

*Esha***IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO. 177 OF 2023**

Jose Welvin Maximo de Menezes, son
of Jose F.M. de Menezes, aged about
43 years, Indian, r/o House No. 967,
Bairo Saleria, Goa Velha, Ilhas, Goa. ... PETITIONER

Versus

1. All India Football Federation,
through its General Secretary,
having office at Sector 19, Phase I,
Dwarka, New Delhi
2. Goa Football Association,
Through its Secretary, having
office at 5th Floor, Atmaram
Commercial Complex, Opposite
Axis Bank, Near Mahalaxmi
Temple, Panaji-Goa.
3. The Returning Officer for the
election of the Executive
Committee of the Goa Football
Association, c/o Goa Football
Association, having office at 5th
Floor, Atmaram Commercial
Complex, Opposite Axis Bank,
Near Mahalaxmi Temple, Panaji-
Goa.
4. Caitano Jose Fernandes, son of
Jose Fernandes, aged about 40
years, resident of Villa No. C3,
Sea Rock Leasure, Machado Cove,
Dona Paula, Goa.
5. The State of Goa, through the
Chief Secretary, Secretariat, Alto
Porvorim, Bardez, Goa. ... RESPONDENTS

Mr. Ryan Menezes, Advocate for the Petitioner.

Mr. Parag Rao with Mr. Akhil Parrikar and Mr. Ajay Menon, Advocates for Respondent No. 1.

Mr. Jagannath J. Mulgaonkar, Advocate for Respondent No. 2.

Ms. Divyashree Shanbag, Advocate for Respondent No. 3 [through V.C.].

Mr. Nitin Sardessai, Senior Advocate with Mr. Vibhav Amonkar, Mr. S. Sardessai, Mr. Kabir Sabnis, Mr. Tarun Rebello and Ms. S. Phadte, Advocates for Respondent No. 4.

Ms. Maria Correia, Additional Government Advocate for Respondent No. 5.

**CORAM: M.S. KARNIK &
BHARAT P. DESHPANDE, JJ.**

DATED: 26th JULY 2024

ORAL JUDGMENT:

1. Heard Mr. Ryan Menezes appearing for the Petitioner, Mr. Parag Rao for Respondent No. 1, Mr. Mulgaonkar for Respondent No. 2, Ms. Shanbag for Respondent No. 3, Mr. Nitin Sardessai, learned Senior Counsel appearing with Mr. Vibhav Amonkar for Respondent No. 4 and the learned Additional Government Advocate Ms. Maria Correia for Respondent No. 5.

2. The Petitioner who contested the election conducted by Respondent No. 1 and lost to Respondent No. 4, is challenging the order passed by the Returning Officer dated 20.10.2022 together with the election of Respondent No. 4 in this Petition.

3. A few facts which are not disputed are as follows:

(A) Respondent No. 1 is the All India Football Federation whereas Respondent No. 2 is the Association operating in Goa.

(B) Respondent No. 2 is considered to be a State and amenable to writ jurisdiction as observed by this Court in the case of **Salcete Football Club Vs. Union of India & Others, 2022 SCC OnLine Bom 1857**.

(C) A notice dated 20.09.2022 was issued by Respondent No. 2 thereby notifying the election programme for election of its Executive Committee. Filing of nominations was to be held from 21.09.2022 to 30.09.2022. Thereafter, scrutiny of the nominations started on 30.09.2022, which was supposed to be concluded on or before 07.10.2022, when the list of received, accepted, and rejected nominations was to be published. The final date for withdrawal of nominations was on 14.10.2022, whereas the list of accepted nominations was to be declared on 17.10.2022. The election was supposed to be conducted on 30.10.2022.

4. The Petitioner's contention is that in the election programme, there was no date fixed for filing of the objection, if any, against the nominations filed or to hear such objections, which could be decided by the Returning Officer/Respondent No. 3. It is his contention that no provision was made in the election programme for filing of an objection and deciding on it. Vide letter dated 20.09.2020, Respondent No. 3 was appointed as a Returning Officer to conduct the elections.

