ballot”, it is the submission of Mr. Lawande that the process that was followed clearly violated Article 48(1) of the Code. For necessary reference and interpretation, we must reproduce the said provision to the following effect :

“[Article 48.] The election committee of the board shall be composed of the president of the board, the attorney and the registrar, the president of the board being the president of the committee.

1. All the elections shall be held by open ballot and each list should have one name for the effective member and another one for his substitute. The voting shall be conducted by the listing of the electors present personally ~~or by proxy and of the absent electors by declaration of vote.~~

2. The election proceedings shall be presided over and conducted by the officer to be appointed by the District Collector, for the purpose.”

4. Apart from the fact that the said provision describes “open ballot”, it do not specify in what manner the open ballot shall be conducted as it also stipulate that the voting shall be conducted by the listing of the Electors present personally or by Proxy and of the absent Electors by declaration of vote.

The learned Single Judge of this Court in case of ***Danisio Francisco Trinidad Vs Naneshwar Gopal Fadte and 3 others***, in connected writ petitions, the lead petition being ***WP.930/2019*** had an opportunity to deal with this very argument, when the matter came before him, from an order passed by the Administrative Tribunal and, while interpreting as to what could be the meaning underlying the term- “open ballot”, while upholding the decision of the Administrative Tribunal, which had ordered re-election, to resolve the imbroglio specifically observed as below-

“I clarify “open ballot” stands in contradistinction with “secret ballot;” it need not be by show of hands of alone. The authorities will adopt a method that leaves verifiable material

*should there be any controversy about the voting,
as it happened this time.”*

5. The aforesaid observation is vehemently relied upon by the petitioner in submitting that open ballot means necessarily by show of hands or shall be in a manner which is indicated under Article 48 of the Code. Infact the learned Single Judge has only clarified by stating that “open ballot” stands in contradiction with “secret ballot” and necessarily it may not be by show of hands alone but any method which gives a verifiable material, would offer a solution to the manner in which the voting is conducted under Article 48.

Sub-Article (1) of the Article 48 of the Code, categorically states that the voting shall be conducted by the listing of the Electors present personalty, or by proxy and incase of those Electors who are absent, by declaration of a vote.

The minutes of the meetings which are placed before us in regards to the election of the President record that the Presiding Officer, scrutinized the proposal of the two Contenders for the post of President and put them to voting before the present members and thereafter, he declared that the respondent no. 1 had secured 54

votes whereas the petitioner had secured 53 votes, and accordingly, the result was declared.

True it is that, by what manner the votes were counted is not clear but, it is clear that it has to be in terms of Article 48 i.e. by show of hands and this process, according to Mr. Lawande is flagrantly violated as provision prescribes that there should be a list provided which should have one name for the effective member and another for his substitute.

If this argument advanced on behalf of the petitioner is to be accepted, then we can understand Mr. Lawande, precisely arguing before us that there is violation of the guidelines contained in Article 48, which is mandatory to be followed. In case, if there is any violation, it definitely amounts to an irregularity as the regular process which is prescribed by the Code has not been followed and for that purpose itself, we find that the Code of Comunidade in Article 49 clearly stipulate that in case of any 'Irregularity' in Election, an appeal may lie to the Administrative Tribunal within five days, and to make the process simpler, the proceedings of Appeal to be drawn upon a plain paper.

The argument of Mr. Lawande as regards to the point of limitation, and the specific challenge to Article 49 by inserting prayer clause DD (i) does not lie in the mouth of the petitioner, since we find that after the election having been conducted on 29.12.2024, the petitioner was furnished a copy of the minutes of meeting on 02.01.2025. We find from the documents that the copy of the minutes of the meeting were given to the petitioner on 02.01.2025, as the outward number. Though, Mr. Lawande have made a statement in the petition that it is received by him on 06.01.2025 at 11:00 am. Ultimately, this is a matter which will have to be determined by the Tribunal upon leading appropriate evidence.

6. In any case, in a connected writ petition where a similar challenge was raised that is in the case of *Mario J. J. Athaide and 2 others vs. the State of Goa, through the Chief Secretary and 7 ors, in Writ Petition No. 326 of 2025(Filing)* in respect of Comunidade of Serula, we had taken a view that in the wake of existence of an alternative and efficacious remedy under Article 49 of the Code of Comunidade, the Administrative Tribunal can investigate into the irregularity so alleged and this will definitely

include the irregularity as regards the conduct of voting as contemplated under Article 48.

7. Mr. Lawande has vehemently urged before us that access to justice is his fundamental right and since there is infraction of this right, this Court must entertain the Writ Petition and under Article 226 of the Constitution of India. It is also submitted by him that the bar which is created by the Constitution of India as well as various Statutes, in form of “hands-off doctrine”, in respect of the election to the Municipal Council as well as the Village Panchayat, will not be made applicable to the elections of the Comunidade, but we must express our disagreement with Mr. Lawande on this point.

