
(2020) 02 BOM CK 0120
In the Bombay High Court
Case No : Writ Petition No. 881 Of 2018

Uday B. Vaigankar

APPELLANT

Vs

State Of Goa And Ors

RESPONDENT

Date of Decision : 25-02-2020

Acts Referred:

Goa Panchayat Raj Act, 1994 — Section 12, 12(d), 12(1)(d), 55, 55(4)
Constitution Of India, 1950 — Article 226, 227

Citation : (2020) 02 BOM CK 0120

Hon'ble Judges : M.S. Sonak, J;Nutan D. Sardessai, J

Bench : Division Bench

Advocate : Abhijit Gosavi, Priyanka Kamat, Ganesh Naik, A.D. Bhobe, Kalpa Govekar

Judgement

M.S. Sonak, J

1. Heard Mr. Gosavi for the Petitioner, Ms. Kamat, learned Addl. Govt. Advocate for Respondents No.1 and 3, Mr. Ganesh Naik, for Respondent

No.2 and Mr. A. D. Bhobe for Respondent No.4.

2. The Petitioner, who is a registered voter from Ward No.II of Arambol Village seeks, inter alia, a declaration that Respondent No.4 stands

disqualified as the Member (Panch) of the Village Panchayat of Arambol and the seat held by her is deemed to have become vacant. Based upon

such declaration, the Petitioner seeks a writ of quo warranto, coupled with a direction to Respondent No.4 to vacate the seat of the Member (Panch)

of the Village Panchayat of Arambol.

3. The Petitioner invokes the provisions of Section 12(1)(d) of the Goa Panchayat Raj Act, 1994 (said Act) which provides that if a member of a

Panchayat votes or takes part in discussion in contravention of the provisions of

sub-section (4) of section 55, his seat shall be deemed to be or to have become, as the case may be, vacant.

4. Section 55 (4) of the said Act provides that no member of a Panchayat shall vote on, or take part in the discussion of, any question coming up for consideration at a meeting of a Panchayat, if the question is one in which, apart from its general application to the public, he has any pecuniary interest, and if the person presiding has such an interest, he shall not preside over the meeting when such question comes up for consideration.

5. The Petitioner refers to Resolution No.6/4, passed in the meeting of the Panchayat held on 28th June, 2017 at 3 p.m., the minutes of which have been placed on record in this Petition. The said resolution of the Panchayat reads as follows:

â??6/4 : As per the resolution No.4/21 dt 28/04/17 regarding seeking Regularization of H.No.299 in the property bearing Sy.No.176/9 and 176/10 of V.P. Arambol has been placed in the meeting and after discussion it is unanimously resolved to regularize the said illegal structure within the period of two months and submit the fill along with relevant documents of regularization of construction.â??

6. There is absolutely no dispute that Respondent No.4 attended the meeting of the Panchayat held on 28th June, 2017 and has voted in favour of the aforesaid resolution, which was duly passed in the meeting held on 28th June, 2017. In any case, this position is clear from the minutes of the meeting placed on record, which, clearly bear signatures of Respondent No.4.

7. The Petitioner has alleged that House No.299 in the property surveyed under No.176/9 and 176/10 of Arambol, which was resolved to be unanimously regularised by all the Members of the Panchayat, is the ancestral house of Respondent No.4, which stands recorded in the name of Krishna Hari Vaigankar, who is none other than the father-in-law of Respondent No.4. The Petitioner has contended that the application for regularisation of the illegal constructions in House No.299 was, in fact, made by Sudan Krishna Vaigankar, who is the brother-in-law of Respondent No.4. It is also the case of the Petitioner that the husband of Respondent No.4 operates a shop from the ground floor of House No.299. On such basis, it is the case of the Petitioner that Respondent No.4, having voted on the resolution in which she had pecuniary interest, has breached the

provisions of Section 55(4) of the said Act and consequently is deemed to have vacated her seat as the Member of the Panchayat, as provided under

Section 12(1)(d) of the said Act.

