



Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 116 OF 2025

Mr. Hilario Pereira, son of late Joao Pereira, 62 years, Business, Resident of H. /No. 715, ... Petitioner
Malwara, Agassaim, Goa.

V e r s u s

1. State of Goa, Through Chief Secretary, Secretariate, Porvorim, Goa.

2. Goa State Chief Election Commission, Through State Election Commissioner, Goa having its office at Altinho, Panaji, Goa.

3. Mrs. Emie Leonora Fernandes, Panchayat member of ward no. 0, r/o. H. No. 666/2 of Dugrem, Agassaim Goa and

4. Mr. Allan Antonio Silveira, Panchayat member of ward no. 1, r/o. H. No. 702/4 of Malwara, Agassaim Goa.

5. Mr. Benny Manuel Silveira, Panchayat member of ward no. 2, R/o. No. 38, Dandi, Agassaim, Goa.

6. Mrs. Regisna Vitoria Antonio Joao Cortez Mascarenhas Panchayat member of ward no. 3, r/o. H. No. 172, Dexibhat, Agassaim, Goa.

7. Mrs. Sally Felix Gonsalves, Panchayat member of ward no. 4 r/o. H. No. 217(B) Baixo-de-Igreja, Agassaim, Goa.

8. Mr. Julius Francisco Almeida Panchayat member of ward no. 5 r/o. H. No. 317, Mercurim, Agassaim, Goa.

9. Mrs. Mony Veana Fernandes, Panchayat

member of ward no. 6 r/o. H. No. 453/1,
Mercurim, Agassaim, Goa.

10. Mr. Hiresb Subha Kavlekar, Panchayat
member of ward no. 7, r/o. H. No. 586,
Sulabhat, Agassaim, Goa.

11. Mrs. Piedade Manuel Fernandes,
Panchayat member of ward no. 8, r/o. H. no.
551/1, Sulabhat, Agassaim, Goa.

12. Mr. Lakshadeep Kashinath Gawas,
Panchayat member of ward no. 10, r/o. H. No.
785/3 Malwara, Agassaim, Goa.

13. Mrs. Julieta Nita Godinho E, Panchayat
member of ward no. 11, Ribeiro r/o. H. No.
785/3, Malwara, Agassaim, Goa, ward no. 11.

14. Village Panchayat of St. Lawrence of
Agassaim, Through its Secretary, Agassaim, ... Respondents
Goa.

Mr. S. D. Padiyar, Senior Advocate with *Mr. Hrudaynath Shirodkar, Mr. Prayash Shirodkar and Ms. Akshata Rane, Advocates for the Petitioner.*

Mr. Deep Shirodkar, Additional Government Advocate for
Respondent no. 1-State of Goa.

Mr. Somnath Karpe, Advocate for the *Respondent no. 2.*

Mr. Shivan Desai, Advocate with *Mr. Varun Bandankar, Mr. A. Sardesai, Ms. Tahira Menezes and Ms. Riya Amonkar, Advocates for the Respondent nos. 3, 7 and 10.*

Mr. Jatin Ramaiya, Advocate for *Respondent nos. 5 and 6.*

Mr. Galileo Francisco Teles, Advocate for *Respondent no. 14.*

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

RESERVED ON : 16th APRIL 2025
PRONOUNCED ON: 23rd APRIL 2025

JUDGMENT (*Per Bharati Dangre, J.*)

1. The Petitioner, a voter in ward 9 for Part no. 26 in St. Andre Constituency is aggrieved by the decision of the Goa State Election Commission, Panaji, Goa, in refusing to entertain him when he approached the Commission seeking disqualification of the eleven Members of Village Panchayat St. Lawrence in terms of Section 19(f) of the Goa Panchayat Raj Act, 1994, (for short 'Act of 1994').

The relief is refused to the Petitioner on the ground that once the candidate becomes a Member of the Panchayat, his/her removal can be only on the specified grounds of misconduct and the proceedings in which regard shall be filed before the Director of Panchayat under the Act of 1994 and the application under Section 10(f) filed by him cannot be entertained as the Commission lack jurisdiction in this regard.

2. We have heard learned Senior Counsel Shri S. D. Padiyar for the Petitioner, Mr. Deep Shirodkar, Additional Government Advocate for the State of Goa, Mr. Somnath Karpe appearing for the Goa State Election Commission. Mr. Shivan Desai represent Respondent nos. 3, 7 and 10, Mr. Jatin Ramaiya represent Respondent nos. 5 and 6 and Mr.

Galileo Teles, learned Counsel, represented Respondent no. 4, before us.