5. It is the case of the Petitioner that he is a Member of Goa Velha Sports Club and an active Member of Respondent No. 2. The Petitioner was nominated for the election to the post of the President of Respondent No. 2 and accordingly, he filed a self-declaration form along with his nomination on 28.09.2022. The candidature of the Petitioner was proposed by Panjim Footballers and seconded by Saligao United, both Members of Respondent No. 2.

6. On 07.10.2022, the Returning Officer/Respondent No. 3 notified the list of nominations which were received, accepted and rejected. According to such a list, the candidature of the Petitioner for the post of President in the form of his nomination was accepted. Similarly, the nomination filed by Respondent No. 4 for the post of President was also accepted. The Petitioner was unable

to obtain a copy of the nomination papers filed by Respondent No. 4 due to paucity of time. Finally, the list of accepted nominations was published on 17.10.2022.

7. It is the contention of the Petitioner that on 17.10.2022 itself, he learnt that Respondent No. 4 is facing charges of the offence, under Section 408 of IPC which is a non-bailable offence, wherein the chargesheet is filed before the learned Magistrate at Panaji Court. The Petitioner also got knowledge that Respondent No. 4 appeared before the Magistrate and filed an Application for compounding of the said offence, which was granted and the case was disposed of as compounded.

8. The Petitioner would then submit that the pendency of a criminal case and more particularly, the filing of a chargesheet involving a non-bailable offence itself, disqualifies Respondent No. 4 from contesting the election, particularly when he suppressed such information in the nomination form. It is the contention of the Petitioner that Respondent No. 4 gave a false declaration by suppressing the fact that he was chargesheeted for a non-bailable offence and even an order was passed for framing of charge.

9. It is the contention of the Petitioner that on receiving knowledge of such proceedings filed against Respondent No. 4, he

immediately filed objections against the nomination of Respondent No. 4 before the Returning Officer, however, such objections were not looked into as untenable, vide order dated 20.10.2022.

10. Mr. Menezes appearing for the Petitioner would submit that the order passed by the Returning Officer is itself bad in law as first of all in election programme, there is no procedure for filing such an objection and deciding it by the Returning Officer. Besides, Mr. Menezes would submit that the Returning Officer was empowered to consider such objections, which were filed before the commencement of voting. The Returning Officer could have disqualified Respondent No. 4 on the ground of suppression of material information or for giving false information as per Article 27(b) and (f) of the Goa Football Association (GFA) Statutes, which govern the Petitioner as well as the Respondents.

11. Mr. Menezes would further submit that an order was passed by the learned Magistrate on 03.05.2019 itself observing that the charge under Section 408 of IPC is *prima facie* made out and such charge needs to be framed. According to Mr. Menezes, this information was suppressed by Respondent No. 4 and therefore, he incurred disqualification.

12. Mr. Menezes would submit that only because the charge was not explained to Respondent No. 4, it would not in any manner exclude or exempt Respondent No. 4 from giving a correct declaration and/or suppressing the material fact.

13. Mr. Menezes would further submit that only because Respondent No. 4 managed to settle the dispute with the Complainant and obtained an order of discharge on compounding the said offence, would not in any manner absolve Respondent No. 4 from making a correct declaration.

14. Mr. Menezes would further submit that once an order is passed by the Court that a charge is required to be framed, the provisions of Article 27 of the GFA Statutes shall operate, which automatically incur disqualification and accordingly, the election of Respondent No. 4 needs to be quashed and set aside.

15. Per contra, Mr. Nitin Sardesai appearing for Respondent No. 4 would submit that there are clear averments in the Petition itself and more particularly, in paragraph 3(x), which makes it clear that the Petitioner himself was aware that a charge is required to be framed and explained to the Accused so as to incur disqualification under Article 27 of the GFA Statute.

16. Mr. Sardessai would further submit that clause (f) of Article 27 has to be read in tandem and such clause cannot be bifurcated into two parts since the word “and” is used therein. He submits that such a part cannot be interpreted disjunctively. The language used in clause (f) of Article 27 has to be read as a collective procedure that a person is charged in the Court of law and the charges are that of a non-bailable offence. He submits that the first portion would mean that the person is charged by a Court of law whereas the second part means that charges have been framed in a non-bailable offence.