8. Mr. Gosavi, the learned Counsel for the Petitioner has relied upon the following decisions to submit that the expression "pecuniary interest" in

Section 55(4) of the said Act should not receive unduly narrow or restricted construction, because the provisions in Section 55(4) and Section 12(1)(d)

of the said Act have been enacted to ensure purity in the administration of the Panchayats and to prevent the Members from voting upon resolutions in

cases where there is a conflict between interest and duty.

(1) Mohan Vithal Dabhale vs. Santosh Vasant Morajkar and ors. 2011 (3) Bom CR 484;

(2) The Akhada St. Estevam Village Development and Protection Samittee and ors. vs. Seema Rohidas Narvekar and ors. 2010 (3) Bom CR 37;

(3) Lenocio John Raicar vs. Martinho Francisco Rocha and ors. 2010 (5) Bom CR 303 and

(4) Jagdish Bhobe vs. State of Goa and ors. MANU/MH/0967/2010

8. Since, there is no forum provided under the said Act, taking into consideration the issues which arise under Section 12(1)(d) of the said Act, this

Court has been entertaining Petitions under Articles 226 and 227 of the Constitution of India. In such Petitions, the Court usually appoints a

Commissioner to record evidence and to remit the notes of evidence, particularly where disputed questions of fact are involved. Accordingly, vide

order dated 23rd September, 2019, a Court Commissioner was appointed to record evidence. Such evidence has, in fact, been recorded by the Court

Commissioner and the notes of evidence have been placed on record.

9. Mr. Gosavi, learned Counsel for the Petitioner pointed out that Respondent No.4, in the course of her evidence, has clearly admitted that House

No.299 which is subject-matter of the said resolution, is her ancestral house and she stayed in the said house, soon after her marriage before moving

to her new house No. 300(2). Mr. Gosavi submits that even this admission is sufficient to attract the provisions of Section 55(4) and Section 12(1)(d)

of the said Act.

10. Mr. A.D. Bhobe, learned Counsel for Respondent No.4 submits that Respondent No.4 resides along with her husband in House No. 300(2) and

has no nexus whatsoever with House No.299. He submits that Respondent No.4 was not married under the Regime of Communion of Assets and,

therefore, can be said to have no right, title or interest whatsoever to House No.299. He submits that Respondent No.4 has placed on record

Panchayat records, as well as ration card which establish that Respondent No.4 is a resident of House No.300(2) and consequently, also establishes

that Respondent No.4 has no nexus with House No.299. He submits that the so called admission in the course of evidence, cannot be read out of

context and, therefore, the present Petition ought to be dismissed. Mr. Bhobe relies on *Zelia M. Xavier Fernandes e Gonsalves vs. Joana Rodrigues*

and ors. (2012) 3 SCC 188 in support of his contentions.

11. Mr. Bhobe submits that the application made by the husband of Respondent No.4 to the Panchayat for issuance of an NOC to operate a shop

through House No.299 is dated 27.12.2018 and the actual NOC is dated 29.12.2018. He submits that the said resolution, on the basis of which the

Petitioner seeks to disqualify Respondent No.4, was passed on 28th June, 2017. He submits that from this it is quite clear that Respondent No.4 had

absolutely no nexus or interest with House No.299 as on the date when the said resolution was passed by the Panchayat. Mr. Bhobe submits that this

is an additional reason as to why the present Petition ought to be dismissed.

12. The rival contentions now fall for our determination.

13. As noted earlier, Section 12(1)(d) of the said Act provides that if a member of a Panchayat votes or takes part in discussion in contravention of

the provisions of sub-section (4) of section 55, his seat shall be deemed to be or to have become, as the case may be, vacant. Section 55(4) of the said

Act provides that no member of a Panchayat shall vote on, or take part in the discussion of, any question coming up for consideration at a meeting of a

Panchayat, if the question is one in which, apart from its general application to the public, he has any pecuniary interest. The expression

pecuniary interest in the very context of the provisions of Section 12(1)(d) and Section 55(4) of the said Act, has been interpreted by this Court

in several decisions, upon which reliance was placed by Mr. Gosavi, the learned Counsel for the Petitioner.

