

(2020) 02 BOM CK 0060
In the Bombay High Court
Case No : Pil Writ Petition No. 6 Of 2018

United Goans Foundation

APPELLANT

Vs

State Of Goa And Ors

RESPONDENT

Date of Decision : 12-02-2020

Acts Referred:

Goa Town And Country Planning Act, 1974 — Section 10, 11, 12, 13, 14, 15, 16, 17, 33, 34, 35, 36, 37, 39
Goa Panchayat Raj Act, 1994 — Section 2(17), 176, 238, 238(1), 238(2), 239
Goa Municipal Act, 1968 — Section 184, 184F, 297
Constitution Of India, 1950 — Article 243N, 243W, 243ZD

Citation : (2020) 02 BOM CK 0060

Hon'ble Judges : M.S. Sonak, J; M.S. Jawalkar, J

Bench : Division Bench

Advocate : Nigel Da Costa Frias, B. Pacheco, D. Pangam, Deep Shirodkar

Final Decision : Disposed Of

Judgement

M.S. Sonak, J

1. Heard Mr. Nigel Da Costa Frias and Mr. D. Pangam, the learned Advocate General for the respondents.

2. The petitioner, by instituting this public interest litigation, seeks the following reliefs:

â??(a) for an appropriate Writ, order or direction declaring that sections 10 to 17, 33 to 37 and 39 of the Goa Town and Country Planning Act 1974

are unconstitutional and hence invalid and thereby striking down the same.

(b) For a writ of mandamus or any other appropriate writ, order or direction thereby directing the Respondents 1, 3 and 4 to immediately ensure that

all village Panchayats and Municipal Councils/Corporations in the State of Goa prepare the development plans as required by section 238 of the Goa

Panchayat Raj Act 1994 and section 184 F of the Goa Municipal Act, 1968.

(c) For a writ of mandamus or any other appropriate writ, order or direction thereby directing the respondent no.1 to immediately constitute the

District Planning Committees as required by section 239 of the Goa Panchayat Raj Act 1994.

(d) For a writ of mandamus or any other appropriate writ, order or direction thereby directing the respondent no.1 to immediately ensure that the

District Planning Committees constituted under article 243ZD of the Constitution of India in the State of Goa prepare the development plans as

required by law and to take appropriate measures to implement the same.

(e) For a writ of mandamus or any other appropriate writ, order or direction thereby directing the respondent 1, 3 and 4 not to issue any

permission/NOC/Technical clearances for construction of any multi-dwelling residential and commercial structures till the time the respective village

Panchayats and Municipal Councils/Corporations in the State of Goa prepare the development plans, including spatial plans, as required by Section 238

of the Goa Panchayat Raj Act 1994 and Section 184 F of the Goa Municipalities Act, 1968.â??

3. According to us, there are no proper pleadings to entertain or evaluate the challenges to the constitutional validity of the provisions of the Goa,

Daman and Diu Town and Country Planning Act, 1974, (Goa TCP Act 1974, for short). Reference was made to the provisions in Article 243 N and

243 W of the Constitution of India. However, upon perusal of the said Articles, we find that the same relate to the continuance of the existing laws

relating to Panchayats and Municipalities. In any case, taking into account the state of pleadings in this petition, we do not think that it is appropriate

for us to go into the question of constitutional validity of the provisions of the Goa TCP Act, 1974.

4. In Guruvayoor Devaswom Managing Committee & anr. reported in (2003) 7 SCC 546, the Hon'ble Apex Court has held that ordinarily the High

Court should not entertain a Writ Petition by way of public interest litigation questioning the constitutionality or validity of a statutory rule. Therefore,

going by the pleadings in this petition and in the absence of some concrete case being instituted by a proper relator, we do not deem it appropriate to

go into the issue of constitutional validity of the provisions of Goa TCP Act, 1974.

Accordingly, the issue of constitutional validity of the provisions so challenged, is kept open and not decided one way or the other.

