
(2001) 04 BOM CK 0052
In the Bombay High Court
Case No : Writ Petition No. 145 of 2001

Bhagirath P. Gaonkar and Others

APPELLANT

Vs

Administrative Tribunal, Goa-Panjim and Others

RESPONDENT

Date of Decision : 26-04-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 30, 40, 41

Citation : (2001) 1 BOMLR 102 : (2002) 1 MhLj 478

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : S.D. Lotlikar and Rupali Thakur, for the Appellant; A.P. Lawande, Government Advocate and M.B. D'Costa, for the Respondent

Final Decision : Allowed

Judgement

1. Rule made returnable forthwith by consent.
2. Shri A. P. Lawande, learned Government Advocate waives notice on behalf of respondent No. 2. Shri M. B. D'Costa, learned Advocate waives notice on behalf of respondent No. 3. Respondent No. 1 is a formal party and notice can be dispensed with.
3. Heard both sides at length.
4. By this Writ Petition under Article 227 of the Constitution of India, the petitioners have challenged the Order dated 18th April, 2001 passed by the President of the Administrative Tribunal, Panaji, Goa. By this Order, the Administrative Tribunal has granted ex-parte temporary injunction restraining the petitioners from taking charge as Members of the Managing Committee of the Devasthan for the triennium 2001-2004. No doubt the Order is an ex-parte ad-interim Order and show cause has been made returnable on 20th April, 2001 at 2.30 p.m., however, having regard to the peculiar facts of the present case it has become necessary for this Court to intervene and set the controversy at rest so that the newly elected Body can resume office. It is relevant to point out that

there was serious dispute between the Members of the Devasthan and the same came right upto this Court being Writ Petition No. 364/2000. This Court after examining the rival contentions directed the Mamlatdar to conduct the elections and install a democratically elected Body in accordance with law. In terms of the said directions, the Mamlatdar issued notice on 30th March, 2001 for convening a meeting to hold elections on 28th March, 2001. However, just before the elections were scheduled as per the said notice which was issued in compliance of the directions given by this Court, the rival group filed a suit before the Civil Court and obtained ex-parte injunction restraining the Mamlatdar from proceeding with the election process. This order was obtained on 23rd March, 2001. It needs to be mentioned that 23rd March, 2001 was the last working day for the Court which was to be followed by holidays. In the circumstances, the petitioners herein had moved this Court by way of Writ Petition No. 93/2001 challenging the said ex-parte ad-interim Order passed by the Civil Court dated 23rd March, 2001. This Court on 27th March, 2001 stayed the operation of the said injunction granted by the Civil Court. It will be apposite to reproduce the Order passed by this Court on 27th March, 2001 which reads thus:--

"Not on board. Taken on board upon urgent mentioning.

This Writ Petition under Articles 226 and 227 of the Constitution of India takes exception to the Order passed by the Civil Judge of Bardez at Mapusa, dated March 23, 2001, below Civil Miscellaneous Application No. 103 of 2001/SR/II in Special Civil Suit No. 32/2001/SR/II.

By the impugned Order the trial Court has granted ex-parte ad-interim relief thereby interdicting the election process which had commenced pursuant to the notice issued by the respondent No. 2 dated March 13, 2001, that too without assigning any reason whatsoever. It is not necessary to go into the merits of the grounds raised in the Writ Petition at this stage. However, I am prima facie of the view that the suit filed by the respondents/original Plaintiffs is an abuse of process of law inasmuch as the matter was litigated right upto this Court by way of Writ Petition No. 364 of 2000 and it is pursuant to the directions issued by this Court that the respondent No. 2 had issued notice for holding the elections which were scheduled to be held on 28th of March, 2001, I have no doubt that the purpose of moving the trial Court in the evening of 23rd March, 2001, which was the last working day of the week to be followed by holidays till 26th March, 2001, was obviously to render the petitioners remediless inasmuch as the purpose of filing the suit would obviously be worked out by obtaining the ad-interim order. It is unfortunate that martial Court did not examine this basic aspect and particularly the background in which the suit was filed. Moreover, since the trial Court has not assigned any reason that persuaded it to grant the ad-interim order, this Court is at a loss to know as to what was the impelling circumstances which warranted such action.