14. In *Jagdish Bhobe (supra)*, an elected member of the Village Panchayat of St. Andre (Goa Velha) took part in discussion or voted on a resolution in

relation to House No.454/2 recorded in the Panchayat in the name of Mrs. Felicidade Agnello Gonsalves, the mother of the Panch Member. The

Division Bench of this Court held that the expression "pecuniary interest" should not receive an unduly narrow or restricted construction, because

the provisions in Section 12(1)(d) and Section 55(4) of the said Act were to ensure purity of administration of local bodies.

15. The relevant discussion on this issue is to be found in paragraph 11, which reads as follows:

11. In the case of The Akhada St. Estevam Village Development and Protection Samittee and Ors. (supra), this Court had considered the

meaning of "pecuniary interest". This Court in paragraph 24 held that to ensure purity of administration of local bodies, the provisions relating to

disqualification should not receive an unduly narrow or restricted construction. The phrase used in Sub-section (4) of Section 55 of the said Act of

1994 is "pecuniary interest". The word "pecuniary" connotes "pertaining to money". The expression "pecuniary interest", therefore, necessarily means

the interest which can be exacted in money or which is pertaining to money. The interest can be of different types. The interest can be in respect of a

right in a property, benefit in a property or use of a property. If a person constructs a structure and the construction is sought to be demolished, it can

be certainly stated that "pecuniary interest" of the person is affected, inasmuch as the demolition or destruction or damage to the structure will involve

monetary loss. To attract Sub-section 4 of Section 55, actual monetary gain or accrual of benefit is not necessary. Participation in a discussion

involving "pecuniary interest" is sufficient.

16. In the case of The Akhada St. Estevam Village Development and Protection Samittee (supra), the Division Bench of this Court was concerned

with a complaint filed of an illegal construction undertaken by one Rohidas Narvekar, husband of the Panchayat Member Seema Narvekar. In the

meeting of the Panchayat, Seema Narvekar voted on the resolution to reject the complaint. In these circumstances, the Division Bench of this Court

held that the disqualification, as contemplated by Section 12(1)(d), read with Section 55(4) of the said Act, was incurred.

17. Relevant discussion is to be found in paragraphs 22, 23 and 24, which reads as follows:

22. At this stage, it is useful to refer to the definitions of expressions "interest" and "pecuniary", as occurring in the Shorter Oxford English

Dictionary, fifth edition; as also in Black's Law Dictionary, seventh edition. Expression "interest" as occurring in Shorter Oxford English Dictionary

defines:

The fact or relation of having a share or concern in, or a right to, something, esp. by law; a right or title, esp. to (a share in) property or a use or

benefit relating to property; (a) share in something (b) participation in doing or causing something; (c) A financial share or stake in something; the

relation of being one of the owners or beneficiaries of an asset, company, etc.

The expression "interest" as occurring in Black's Law Dictionary defines:

1. Advantage or profit, esp. of a financial nature, conflict of interest. 2. A legal share in something; all or part of a legal or equitable claim to or right in

property, right, title, and interest.

The expression "pecuniary" as occurring in the Shorter Oxford English Dictionary, defines:

1. consisting of money; exacted in money, 2. Of or pertaining to money.

The expression "pecuniary" as occurring in Black's Law Dictionary, defines of or relating to money; monetary, a pecuniary interest in the lawsuit.

23. Considering the provisions of Section 55(4) of the 1994 Act, and the complaint made by petitioner No. 2, the discussion undertaken in the meeting,

coupled with the definitions of the terms "pecuniary" and "interest", as defined, we are of the view that the issue raised in the complaint was discussed

in the meeting related to pecuniary interest of respondent No. 1 Smt. Seema Narvekar. We do find that a brave attempt was made by members of the

Panchayat to protect respondent No. 1 from the clutches of the provisions of Section 55(4) by adopting Resolution No. 20 dated 28.6.09.