5. In terms of prayer clause (b) of the petition, the petitioners seek a writ of mandamus to direct the respondent nos.1, 3 and 4 to ensure that all

Village Panchayats and Municipal Councils/Corporation in the State of Goa prepare the development plan as required by Section 238 of The Goa

Panchayat Raj Act, 1994, (Panchayat Raj Act, 1994, for short) and Section 184 F of The Goa Municipalities Act, 1968, (Goa Municipalities Act, 1968, for short).

6. The learned Advocate General submits that the mandate, if at all, for preparation of development plans, is cast upon the Panchayats and the

Municipalities. Therefore, a mandamus should have been applied against the Panchayats and the Municipalities, who are alleged to have failed to

comply with the provisions of Sections 238 of the Panchayat Raj Act and Section 184 F of the Municipalities Act, 1968. The learned Advocate

General submits that there is no question of issuing any mandamus to respondent nos.1, 3 and 4 upon whom, no duty is cast by the provisions of

Section 238 of the Panchayat Raj Act, 1994 and Section 184F of the Municipalities Act, 1968.

7. Section 238 of the Panchayat Raj Act, 1994, reads as follows :

238. Preparation of development plan. - (1) Every Panchayat shall prepare every year a development plan and submit it to the Zilla Panchayat

before such date and in such form as may be prescribed.

(2) Every Zilla Panchayat shall prepare every year, a development plan on the district after including the development plans of Panchayats and submit

it to the District Planning Committee constituted under Section 239.

8. Section 184F of the Goa Municipalities Act, 1968, reads as follows:

184F " Preparation of development plan.- Every Council shall prepare every year a development plan and submit it to the District Planning

Committee constituted under Section 239 of the Goa Panchayat Raj Act, 1994 (Act 14 of 1994).

9. The aforesaid provisions of the Panchayat Raj Act and the Municipalities Act have some nexus with the provisions of Article 243ZD of the

Constitution of India which reads as follows :

Article 243ZD. Committee for district planning (1) There shall be constituted in every State at the district level a District Planning Committee to

consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole.

(2) The Legislative of a State may, by law, make provision with respect to--

(a) the composition of the District Planning Committees;

(b) the manner in which the seats in such Committees shall be filled:

Provided that not less than four-fifths of the total number of members of such Committee shall be elected by, and from amongst, the elected members

of the Panchayat at the district level and of the Municipalities in the district in proportion to the ratio between the population of the rural areas and of

the urban areas in the district;

(c) the functions relating to district planning which may be assigned to such Committees;

(d) the manner in which the Chairpersons of such Committees be chosen.

(3) Every District Planning Committee shall, in preparing the draft development plan,--

(a) have regard to--

(i) matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and

natural resources, the integrate development of infrastructure and environmental conservation;

(ii) the extent and type of available resources whether financial or otherwise;

(b) consult such institutions and organizations as the Governor may, by order, specify.

(4) The Chairperson of every District Planning Committee shall forward the development plan, as recommended by such Committee, to the

Government of the State.

10. From the reading of the aforesaid provisions, it does appear that the duty is cast upon the Panchayats to prepare every year a development plan

and submit the same to the Zilla Pachayat 'before such date and in such form as may be prescribed.'

11. Similarly, Section 184 F of the Municipalities Act, 1968, casts a duty upon the

Municipal Councils to prepare every year a development plan and submit the same to the District Planning Committee constituted under Section 239 of the Panchayat Raj Act, 1994. Such duties which are cast upon the Panchayat and the Municipal Councils are relatable to the provisions of Article 243ZD of the Constitution of India.

