
(2014) 02 BOM CK 0050
In the Bombay High Court
Case No : Writ Petition No. 541 of 2013

Dyaneshwar Narso Naik

APPELLANT

Vs

State of Goa

RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Goa Village Panchayat Raj Act, 1994 — Section 114, 12(1)(d), 55(4), 57

Citation : (2014) 6 ALLMR 158 : (2014) 6 BomCR 434

Hon'ble Judges : R.S. Dalvi, J;F.M. Reis, J

Bench : Division Bench

Advocate : Galileo Francisco Teles, Advocate for the Appellant; A.N.S. Nadkarni, Advocate Gen., K. Noorani, Addl. G.A., Prema Matkar and D. Pangam, Advocate for the Respondent

Judgement

R.S. Dalvi, J.—Rule. Made returnable forthwith. The petitioner has sought a writ of quo warranto directing respondent No. 3 to discontinue functioning as a member of respondent No. 2 Village Panchayat and for a declaration that she has been disqualified to be such member and her office has become vacant under the provisions of section 12(1)(d) r.w. section 55(4) of the Goa Panchayat Raj Act, 1994.

2. Respondent No. 3 is the elected member of the Village Panchayat. She is stated to have participated in the meeting concerning a matter in which she has pecuniary interest. That matter was the renewal of construction licence issued to her husband. The licence was initially issued on 10th March, 2010. It would expire on 9th March, 2013. The meeting with regard to the renewal of the licence was held on 16th March, 2013 when the licence had already expired. It was resolved to grant the licence to her husband in the meeting dated 16th March, 2013. The renewal licence was actually granted on 21st March, 2013 after the initial licence had expired. It has been renewed from 10th March, 2013 to 9th March, 2014.

3. It is not disputed that the licence was issued to the husband of respondent No.

3. It is also not disputed that it has been renewed as stated above.
4. It is settled in the case of Zelia M. Xavier Fernandes E. Gonsalves Vs. Joana Rodrigues and Others, by the Supreme Court that in view of the principle of communion of acquired properties between spouses under Articles 1098 and 1108 of the Portuguese Civil Code, 1860 a wife would have pecuniary interest in the properties of her husband as the properties would be apportioned equally between them. Consequently there is not much dispute that respondent No. 3 would have pecuniary interest in the aforesaid resolution.
5. The only point which is to be considered is whether the respondent No. 3 participated and/or voted in the said resolution.
6. Under section 12(1)(d) a member of the Village Panchayat would vacate his/her seat as such member if he/she votes or takes part in discussion in contravention of section 55(4) of the Act.
7. Under section 55(4) no member of the Village Panchayat shall vote or take part in the discussion of, any question coming up for consideration at the meeting of the Panchayat if he/she has any pecuniary interest therein
8. It would have to be seen whether respondent No. 3 voted or took part in the discussion of the question relating to the renewal of the construction licence of her husband.
9. It may be mentioned that under section 57 of the Act minutes are required to be kept of the names of the members and of the officers present and of the proceedings at each meeting of Panchayat. Under the said section if any member present at the meeting so desires the names of the members voting respectively for and against the resolution would be mentioned. Such minutes are to be kept in the book provided for the purpose and signed by the Sarpanch or whoever else who presided at such meeting.
10. The minutes of the meeting would be presumptive evidence of what transpired at that meeting. Of course, it would be a rebuttable presumption. It would have to be rebutted by respondent No. 3. Until it is rebutted the minutes recorded in the normal course of the business of the Village Panchayat would be presumed to be correctly recorded as per the general law of meetings which Village Panchayats, including respondent No. 2 Village Panchayat would implicitly accept by virtue of maintaining the minute book itself.
11. It may be mentioned that respondent No. 3 has orally denied that she voted or participated in any discussion relating to the issue of renewal of construction licence to her husband. The petitioner has produced photocopies of the minutes of the meeting of the relevant meeting held on 16th March, 2013 and the subsequent meeting confirming what transpired on that date held on 30th March, 2013. The minutes show the attendance of respondent No. 3 which is not denied. She has signed against her name on both the dates. The Village Panchayat resolved to issue the renewal of the construction licence on 16th March, 2013.

The minutes of 16th March, 2013 were confirmed on 30th March, 2013.

12. The precise resolution passed by the Village Panchayat would be important to consider. It is resolution No. 4/24 which runs thus:

"4/24:- Application received from Satyavijay Naik regarding Renewal of Construction Licence No. 14 dated 10th March, 2010 was placed before Meeting and after discussion it is resolved to Renew the said for period of one year for charging of 25% of Construction Licence Fee".

(Emphasis supplied)

13. This resolution was passed on 16th March 2013 and confirmed without corrections on 30th March 2013.

14. It is contended on behalf of the petitioner that all the members who were present at the meeting must be taken to have discussed all the business which was transacted thereat. It is contended on behalf of respondent No. 3 that she had not discussed and that the resolution does not show that she had discussed or voted in the resolution on that day. Her affidavit in reply shows that the minutes do not reflect the true and correct picture. It is claimed that the minutes ought to have disclosed who discussed in the resolution No. 4/24. It is also contended that the minutes do not show who opined in respect of what resolution or how many members voted in favour of such resolution. She claims that she had walked out of that meeting and had abstained from the discussion, or participated or voted on the resolution. That fact has not been mentioned in the minutes. It is contended on her behalf that, therefore, the minutes are vitiated. Section 57 of the Act does not enjoin such procedure. It is only if that was specifically desired to be shown by any member that such detail may have to be mentioned in the minutes. Only respondent No. 3 would require such mention. It was for her to request such mention.

