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**(2000) 05 BOM CK 0013**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 233 of 1999**

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|---------------------------------------------------------|----|------------|
| Smt. Wilma Pacheco                                      | Vs | APPELLANT  |
| The President, Administrative Tribunal, Goa and another |    | RESPONDENT |

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**Date of Decision :** 04-05-2000

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Goa Village Panchayat Raj Act, 1994 — Section 10, 11, 16, 20(1), 245  
Goa, Daman and Diu Village Panchayats Regulation, 1962 — Section 11  
Maharashtra Municipalities Act, 1965 — Section 16(1)

**Citation :** (2000) 4 BomCR 427 : (2000) 3 MhLj 794

**Hon'ble Judges :** R.M.S. Khandeparkar, J; R.K. Batta, J

**Bench :** Division Bench

**Advocate :** M.S. Sonak, for the Appellant; V.P. Thali, for the Respondent

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## Judgement

R.K. Batta, J.—The petitioner and respondent No. 2 filed nominations from Ward No. 7 reserved for women for election to the Village Panchayat of Colva. The nomination papers of respondent No. 2 were rejected as a result of which the petitioner was the lone candidate in the fray, due to which the petitioner was declared duly elected on 28-12-1996 in the reserved seat of Ward No. 7 of the Village Colva. Respondent No. 2 filed election petition u/s 16(1), read with sections 20(1)(a), 20(1)(d)(i) and 10(d) of the Goa Panchayat Raj Act, 1994 (hereinafter called as "the said Act").

2. The election petition was filed on the ground that the petitioner was in arrears to the Panchayat in the sum of Rs. 2,41,125/- and the said arrears were cleared only on 26-12-1996, which was the date of scrutiny of nomination papers. In view of the same, it was urged by respondent No. 2 in the said election petition that the nomination of the petitioner was improperly accepted in violation of section 10(d) of the said Act.

3. The election petition was allowed by the Administrative Tribunal vide Judgment dated 15-7-1999 and the election of the petitioner was declared as void and set

aside. It is against this order that the petitioner has invoked the writ jurisdiction of this Court, The Tribunal found that the petitioner was in arrears of dues to the Panchayat for more than 3 months and, as such, was disqualified u/s 10(d) of the said Act. Notification dated 16-6-1971 prescribing the period of three months for the purpose of Clause 11 (j) of the Goa, Daman and Diu Village Panchayat Regulation, 1962 (hereinafter referred to as "the Regulation") was pressed into service by virtue of section 245 of the said Act,

4. Learned Advocate for the petitioner has urged that section 10(d) of the said Act does not prescribe any period and in the absence of demand notice, the impugned order is liable to be set aside. In this connection, it is further urged that by Resolution dated 9-12-1996, the Panchayat had requested the petitioner to pay a sum of Rs. 2,41,125/- before 31-12-1996 and the said amount was, in fact, paid on 26-12-1996, that is to say, before the petitioner was declared elected and, as such, the impugned order cannot be sustained. It is further urged that the petitioner had sent a letter dated 13-11-1995 to the Secretary, Village Panchayat raising bona fide dispute in relation to payment of amount and, it was only on 9-12-1996 that the Panchayat had resolved the dispute by directing the petitioner to pay Rs. 2,41,125/- before 31-12-1996. The next plank of the argument of learned Advocate for the petitioner is that the period of three months could not be imported into section 10(d) of the said Act by virtue of section 245 of the said Act. It was also urged that no objection was raised at the time of acceptance of nomination form of the petitioner and respondent No. 2 is estopped from raising such ground in the election petition. Thirdly, it is urged by learned Advocate for the petitioner that conjoint reading of sections 10 and 11 of the said Act clearly provides for a reference to the State Election Commission due to which jurisdiction of the Administrative Tribunal to deal with issue relating to disqualification u/s 10 of the said Act is clearly excluded. In support of his submission, learned Advocate for the petitioner has placed reliance on *Kasturchand Kisanlal Chandak Vs. District Judge, Nagpur and Others*, and *S. Rama Mohan Ray Vs. A. Kishore Chandra Patra and Others*, .