17. Mr. Sardessai would further submit that though a chargesheet was filed against Respondent No. 4, which could comply with the first part of clause (f), however, charges were not framed against him for a non-bailable offence. He would submit that the second part was not complied with as the charge was never explained to Respondent No. 4, even though an order to that effect was passed. He would further submit that disqualifying a person is a harsh step and therefore, the provision has to be interpreted correctly and cannot be used to the advantage of the Petitioner as tried to be claimed.

18. Mr. Sardessai would further submit that before the charge could be explained to Respondent No. 4, an Application for

compounding of the said offence was filed and accepted by the Court and accordingly, Respondent No. 4 was discharged from the said offence. He would therefore submit that once an order of discharge is passed, it presupposes that no charge was framed, otherwise, the order would have been of acquittal.

19. Mr. Sardesai would submit that Respondent No. 4 neither suppressed the fact nor gave any false declaration. He submits that the declaration which the Respondent No. 4 furnished is only to the effect that he is not disqualified from filing a nomination. According to him, as on the date of the filing of the nomination, no charge was framed and explained to the said Respondent and thus, he had not incurred any disqualification.

20. Mr. Rao appearing for Respondent No. 1 while supporting the contentions of Mr. Sardesai would submit that Article 27 of the Statute will have to be strictly interpreted as there is no ambiguity in it.

21. Ms. Maria Correia, learned Additional Government Advocate appearing for Respondent No. 5 and Mr. Mulgaonkar appearing for Respondent No. 2 also supported the contentions of Mr. Sardesai.

22. The rival contentions fall for consideration as under.

23. Article 27 of the GFA Statute reads thus:

*“LOSS OF MEMBERSHIP OF
THE EXECUTIVE COMMITTEE*

An executive Committee Member shall cease to be a member of the Committee if he or she

- a) ceases to be a citizen or resident of India;*
- b) has given a false declaration in the nomination form for his election;*
- c) submits his resignation;*
- d) fails to attend three consecutive meetings of their Executive committee unless he has been granted leave of absence;*
- e) is declared a defaulter for non-payment of dues or moneys/ monies owing to GFA;*
- f) has been charged by a court of law and charges have been framed in a non-bailable offence or is found guilty of an offence and sentenced in respect thereof to imprisonment for not less than 6 (six) months, and a period of 5 (five) years has not elapsed from the date of expiry of the sentence;*
- g) is found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;*

h) has attained the age of 70 years.”

24. The above Article deals with the loss of membership of the Executive Committee wherein it is provided that an Executive Member shall cease to be a Member of the Committee on the clauses as found mentioned therein from (a) to (h).

25. The present Petition needs consideration only with regard to clauses (b) and (f), which we have to interpret for the purpose of finding out whether there is such seizure of membership for giving false declaration in the membership form and secondly, for being charged and framing of charge in a non-bailable offence. It is not in dispute that Respondent No. 4 filed his nomination for the post of President and his nomination was accepted by the Returning Officer. The declaration which was furnished by Respondent No. 4 along with the nomination form reads thus:

“GOA FOOTBALL ASSOCIATION

*ELECTION OF OFFICE BEARERS OF EXECUTIVE
COMMITTEE*

FORM 2

*ELECTION OF OFFICE BEARERS OF EXECUTIVE
COMMITTEE*

NOMINATION PAPER FOR

ELECTION AS PRESIDENT (NAME OF THE POST)

TO,
 ADV. PRAMOD KAMAT,
 THE RETURNING OFFICER FOR ABOVE ELECTION,
 GFA SECRETARIAT,
 5th FLOOR, ATMARAM COMPLEX,
 NEAR MAHALAXMI TEMPLE,
 PANAJI-GOA.

We nominate Mr/Mrs./Ms JOSEWELVIN MAXIMO DE MENEZES of GOA VELHA SPORTS CLUB (name of active member) whose name is entered at Sr. No. 62 in the Electoral College list for the above mentioned post.