15. It is, therefore, clear that keeping of minute books is a statutory requirement. This is in terms of the general law of minutes. The mandatory requirement for the maintenance of the minute book is that it should be in the form of a book, it should contain the names of members and officers who have attended the meeting and it should show the proceedings at such meeting. The requirement of showing who are the members who voted for or against the resolution is only if any of the members would so desire to have it recorded. The various minutes of the meeting dated 16th March, 2013 show that in none of the resolutions the names of those who voted for or against is recorded. Only the statutory requirement is complied. The proceedings at the meeting are recorded.

16. If respondent No. 3 specifically walked out at the meeting and if she specifically refrained from participating thereat it was for respondent No. 3 to see that it was specifically recorded. She as a responsible member of the Panchayat representing her village community. She claims to have done precisely what was expected other in the situation. Yet that fact is not recorded. The minutes are

kept in correct order and as per the statutory requirement. Consequently the minutes shall have to be read as correct and the presumption with regard to the minutes would operate, the minutes having been kept as required by law.

17. The resolution shows that the application of the husband of respondent No. 3 was placed before the meeting and "after discussion" it was resolved to renew his licence for one year charging 25% of construction licence fee. The resolution was passed "after discussion". All the members present thereat must be taken to have discussed the subject-matter of the resolution. All the members present do not require to actually speak at any meeting. Yet by virtue of their very presence they must be taken to have discussed the proceedings at the meeting for the passing of such resolution unless they are shown to have abstained therefrom. The abstention of respondent No. 3 is not shown though she claims to have walked out of the meeting. The factum of her walking out is also not shown. The presumption that would naturally arise from the record of the meetings kept in the minute book as per procedure established by law is, therefore, not rebutted by respondent No. 3. She is, therefore, seen to have taken part in the discussion relating to the aforesaid resolution under which the Village Panchayat renewed the construction licence of her husband, the property, in which she has a share by the law of communion of assets.

18. The case of identical facts is in Mr. Mohan Vithal Dabhale Vs. Mr. Santosh Vasant Morajkar and Others, . In that case also the NOC of the Village Panchayat was to be granted for the construction put up by the wife in which case the husband was a member of the Village Panchayat and who was admittedly present at the meeting and shown to have seconded the meeting which he denied and claimed to have abstained himself and not participated thereat. In that case the husband had also sought to have the record of the minutes corrected to show another name of the seconder which correction came to be made later in the minutes. It was a case of oral evidence of what transpired at the meeting. Oral evidence was directed to be recorded. Three members of the Panchayat deposed about the factum of the participation by the husband. The husband denied that fact. The Court concluded that he had participated and voted on the issue. Oral evidence is not even required to be recorded. The presumption under section 114 illustrations (e) and (f) would govern a record of meetings by way of maintaining Minute books. The official acts of the conduct of meetings must be taken to have been regularly performed. Similarly the common course of business transacted at meetings must also be presumed to have been followed.

19. In this case the wife has similarly claimed that though present she had not discussed or voted and accordingly participated in that resolution concerning her husband's construction licence. She claims to have walked out, a fact which is not recorded in the minutes despite her positive act in that behalf. She claims to have challenged the minutes before the Director of Panchayats. It is not known what has happened to her challenge. She continues as a member of the Village Panchayat. She continues to represent the Village Community. She fulfills the

objective of the law in granting greater participation to the villagers in the effective implementation of the rural development programme. She has, however, not satisfactorily shown the Court that her claim is true.

20. It is also argued on her behalf that these are ordinary village people who do not know the niceties of the law. The affidavit of respondent No. 3 does not bring her out in such light. It shows respondent No. 3 having knowledge of the specific aspect of law requiring her not to partake in the discussion in subjects in which she would have pecuniary interest. Her claim that she walked out itself shows the knowledge of the legal position. Her further claim that the names of the persons who voted for and against the resolution are not recorded is in excess of the mandate contained in section 57 of the Act. Respondent No. 3 had failed to show what she has done. Her confirmation of the resolution in the next meeting further shows the truth of the resolution dated 16th March 2013 in its entirety. The statements of respondent No. 3 about what transpired at the meeting held on 13th March 2013 which are not recorded as required cannot rebut the statutory presumption. The minutes of the meetings must be accepted as true.

21. Respondent No. 3 is shown to have participated in the discussion relating to the issue of the renewal of the construction licence to her husband. She has acted in contravention of section 55(4) of the Act. She has, therefore, vacated her seat under section 12(1)(d) of the Act. She has become disqualified as a member of the Village Panchayat.

22. Consequently the petitioner must be granted the writ of quo-warranto and the consequent declaration sought by him.

23. Rule is, therefore, made absolute in terms of prayers (a) and (b). The writ petition is disposed off accordingly.