

(2013) 10 BOM CK 0235
In the Bombay High Court
Case No : Writ Petition No. 175 of 2013

Comunidade of Pilerne

APPELLANT

Vs

Shri. Somakant Laximan Pilankar and Another

RESPONDENT

Date of Decision : 28-10-2013

Acts Referred:

Citation : (2014) 1 ABR 209 : (2014) 1 ALLMR 616 : (2014) 1 BomCR 841

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : V.B. Nadkarni and Y.V. Nadkarni, for the Appellant; A.F. Diniz, S. Narvekar, V. Rodrigues and Ms. P. Bhandari, Additional Govt. Advs., for the Respondent

Final Decision : Dismissed

Judgement

R.M. Savant, J.—Rule in all the petitions. With the consent of the learned Counsel for the parties made returnable forthwith and heard. The writ jurisdiction of this Court under Article 227 of the Constitution of India is invoked against the orders dated 9/11/2012 passed by the Administrative Tribunal, Goa by which the Appeals filed by the petitioner herein came to be dismissed and the order passed by the Administrator of the Comunidades of North Zone, Mapusa came to be confirmed.

2. The facts giving rise to the above petitions can be stated thus:

The Comunidade of Pilerne i.e. the petitioner herein published the list of the able components on 31/08/2012 which was in terms of the mandate of Article 42 of the Code of Comunidades. Since the name of the respondent No. 1 to each of the above petitions (respondents, for short) was not appearing in the said list of able components application was made by the said respondents being Somakant Laximan Pilankar insofar as Writ Petition No. 175/2013 is concerned and the respondents Shri. Jonathan Fernandes and Shri. Cosmas Francis Fernandes, insofar as Writ Petition Nos. 176 and 177 of 2013 are concerned. The

said application was addressed to the Administrator of the Comunidades. The said application was to the effect that the respondent was a Gaonkar of the Comunidade of Pilerne and therefore his name may be entered in the list of able components as he would like to contest for the elections of the Comunidade of Pilerne. As mentioned herein above, similar applications were made by the other respondents.

3. On receipt of the said applications, the Administrator of the Comunidades of North Zone issued notice dated 6/09/2012 to the Comunidade of Pilerne to appear in the administrative office on 7/09/2012 to give its say to the said applications thereby giving the reason as to why the names of the respondents should not be included in the list of able components prepared by the attorney for election of Managing Board of Comunidade of Pilerne for the triennium 2013-16. The Comunidade of Pilerne through its attorney filed its reply to the said applications made by the respondents. It was averred in the said reply that the applicants are not Gaonkars of the Comunidade but are Culacharis. It was further averred that the Culacharis are persons who are brought to the village for providing certain services at a certain point of time and considering their status of servants of the Comunidade, they are not eligible to be appointed for posts in Managing Committee or to be appointed or elected. It was further averred that in any organization servants do not occupy posts in the management and reliance was sought to be placed on the renowned authors of Goa in that respect which have been mentioned in paragraph 8 of the reply. It was lastly contended that it was for the reasons mentioned in the said reply that the respondents were not included in the list of able components as the same would amount to violation of the Code.

4. The Administrator considered the representations of the respondents and by his order dated 7/09/2012 allowed the said applications and directed the Comunidade of Pilerne to include the names of the respondents in the list of able components. The Administrator held that the respondent as the Comunidade of Pilerne could not produce any Article in the Code of Comunidades that the Culacharis cannot be entered in the list of able components. The Administrator further observed that the zonns were distributed equal as that of Gaonkaris. Identical orders were passed by the Administrator in respect of the respondents in the other two petitions.