Since the limited question that fall for our consideration, revolve around interpretation of Section 10 of the Act of 1994 with specific reference to the words “for being chosen as” and “for being a Member of the Panchayat” along with Sections 11 and 12, by consent of the parties, we issue 'Rule' and take up the Petition for final hearing at the stage of admission.

3. The background facts disclose that the general election to Village Panchayats in Goa was conducted on 10.08.2022 and this included the election to the Respondent no. 14-Panchayat of St. Lawrence of Agacaim, wherein the Respondent nos. 3 to 13 in the Petition came to be elected as Panch Members.

Village Panchayat of St. Lawrence of Agacaim comprise of eleven Members, to be elected from eleven different wards within the jurisdiction of the Village Panchayat. The Panchayat being a local authority, is governed by the provisions of Goa Panchayat Raj Act of 1994, which has set out the procedure for the Management of affairs of the Panchayat.

4. According to the Petitioner, the Respondent nos. 3 to 13, suffered disqualification, since each of the Member received monetary share and interest in their name in the tender work undertaken within the jurisdiction of the Village Panchayat. It is specifically alleged that the payment received in the name of each of them has been credited in their bank account from the saving account of Village Panchayat and that there was no resolution passed by the Village Panchayat for issuing the cheques in their names neither there is any reason to part with the Panchayat fund by crediting into the accounts of the Respondents but, without authority of law, the Respondents have received huge amounts. The Petitioner has offered the detailed of these payments received by each of the Respondents in paragraph no. 6 of the Petition and has also offered details of the work against which the amount is received by them as Members of the Panchayat.

Stating that the Respondent nos. 3 to 13 being the elected as Member, they are in receipt of monetary remuneration from the Government of Goa and, therefore, it is not open for them to receive any payment, which is not due and payable to them, a serious accusation is levelled that in the tender work floated by the Panchayat to be undertaken, within the jurisdiction of Village Panchayat, cheques were directly issued in the name of Respondent nos. 3 to 13 and they have availed monetary interest for the work done within the

jurisdiction of Village Panchayat and on behalf of the Panchayat. It is therefore the specific case of the Petitioner that the Respondent nos. 3 to 13 have incurred a disqualification under Section 10(f) of the Goa Panchayat Raj Act, and they are disqualified to hold the post of Member for having direct monetary interest in the work of the Panchayat.

5. With the aforesaid grievance, the Petitioner approached the State Chief State Election, Panaji, Goa, by instituting proceedings on 04.09.2024, being registered as case no. 20 of 2024, praying for an order to be passed under Section 10(f) of the Goa Panchayat Raj Act, to disqualify the Respondents from holding the post of Member in Village Panchayat of St. Lawrence, and upon disqualifying them, a declaration was sought that all the seats in eleven wards of Village Panchayat of St. Lawrence be declared as vacant.

The Petition was accompanied with several documents which included the information obtained under the Right to Information Act of 2005, including the information as regards the bank statement of the Respondents as well as the payments made to the contractors and the tender awarded for all the works carried out in Village Panchayat, Agacaim as well as the details of the tender quotation.

6. At the outset, we must make it clear that we may not be required to get into the minute details of the pleadings seeking disqualification of the Respondents, as we find that the State Election Commission, has refused to entertain the Petition on the ground of lack of jurisdiction to entertain the Petition, to disqualify a person who is being chosen to become a Member of the Panchayat but once a candidate becomes a Member, then the Commission cease to exercise its jurisdiction and the proper remedy available is to approach the Director of Panchayat under the relevant provision of the Goa Panchayat Raj Act, seeking their removal, without getting into the merits of the Order and it is this order passed by the Respondent no. 2-Election Commission which is assailed before us.

7. Mr. Padiyar, the learned Senior Advocate has raised a challenge to the impugned Order by submitting that the inference of the commission that it lacks jurisdiction to decide the Petition in seeking declaration under Section 10(f) is erroneous and contrary to law. He would submit that the commission has fallen in grave illegality in not appreciating the true purport of the provisions of Sections 10, 11 and 12 of the Act of 1994 and has grossly erred in adopting a restrictive approach in construing the said provisions, which has resulted into miscarriage of justice.

According to Mr. Padiyar, in the scheme of the Act of 1994, Section 10 prescribe for disqualification from membership by providing that a person shall be disqualified for being chosen as and for being a Member of the Panchayat, under the circumstances which are specifically set out in form of clauses (a) to (g). By placing reliance upon Section 11, which is in the form of a provision determining the decision on questions as to disqualification, he would submit that virtue of the said provision, if any, question arises whether a Member of Panchayat has become subject to any disqualification referred to in Section 10, it shall be referred to the State Election Commission for its decision, whose decision shall be final.