24. In the facts of the case and in view of the provisions of the law, we are of the opinion that to ensure purity of administration of local bodies, the

provisions relating to disqualification should not receive an unduly narrow or restricted construction.

18. In *Lenocio John Raicar* (supra), the Division Bench of this Court was concerned with a Member of the Panchayat who voted upon resolution to

approve a mobile tower and security room over the property which he had granted on leave and licence basis to Idea Cellular Ltd. In these

circumstances, the Division Bench held that such Member had incurred disqualification, even though it was the case of the Member that the leave and licence document was never acted upon.

19. Relevant discussion is to be found in paragraphs 13 to 17, which reads as follows:

13. Mr. Teles submitted that the sections do not apply in the present case as the pecuniary interest would accrue only upon the commencement of the construction and not by virtue of the resolution alone.

14. The accrual or furtherance of a pecuniary interest may be dependent on several factors. That would make no difference to the applicability of

Sections 12 and 55. The applicability of these provisions is not so restricted by the Legislature. These sections would also operate even if the

pecuniary benefit accrues or is dependent on account of other factors, so long as the discussion upon the subject-matter of such a question or a

resolution thereon falls within their ambit.

15. Mr. Teles submitted that no pecuniary interest would accrue between the date of the resolution and the commencement of the construction.

16. Merely because between the date of the resolution and the commencement of the construction, the licence fee was not payable is irrelevant to the

question as to whether Respondent No. 1 had a pecuniary interest in the subject-matter of the resolution. The resolution was required for the liability

of Idea Cellular Ltd. to make the payment of the licence fee. The fact that a pecuniary benefit would arise subsequent to the passing of a resolution

does not exclude it from the ambit of the expression "pecuniary interest" appearing in Section 55(4) of the said Act.

17. The purpose of Sections 12(d) and 55(4) of the said Act is to ensure the purity and fairness in the proceedings, working and dealings of the Village

Panchayat, inter alia, by ensuring that there is no misuse of the fiduciary capacity occupied by its members. The provisions are based on public policy.

It would make no difference even if the agreement was subsequently not implemented for any reason. That is irrelevant for the purpose of Sections

12 and 55 of the said Act. That is relevant only between the parties to the contract.

20. Finally, in case of Mohan Vithal Dabhale (supra), the Division Bench of this Court has considered, in details, the provisions of Section 12(1)(d) of

the said Act and held that even participation in a meeting is sufficient to attract the disqualification and it is not necessary to show that the member

concerned only took part in the discussion. The argument that the view taken in cases of Akhada St. Estevam Village Development and Protection

Samittee (supra) and Jagdish Bhohe (supra) being erroneous, was rejected by the Division Bench by again reiterating that there is no scope for unduly

narrow and restricted construction of the expression "pecuniary interest", because such provisions were enacted to ensure purity of administration

of local bodies.

21. Even in Zelia M. Xavier Fernandes e Gonsalves (supra), upon which reliance is placed by Mr. Bhohe, the Hon'ble Supreme Court has clearly held

that the purpose and object of prescribing several disqualifications in that provision, was to ensure that the purity of the administration of the Municipal

Committees is maintained and in that sense the different clauses of disqualifications should not receive unduly narrow or restricted construction.

22. Now, therefore, the rival contentions will have to be examined keeping in mind the principles laid down by various Division Benches of this Court,

as well as by the Hon'ble Supreme Court in the context of the provisions prescribing disqualifications where members of local bodies vote upon or take

part in the proceedings in which they have a pecuniary interest. Basically, said provisions are conceived in order to prevent the elected members from

voting upon or taking part in meetings where there is apparent conflict between their interest and duty. Time and again, the Division Benches of this

Court, as well as the Hon'ble Apex Court, have held that the provisions should not receive unduly narrow or restricted construction, so as to frustrate

the very objective of enacting such provisions, namely maintaining purity of administration in local bodies, like Panchayats.