12. The learned Advocate General is perhaps right in submitting that the petitioners should have made a demand that Panchayats and the Municipal Councils and in case of refusal, could have sought for a writ of mandamus against such Panchayats and Councils rather than go about in a circuitous manner of seeking writs against the respondent nos.1, 3 and 4 to the present petition. However, this is a public interest litigation and there are sufficient powers to mould the reliefs in such matters. Since the provisions of Section 238 of the Panchayat Raj Act, 1994 and Section 184 F of the Municipalities Act, 1968, are quite clear, some relief in the moulded form can always be granted to the petitioners in the present petition.

13. Section 238 of the Panchayat Raj Act, 1994 requires the Panchayats to prepare every year the development plan and submit the same to the Zilla Panchayat before such date and in such form as may be 'prescribed'.

14. The expression 'prescribed' has been defined under Section 2(17) of the Panchayat Raj Act, 1994, to mean 'prescribed by the Rules framed under this Act'. Admittedly, no Rules have been framed under the Panchayat Raj Act, 1994, with regard to the date or the form in which the development plan is required to be prepared by every Panchayat every year.

15. Though, we were informed that some form has been provided by the Government, there is nothing on record to indicate that such form has been prescribed by the Government in terms of the Rules framed under the Panchayat Raj Act, 1994.

Similarly, there is no date prescribed by the Government before which the development plans have to be submitted by every Panchayat to the Zilla Panchayat.

16. Simply because no Rules may have been framed under the provisions of the Panchayat Raj Act, in relation to the implementation of the provisions of Section 238 of the Panchayat Raj Act, it cannot be said that there is no obligation to comply with the mandate of Section 238 of the Panchayat Raj Act, 1994. The mandate of the statutory provisions, which have a nexus with the

constitutional provisions, cannot be frustrated by not framing Rules

for effective implementation. It is possibly on account of the absence of Rules, that there is no wide compliance with the mandate of Section 238 (1)

of the Panchayat Raj Act, 1994.

17. Section 176 of the Panchayat Raj Act, 1994, deals with the Power of Government, Director and Chief Executive Officer to provide for

performance of duties in default of Panchayat or Zilla Panchayat. This Section provides that when the Government in case of a Zilla Panchayat, or

the Director in case of a Panchayat, is informed on complaint made or otherwise, that any Zilla Panchayat or Panchayat has made default in

performing any duty imposed upon it, by or under this Act, or by or under any law for the time being in force and if satisfied, after due enquiry that any

Zilla Panchayat or Panchayat has failed in the performance of such duty, it or he may fix a period for the performance of that duty, provided that no

such period shall be fixed unless the Zilla Panchayat or Panchayat concerned, has been given an opportunity to show-cause why such an order shall

not be made.

18. The aforesaid means that in a given case where it is established that there is default on the part of the Panchayat or the Zilla Panchayat, in the

performance of any duty imposed upon it by or under the Panchayat Raj Act, 1994 or by or under any law for the time being in force, the Government

or the Director can always fix a period for the performance of that duty.

No doubt, if this is to affect the Zilla Panchayat or the Panchayat, opportunity to show cause has to be given.

19. In the present case, the provisions of Section 238 of the Panchayat Raj Act, 1994, are quite clear inasmuch as they mandate every Panchayat to

prepare every year the development plan and submit the same to the Zilla Panchayat before such date and in such form as may be prescribed. So

also, every Zilla Panchayat is required to prepare every year a development plan of the district after including the development plan of the Panchayat

and submit the same to the District Planning Committee constituted under Section 239 of the Panchayat Raj Act, 1994. The Panchayats or the Zilla

Panchayats cannot avoid preparation of such plans as are mandated by Section 238 of the Panchayat Raj Act, 1994.

20. At the same time, in the absence of any prescribed Rules on this subject, the

Director of Panchayat is also duty bound to fix the date before which every Panchayat is required to prepare and submit the development plan to the Zilla Panchayat. Accordingly, it is only appropriate to direct the Director of Panchayats to fix such date and thereafter to intimate such date to all the panchayats in the State of Goa, so that all the Panchayats in the State of Goa comply with the duty which is cast upon them by the provisions in Section 238(1) of the Panchayat Raj Act, 1994. This exercise of fixing the date and giving intimation to all the Panchayats in the State of Goa should be completed by the Director of Panchayat within a period of thirty days from today.