It is therefore the submission of Mr. Padiyar that it is only the State Election Commission who will decide of a disqualification of a Member and this would include a disqualification prior to his election as well as subsequent to his election as a Member of Panchayat.

By inviting our attention to the specific language used by the Legislature in Section 12, wherein it is prescribed that if a Member of the Panchayat, “is or becomes subject to his disqualification mentioned in Section 10”, his seat shall be deemed to be or to have become as the case may be vacant, it is his submission that the post election disqualification is also covered. By inviting our attention to sub-section (2) of Section 12, which clearly provide that if any question arises as to

whether a person is or has become subject to disqualification under clause (b) or clause (c) or clause (d), sub-Section (1) of Section 12, then the Block Development Officer is the authority to decide the question, it is his submission that clause (a) is out of the purview, which is then governed by Section 11.

8. Mr. Padiyar has invited our attention to the parallel scheme contained in Article 101 to Article 103 in Chapter II of the Constitution and the scheme contained in Article 191-192 contained in Chapter III under the caption “State Legislature”.

According to him, Article 102 as well as Article 191 has used the same phraseology i.e. “ a person shall be disqualified for being chosen as, and for being, the Member of either House of Parliament to the Legislative Assembly or Legislative Council of a State.....”

Apart from this, Article 103 and Article 192, are identically worded as Section 11 of the Act of 1994, when it has attached finality to the decision of the President/the Governor of the State, when any question arises as to whether a Member of either House of the Parliament or House of Legislature of a State has become subject to any of the disqualifications prescribed.

According to Mr. Padiyar, the phraseology in Article 102 and Article 191 as well as Section 10 of the Goa Panchayat Raj Act,

contemplate disqualification prior to the election of a person as a Member and also after he is elected as a Member.

By a conjoint reading Section 12(1)(a) with Section 11 of the Act of 1994, according to him, provide a remedy when a Member incurs disqualification after he is elected as a Member i.e. a supervening disqualification. He would submit that the words “becomes subject” employed in Section 12(1)(a) and “has become subject” in Section 11 indicate a change in position of a Member pursuant to his election, as on this contingency his seat shall be deemed to have become vacant, on he attaining disqualification and this is clearly indicative of a situation contemplated by the Legislature, i.e. a sitting member incurring disability whilst he continue to be a Member. Therefore, it is his specific submission that when the Member of the Panchayat incurs supervening disqualification, the State Election Commission has jurisdiction in deciding whether the Member has become subject to the disqualification, as Section 11 clearly contemplate this situation and its decision is final.

Mr. Padiyar has dissected clause (a) of sub-section (1) of Section 12 into two parts, namely, “is subject to” and “become subject to” disqualification in Section 10. According to him, the word ‘becomes’ connotes and visualises a subsequent event or a supervening disqualification which would render the person disqualified, if he

incurs any disqualification specified in Section 10. However, according to the him, the word “is subject to” convey, being subjected to and therefore the word ‘is’ in the context of Section 10 is nothing different then the word ‘becomes’.

According to the learned Counsel, Section 10 of the Act has set out the grounds and reasons on which a person shall be disqualified for being chosen as and for being a Member of the Panahayat, however, as far as the manner of vacation of seat by a Member, Section 12 of the Act comes into picture as it is restricted only to the Members to become ineligible to continue to become Members for any of the reasons specified of sub-section(1). In this background, the Legislature has specifically introduced a provision in form of Section 11, for deciding on the question as to whether a Member of the Panchayat has become subject to any disqualification and even constituted a forum in the Act of 1994, i.e. the Goa State Election Commission, is his contention.

9. Mr. Padiyar would place reliance upon the decision of the Apex Court in case of **Election Commission of India vs. Saka Venkata Rao, Union of India**¹, pronouncing upon the scope of Article 190(3) and 192(1) and the interpretation of the Apex Court, the term “being chosen as” and “for being” a Member of the Legislative Assembly and the conclusion drawn to the effect that Article 190(3), 191 and 192(1)

¹ (1953) 1 SCC 320

are applicable only to disqualifications to which the Member becomes subject after he is elected as such and neither the Governor nor the Commissioner has jurisdiction to inquire into the Respondents disqualification, which arose long before this election.

Reliance is also placed upon a subsequent decision in the case of **Brudaban Nayak vs. Election Commission of India & anr.**² where the proposition laid down in **Saka Venkata Rao** (supra) is reiterated in determining the true purport of Article 192(2) and the conclusion drawn is, that the whole object of democratic elections is to constitute legislative chambers composed of Members who are entitled to that status, and if any Member forfeit that status by reason of a subsequent disqualification, it is in the interest of the constituency, that the matter should be brought to the notice of the Governor and decided by him in accordance with the provisions of Article 192(2).