5. On the other hand, learned Advocate for respondent No. 2 after placing reliance on Article 192(2) of the Constitution of India and *Election Commission, India Vs. Saka Venkata Subba Rao* and, has urged that if the disqualification is incurred by a candidate after the election, then section 11 is attracted under which the dispute relating to disqualification is required to be referred to the State Election Commission, but if the disqualification incurred relates to the period prior to election, then election petition u/s 16 is maintainable before the Administrative Tribunal. On the question that section 10(d) of the said Act does not prescribe any period for which the candidate should be in arrears, reliance has been placed on Notification dated 16-6-1971 and section 245 of the said Act and it is urged that the period u/s 10(d) would be 3 months. In this respect, learned Advocate for respondent No. 2 has placed reliance on *Shri Mafaldo Fernandes, Sarpanch of Village Panchayat Vs. Shri Kushali S. Kalekar, Panch, Village Panchayat and Others*, .

6. In order to appreciate the controversy, it is necessary to note down first the relevant provisions. Relevant portion of section 10, section 11, section 245 of the said Act read as under :

"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) he is in arrears for such period as may be prescribed of any tax, fee or other sum due to the Panchayat;

(e) ...

(f) ...

(g) ...

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.

245. Repeal and savings.---The Goa, Daman and Diu Village Panchayats Regulations, 1962 (9 of 1962) and the Goa Panchayat Raj Ordinance 1994 (Ordinance No. 2 of 1994) is hereby repealed:

Provided that such repeal shall not affect ---

(a) the previous operation of the Goa, Daman and Diu Village Panchayats Regulation, 1962 (9 of 1962) or the said Ordinance or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the said Regulation; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the said Regulation; or

(d) any investigation, legal proceeding or remedy in respect of such right, privilege, obligations, liability, forfeiture or punishment as aforesaid and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed:

Provided further that. -

(a) subject to the preceding provisions, anything done or any action taken (including any appointment or delegation made, tax, fee or cess imposed,

notification, order, instrument or direction issued, rules, regulations, forms, bye-laws or Schemes framed, certificates obtained, permits or licences granted or registration effected) under the said Regulation or the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act;

(b) ...

(c) ...

(d) ..."

Section 11(j) of the said Regulation reads as under :

"11. Disqualification for membership.---A person shall be disqualified for being chosen as, and for being, a member of a Panchayat if he

(a) ..

(b) ..

(c) ..

(d) ..

(e) ..

(f)..

(g)..

(h)..

(i) ..

(j) is in arrears for such period as may be prescribed of any tax, fee or other sum due to the Panchayat."

7. To start with we must point out that the reliance placed by learned Advocate for the petitioner on *Kasturchand Kisanlal Chandak v. District Judge, Nagpur and others* (supra) is totally misplaced since section 16(1)(h) of Maharashtra Municipalities Act, with which the Division Bench was concerned, was totally different and not pan materia to the provisions involved in the petition under consideration. Section 16(1)(h) of the Maharashtra Municipalities Act, is as under :

"16(1) No person shall be qualified to become a Councillor whether by election, co-option or nomination who

x x x x

(h) is in arrears (otherwise than as a trustee) of any sum due by him to the Council after the presentation of a bill therefore to him u/s 150; or"

The Division Bench held that on reading the section it is obvious that the disqualification attaches to a person who is in arrears of a sum due by him to the Council; such arrears must continue even after the presentation of a bill thereof to him u/s 150 and that as such, the Municipality must present a bill under the provisions of section 150 and in spite of such presentation if the arrears continue, then the person is disqualified from becoming a Councillor.

8. Section 10(d) of the said Act disqualifies a person for being chosen as and for being a member of Panchayat if he is in arrears for such period as may be prescribed of any tax, fee or other sum due to the Panchayat. The period referred to in section 10(d) of the said Act has not been prescribed thereunder. Nevertheless, section 245 of the said Act which deals with repeal and savings provides that the notification, order, rules, regulations, forms, bye-laws or scheme framed, etc. under the said Regulation or the said Ordinance shall be deemed to have been done under the corresponding provisions of the said Act and shall continue to be in force, accordingly, unless and until superseded by anything done or any action taken under the said Act. At this stage, it is relevant to note that the provisions of section 10(d) of the said Act are *pari materia* with that of section 11(j) of the said Regulation. The period prescribed for the purpose of Clause (j) of section 11 of the said Regulation shall be 3 months as notified by Notification No. CDB/VPT/244/ 70-71 dated 16-6-1971 which was published in the Goa Gazette on 24-6-1971. This notification, by virtue of second proviso is still in force and, as such, the period prescribed for the purpose of section 10(d) is 3 months. Therefore, a person who is in arrears of any dues to the Panchayat for a period of more than 3 months would be disqualified. This view has already been taken by Division Bench of this Court in *Shri Mafaldo Fernandes v. Shri Kushali S. Kalekar and others* (*supra*) to which one of us (Khandeparkar, J.) was a party.

