(2009) 07 BOM CK 0108

In the Bombay High Court

Case No : Writ Petition No. 437 of 2009

Mr. Zelia M. Xavier Fernandes E Gonsalves — APPELLANT

Vs

Mrs. Joana Rodrigues and Others — RESPONDENT

Date of Decision : 22-07-2009

Acts Referred:
Goa Village Panchayat Raj Act, 1994 — Section 10
Income Tax Act, 1961 — Section 5A

Citation : (2009) 5 BomCR 74

Hon'ble Judges : A.H. Joshi, J

Bench : Single Bench

Advocate : Galileo Teles, for the Appellant; A.F. Diniz and V. Thali, for the Respondent

Final Decision : Dismissed

Judgement

A.H. Joshi, J.—Rule. Rule is made returnable forthwith consent. Fresh service on Respondent Nos. 2, 4 and 5 is considered to be not necessary. Heard Advocates.

2. The respondent No. 1 herein submitted application before the Goa State Election Commission seeking disqualification of petitioner herein.

3. In the said application, the respondent No. 1 raised objection that petitioner''s husband has a subsisting contract with the Panchayat to which the petitioner has been elected, therefore, she being a wife of the contractor, she be declared as disqualified.

4. The petitioner filed reply accepting the relationship, the fact of contract being in subsistence, but denied that Section 10(f) of Goa Panchayat Raj Act, 1994 did contemplate disqualification on this ground and claimed that she should have been personally interested to be declared disqualified.

5. The Commission has passed order on 3.7.2009 disqualifying the petitioner. The Commissioner has recorded the finding which reads as follows:

The marriage between the respondent Nos. 1 and 2 still subsists since no decree of dissolution of their marriage is produced before this Commission. After considering all the facts as stated above, I have come to the conclusion that the respondent No. 1 is liable for disqualification as a Panch member of the Village Panchayat of Raia, i.e. Respondent No. 3 under Clause (f) of Section 10 of the Goa Panchayat Raj Act, 1994.

6. In the present Writ Petition, the order of the Commissioner has been challenged. The grounds of challenge can be precisely seen from the paras IV, V and VI which are quoted below for ready reference :

IV. The petitioner states that Section 10(f) of the Goa Panchayat Raj Act, 1994 clearly stipulates that a person shall be disqualified if the member 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.

V. A bare reading of the aforesaid section clearly states that the member would be disqualified if he has direct or indirect share or monetary interest by virtue of any contract or employment with the Panchayat.

VI. The petitioner therefore submits that if the petitioner had entered into contract or employment with the Panchayat then only she can be disqualified u/s 10(f) of the Act.

7. Learned Advocate for the petitioner has placed reliance on the judgment of the Hon''ble Supreme Court reported in Gulam Yasin Khan Vs. Sahebrao Yeshwantrao Walaskar and Others, . In the case cited, which was arising under the C.P. and Berar Municipalities Act, the Apex Court has held that employment of family member did not amount to having interest in the contract.

8. While opposing petition, the learned Advocate Mr. A. F. Diniz, for the respondent No. 1 has placed reliance on Ashabai Gawande Vs. Additional Commissioner, Amravati Dvn. and Others, , Amravati Division and Ors., which clinches the issue. In the case cited, it is held by this Court that, in the case of a contract in favour of the husband, the wife was interested in the contract. While deciding Ashabai''s case supra, this Court has also considered the case of Gulam Yasin Khan relied upon by the writ petitioner.

9. Next submission advanced by Advocate Mr. A. F. Diniz in support of the order under challenge is by placing reliance of three legal provisions viz.:

(i) Sections 1108 of Goa Common Civil Code, 1860;

(ii) Section 1098 of Goa Common Civil Code, 1860; and

(iii) Section 5A of Income Tax Act, as applicable to spouse governed by Portuguese Civil Code, 1860.

10. Based on the provisions referred to in the foregoing para, learned Advocate

Mr. A. F. Diniz has submitted that:

(a) In absence of proof of exclusion of wife from husband''s assets and income, the wife has an indelible interest and a vested right in husband''s income and assets.

(b) In present case, therefore she has vested interest in the contract subject matter.

(c) Proof of exclusion of wife from husband''s assets and income has not been pleaded and brought forward by the petitioner.

11. The legal position that wife has vested in husband''s property and income by virtue of provisions of law referred to in foregoing para is not denied by the petitioner. Record also shows that it is not the petitioner''s case that there existed an agreement between the spouse thereby excluding wife''s interest in husband''s assets and income.

12. This Court has then adverted to Clause (f) of Section 10 of The Goa Panchayat Raj Act, 1994. It reads as follows:

(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.

13. It is seen that scheme of the Act does not carve out exclusion of spouse when the tender or contract is given to spouse. No such exclusion can be read or inferred between the spouses to whom Portuguese Civil Code, 1860 applies.

14. In the light of existing legal position and absence of exclusion by a contract at the time of marriage, the wife has a vested legal right and interest in husband''s property and income, petitioner''s arguments that she is not interested is without any foundation whatsoever.

15. In this peculiar fact, therefore, though there is no detailed discussion in the judgment of the Election Commission, in law ultimately the conclusions of the Election Commission are legal, proper and confirming to the law in vogue. Therefore, no indulgence called for in this petition.

16. The petition has no merit and is dismissed. Rule is discharged. Parties are directed to bear their own costs.