5. The Comunidade of Pilerne aggrieved by the said order dated 7/09/2012 filed appeals before the Administrative Tribunal, Goa being Comunidade Appeal Nos. 5/2012, 4/2012, and 3/2012. The Administrative Tribunal has by the impugned judgment and order dated 9/11/2012 has dismissed the Appeals filed by the Comunidade of Pilerne. The Administrative Tribunal held that the argument advanced on behalf of the Comunidade of Pilerne that the quantum of zonnos received by Culacharis is lost and therefore they are not entitled to contest the elections was misdirected in the context of the preparation of list under Article 42. The Administrative Tribunal held that the findings of the

Administrator of Comunidade of North Goa as regards the quantum of zonnos was required to be set aside as the same was not a prerequisite to be considered for being in the list of able components. The Administrative Tribunal has held that the names of the respondents i.e. the applicants were also figuring in the earlier list and the register of zonnkars and it is the said record which is to be considered while preparing the list of able components under Article 42. The Tribunal further observed that for deleting the names from the list an opportunity had to be given to the Comunidade of Pilerne as the same affects the substantive rights and therefore the principles of natural justice are required to be followed. The Administrative Tribunal accordingly dismissed the Appeals filed by the Comunidade of Pilerne.

6. At this stage, it is required to be noted that Writ Petition No. 689/2012 came to be filed in this Court wherein certain illegalities were attributed to the petitioner herein i.e. the Comunidade of Pilerne which included the illegal payment of "zonns" (jono) to Culachari and Gaonkars in violation of the internal regulation of the Comunidade of Pilerne. It was further alleged that the names have been included in the rolls of the Comunidade without verifying antecedents namely; whether the father was registered as a member. It was alleged that in violation of the Code of Comunidades both Gaonkars and Culacharis are indiscriminately enrolled and allowed to stand for election. The said Writ Petition came to be disposed of by Division Bench of this Court by order dated 6/11/2012 on the statement being made by the learned Counsel appearing for Respondent No. 1 namely that respondent No. 1 has decided to investigate the membership registers including the names of the persons mentioned in the petition itself. This Court, at the request of the learned counsel for the respondent granted 6 months time to complete the exercise. By a further order dated 30/04/2013, the said time is extended by further period of 6 months. It seems that in the above petition an order came to be passed by a learned single Judge of this Court (F.M. Reis, J.) that the investigation in question would not impede the holding of elections to the Managing Committee of the Comunidade. The aforesaid facts relating to the said Writ Petition have been adverted to as reliance was sought to be placed on the said facts by the learned Senior Counsel appearing on behalf of the petitioners.

7. Heard the learned Counsel for the parties:

Submissions of the learned Senior Counsel Shri. V.B. Nadkarni on behalf of the petitioner:

(i) That by issuing notice on 6/09/2012 and asking the Comunidade of Pilerne to give its response to the application made by the respondents by 7/09/2012, the Administrator has not given a proper opportunity to the petitioner and therefore the principles of natural justice were violated.

(ii) That the "able components" can comprise of only the persons who are covered by clauses 1 and 2 of Article 20 of the Code of Comunidades. Since the

Culacharis belong to category 3 clause 3 of the said Article, they are not entitled to be in the list of able components.

(iii) That Culacharis cannot be part of the list of able components is made out from a true and correct reading of Article 3, Article 24 and Model 6 of the Code of Comunidades and it is only the Gaonkars, who are in terms of the said Articles and Model 6 entitled to be in the list. The learned Senior Counsel sought to rely upon the Konkani Dictionary for the meaning of the word "Culachari".

(iv) That the Administrator and thereafter the Administrative Tribunal has decided the matter without reference to the works of the renowned authors reference to which was made in the reply filed by Comunidades.

(v) Since the Administrative Tribunal has set aside the finding of the Administrator insofar as the aspect of zonnos is concerned there remained nothing in the order of the Administrator on the basis of which the application filed by the respondents could be allowed and therefore the matter was required to be relegated back to the Administrator for a de novo consideration.

(vi) That since the Comunidade is conducting an investigation into the names of the persons appearing in the list pursuant to the statement made on behalf of the Comunidade in the Writ Petition which has been disposed of by the Division Bench of this Court, the Administrator ought not to have allowed the application filed by the respondents.

(vii) The learned Senior Counsel relied upon the judgment of the Division Bench of this Court, reported in 1990 (2) GLT 286 in the case of Francisco Casimiro Jeronimo Agnelo Pinto e Souza alias Francis de Souza v. State of Goa & Ors. insofar as they lay down the history of the Comunidades.