Mr. Padiyar would also place reliance in the decision of **K. Venkatachalam vs. A. Swamickan & anr.**³ taking a view that since the candidate incurred clarification prior to election, Article 191 and Article 193 are attracted.

10. In addition to the aforesaid decisions of the Apex Court, he has also drawn our attention to the decision of Rajasthan High Court in the

² AIR 1965 SC 1892

³ (1999) 4 SCC 526

case of **Bheru Singh Rathore vs. State of Rajasthan**⁴ and also another decision in case of **Sameera Bano vs. State of Rajasthan**⁵. In addition, he has placed before us the decision in case of **Shri Kanhoba Vishnu Raul vs. State of Goa & Ors.**⁶, when this Court by relying upon the decision in case of **Brudaban Nayak vs. Election Commission of India & anr.** (supra), has categorically held that Section 11 of the Act clearly prescribed that when a matter relate to the subject matter of disqualification of a Member of the Panchayat, on the ground enumerated under Section 10, the Member has to appear before the State Election Commission, on the issue being referred to it for a decision in that regard and has further offered a clarification that once the matter relates to the subject matter of disqualification, it is immaterial whether it is referred by the Panchayat or by an individual who has cause of action to raise dispute about such disqualification of a Member.

11. Opposing the submission advanced by Mr. Padiyar, Mr. Shirodkar has supported the impugned decision.

12. Mr. Shivan Desai, representing the private Respondents, has relied upon the decision of the Apex Court in **State of Goa & anr. vs. Fouziya Imtiaz Shaikh & anr.**⁷, as according to him, a bare look

⁴ 2003 LawSuit (Raj) 217

⁵ 2007 LawSuit (Raj) 47

⁶ WP No. 408 of 2005 decided on 30.01.2006.

⁷ (2021) 8 SCC 401

at Section 10 itself would reveal that the contingencies specified resulting into disqualification of a Member are the one which existed prior to a person being chosen as and for being a Member of the Panchayat and, therefore, Section 11 would only refer to such disqualification. It is his contention that only if the disqualification is prior to the election, then election commission shall exercise jurisdiction under Section 11 to determine the question but definitely not the post qualification.

According to Mr. Desai, a statute must be read as a whole and not in isolation and the provisions in the statute will have to be construed by keeping in mind its object and its theme as well as the mischief which a statute sought to remedy. According to him, when a Member of Panchayat is disqualified to continue as a Member under Section 10, Section 11 does not give any party, other than the Panchayat or the person subject to disqualification, any right to approach the Election Commission for any final decision and the matter has to be first decided by the Panchayat and if the Member dispute the decision of the Panchayat, on his disqualification, then the matter will call for reference to the the Election Commission. In order to support this proposition, he would rely on the decision of the Bombay High Court in **Shri Mafaldo Fernandes vs. Shri Kushali S. Kalekar, Panch, Village Panchayat, Avedem-Cotombi and Chaifi**⁸.

⁸ 1996 SCC OnLine Bom 246

Yet, another decision on which he would place reliance is the decision of the this Court **Hanumant Thakare vs. Deorao Kadu & Ors.**⁹, dealing with disqualification under Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967 .

13. Advocate Teles for Respondent no. 14 i.e. the Village Panchayat of St. Lawrence, would place reliance upon the decision in case of **Shri Mafaldo Fernandes vs. Shri Kushali S. Kalekar, Panch, Village Panchayat, Avedem-Cotombi and Chaifi** (supra) to submit that under Section 11 of the Act, the Election Commission gets jurisdiction only on a reference to the question made over to it as it does not give any right to any party other than the party or and the person subjected to disqualification to approach the Election Commission for a final decision under Section 11.

14. Mr. Siddharth Malik, representing Respondent no. 4, also adopted the submission of Mr. Desai and on facts he would submit that the amount deposited in the account of the Respondents by the Secretary of the Village Panchayat was for paying wages to the daily wage labourers hired by the Panchayat and not by way of any share or monetary interest in any work of the Panchayat being undertaken. According to him, the only remedy available to question the transfer of

9 2009 SCC OnLine Bom 1902

the amounts to the Respondents is under Section 210A of the Goa Panchayat Raj Act, 1994 for misappropriation of the amount.

15. On consideration of the rival claims, a neat question of law which falls for our consideration is whether the State Election Commission under Section 11 of Panchayat Raj Act, 1994, is competent to determine the disqualification of a Member of the Panchayat, after he has been chosen as a Member or whether it is restricted only to determining the qualification for he being chosen as a Member.

At the outset, in order to appreciate the rival claims, it is necessary to have a minute look at the scheme of the Goa Panchayat Raj Act, 1994.