Our particulars are given below:

NAME OF	NAME OF OFFICE BEARER & DESIGNATION	NAME OF ACTIVE MEMBER	SR. NO. IN THE ELECTORAL LIST	SIGNATURE
PROPOSER	ANTHONY FRANCIS VAZ PRESIDENT	PANJIM FOOTBALLERS	84	Sd/-
SECONDER	PATRICK D'SOUZA SECRETARY	SALIGAO UNITED	107	Sd/-

I, the candidate abovenamed do hereby give my assent to my nomination for the above post.

Name of the candidate: JOSEWELVIN MAXIMO DE MENEZES

Name of the Active Manager: GOA VELHA SPORTS CLUB

Sr. No. in the Electoral College List: 62

Signature: sd/-

Place: PANJIM.

Date: 28/09/2022.

SELF DECLARATION FORM
 (To be filled and signed by the candidate)

I, JOSE WELVIN MAXIMO DE MENEZES Serial No. 62 in the Electoral College list candidate for the post of PRESIDENT in the Executive Committee of the Goa Football Association.

Hereby declare that:

- i. I am Citizen of India.*
- ii. My date of birth is 22/12/1978.*
- iii. I am eligible to contest the Elections to the Executive Committee of the Goa Football Association to be held on the 30th of October, 2022.*
- iv. I do not incur any disqualification for the Executive Committee of the Goa Football Association under the provisions of the GFA Statutes and Annexure A of these Statutes defining procedure for conduction the election adopted on the 28th July, 2018.*
- v. I shall, in request by the Returning Officer submit any proof required to reaffirm that I am eligible to contest the Election to the Executive Committee of the Goa Football Association to be held on the 30th October, 2022.*

Signature of the candidate.
Sd/-

For office use
Nomination from received on 28/09/2022 at 16.10
hrs.

Sd/-
Signature of official authorised to receive the form.
GFA Seal.”

26. Clause (iv) of the above self-declaration form would go to show that the person who is filing nomination must declare that he has not incurred any disqualification for the Executive

Committee under the provisions of the GFA Statutes and Annexure-A of the said Statute. Thus, the disqualification which is considered in the said self-declaration is in the form of loss of membership as found in Article 27 which is already reproduced above. No other Article was pointed out to us by the Petitioner with regard to such disqualification as referred to in the said declaration form.

27. The Petitioner as well as Respondent No. 4 filed their nomination papers which were accepted by the Returning Officer. Respondent No. 4 in his self-declaration form disclosed that he did not incur any disqualification for the Executive Committee under the provisions of the GFA Statutes. Such self-declaration was given on 28.09.2022. It is an admitted fact that as on 30.10.2022, Respondent No. 4 was facing a chargesheet which was filed before the learned Magistrate for the offence punishable under Section 408 of IPC. It is also a matter of record that on 03.05.2019, an order was passed by the learned Magistrate that a charge is required to be framed against Respondent No. 4 under Section 408 of IPC.

28. Section 408 of IPC deals with criminal breach of trust by a clerk or servant and provides imprisonment of either description for a term which may extend upto seven years and shall also be

liable to pay a fine. Admittedly, the offence under Section 408 of IPC is a cognizable and non-bailable offence, but compoundable with permission of the Court.

29. The matter before the concerned Magistrate was then adjourned from time to time and in the meantime, Respondent No. 4 filed Criminal Revision No. 58/2019 against the order of framing of charge. The said Revision was dismissed by the Additional Sessions Judge vide order dated 23.12.2021 and the matter was then fixed for appearance before the learned Magistrate.

30. It is also a matter of record that on 08.06.2022, the learned Magistrate observed in the Roznama that since the Revision was rejected, the matter was posted for the purpose of charge on 06.07.2022. Thus, it is clear that charges were not framed and explained to Respondent No. 4 when the nomination papers were filed. In fact the charge was not explained to Respondent No. 4. Thereafter, on 17.10.2022 before the elections could be held, the order was passed by the learned Magistrate, thereby allowing the Application for compounding of the offence and discharging Respondent No. 4. Paragraph 3 of the order passed by the learned Magistrate clearly shows as under:

“3. At the stage of framing of charge the complainant in the present case, and the accused herein filed a joint application, which is the present application at Exhibit D-14, and the same is duly signed by the complainant and the accused. The complainant was present before the Court and submitted that he has voluntarily signed the present application and that there is no coercion, threat, pressure or undue influence used for signing the present application for compounding under Section 320 Cr.P.C.”