9. Under agreement dated 26-3-1995, the petitioner was given contract for collection of fees in the market, melas and fairs being a highest bidder for Rs. 3,21,500/-. The payment of the said amount was to be made in four equal installments, the first installment of Rs. 88,375/- to be paid within 8 days from the date of auction, the second installment of Rs. 80,375/- to be paid on or about 30-6-1995, the third installment of Rs. 80,375/- to be paid before 30-10-1995 and the last installment of Rs. 80,375/- to be paid on or before 30-1-1996. Unfortunately, in the agreement which is filed by the petitioner at pages 73 to 77 does not give correct date regarding payment of third installment which is stated there as payable on 30-5-95. The petitioner filed nomination and on the date of scrutiny of the nomination, the petitioner was in arrears to the tune of Rs. 2,41,125/-. The date of filing nomination was 24-12-96 and the date of scrutiny of the nomination was 26-12-1996. As on the date of nomination, the petitioner was in arrears of Rs. 2,41,125/-. The contention of the petitioner that he had raised a dispute by filing application dated 13-11-1995 does not, in any manner, help the petitioner, since the second installment of Rs. 80,375/- was due and payable on or before 30-10-1995. In addition, the last installment was due

and payable on or before 30-1-1996. Therefore, it is crystal clear that the petitioner was in arrears due to the Panchayat for a period of more than 3 months on the date of scrutiny and, as such, the petitioner was disqualified for being chosen as member of the Panchayat in terms of section 10(d) of the said Act. It is pertinent to note that the petitioner had gone to the extent of stating in reply dated 11-3-1997 filed before the Administrative Tribunal that she was not in arrears in respect of any amount to the Panchayat incurring on her disqualification u/s 10(d) of the said Act. There is no requirement of service of notice or demand calling upon a member to pay arrears due to the Panchayat. In the petition under consideration, the arrears were required to be paid within the time limit fixed under the agreement dated 26-3-1995 between the petitioner and the Panchayat and if the installments were not paid as specified in the agreement, the petitioner was in arrears of the sum. In fact, on account of nonpayment of the installments, the petitioner was in arrears for more than 3 months and, as such, incurred disqualification u/s 10(d) of the said Act.

9A. The petitioner has also raised the issue of jurisdiction and according to her, the jurisdiction is vested in the State Election Commission which excludes the jurisdiction of the Administrative Tribunal. In this connection, it is pertinent to note that section 10 of the said Act provides for disqualification for being chosen as and for being a member of the Panchayat. Section 11 provides that 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 and its decision shall be final. In addition, there is a provision for filing election petition u/s 16 of the said Act. Section 20(1)(a) of the said Act provides for grounds for declaring election to be void when the prescribed authority is of the opinion that on the date of election a returned candidate was not qualified or was disqualified to be chosen as member under the said Act. The petitioner was disqualified to be chosen as member under the said Act in view of section 10(d) in respect of which the jurisdiction clearly vests in the prescribed authority, namely the Administrative Tribunal. Section 11 of the said Act does not come into play in the facts and circumstances of this case and, as such, the question of jurisdiction of the State Election Commission does not arise. The ruling in *S. Rama Mohan Ray v. A. Kishore Chandra Patra and others* (supra) cannot be applied to the petition under consideration since the findings therein are based upon the provisions which are totally different and the controversy therein was also altogether different. Accordingly, we hold that there is no merit in the submission of learned Advocate for the petitioner that the jurisdiction to decide the controversy, in question, vests with the State Election Commission.

10. For the aforesaid reasons, we do not find any merit in this petition and the petition is, hereby, summarily rejected. The costs shall be borne by the petitioner.

11. Petition rejected.