21. Section 238(2) of the Panchayat Raj Act, 1994, requires the Zilla to prepare every year a development plan of the district after including the development plans of the Panchayats and thereafter submit the same to the District Planning Committee constituted under Section 239 of the Panchayat Raj Act, 1994.

22. The State Government should issue the necessary intimation to the Zilla Panchayats fixing the last date by which such development plan must be submitted to the District Planning Committee. Such intimation to be issued by the State Government to the Zilla Panchayat within a period of thirty days from today.

23. Section 184 F of the Goa Municipalities Act, 1968, though mandates every Council to prepare every year the development plan and submit it to the District Planning Committee constituted under Section 239 of the Panchayat Raj Act, 1994, there is no provision for submission on or before any particular date. In order that provisions of Section 184 F of the Goa Municipalities Act, 1968, are effectively implemented, it is only appropriate that the Director of Municipal Administration, who, otherwise, has sufficient powers to oversee the functioning of Municipal Councils, must direct the Municipal Councils in the State of Goa to submit such development plans to the District Planning Committee constituted under Section 239 of the Panchayat Raj Act, 1994, on or before a single specified date.

Such directions to be issued by the Director of Municipal Administration to all the Municipal Councils of the State of Goa within a period of thirty days from today.

24. Section 297 of the Goa Municipalities Act, 1968, deals with power of Director to enforce performance of duties. This provision provides that when

the Director is informed, on a complaint made or otherwise, that default has been made in the performance of any duty imposed on a Council by or

under this Act or by or under any enactment for the time being in force, the Director, if satisfied after due inquiry that the alleged default has been

made, may by order fix a period for the performance of that duty and communicate such order to the Council.

25. Unless, this is done, there will be no effective implementation of the provisions of Section 184 F of the Municipalities Act, because each Municipal

Council may then submit development plans on different dates spread over the entire year. The District Planning Committee constituted under Section

239 of the Panchayat Raj Act, 1994, is required to consolidate the plans prepared by the Zilla Panchayat, the Panchayats and the Municipal Councils

in the District as a whole and thereafter submit the same to the State Government. Therefore, if there is no date fixed, by the Director of Panchayats

and the Director of Municipal Administration and the Zilla Panchayats for submission of their respective development plans, the mandatory provisions

of Sections 238 and 239 of the Panchayat Raj Act, 1994 and Section 184 F of the Goa Municipalities Act, 1968 will be frustrated.

26. Accordingly, by moulding the relief in terms of prayer clause (b) of the petition, we direct the Director of Panchayats, the State Government and

the Director of Municipal Administration to issue the necessary intimation/directions to the Panchayats, Zilla Panchayats and Municipal Councils in the

State of Goa, respectively, within thirty days from today, fixing the time limit within which the Panchayats, the Zilla Panchayats and the Municipal

Councils must submit their development plans in terms of the provisions of Section 238 of the Panchayat Raj Act 1994 and Section 184 F of the Goa

Municipalities Act, 1968.

27. The prayer clause (c) of the petition relates to the constitution of District Planning Committees as required by Section 239 of the Panchayat Raj

Act, 1994. Section 239 of the Panchayat Raj Act, reads as follows:

â??District Planning Committee. - .

(1) Government shall constitute in every district, a District Planning Committee to consolidate the plans prepared by the Zilla Panchayat, Panchayats,

and Municipal Councils in the district as a whole.

(2) The District Planning Committee shall consist of,â?

(a) members of the House of the People who represent the whole or part of the district;

(b) the members of the Council of States who are registered as electors in the district;

(c) Adhyaksha of the Zilla Panchayat;

(d) the President of the Municipal Council having jurisdiction over the headquarters of the district;

(e) such number of persons, not less than four-fifth of the total number of members of the Committee as may be specified by the Government, elected

in the prescribed manner from amongst the members of the Zilla Panchayat and Councillors of the Municipal Councils in the district, in proportion to

the ratio between the population of the rural areas and of the urban areas in the district.

