
(2010) 06 BOM CK 0026
In the Bombay High Court
Case No : Writ Petition No. 296 Of 2010

Comunidade of Mormugao	Vs	APPELLANT
State of Goa and 3 others		RESPONDENT

Date of Decision : 29-06-2010

Acts Referred:

Citation : (2010) 06 BOM CK 0026

Hon'ble Judges : F.M. Reis, J;A.S. Oka, J

Bench : Division Bench

Advocate : J.P. Mulgaonkar, for the Appellant; Susan Linhares, Additional Government Advocate for Respondents nos.1to 4, for the Respondent

Final Decision : Allowed

Judgement

A.S. Oka, J.—By order dated 24th June, 2010 this Court had directed that the writ petition will be taken up for final disposal at admission stage. Accordingly, we have taken up the petition for final disposal. The challenge to this writ petition is to the decision of the Government of Goa directing that handing over of the charge to the newly constituted Managing Committee of the first petitioner Comunidade of Mormugao be stayed till thorough inquiry is conducted in the matter and till action is taken in view of the amendment to Article 49 of the Code of Comunidades. The said decision was communicated by a letter dated 26th February, 2010 by the Under Secretary (Rev.I and II). The challenge is also to the office note dated 26th February, 2010, issued by the Administrator of Comunidades of South Zone, Margao. The office note refers to the aforesaid communication dated 26th February, 2010. By the said Office note, a direction has been issued that handing over of the charge to the new Committee shall remain stayed till thorough inquiry is conducted in the matter and till action is taken under amended Article 49 of the Code of Comunidades.

2. The submission of the Learned Counsel for the Petitioner is that the State Government had no authority to stay the process of handing over of the charge to the newly elected Managing Committee of the first Petitioner. He submitted that

the powers under the amended Article 49 of the Code of Comunidades can be exercised before the elections. He submitted that there is no jurisdiction vesting in the authorities to prevent the newly elected committee from taking charge of the first Petitioner Comunidade. The learned Additional Government Advocate has tendered an Affidavit in Reply of Mr. Pandharinath N. Naik, Under Secretary (Revenue-I). In the said Affidavit it is stated that certain irregularities in the process of election of the Managing Committee of Comunidade of Mormugao were pointed out by the components of the Comunidade by a representation dated 10th December, 2009. It is stated that in view of the said representation, a direction was issued to the fourth respondent, vide letter dated 26th February, 2010 to investigate and to take necessary action. It is stated that on the basis of the said direction, the Deputy Collector called for the comments from the Administrator of Comunidades. The Administrator of Comunidades submitted two reports dated 25th February, 2010 and 14th June, 2010, which allegedly confirmed violation of Article 29(5) and Article 50 of the Code of Comunidade. The respondents have placed on record the report of the Deputy Collector dated 24th June, 2010 and it is prayed that the matter be referred to the Administrative Tribunal for further adjudication. We have heard the submissions of the Learned Additional Government Advocate on behalf of Respondents.

3. We have given careful considerations to the submissions. There is no dispute that on 6th December, 2009, the elections of the newly Managing Committee of the first petitioner Comunidade for the triennium 2010-2013 were held.

4. It appears that on 26th February, 2010 the Under Secretary (Revenue I and II) issued a communication to the Collector of South Goa Margao stating as under:

I am directed to refer your letter No.52/32/CAB/2009 dated 26/02/2010 on the above cited subject and to convey Government decision that the handing over charge to the new Committee be stayed till thorough inquiry is conducted in the matter and action betaken in view of amendment to Article 49 of the Code of Comunidade.

5. Effect was given to the said communication by the Administrator of Comunidades by issuing office note on 2nd March, 2010. As a result of the aforesaid communication, the charge has not been handed over to the newly elected Managing Committee.

6. Reliance has been placed by the State Government on Article 49 of the Code of Comunidades as amended by Act 24 of 2001. The amended Article 49 reads thus :

Article 49. In case if irregularities in the election, any component of the Comunidade with right of voting may appeal to the Administrative Tribunal within 5 days, it being allowed the use of ordinary paper for all proceedings. Only. The Administrative Tribunal shall decide the appeal within 8 days, and, in case the election is annulled, the comunidade for the twenty major components

shall be convened once again according to formalities contained in Article 47, in order to arrange for the new the election in accordance with the judgment of that Tribunal.

Amendment of Article 49 -....

Provided that in case of allegations of irregularities concerning the voters' list or any matters relating to the elections, the Government or the Collector or any officer authorized by the Government, in this behalf shall have powers to postpone the elections or appoint temporary managing committee or direct the Administrator to prepare a fresh voters' list or direct the Administrator or such other officer as may be specified by the Government to conduct the elections.

Provided further that any action by the Government or the Collector or any officer authorized by the Government, taken on or after 30.11.2000 shall be deemed to have been taken in accordance with the above proviso.

7. Article 49 provides that in case of irregularities in the election, any component of the Comunidade having right of voting may appeal to the Administrative Tribunal within five days. The Administrative Tribunal is under an obligation to decide the appeal within eight days. In the event the election is annulled by the Administrative Tribunal, a fresh election is required to be held. The first proviso has been added by the amendment. On plain reading of the first proviso it is obvious that the same will be applicable at a stage before the actual elections are held. The said proviso does not vest power on the Government or on the Collector to act after the election is held. There is no power vested in the Government or the Collector to prevent the newly elected Committee from taking charge and from discharging its duties on the ground that there are alleged illegalities or irregularities in the process of the election. Article 49 provides for an appeal to the Administrative Tribunal within 5 days in case of irregularities or illegalities in the election. The period of limitation provided for preferring appeal is only of five days. In the present case no such appeal has been preferred before the Administrative Tribunal. The period provided for preferring the appeal has expired long back.

8. It is very clear that there is no power vesting in the State Government to direct the elected Managing Committee not to take charge on the ground that there were allegations of illegalities or irregularities committed during the course of election. The action of directing the newly elected committee not to take charge is completely illegal and the same has to be set aside. The Managing Committee has been elected by a democratic process. The result of the election can be annulled or set aside only by the Administrative Tribunal in exercise of the appellate powers.

9. In the result the petition must succeed. We therefore pass the following order:

a) Rule is made absolute in terms of prayer clauses "a" and "b".

b) It will be open for the newly elected Managing Committee to assume charge

- c) It is observed that no adjudication has been made as regards illegalities and irregularities alleged in the process of election.
- d) There shall be no order as to costs.