23. The material on record establishes that House No.299, which is subject-matter of the said resolution and a portion of which was resolved to be

regularised by the Panchayat in its meeting held on 28th June, 2017, is recorded in the Panchayat records in the name of Krishna Hari Vaigankar. This

is established by a certificate issued by the Panchayat and placed by the Petitioner on record at Annexure A (at page 145 of the paper book).

In fact, there is not even a denial that House No.299 belonged to Krishna Hari Vaigankar. There is also no dispute that Krishna Hari Vaigankar

expired some time in the year 2003. There is also no dispute whatsoever that Krishna Hari Vaigankar was the father-in-law of Respondent No.4 i.e.

the wife of Deelip Krishna Vaigankar, who is the son of late Krishna Hari Vaigankar.

24. Respondent No.4, in her affidavit, has herself admitted that her father-in-law late Krishna Hari Vaigankar had four sons by names Deelip Krishna

Vaigankar, Sudan Krishna Vaigankar, Madan Krishna Vaigankar and Bhalchandra Krishna Vaigankar. Respondent No.4, in her affidavit has pleaded

that she, along with her husband reside in House No.300(2), Sudan, along with his family members reside in House No.298, Madan and family of late

Bhalchandra reside in House No.299, along with their respective families. On the basis of such pleadings, Respondent No.4 urges that she has no

nexus with House No.299. Respondent No.4 has pleaded that she neither has any interest in House No.299, nor would she be affected in any manner

if the order made by the Village Panchayat of Arambol regards demolition of House No.299 is executed by the Panchayat. In short, it is the case of

Respondent No.4 that she has absolutely no pecuniary interest in house No.299 and, therefore, her voting on the resolution to regularise illegal

constructions in House No.299 does not attract the bar under Section 55(4) of the said Act.

25. The record, apart from indicating that House No.299 belonged to Krishna Hari Vaigankar, father-in-law of Respondent No.4, also indicates that

the Petitioner had made complaints regards the illegal constructions in House No.299 and the Panchayat had even made certain orders in that regard.

Since, no action was taken to demolish the illegal constructions, the Deputy Director of Panchayats was approached, who made orders for demolition.

The matter was, thereafter, taken up at the level of the Additional Director of Panchayats, as well.

26. Mr. Gosavi has pointed out that soon after Respondent No.4 was elected, in the very first meeting of the Panchayat held on 28th June, 2017, the

issue of regularization of the illegal construction was taken up and the proposal for regularization was unanimously approved by all the Members of

Panchayat, including Respondent No.4, who is, admittedly, the daughter-in-law of late Krishna Hari Vaigankar. The application for regularisation in

the present case, was made by Sudan Krishna Vaigankar, who is admittedly the brother-in-law of Respondent No.4.

27. In the evidence which was recorded before the Commissioner, Respondent No.4 has deposed as under:

â??I know there is a house bearing no.299 and the same is in the property belonging to Krishna hari vaigankar. The said is ancestors house. I now

say that I stayed in the same house bearing no.299 soon after my marriage before new house bearing no.300(2) was built. Its true that during the time

Krishna hari vaigankar was residing along with his 4 sons with their respective families. I say that I don't remember is the said house bearing no.299

was repaired at any point of time. Its not true to suggest the above statement is false. I don't remember if sudhan vaigankar had made an application

to regularize the house bearing no.299 in survey no.176/9 and 176/10 of village arambol. I don't know that in the said letter dated 17.04.2017 said

sudhan have said that house bearing 299 is in possession of all the family members. I don't remember if there was any commotion/assault between

sumita suresh vaigankar, Manisha madan vaigankar and ms. Deepa dilip vaigankar alias dipika d. vaigankar and the petitioner. I say that to this

regards above mentioned I had filed police complaint along with sunita suresh vaigankar and Manisha vaigankar. I say that I don't remember why the

incident occurred however I say that the petitioner and the family members are habitual trouble makers. I say that a talathi had come to the property