Submissions of Shri. A.F. Diniz, learned counsel on behalf of the respondents:

(i) That the Administrative Tribunal was right in setting aside the finding of the Administrator on the aspect of zonnos as the said aspect is not material for the purposes of deciding the present application filed by the respondent for inclusion of their names in the list of able components.

(ii) That it is an undisputed fact that the names of the respondents were appearing in the earlier list of able components as also in the register of zonncars and therefore they cannot be deleted unless they were disqualified under Article 29 of the Code of Comunidades.

(iii) That the right of the respondents is founded on the provisions of the Code of Comunidades inasmuch as since their names were appearing in the earlier list they were entitled to be in the list for the election to be held for the ensuing triennium and the exclusion of their names was wrongful. In support of the said contention the learned Counsel relied upon various provisions of the Code.

(iv) That Culacharis are also zonncars as they also receive zonnos though to a lesser extent than the Gaonkars insofar as the Comunidade of Pilerne is

concerned and are therefore able components.

(v) That in terms of Article 42 of the Code, which is the Article governing the preparation of list the factum of the name appearing in the register of zonnkars is a relevant factor and therefore the Administrative Tribunal was right in observing that in the instant case the name of the respondents was appearing in the name of the registers of zonnkars the aspect for payment of zonnos was not material.

(vi) That the order passed in the Writ Petition No. 689/2012 cannot come in the way of the respondents from agitating their grievance in respect of the wrongful deletion from the list.

(vii) That the Comunidade of Pilerne cannot rely upon the said order which is passed on the basis of the statement made by the Comunidade before the Division Bench of this Court, so as to deny the right of the respondents which is founded on the provisions of the Code itself.

(viii) That the Code of Comunidade is a self contained Code providing for a remedy at every stage, be it inclusion in the register of zonnkars or inclusion in the lists of able components. The names of the respondents being in the register of zonnkars they ought to be in the list of able components.

(ix) That the entire approach of the persons, who are now in the management of the Comunidade is to see to it that the elections do not take place, so that they continue in office indefinitely. The learned counsel would contend that in the present petition a learned single Judge of this Court has observed that the extension of time sought by the Comunidade to investigate into the list would not postpone the holding of elections.

8. Having heard the learned counsel for the parties, I have bestowed my anxious consideration to the rival contentions.

At the outset, in the context of the controversy which has arisen in the above petitions, it would be appropriate to consider the basis of the order passed by the Administrator and thereafter by the Administrative Tribunal. Insofar as the Administrator is concerned, he has allowed the application on the ground that the Culacharis were paid zonnos equal like that of the Gaonkars on which basis equal right was given to the Culacharis. The Administrator has further held that the respondent before him i.e. the Comunidade could not produce any Article in the Code of the Comunidades which provides that the names of the Culacharis cannot be entered in the list of able components. By making the final observations that the zonnos were distributed to the Culacharis equal like that of the Gaonkaris, the Administrator has allowed the applications. Now, coming to the order passed by the Administrative Tribunal, the Administrative Tribunal whilst dismissing the Appeal filed by the Comunidade has set aside the finding of the Administrator as regards the quantum of zonnos as the same was not a prerequisite for being considered for enlistment in the list of able components.

The Administrative Tribunal has held that since the names of the respondents already figure in the earlier list and in the register of zonnos and since the same is the factual position, the said record is to be considered while preparing the list of able components under Article 42 of the Code. The Administrative Tribunal has further held that the names of the respondents could not have been deleted without complying with the principles of natural justice. The Administrative Tribunal therefore as can be seen from the impugned order has laid emphasis on the fact that the names of the respondents already figure in the earlier list and in the register of zonnos and the said aspect according to the Administrative Tribunal is only relevant for considering the enlistment of the respondents in the list of able components.

9. Insofar as the term "able components" is concerned, though it is not defined in the Code, the Division Bench of this Court in the judgment, reported in the case of Francisco Casimiro Jeronimo Agnelo Pinto e Souza alias Francis de Souza v. State of Goa & Ors. (supra) has held that only those persons whose names are included in the list of able components are eligible to be elected/nominated to the Managing Committee. In the said context, it would be relevant to take note of certain provisions of the Code of Comunidades, which in my view, have a bearing on the aspect of enlistment in the list of able components. Since the rights of the parties are governed by the Code of Comunidade it would be apposite to consider how the Code came into being.

