

(2017) 11 BOM CK 0148
In the Bombay High Court
Case No : 972 of 2017

Laurence M. Rodrigues

APPELLANT

Vs

Inacio Domnic Pereira & Ors

RESPONDENT

Date of Decision : 29-11-2017

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court
Goa Panchayat Ra

Citation : (2017) 11 BOM CK 0148

Hon'ble Judges : C. V. Bhadang

Bench : SINGLE BENCH

Advocate : Nitin Sardessai, Gaurang Panandiker

Judgement

1. Rule, made returnable forthwith. The respondent nos.1 to 3, who appear in person, waive service. Heard finally by consent of the parties.

2. The challenge in this petition under Articles 226 and 227 of the Constitution of India, is to the order dated 20/09/2017, passed by the State Election Commissioner (Election Commissioner, for short), rejecting the preliminary objection raised on behalf of the petitioner to the maintainability of the petition before the Election Commissioner.

3. Brief facts are that the respondent nos.1 to 3 had approached the Election Commissioner purportedly under Sections 10 and 11 of the Goa Panchayat Raj Act, 1994 (the Act, for short), seeking disqualification of the petitioner (respondent no.1 before the Election Commissioner). The petitioner happens to be an elected member of the Village Panchayat of St. Cruz from Ward No.3. The sole ground, on which the disqualification is sought, is that the said Ward was reserved for the candidate belonging to Other Backward Category (OBC). It was contended that although the petitioner is having a certificate in his favour as belonging to OBC, the said certificate is obtained by fraud. Thus, in short, it was

contended that the petitioner was disqualified for contesting the election from the said Ward.

4. The petitioner raised a preliminary objection to the maintainability of the petition on the ground that the Election Commissioner cannot look into the question of disqualification under Section 11 of the Act unless the said disqualification refers to Section 10 of the Act. It was contended that the grounds as raised before the Election Commissioner, at the highest, may pertain to Section 9 i.e. regarding "qualification" and they would not fall under Section 10 of the Act.

5. The Commissioner, by a one line order, has dismissed the preliminary objection, which brings the petitioner to this Court.

6. I have heard Shri Sardessai, the learned Senior Counsel for the petitioner and the respondent no.3 in person.

7. It is submitted by Shri Sardessai, the learned Senior Counsel for the petitioner that the Goa Panchayat Raj Act as also the Representation of People Act, 1951 make a conscious distinction between the "disqualification" of a person from contesting election and "qualification" of a person to contest such election. It is submitted that the ground about the petitioner not belonging to OBC, cannot be examined by the Commissioner in an application under Section 11 of the Act. It is submitted that even otherwise, the validity of the Caste Certificate can only be examined by the Caste Scrutiny Committee and once the petitioner has obtained the Caste Certificate, it would not be open for the Election Commissioner to examine whether the certificate is valid or not, which is the exclusive jurisdiction of the Caste Scrutiny Committee.

8. The respondent no.3, who appears in person submits that the application would be maintainable under Section 11 read with Section 10(a) of the Act. It is submitted that a person, who on account of his caste is not qualified to contest the election to a particular Ward (which is reserved for particular caste), would be a person "disqualified", within the meaning of Section 10(a) of the Act. Shri Shetye alternatively submitted that the matter can be remanded back to the Election Commissioner for deciding the preliminary objection afresh.

9. Shri Sardessai further submits that as the issues go to the root of the matter, this Court may decide the same in this petition only.

10. I have carefully considered the circumstances and the submissions made.

11. The perusal of the impugned order shows that it lacks any reason for dismissal of the preliminary objection. Once the petitioner had raised an issue about the maintainability of the application under Section 10, it would be necessary for the Election Commissioner to record reasons while holding that the application as framed and filed is maintainable or otherwise. On hearing the learned Senior Counsel for the petitioner and the respondent no.3 in person, I do find that an arguable case arises as to the interpretation of Sections 9 and 10(a)

in the context of remedy available under Section 11 of the Act. There is also an issue whether the Election Commissioner can examine the validity of the Caste Certificate. In such circumstances, in my considered view, it would be appropriate if the matter is remanded back to the Election Commissioner for deciding the preliminary objection afresh. The Election Commissioner can decide the preliminary objection as to the maintainability of the application under Section 11 of the Act and also the question whether the validity of the Caste Certificate can be examined by an Authority other than the Caste Scrutiny Committee.

12. In such circumstances, the petition is partly allowed. The impugned order rejecting the preliminary objection is hereby set aside. The Election Commissioner shall decide the preliminary objection and the issue as referred above afresh, after hearing the parties in accordance with law. Parties to appear before the Election Commissioner on 12/12/2017 at 4.00 p.m.

13. Rule is partly made absolute in the aforesaid terms, with no order as to costs.