belonging to Krishna hari v. and cause of it the petitioner and his family members created commotion and to this regard I along with sunita suresh

vaigankar and Manisha madan v. filed a police complaint. I say that house bearing no.300/2 is used for residential purpose and the rooms on the first

floor are used for commercial guest house accommodation. Its not true to suggest that I'm not residing in the house bearing no.300/2 as the entire

house is used for commercial purpose. I don't remember if my husband mr. dilip vaigankar had applied for NOC for a shop with village panchayat

harmal dated 27.12.2018. I don't know that the said shop is in house having no.299. I say that my husband nor me have any shop.

Shown to the witness exhibit PW1-K, upon questioning the witness as to identification of signature of her husband mr. dilip k. vaigankar. The witness

answers in negative and states that theres no sign of her husband in the said letter. I say that there are some shops belonging to balchandra and madan

however there are no shops belonging to suresh and sudhan vaigankar. I don't know that against the said letter at exhibit PW1 -K village panchayat

arambol have issued an NOC which is exhibited at PW1-M. the witness answers that I don't have any interest or right in the said shop bearing no.299.

To the question, NOC issued at exhibit PW-1M is a sham document or true document.

Ans. I don't have any interest in the said house bearing no.299.

I don't know if the house bearing no.299 is in the name of my father in law shri. Krishna hari vaigankar.â??

[emphasis supplied]

28. The above deposition indicates that Respondent No.4 has virtually admitted that House No.299 is an ancestral house and further, she had stayed in

the said house soon after her marriage before new house bearing No.300(2) was built. The deposition also indicates that Respondent No.4 is feigning

ignorance about all matters, including all matters which are established on the basis of documentary evidence on record. For example, Respondent

No.4 refuses to accept or identify the signatures of her own husband on the application seeking NOC to start a shop from the ground floor of House

No.299. Respondent No.4 also claims not to remember anything about the criminal proceedings initiated against her and her family members in

relation to the dispute concerning House No.299 itself. Respondent No.4 gives evasive answers in respect of the NOC issued by the Panchayat in

favour of her husband to start a shop from the ground floor of House No.299.

29. The documents produced by Respondent No.4 that she pays taxes in respect of House No.300(2) or that the ration card indicates her address as

House No.300(2) are really not sufficient to establish that Respondent No.4 had no pecuniary interest, in so far as House No.299 is concerned. The

evidence on record has overwhelmingly establishes that House No.299 is the ancestral house, recorded in the name of her father-in-law Krishna Hari

Vaigankar. The record also establishes that Respondent No.4 has also lived in that house soon after her marriage. Merely stating that Respondent

No.4 now lives in the adjacent house, or some other house, does not mean that Respondent No.4 had no pecuniary interest in House No.299. The

record establishes that even the application for regularisation was made by her own brother-in-law.

30. Therefore, even without going to the cause title in Criminal Case No.42/S/2010 or adverting to the application made by the husband of Respondent

No.4 for an NOC to start a shop on the ground floor of House No.299, there is enough material on record to establish that Respondent No. 4 had

“pecuniary interest” in the subject-matter of the said resolution.

31. As noted earlier, the expression “pecuniary interest” has to be construed liberally and not with undue strictness. Clearly, therefore,

Respondent No.4 had pecuniary interest in House No.299 and in the resolution to regularise the illegal constructions carried out therein.

32. Respondent No.4, in the circumstances, can be said to have voted in contravention of the provisions of Section 55(4) of the said Act and,

therefore, her seat as the Member of the Panchayat, is deemed to be or to have become vacant. Her continuance as the Member of the Panchayat is,

consequently, without any authority of law.

33. For all the aforesaid reasons, we declare that Respondent No.4 is deemed to have vacated her seat as the Member of the Panchayat and direct

that she shall no longer act as the Member of the Panchayat.

34. Rule in this Petition is, accordingly, made absolute in terms of prayer clauses (a), (b) and (c).

35. In the facts of the present case, there shall be no order as to costs.