10. The Code of Comunidade which governs the rights and liabilities of its members was initially enacted during the Portuguese rule in the year 1933. The system of the Gaoncars of the Village having a share in the income of the Comunidade was sought to be regulated by the Code. The Gaoncars were the original settlers of a village who were entitled to a share in the income of the Comunidade. The present Code was enacted under legislative diploma No. 2070 dated 7/06/1961. The English translation of the Code which is in use has been published and gazetted by the Government of Goa.

11. Insofar as the distribution of income in the Comunidade of Pilerne is concerned the provision reads as follows:

Pilerne: Divide the net income by whole zonns, half zonns, and deducted zonns. After completing the age of 14 years, each "Gaonkar" will receive whole zonn, and each "Culacharim" will receive whole zonn, after deducting 130 in favour of the group of "Gaonkars". Each orphan will be given half zonn, except where there are two or more brothers, because in this case the youngest will receive whole zonns.

Hence, reading of the said provision indicates that the Culachari is entitled to receive whole zonns after deducting 1/30th in favour of the group of Gaonkaris.

Article 3 - provides for the composition of the Comunidade.

Article 20 - postulates as to who are members of the Comunidade in terms of

Article 3 and they are in three categories:

(1) Those who were entitled to receive zonn, either per head or per lineage - (per capita or per stirpes) - and their male descendents by male lineage, legitimate, legitimized, acknowledged as legitimate and adopted, whatever may be their number;

(2) Those who possess in the Comunidade registered shares in their own names;

(3) Those who can claim a part of the net income of the Comunidades whatever the nature and the name of his claim since it is registered in the respective books of the Comunidade on an application addressed to the Administrator with the document of transmission attached.

The above three groups can be classified as; (a) Jonoeiro, (b) Share Holders, (c) Jonoeiro and Share Holders and (d) Sharers.

Article 182 - This Article covers the primary enrolment of zonnkars as provided in Article 21 which would be open from 1st to 31st May each year.

Article 183 - This Article sets the documents that an applicant has to submit if he desires to have his name in the book of primary enrolment.

Article 184 and

Article 185 - Provide that orphans and widows of zonnkars can apply for primary enrolment.

Article 186 - Provides the manner in which an application for primary enrolment is to be dealt with.

Article 188 and

Article 189 - Concerns objections against the inscription of any member and the date from which he can enjoy his rights and obligations.

Article 192 - Provides that the inscription has to be done as per Model 6.

Article 193 - Provides for the annual enrolment of a zonnkar, upon production of their existence till the 30th day inclusive of the previous month of April.

Article 193(4) - Provides that the annual enrolment shall be done in accordance with the Model No. 7.

Article 545 - This Article provides that the book for the primary enrolment of zonnkars shall be kept as per the Model 6.

The said Model 6 provides as follows:

..... We enroll him as zonnkar of this Comunidade in the class of "Gaonkar" (Culacharim, vantelo zonnkar or what he is) in order to enjoy all the rights and to be subject to all the duties which, in that capacity, belong to him.

The aforesaid provisions disclose the procedure for inscription in the register of zonnkars and the remedy that is available against the proposed inscription.

Thereafter, Model 7 which is the proforma of the register of the annual enrolment of zonnkars contains a column disclosing the clause to which a zonnkar belongs and shows that a Culachari is also included in the said column.

The pro forma as contained in the Code of Comunidades is reproduced herein under for ready reference.

Hence, the pro forma discloses that a Culachari is also included in the register of the annual enrolment of the zonnkars.

(emphasis supplied)

12. Insofar as the instant case is concerned which is arising out of the applications made by the respondents for their enlistment in the list of able components, the defining Article if it can be said is Article 42 which inter alia governs the preparation of the list of the able components. The said Article postulates the manner in which the list is to be prepared. In terms of the said Article the list is to be prepared on the basis of the accounts of the last three years and of the registers of members by birth (zonnkars) and shareholders, in accordance with the terms of the Code.