The Panchayat which is incorporated under Section 8 of the Act is a body corporate having perpetual succession and common seal.

Every person whose name is in the list of voters of the wards in the Panchayat shall unless disqualified, under the Act or any other law for the time being in force is qualified to be elected from any ward in that Panchayat.

Section 10(f) of the Act provide for declaration for membership and the said provision reads thus :

“Section 10 : **Disqualification for membership.**

— A person shall be disqualified for being chosen as, and for being, a member of the Panchayat if,—

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) he has directly or indirectly any share or monetary interest in any work done by or to the Panchayat or any contract or employment with, under or by or on behalf of, the Panchayat;

16. Sections 11 and 12, which are relevant provisions, which warrant attention, reads thus :

“Section 11 - **Decision on questions as to disqualification.**— If any question arises as to whether a member of a Panchayat has become subject to any disqualification referred to in section 10, it shall be referred to the State Election Commission for decision and its decision thereon shall be final.

“Section 12 - **Vacation of seat by members.**—

(1) If a member of a Panchayat—

(a) is or becomes subject to any of the disqualifications mentioned in section 10; or

(b) absents himself for more than three consecutive ordinary meetings of the Panchayat without the leave of the Panchayat or is absent from the State of Goa for more than four consecutive months:

Provided that when an application is made by a member for leave to the Panchayat for leave to absent himself and the Panchayat fails to inform the applicant of its decision on the application within a period of one month from the date of the receipt of the application by the Panchayat, the leave applied for shall be deemed to have been granted by the Panchayat.

(c) absents himself with leave of the Panchayat for a period not exceeding six months but fails to attend the next meeting of Panchayat after the expiry of such leave.

(d) votes or takes part in discussion in contravention of the provisions of subsection (4) of section 55 this seat shall be deemed to be or to have become, as the case may be, vacant.

(2) If any question arises as to whether a person is or has become subject to disqualification under [clause (b) clause (c) or clause (d)] of sub-section (1), the [Block Development Officer] may either suo-moto or on a report made to him and after giving an opportunity to the person concerned of - being heard, decide the question whose decision shall be final.”

17. Section 15 of the Act provide for election of Members from wards of Panchayat and Section 16 create a bar in a calling in question an election to fill seats or seat in Panchayat except by the Election Petition on one or more of the grounds specified in Section 20 and Section 21 to such authority that may be prescribed. Section 20 has set out the grounds for declaring the election to be void.

18. Section 210A is yet another provision which reads thus :

“Section 210 A - Liability of members for removal. - A member of a Panchayat shall, after an opportunity is afforded for hearing him, be removable from his office as a member by an order passed by the Director, for persistent remiss in the discharge of his duties, or if such member acts detrimental to the interest of the Panchayat or misuses or abuses the powers or exercises powers which are not expressly vested in him by or under this Act or rules or bye-laws framed thereunder and the member so removed shall not be eligible for re-election for a period not exceeding five years as the Director may specify in his order.”

19. The scheme of the Act of 1994 with regards to disqualification from membership as well as the decision on question of disqualification is identical to the one contemplated in the Constitution of India when it comes to Article 191 and 192 concerning the State Legislature and Article 102 and 103 in relation to the Parliament. Article 102 and Article 191, are provisions which prescribe disqualification for membership are in pari materia with Section 10 of the Panchayat Raj

Act, 1994, which has prescribed the circumstances in which a person shall be disqualified for being chosen as and for being a Member either for the House of Parliament or of a State Legislature and when any question arises as to whether a Member has become subject to any disqualification, the question is left to be decided in case of membership of either House of Parliament to the President and in case of the Legislative or Legislature Assembly of the State to be decided by the Governor.

As against this, as far as the State of Goa is concerned, the question of declaration is to be referred to the State Election Commission for decision, whose decision has been accorded finality.

The question before us is whether a person who is already elected as a Member and incurs disqualification under Section 10, whether question can be decided by the State Election Commission.

20. In **Saka Venkata Rao** (supra), 190(3) and 190(1), fell for consideration, as the very same question was raised as to whether Article 190(3) and 192(1) shall apply only to disqualification to which a Member becomes subject to after he is elected or even to the pre-existing qualifications.