(3) All the members of the State Legislative Assembly whose constituencies lie within the district shall be permanent invitees of the Committee.

(4) The Chief Executive Officer shall be the Secretary of the Committee.

(5) The Adhyaksha of Zilla Panchayat shall be the ex officio Chairman of the District Planning Committee.

(6) The District Planning Committee shall consolidate the plans prepared by the Zilla Panchayats, Panchayats, Municipal Council in the district and

prepare a draft development plan for the district as a whole.

(7) Every District Planning Committee shall in preparing the draft development plan,â?

(a) have regard to,

(i) the matters of common interest between the Zilla Panchayats, Panchayats and Municipal Councils in the district including special planning, sharing

of water and other physical and natural resources, the integrated development of infrastructures and environmental conservation;

(ii) the extent and type of available resources whether financial or otherwise;

(b) consult such institutions and organisations as the Government may, by order, specify.

(8) The Chairpersons of every District Planning Committee shall forward the

development plan, as recommended by such Committee to the Government.â??

28. The learned Advocate General has placed before us Notifications dated 11.03.2016 published in the Official Gazette dated 26.03.2016 in relation

to the re-constitution of the District Planning Committees for the North Goa District and the South Goa District. The same are taken on record.

According to us, relief in terms of prayer clause (c) stands worked out with the issuance of the said Notifications. However, we make it clear that we

have not gone into the issue of the constitution of such District Planning Committees since such issue does not arise in this petition.

29. The relief in terms of prayer clause (d) seeks a direction to the District Planning Committees to prepare development plans as required by law and

to take requisite measures to implement the same. Since, till date, there is no clarity as to the number of Panchayats or Municipal Councils that have

prepared development plans and submitted the same to the District Planning Committees, it will not be possible to issue any specific orders. However,

if the Notifications dated 11.03.2016 are perused, then, the same very clearly state that the District Planning Committees will have to prepare the

development plans having regard to the matters which are referred to in the Notifications itself and further the other persons of the respective District

Planning Committees will have to forward the development plan as recommended by the said Committee to the Government of Goa. This, according

to us, is the only relief that can be granted in this petition qua the prayer clause (d) of this petition.

30. The relief in terms of prayer clause (e) in this petition is also entirely premature and, in any case, there are no proper pleadings or instances placed

before us in this petition in order to consider the same. Therefore, in this petition, we are not inclined to go into the merits or otherwise of the relief in

terms of prayer clause (e).

31. At one stage, there was some debate with regard to the contents and the scope of the development plans as contemplated by the constitutional

provisions or the provisions under Section 238 and 239 of the Panchayat Raj Act, 1994 and Section 184 of the Goa Municipalities Act, 1968.

According to us, in this petition, we are not required to go into this issue in the absence of some concrete case being made out before us by either of

the parties. Accordingly, we only observe that the development plans will have to be prepared in accordance with law, which means the provisions of the Panchayat Raj Act, 1968 and, of course, the Constitution of India. The rival contentions on this issue are therefore kept open to be evaluated in an appropriate case.

32. Again, there was also some debate on the issue of the Regional Plan under the provisions of the Goa TCP Act, 1974, taking into consideration the development plans to be prepared under the provisions of the Panchayat Raj Act, 1994, Goa Municipalities Act, 1968 and the Constitution of India.

According to us, in this petition, looking to the reliefs claimed and the pleadings, we are really not required to go into this issue. Rival contentions on this issue are therefore kept open for evaluation in an appropriate case.

33. The Rule in this petition is disposed off in the aforesaid terms. There shall be no order as to costs.

34. All concerned to act on the basis of an authenticated copy of this order.