In the circumstances,. I am of the view that it would "be expedient, in the interest of justice not only to stay the impugned Order but also the further

proceedings before the trial Court, being Special Civil Suit No. 32/2001/SR/II till the further hearing of this Writ Petition. I order accordingly, Issue notice to the respondents for final disposal returnable in three weeks. Hamdust permitted.

In the meantime, the respondent No. 2 is at liberty to proceed with the election programme by re-notifying the schedule as required in accordance with Regulation No. 38 of Devasthan Regulation including by publishing it in the Official Gazette. The respondent No. 2 is personally present in the Court when this Order is made and assures through his Counsel that necessary action would be taken and the elections will be held within two weeks from today. This assurance is accepted.

Parties to act on the copy of this Order duly authenticated by the Sheristadar of this Court."

5. In accordance with the assurance given by the Mamlatdar before this Court on 27th March, 2001, the Mamlatdar issued fresh notice and scheduled the elections on 7th April, 2001. The respondent No. 3 along with others filed Miscellaneous Civil Application No. 167/2001 before this Court praying for reliefs mentioned therein. Even the said application was disposed of after hearing the parties at length by this Court on 5th April, 2001. The Order passed on 5th April, 2001 reads thus:--

"Heard both sides at length.

The ground on which the relief is prayed for in the application and which is pressed into service cannot be considered. In my view, it will not be appropriate to stall the election proceedings or modulate the same in any manner, which has already commenced and stated to be held on 7th April, 2001, that is day after tomorrow. The only appropriate order that can be passed in such a situation is to order continuation of the election process which has already commenced, but in view of the serious dispute about the status of the two writ petitioners before this Court and similarly placed 77 persons who have taken recourse to appeal before the Administrative Tribunal and obtained stay of convening of General Body meeting to decide about their status, the proper course as aforesaid, would be to allow the election process to continue. But it is made clear that the election held and results declared, will be subject to the outcome of the proceedings initiated by the Writ Petitioners, being Devasthan Appeal No. 46/2001 before the Administrative Tribunal. I am deposed of to take this view since if the Appeal filed by the Writ Petitioners fails, naturally the General Body will have to be convened to decide about the status and eligibility of the petitioners and similarly placed persons for being included in the Voters List in which case the General Body alone will be entitled to decide on the said question. In the circumstances, there is no reason to grant relief as prayed for in the present application. However, the issues are left open as aforesaid.

At this stage, Mr. D'Costa, prays that the Appeal pending before the Administrative Tribunal be expedited. Learned Counsel for the Writ Petitioners

has no objection for expediting the hearing of the said Appeal. The Tribunal shall therefore expeditiously dispose of the Appeal and preferably within three months from the date of receipt of the Writ of this Court.

Application disposed of."

6. It is common ground that the elections were held on the 7th April, 2001 and result was also declared. However, it is relevant to point out that during the course of hearing of Writ Petition No. 93/2001, it was revealed that the election dispute has been filed before the Administrative Tribunal in which an ex-parte Order has been obtained by respondent No. 3 on 18th April, 2001, which Order is impugned in the present Petition.

7. The learned Advocate for the petitioners, therefore, sought adjournment of Writ Petition No. 93/2001 so as to take out appropriate proceedings. In the circumstances, the present Writ Petition No. 145/2001 has been filed challenging the correctness of the Order passed on 18th April, 2001.

8. The challenge to the impugned Order is mainly on the ground that although the respondent No. 3 could have instituted election dispute before the Administrative Tribunal, there is no regulation or provision in the Act which vests power in the Tribunal to grant injunction restraining the newly elected Body from taking charge. The other grievance is that in any case, such an Order ought not to have been passed ex-parte so as to defeat the mandate expressed by the Members of the Devasthan in favour of the newly elected Body.

9. Shri M. B. D'Costa, learned Advocate for the respondent No. 3/ Original Petitioner in Election Dispute on the other hand referred to Articles 30, 40 and 41 of the Devasthan Regulation to contend that liberal interpretation should be given to the said provisions to the effect that the Administrative Tribunal is empowered to grant injunction as has been granted in the present case. He has referred to various irregularities committed during the election.