In the facts before the Apex Court, the Respondent was convicted by the Sessions Court and sentenced to imprisonment in 1942 and he was released in the year 1947. In a Bye-Election to a reserved seat in Kakinada constituency of the Madras Legislative Assembly, he offered himself as a candidate but was disqualified under Section 7(b) of the Representation of the People Act, 1951, as five years had not elapsed. He applied to the Commission seeking for exemption so as to enable him to contest the election. Since he received no reply, on the last day he filed his nomination and no exception was taken either by the Returning Officer or by any other candidate and he was declared as elected on 16.06.1952 and took the seat as Member of Assembly. In the meantime, his application for exemption was rejected and when the question arose about his disqualification, the speaker referred the question to the Governor of Madras, who forwarded his case to the Commission as contemplated under Section 192 of the Constitution. The respondent raised a challenge to the competency of the reference and the action taken thereon by the Governor.

He approached the High Court contending that Article 192 of the Constitution was applicable only when a Member become subject to a disqualification after he was elected but not where the disqualification arose before his election, as in this case, the only remedy was to challenge the validity before the Election Tribunal.

The Commission raised an objection on the jurisdiction of the Court to issue writ but however overruling the said objection, the Single Judge held that Article 192 applied only to cases of supervening disqualification and the Commission had not jurisdiction to deal with disqualification which arose before the election took place. However, while issuing a writ prohibiting the Commission from proceeding with the inquiry, a certificate was granted under Article 132 as the case involved a substantial question of law as to interpretation of the Constitution and, accordingly, the Election Commission preferred an appeal before the Apex Court.

21. The Constitution Bench by taking note of the scheme contained in the Constitution in form of Article 190 to 193, was confronted with an issue whether the Respondent having being under disqualification before his nomination, could be said to have ‘become’ subject to disqualification within the meaning of Article 192.

The Attorney General advanced his submission by submitting that Article 191 and Article 193 covered both pre-existing and supervening disqualification and so does Article 190 and Article 192. It was urged that the use of the words ‘become’ in Article 190(3) and 192(1) is not inapt in the context to include within its scope pre-existing disqualification also as, ‘has become’ subject to a disqualification is

predicated of "a Member of a House of Legislature", and a person who, being already disqualified, gets elected, can, not inappropriately, be said to "become" subject to the disqualification, as a Member as soon as he is elected.

Recording the argument as ingenious, the Constitution Bench speaking through Chief Justice Patanjali Sastri (as his Lordship then was), remarked thus :

“14. ... Article 191, which lays down the same set of disqualifications for election as well as for continuing as a member, and Article 193 which prescribes the penalty for sitting and voting when disqualified, are naturally phrased in terms wide enough to cover both preexisting and supervening disqualifications; but it does not necessarily follow that Articles 190(3) and 192(1) must also be taken to cover both. Their meaning must depend on the language used which, we think, is reasonably plain. In our opinion these two articles go together and provide a remedy when a member incurs a disqualification after he is elected as a member. Not only do the words "becomes subject" in Article 190(3) and "has become subject" in Article 192(1) indicate a *change in the position* of the member *after* he was elected, but the provision that his seat is to become *thereupon* vacant, that is to say, the seat which the member was filling theretofore becomes vacant on his becoming disqualified, further reinforces the view that the article contemplates only a sitting member incurring

the disability while so sitting. The suggestion that the language used in Article 190(3) can equally be applied to a pre-existing disqualification as a member can be supposed to vacate his seat the moment he is elected is a strained and far-fetched construction and cannot be accepted. The Attorney General admitted that if the word " is " were substituted for "becomes" or " has become ", it would more appropriately convey the meaning contended for by him, but he was unable to say why it was not used."

In the wake of the aforesaid observation, the Bench expressed agreement with the finding of the learned Judge holding that Article 190(3) and 192(1) are applicable only to disqualification to which a Member becomes subjected to after he is elected as such and neither the Governor nor the Commission has jurisdiction to inquire into disqualification which arose long before his election.

22. The aforesaid exposition of law was followed by another Constitution Bench in the case of **Brudaban Nayak** (supra), which once again focused its attention upon the scheme of Article 192(1) and (2) and by recording that the object of this provision clearly is to leave it to the Election Commission to decide the matter, though the decision as such would formally be pronounced in the name of the Governor, it is further ruled that all complaints in respect of disqualification incurred by the Members subsequently, upon having been validly

elected shall be tried by the Election Commission though the decision in form has to be pronounced by the Governor.

23. It is pertinent to note that the same wording is to be found in Section 10 of the Goa Panchayat Raj Act, as well as in Section 11, which contemplate the same phraseology “ has become subject to any disqualification”, we have no difficulty in accepting the submission of Mr. Padiyar that Section 11 contemplate a disqualification incurred subsequent to a person becoming a Member of the Panchayat.

When we perused the language employed in Section 12, which contemplate vacation of seat of a Member of Panchayat, when a Member is or becomes subject to any disqualification prescribed in Section 10, we have no doubt in our mind that the Legislation contemplate both contingencies i.e. when a Member is disqualified at the inception or he becomes subject to any disqualification mentioned in Section 10 and in such contingency his seat shall be deemed to be or to have become, as the case may be, vacant.