31. Thus, even as on 17.10.2022, the matter was posted for framing of charge and before the charge could be explained, an Application for compounding was filed and allowed. The final order of the learned Magistrate clearly shows that Respondent No. 4 stands discharged of the offence punishable under Section 408 of IPC.

32. With this backdrop, the self-declaration given by Respondent No. 4 and Article 27 of the GFA Statutes will have to be interpreted.

33. Mr. Sardesai while placing reliance in the case of **Renjith Pannackal Vs. State of Kerala** [Criminal Revision Petition No. 161 of 2022 dated 01.08.2022] decided by the learned Single

Judge of the High Court of Kerala observed that Section 240 of Cr.P.C. has to be read in two parts i.e. sub-section (1) and sub-section (2) and unless charge is framed in writing and explained to the Accused, there cannot be any compliance of such provisions.

34. For the sake of convenience Section 240 of Cr.P.C. is reproduced as under:

“240. Framing of charge.— (1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

35. Chapter XIX of Cr.P.C. deals with the trial of warrants by the Magistrate. Section 408 of IPC imposes a punishment upto seven years which is warrant triable case. After compliance of Section 207 of Cr.P.C. i.e. handing over of the police report along with the necessary documents to the Accused, provisions of Section 239 of Cr.P.C. provide that the Accused could be discharged by the concerned Magistrate. The next comes the

provision of Section 240 of Cr.P.C. wherein if the Accused is not discharged, the Court is duty-bound to frame the charge in writing and explain it to the Accused for the purpose of recording his plea of guilty. If the Accused pleads not guilty or claims to be tried, the trial commences as per Section 242 of Cr.P.C. by recording the evidence of the prosecution.

36. Thus, the provisions of Section 240 of Cr.P.C. will have to be interpreted by considering Section 239 of Cr.P.C. wherein the Court can discharge the Accused. It has to be read with Section 320 of Cr.P.C., which permits compounding of the offence with the permission of the Court. If no charge is framed against the Accused and the Application for compounding is accepted, the consequence follows that the Accused is required to be discharged as contemplated under Section 239 of Cr.P.C. However, when the charge is already framed and explained to the Accused wherein he pleads not guilty and claims to be tried and thereafter, an Application for compounding is filed, the Magistrate is duty bound to acquit the Accused.

37. The learned Single Judge of the Kerala High Court in the above matter in the case of **Renjith Pannackal** (supra) discussed the provisions of Section 240 of Cr.P.C. and observed that the golden rule of interpretation would lead to the conclusion

that once the Court decides to frame charge and the charge is framed in writing, the process of framing charge is over. For this process, the Court has to form a *prima facie* opinion that there is ground to presume that the Accused has committed such an offence. It will not be complete only by forming such an opinion, but it should culminate into the framing of the charge in writing and explaining it to the Accused when there could be full compliance with Section 240 of Cr.P.C. Only by forming an opinion that there is *prima facie* material that the Accused has committed such offence, would not be compliance of Section 240 of Cr.P.C. in full sense unless such opinion is reduced in writing in the form of framing of charge for the particular offence and explained to the Accused.

38. We are in full agreement with the observations of the learned Single Judge of the Kerala High Court in this regard and more particularly, for application of such observations by applying it to Article 27 of the GFA Statutes.

39. Article 27(f) as quoted above has to be read fully and not in parts. It says that the person who files a nomination or the Member or the Executive Committee shall cease to be a Member if he has been charged by the Court of law and charges have been framed for a non-bailable offence. The rest of the conditions in

clause (f) are not relevant to the matter in hand and therefore, we are not deliberating upon it. However, the first part itself has the word “and”. Thus, the object and purpose i.e. prior to the word “and” together with the second part will have to be read as one sentence. The word “and” used therein shows that both conditions are required to be fulfilled for incurring disqualification. Thus, only because the person is charged by a Court of law would not include disqualification or loss of membership of the Executive Committee as per Article 27 of the GFA Statutes. Along with the first part that he has been charged by the Court of law, there has to be framing of charge of non-bailable offence. Here the words “non-bailable offence” will have to be interpreted as far as the first part is concerned, which says that he has been charged by the Court of law. Such charges in a Court of law i.e. in the form of filing of chargesheet by Police or even a private complaint must relate to non-bailable offences.