10. It is not necessary for this Court to dwell upon the various irregularities pointed out by the respondent No. 3, for the same will have to be adjudicated in the Election Petition filed before the Administrative Tribunal. What is relevant in the present petition is : whether the Tribunal or for that matter President of the Administrative Tribunal had authority to grant injunction restraining the newly elected Body from taking charge as the Members of the Managing Committee of the Devasthan? It is well settled that remedy of questioning the election is a creature of statute and it can be pursued only in the manner provided therefore and in no other manner. No doubt the regulations provide for filing an election dispute, but the authority of the Administrative Tribunal cannot transcend beyond the statute. The scope of jurisdiction of the Administrative Tribunal in such dispute is only to adjudicate whether the election in question is valid or otherwise. Surely, therefore, the Administrative Tribunal has no authority to interdict the election process or to restrain the newly elected Body from taking charge. No such express provision has been brought to my notice. So long as the

Administrative Tribunal does not render declaration that the election is void till such time the newly elected Body cannot be kept away from the management of the Devasthan. In the circumstances, it is not possible to countenance that the Administrative Tribunal can pass an order so as to inject the newly elected Body. But the mandate of the law is to install the newly elected Body at the earliest opportunity. Only this approach would further the interest of the Members who have expressed their mandate in the said Body. The impugned order is therefore without authority of law.

11. No doubt, Shri D"Costa, learned Advocate may be justified in making a grievance that remedy of dispute is provided, but since the post of Chairman of the Administrative Tribunal is vacant, the remedy provided by the statute is totally meaningless; and, in fact, the Election Petitioner is made remediless. However, it is agreed across the Bar that the Law Secretary is presently in-charge as Chairman of the Administrative Tribunal; and is, therefore, competent to adjudicate the Election Petition. The mandate provided in the regulation is that as soon as the election dispute is filed the same has to be disposed expeditiously. This cannot be overlooked; therefore, it would be appropriate that the President is directed to decide the election dispute filed by respondent No. 3 expeditiously and in any case within 3 months from the date of receipt of the writ of this Court.

12. Shri D"Costa, learned Advocate is right in pointing out that the scheme of Devasthan Regulation is such that the intention is that immediately after the election is concluded the aggrieved party can approach the Administrative Tribunal and it is expected of the Administrative Tribunal to decide the dispute expeditiously preferably before the newly elected Body takes charge. Shri D"Costa, learned Advocate also pointed out that similar provisions are made in the Code of Comunidades and in both these proceedings experience has shown that the election disputes are not decided within the statutory time frame for variety of reasons, and in some cases even till the term of the newly elected Body expires. This, surely is not a happy situation. The election dispute in relation to such institutions, if any, has to be resolved with utmost despatch. The State Government shall look into the matter and ensure that competent persons are appointed as the Chairman/Member of the concerned Tribunals and vacancies are filled at the earliest and that even in future such posts shall not be allowed to remain vacant for a long time. It cannot be ignored that the Devasthan, Co-operative Societies or such organisations are the fulcrum of the Society. For any civilised Society, rule of law is the essence. Rule of law does not mean enacting law without providing the machinery to enforce the same. Without providing forum for redressal of disputes is - denying the Rule of law and only indulging in lip service. If disputes in such institutions remain unresolved, for long, due to non availability of redressal forum, then it is for sure that the aggrieved would take recourse to other measures not conducive to the healthy competition and sustained development of the Society. Needless to mention that such institutions are the foundation of our democracy. Therefore, in the interest of all concerned, the Tribunals which are created to regulate the disputes with intention to

expeditiously dispose of such matters are manned by competent persons and not allowed to remain vacant for a long time without any justification. We hope and trust that the Government would take appropriate remedial steps in this regard with right earnest.

13. In the circumstances, this Writ Petition succeeds. The impugned order dated 18th April, 2001 is set aside. Rule is made absolute. No order as to costs.

14. At this stage, Shri S. D. Lotlikar, Senior Advocate appearing for the petitioners prays that the Mamlatdar be directed to hand over charge to the newly elected Body forthwith and preferably during the course of the day, since it is an auspicious day and birthday of the deity.

15. Shri A. P. Lawande, Government Advocate for the respondent No. 2 says that he would convey to the Mamlatdar that charge be delivered during the course of the day.

16. Shri Lotlikar, Senior Advocate further assures that for some reasons, if the Mamlatdar is not in a position to comply with the above directions, the petitioners would not precipitate the matter by filing contempt proceedings. It is however made clear that the petitioners shall take charge of the Devasthan as Members of the newly Managing Committee which would be subject to the outcome of the election dispute filed by respondent No. 3.

17. Writ petition allowed.