If a Member is disqualified from the very inception, i.e. he was not qualified to be elected, then his seat shall be deemed to be vacated whereas upon elected when a Member incurs any disqualification, his seat shall become vacant.

Sub-section (2) of Section 12 of the Panchayat Raj Act, 1994, offer further strength to our interpretation, as it state that if any question arises whether a person is or has become subject to disqualification under clause (b) where he absents himself, or clause (c) when he absent himself as prescribed or in clause (d), when he votes or takes part in discussion in contravention of the provisions of sub-section(4) of Section 55, then the question as to whether his seat has become vacant shall be decided by the Block Development Officer, suo-moto or on a report made to him. However, what is categorically excluded is clause (a) of sub-section (1) of Section 12.

The reason for the same becomes obvious when we read Section 10 and Section 11 conjointly.

24. When any question arises as to whether a Member of the Panchayat has become subject to any disqualification, it shall be referred to the State Election Commission for decision and a careful reading of this provision would indicate that it is a 'Member' of a Panchayat, who becomes subject to any disqualification. In distinction to the wording used in Section 10, which contemplate a person to be disqualified for being chosen as a Member of the Panchayat. However, when Section 10 which also cover a person for being chosen a Member of the Panchayat incurs disqualification, the phraseology used

intended to cover a person who is elected as a Member and on account of the disqualification, did not deserve his continuation as a Member of the panchayat and when the question to be determined is to whether he has become subject to a disqualification, it shall be referred to the State Election Commission.

It contemplate the disqualification incurred after election, a supervening disqualification as distinguished from the pre-existing disqualification and therefore Article 192 a provision in pari materia of Section 11 of the Panchayat Raj Act, clearly contemplate the question to be referred to the prescribed authority as to whether a Member 'has become subject to any disqualification'.

The only distinguishing factor in the two provisions, being under Article 192, though the decision is by the Governor, it prescribed that the Governor shall obtain an opinion of the Election Commission and shall act according to such opinion.

Since the Constitution Bench on two occasions i.e. in case of **Saka Venkata Rao** (supra) and **Brudaban Nayak** (supra), has referred to the disqualification incurred on becoming a Member as "supervening disqualification" and has held that Article 192 which conferred the authority on the Governor to examine the question of

disqualification restricting it only to the supervening disqualification acquired subsequent to the election of a person to the Legislature.

25. In Election Commission of India vs. Bajrang Bahadur Singh & Ors.¹⁰, the view expressed by the two Constitution Benches was reiterated, when two Judge Bench of the Supreme Court, once again ruled that Article 192 is the authority of the Governor to examine the question of disqualification, extend only to second of the above mentioned categories of disqualification i.e. supervening disqualifications acquired subsequent to the election of a person to the Legislature and since the case in hand, the disqualification, if any, is supervening, only the Governor has the authority to examine the issue.

26. The arguments advanced by Mr. Padiyar also deserve appreciation in the wake of Article 243F of the Constitution which provide for Disqualification for Membership, which reads thus :

“Article 243F - Disqualifications for membership

(1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat--

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

¹⁰ (2015) 12 SCC 570

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

Worth it to note that clause (1) of Article 243F has once against used the same phrase “for being chosen as and for being, a Member of a Panchayat” and clause (2) of Article 243F has again prescribed the same mechanism, when a question arises as to whether the Member of the Panchayat has become subject to any of the disqualification mentioned in clause (1), then the question shall be referred to the decision of such authority and in such manner as the Legislature of a State may by law provide.

The exercise of this power is to be found in Section 10 and Section 11 of the Goa Panchayat Raj Act, 1994, and this is an additional factor which persuade us to accept the submission of Mr. Padiyar that the Election Commission has erred in not taking cognizance of the complaint of the Petitioner, on the ground that it lacked jurisdiction to decide the question. The Commission has further faulted in concluding that the provision under which the Respondents could be disqualified would be Section 210A, which in fact is a provision, for removal of a Member, on finding of his persistent remiss in the discharge of duties

or if such Member acts detrimental to the interest of the Panchayat or misuses or abuses the power or exercises powers which are not expressly vested in him.

The Member so removed is not eligible for re-election for a period not exceeding five years but this provision pertain to the removal of a Member and is distinct from a Member becoming disqualified after being elected resulting into vacation of his seat.

27. The reliance placed by Mr. Desai in the decision of **State of Goa & anr. vs. Fouziya Imtiaz Shaikh & anr.** (supra), do not take the case of the Respondents any further as the said decision pertain to the scheme contained in the Constitution of India in relation to the Municipal and Panchayat elections and the bar of judicial interference contained in Section 243-ZG.