40. In the case filed on a private complaint, wherein the charge is not framed, cannot be considered as incurring its disqualification. The words in clause (f) and more particularly, the first part wherein it is mentioned that “has been charged by a Court of law” would also mean that the order is passed by the Court framing of charge in case of non-bailable offence. Thus, the second part wherein the charges are required to be framed in a

non-bailable offence is of much importance for incurring disqualification.

41. We, therefore, are in agreement with the submission of Mr. Sardesai that clause (f) cannot be bifurcated, but it has to be read together when the person is charged in a Court of law and wherein charges have been framed against a person for non-bailable offence, which have been included and not otherwise.

42. In the case of **HDFC Bank Ltd. Vs. J.J. Mannan & Others, (2010) 1 SCC 679**, the Apex Court in paragraph 15 and more particularly, in the last three lines of the said paragraph observed that interpretation cannot lead to any absurd situation where the charge was framed in the absence as it would defeat the very purpose of sub-section (2) of Section 240 of Cr.P.C. Though these observations are in connection with giving an example for deciding the matter with regard to bail in anticipation of arrest, would support the observations of the fact that Section 240 of Cr.P.C. must be read by applying sub-section (1) and sub-section (2) for its true compliance. Such observations of the Apex Court may not be considered as having dictum but certainly have persuasive value for deciding the matter in hand.

43. The next aspect is whether the passing of the order under sub-section (1) of Section 240 without compliance with sub-section (2) would lead to disqualification. The matter in hand would clearly go to show that though the learned Magistrate observed that there is *prima facie* material to presume that the Accused has committed such an offence, it is also a fact that a formal charge under Section 408 of IPC was not framed and the same was not explained to Respondent No. 4 as required under Section 240 of Cr.P.C.

44. The compliance of Section 240 of Cr.P.C. would be only after forming an opinion that the Accused has committed such offence and then reducing in writing, reading and explaining it to the Accused, for recording his plea. The process of framing of charge would be complete only if the procedure mentioned in sub-section (1) and sub-section (2) of the said Section is found to be complied with. Only forming an opinion by the Magistrate against the Accused that he has committed such an offence, would not be considered as full compliance of the framing of charge. Such an opinion must be reflected in the form of framing of exact details of the charge in writing and then explaining it to the Accused for recording the plea of guilty or otherwise. Thus, the condition imposed in Article 27(f) needs to be interpreted that first of all the Member or the Nominee has been charged by the Court of law and

charges have been framed against him for a non-bailable offence and only then, the person would incur disqualification and not otherwise.

45. The matter in hand would go to show that though Respondent No. 4 was charged by the Court of law, such charges were not framed in writing and explained to him for recording his plea, as on the date of filing of the nomination. Thus, the question of giving a false declaration in the nomination form would not arise.

46. The nomination form and the self-declaration as quoted above only refers to the statement that the candidate has not incurred any disqualification under the GFA Statutes. As on the date of filing of nomination i.e. 28.09.2022, no charge was framed and explained to Respondent No. 4 by the competent Court. Thus, the declaration given by Respondent No. 4 would not in any manner be considered as a false declaration. Accordingly, we hold that Article 27(b)(f) of the GFA Statutes will not in any manner help the Petitioner.

47. For all the above reasons, we are of the considered opinion that there is no false declaration and that no charge of non-bailable offence was framed and explained to Respondent No. 4 as

on the date of filing of the nomination. Accordingly, the Petition is of no substance and deserves to be rejected. The Petition stands dismissed. Rule stands discharged. Parties shall bear their own costs.

BHARAT P. DESHPANDE, J. M.S. KARNIK, J.