If the whole intention behind imposing a bar in entertaining any attack on the election process by any Court, while elections are in progress, and providing a remedy to be availed only after the elections are over by creating a specific coram for entertaining the election disputes, in respect of the elections to the Parliament, the Legislative Assembly, to the Village Panchayats or to the Municipal Council, we find no reason not to make this applicable to the Comunidade, which are ultimately identified as the

Association of Gaonkars in the Districts of Goa, and if one looks at the constitution of the Comunidades, as contained in the Code of Comunidade, with its functions, powers as well as the duties, we find that it is akin to a body of self-governance in that particular Village/District, and therefore, we find sufficient justification in the legislations specifically providing for a remedy to raise a challenge to the election conducted for the Managing Committee of the Comunidade, by providing a remedy of preferring an appeal before the Administrative Tribunal.

The reason for prescribing a period of limitation of five days, is obvious i.e. to entertain the challenge to the election process at the earliest, as the Administrative Tribunal is also conferred with the power to set aside the entire election process by annulling the same and directing conduct of fresh elections, as it was expected by the Framers of the Code of Comunidade that this process should be completed at the earliest with utmost expediency.

8. Mr. Lawande has cited before us the various authoritative pronouncements on the point that a remedy which may be available

may not be an alternative and efficacious remedy and he would draw our attention to the principles laid down by various authoritative pronouncements of the Apex Court, like in case of *Bar Council of Delhi and others Vs. Surjeet Singh and others, (1980) 4 SCC 211* as well as the decision in case of *Unified Agro Industries (India) Ltd. Vs. Debts Recovery Tribunal and others, AIR 2000 Delhi 394* and also in case of the decision in *ABL International Ltd. and another Vs. Export Credit Guarantee Corporation of India Ltd. and others., (2004) 3 SCC 553* to buttress his submission that the Writ Court will not refuse to exercise its jurisdiction because there is a remedy which is available as the remedy which is not an efficacious remedy, is no remedy in law. And in this case, specifically when he attempts to raise a challenge to the *vires* of Article 48 as well as Article 49 to be *ultra vires*, the Administrative Tribunal may not be a remedy which need to be exhausted before he approaches this Court.

As far as the challenge to the procedure under to Article 48 is concerned, we find that there is a procedure which is prescribed, clearly stipulating the manner in which the elections to the Election Committee shall be conducted and what is explicitly made clear is

that the election shall held by “open ballot”. The term “open ballot” as rightly distinguished from “secret ballot”, is the mode contemplated but the manner in which this process of open ballot shall be conducted is not enumerated by the Code and it is informed to us at Bar, that this is usually done by show of hands, which according to us is contradictory to the secret ballot. In case, if there is violation of the process in conduct of election, it definitely is an irregularity and it is open for challenge before the Administrative Tribunal and rather the Tribunal is constituted for determining such irregularities in the election and it shall expeditiously decide the appeal and annul the elections, if it arrives at a conclusion that there was irregularity in the conduct of election.

As far as the point of limitation is concerned, the question whether the limitation Act applies to Article 49 or not, is a matter of judicial decision and decision of learned Single Judge, in case of *Joao Sebastiao Lobo Vs. Administrator of Comunidades of Bardez, 2014 SCC OnLine Bom 182*, was cited before us to submit that a view has been taken that the Limitation Act, 1963, will have no applicability to Article 49, in absence of any provision

to that specific effect, and when read with Section 29(2) of the Limitation Act, 1963.

According to us, this is a view which has been adopted by this Court but it definitely acts as a precedent and this is not a conclusive view that the Limitation Act will not apply to the appeals filed before the Tribunal and there can be no condonation of delay, if the appeal is filed beyond 5 days. In any case, it is for the appellant to canvass that the certified copy of the appeal was received by him, belatedly as it is a pleading in the petition that despite the certified copy of the minutes was made ready on 02.01.2025, it was received by him on 06.01.2025, i.e. one day after expiry of period of limitation.

9. In any case, since we are of the view that the irregularities on the grounds of which, the reliefs are sought in the petition, which includes setting aside of the election for the post of President of the Comunidade, since we are relegating the petitioner to avail the remedy in form of an appeal, it is for the Tribunal to determine whether the appeal can be entertained by giving benefit of Sections 5 and 14 read with Section 29 (2) of the Limitation Act, 1963.

By keeping all the rights and contentions open, we dispose
of the petition.

NIVEDITA P. MEHTA, J.

BHARATI DANGRE, J.