The decision in case of **Zelia M. Xavier Fernandes E. Gonsalves vs. Joana Rodrigues & Ors.**¹¹ revolving around Section 10(f) of the Goa Panchayat Raj Act, undisputably pertain to the disqualification incurred by the husband of the appellant who was awarded a contract by the Village Panchayat, since it was held that by virtue of Article 1098 and 1108 of Portuguese Civil Code, 1860, the appellant become entitled to share in profit of contract being awarded

¹¹ (2012) 3 SCC 188

to her husband and therefore she had indirect share or monetary interest in the contract thereby rendering her disqualified under Section 10(f). However, the said decision is not on the point which has fallen for our consideration.

28. Another decision in the case of **Wilma Pacheco vs. President, Administrative Tribunal & anr.**¹², involving Section 10(d) of the Goa Panchayat Raj Act, is in relation to Sections 16 and 20(1)(a).

Section 20(1)(a) provides for grounds of declaring election to be void, when the prescribed authority is of the opinion that on the date of election of a returned candidate he was not qualified or was rather disqualified to be chosen as Member. The Petitioner filed nomination for election to the Village Panchayat Colva and on the date of the scrutiny of the nomination, he was found to be in arrears due to the Panchayat and as such was disqualified for being chosen as Member of the Panchayat in terms of Section 10(d) of the Act.

The Election Petition was filed calling in question the election by contending that the nomination of the Petitioner was improperly accepted in violation of Section 10(d) of the Act.

¹² 2000 (3) Mh.L.J. 794

It is in this background, the decision in the case of **Saka Venkata Rao** (supra) was cited by the Counsel for the Respondent No. 2, by submitting that if the disqualification is incurred by a candidate after election, then Section 11 is attracted when the dispute will have to be referred to the State Election Commission but the disqualification incurred relates to the period prior to election, then the Election Petition under Section 16 is maintainable before the Administrative Tribunal. It is in this background, since the Election Petition was filed under Section 16 of the Act, it was held that Section 11 of the Act did not come into play and the question of jurisdiction of State Election Commission did not arise.

29. Another aspect of the matter to which Advocate Mr. G. Teles appearing for the Panchayat, has invited our attention is in case of **Shri Mafaldo Fernandes** (supra), where the Division Bench has held that Section 11 of the Act enjoins upon the Election Commission to render a decision on question which arises as to whether a Member of Panchayat has become subject to any disqualification referred to in sub-section 10, it is held that the Section postulates a reference to the Election Commission and a conjoint ruling of Sections 10 and 11, it was held that incurrance of disqualification, has to be first decided by the Panchayat and it has to be informed to the concerned Member disqualified and if the Member disputes the decision of the Panchayat as to his

disqualification, then the Panchayat shall refer the matter to the Election Commission. Section 11 was therefore interpreted to mean that only on a reference of a question made to it, it can decide.

However, this decision received a subsequent clarification in a decision of **Shri Kanhoba Vishnu Raul** (supra), decided on 30.01.2006, when with reference to the decision in case of **Brundaban Nayak** (supra), the Bench itself clarified to the following effect :

“9. As already seen above, Section 11 of the said Act is in pari materia with the provisions comprised under Article 192(1) of the Constitution of India. Bing so, the decision of the Apex Court in relation to Article 191(1) squarely applies to the cases arising under the provisions comprised under Section 11 of the said Act and, hence, it cannot be said that before the matter being referred to the State Election Commission regarding the disqualification of any member of the Panchayat, there has to be any investigation either by the Panchayat or any other body or that the reference shall necessarily be by the Panchayat or any other authority.”

The observation in case of **Shri Mafaldo Fernandes** (supra) received clarification, by recording that the observations, therein were made in relation to the dispute regarding disqualification having been considered by the Panchayat but it did not lay down any broad

proposition of law as such that in no case that an aggrieved person can approach Election Commission under Section 11 and that each every case the matter has to be necessarily investigated by the Panchayat and thereafter to be referred to the Election Commission by the Panchayat or by the aggrieved person disputing the validity and the legality of the Panchayat.

30. In the wake of the aforesaid, we find that the impugned Order dated 19.11.2024 passed by the State Election Commission refusing to entertain the application filed by the Petitioner by invoking Section 10(f) of the Goa Panchayat Raj Act, to be unsustainable and hence the same is quashed and set aside.

The proceedings are restored to the file of the State Election Commission, with a direction to pronounce upon the same in an expeditious manner.

NIVEDITA P. MEHTA, J.

BHARATI H. DANGRE, J.