Thereafter, Article 43 - provides for the display of the list as prepared in 8 days at the places mentioned in the said Article and objections if any to the said list to be taken in the said 8 days.

Article 44 - provides for the Administrator to render his decision on the objections within a period mentioned in the said Article.

Article 45 - provides for the finalization of the list and forwarding of the same to the administration office of the Comunidade.

The aspect of disqualification is covered by Article 29 which provides that the persons appearing in clauses 1 to 8 of the said Article cannot be either voted for or appointed for the post in the Comunidade. The said disqualified persons are the shareholders, whose income in the Comunidade, when the same is composed also of members by birth (zonnkars) is not at least equivalent to the minimum quota belonging to any of the zonnkars and, the non-emancipated minors and the interdicted, those who are indicted on the final judgment that has become definitive, the debtors to the Comunidade or to subrogees, of the later, the employees of the cadre of the civil administration, the members of the Administrative Tribunal, the relatives of the administrator up to the third degree, the members of the Comunidade of either sex who may not know to read or write in Portuguese and the foreigners.

13. Hence, after going through the gamut of the provisions of the Code of Comunidades one fails to find any provision which disqualifies the Culacharis from being enlisted as able components. In fact the weight of the provisions is

towards their enrollment. The disqualification to be voted or to contest the election, if any, is provided for in Article 29. It is required to be noted that the petitioner herein i.e. the Comunidade of Pilerne has not enlisted the respondents on the ground that the respondents are Culacharis and are therefore not entitled to be enlisted in the list of able components, which contention was sought to strenuously urged by the learned Senior Counsel on behalf of the petitioner. In my view, in the teeth of the provisions of the Code it is not possible to accept the said contention. In the instant case, there is no dispute about the fact that the names of the respondents were appearing in the earlier list and also appear in the register of the zonncars and were therefore wrongly excluded. The respondent i.e. Mr. Jonathan has also been President (substitute) during the present period and the respondent Mr. Gomes was the Attorney effective for the triennium 2004-2007. In my view, therefore, they were wrongly excluded from the list. The Administrative Tribunal having regard to Article 42 has therefore rightly observed that the aspect of the quantum of zonnos is immaterial insofar as the present applications filed by the respondents for enlistment as able components is concerned. The said finding of the Administrative Tribunal can therefore be said to have its backing in the provisions of the Code which have been adverted to herein above in detail. Insofar as the contentions urged on behalf of the petitioner that since an investigation into the list is being conducted by the Comunidade, the Administrator and the Administrative Tribunal ought not to have proceeded with the matter. In my view, the said investigation cannot come in the way of the respondents from asserting their rights under the Code. Insofar as the said Writ Petition No. 689 of 2012 is concerned, the learned Counsel for the respondents submitted that except the Comunidade nobody else was before this Court and therefore the order passed in the said Writ Petition cannot come in the way of the respondents from asserting their right under the Code of Comunidades. It is the contention of the learned counsel that in the guise of conducting an inquiry the present Managing Committee is continuing though elections were due in December, 2012. In my view, the Comunidade should take such steps as are necessary to hold elections early so that the impression that the present Managing Committee wants to continue in office indefinitely is dispelled. It is further the contention of the learned counsel for the respondents that the Code of Comunidades is a self contained Code, providing for a remedy at every stage which includes the remedy in respect of the wrongful inclusion of a name in the list of able components as evidenced by Articles 43, 44 and 45 of the Code. It is possibly for the said reason that prominence in Article 42 is given to the name appearing in the register of zonncars. In the facts and circumstances of the case wherein the names of the respondents were appearing in the earlier list and the register of zonncars the principles of natural justice cannot be said to have been violated just because the Comunidade was directed to give its response by the next day. For the same reason, there is also no warrant to remand the matter back to the Administrative Tribunal. In my view therefore having regard to the provisions of the Code of Comunidades, the impugned order passed by the Administrative Tribunal

cannot be faulted with. It cannot be said that the impugned order suffers from any illegality or perversity or that there is any jurisdictional error committed by the Administrative Tribunal. In that view of the matter, no case for interdiction is made out. The Writ Petitions are accordingly dismissed. Rule discharged with parties to bear their respective costs.