
(1984) 01 BOM CK 0007
In the Bombay High Court
Case No : Writ Petition No. 783 of 1983

Gajanan Narayan Mali

APPELLANT

Vs

Sudhir Narhar Rasal

RESPONDENT

Date of Decision : 13-01-1984

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1984) 86 BOMLR 356

Hon'ble Judges : D.B. Deshpande, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.B. Deshpande, J.—This is a petition under Article 227 of the Constitution of India, filed by the petitioner challenging the concurrent orders of the courts below and it arises out of the following facts;

2. 58th Akhil Bhartiya Marathi Sahitya Sammelan is to be held at Jalgaon. For holding this Sahitya Sammelan, a President has got to be elected and the present dispute relates to the election of the President for this Sahitya Sammelan. It is an undisputed fact that till recently the petitioner was the President of the Marathi Sahitya Mahamandal. Now before turning to the merits, it will be necessary to state about the Marathi Sahitya Mahamandal and also about its constituents.

3. It may be stated at the outset that the Marathi Sahitya Mahamandal has its own constitution, bye-laws and rules regarding Marathi Sahitya Mahamandal. It is further not disputed that there were some amendments in all these constitution, bye-laws etc.; and the amended constitution, bye-laws etc. came in force on October 1, 1983. The printed copy of the present constitution is at page 64 of the paper book. It is further not disputed that the constitution, as before October 1, 1983, was also in force and its printed copy is produced at page 88 of the paper book. The constitution of the Marathi Sahitya Mahamandal is

mentioned in Clause 3 of this constitution. I may mention here itself that I am referring only to this constitution existing prior to October 1, 1983. In this petition before me, the validity of the resolution dated August 7, 1983 passed by the Mahamandal is in question and that is why it will be relevant to point out as to what the constitution of the Mahamandal was on that day.

4. Now Clause 3 of this constitution speaks of the constitution of this Mahamandal. Clause (a) lays down that Mahamandal will have Maharashtra Sahitya Parishad, Vidarbha Sahitya Sangh, Nagpur, Mumbai Marathi Sahitya Sangh and Marathwada Sahitya Parishad, Aurangabad, as Ghatak Sansthas. We are not concerned with the representatives of each of these bodies. Sub-clause (a) of Clause 3 lays down provision for Samavishta Sansthas and clearly says that the Mahamandal has a right by 2/3rd votes to recognise any such body as Samavishta Sanstha. Then Sub-clause (e) of Clause 3 relates to institutions which are known as Salagna Sansthas. It is, therefore, apparent that there are three constituents of this Mahamandal. First constituent consists of Ghatak Sansthas, the second constituent consists of Samavishta Sansthas and the third constituent consists of Salagna Sansthas. This is further apparent from different clauses of this constitution. In several other clauses, there is a clear reference to these three different constituents.

5. Now when this Sammelan was decided to be held at Jalagaon, an election programme was announced as usual for the publication of the voters' list, for sending the nomination papers and for withdrawal of nomination papers etc. The present respondent Nos. 6, 7 & 8 in this petition are the three contesting candidates for the post Of the Presidentship of this Sahitya Sammelan.

6. It is an undisputed fact that a meeting of the Marathi Sahitya Mahamandal was held at Nagpur on August 7, 1983. A resolution was passed unanimously in this meeting for recognising Gomantak Sahitya Sevak Mandal as a Samavishta Sanstha. True copy of this resolution is reproduced in the judgment of the learned Joint Judge, Aurangabad and I need not reproduce the same. It clearly shows that the request of Gomantak Sahitya Sevak Mandal, Panji Goa, for treating it as a Samavishta Sanstha was considered in the meeting dated August 7, 1983 and the Mahamandal recognised Gomantak Sahitya Sevak Mandal as the Samavishta Sanstha. In this resolution, the Mahamandal expressed hope that Gomantak Sahitya Sevak Mandal would work as a representative body for literary and cultural programmes in the areas adjacent to Goa. It is further not disputed that after the recognition and the passing of this resolution, the present petitioner, who was then the President of the Marathi Sahitya Mahamandal, wrote a letter dated August 30, 1983 to the working President of Gomantak Sahitya Sevak Mandal. A certified copy of the same as certified by the Notary Public, Panji Goa, is produced at page 28 in the record of the District court. The present President informed the working President that the latter's letter dated May 2, 1983 was placed before the Managing Committee of the Mahamandal and the Mahamandal had granted recognition to Gomantak Sahitya Sevak Mandal as

Samavishta Sanstha at Nagpur unanimously on August 7, 1983. The petitioner, therefore, welcomed all the workers of the said Gomantak Sahitya Sevak Mandal.

7. It may be stated here itself that in the meeting held at Nagpur on August 7, 1983, election programme for the election to the post of the President was announced and several dates were fixed for voters' list, nomination, withdrawals etc.

8. It appears that the disputes started thereafter. It appears further that the present petitioner, who was then the President of the Mahamandal, was of the opinion that Gomantak Sahitya Sevak Mandal had no right to vote. Now it is not disputed that Samavishta Sanstha has 20 voters and accordingly the dispute arose about the 20 voters of Gomantak Sahitya Sevak Mandal. It appears further that the petitioner was of the opinion that 20 voters of Gomantak Sahitya Sevak Mandal were not entitled to vote in the election for the post of the President. It appears further that his Secretary, who is the present respondent No. 3 was of the contrary view and the Secretary was of the opinion that they were entitled to vote and hence the dispute started. It appears that thereafter one Sudhir Narhar Rasal, who is the respondent No. 1 in this writ petition, filed a suit in the civil court at Aurangabad and according to him, these 20 voters of Gomantak Sahitya Sevak Mandal were entitled to vote and he, therefore, sought for an injunction that the result for the post of President should not be declared until these 20 votes from Gomantak Sahitya Sevak Mandal were solicited and were considered. In the same suit an application was given for temporary injunction. The present petitioner resisted the petition and he reiterated that these 20 members of Gomantak Sahitya Sevak Mandal were not entitled to vote. After considering the relevant material before him, the learned trial Judge passed an order restraining defendant nos, 1 to 5 from opening and counting the ballot papers and declaring the results of the election pending the suit. However, he passed an order that if 20 voters of Gomantak Sahitya Sevak Mandal were allowed to exercise their right of voting, the defendants would be at liberty to open and count ballot papers and declare election result. In this suit, defendant No. 1 was Marathi Sahitya Mahamandal, present petitioner was defendant No. 2, present respondent No. 3 the secretary was defendant No. 3, defendant Nos. 4 & 5 were the returning officers and defendant Nos. 6, 7 & 8 were the contesting candidates for the post of President.

9. Feeling aggrieved by this order, the present petitioner went in appeal to the District court at Aurangabad. This appeal was heard by the learned Joint District Judge, who agreed with the trial court and dismissed the appeal. Feeling aggrieved by this order, the present petitioner has challenged the order of the court below under Article 227 of the Constitution of India.

10. Shri Chapalgaonkar appearing for respondent No. 1 raised a contention that the writ petition is not maintainable and this Court should not exercise its powers under Article 227 of the Constitution of India in this matter. I do not think that the matter should be disposed of on technical point. The petitioner can very well

make a request before this Court that this petition be converted into a civil revision application and there should be no harm in granting this permission to convert this writ petition into a civil revision application, which will be clearly within the jurisdiction of this Court. Hence I do not take this objection into consideration.

11. Then an objection is raised on behalf of respondent No. 3 by filing an affidavit on the strength of an event subsequent to the filing of this petition, It is an admitted fact that after this petition was filed by the present petitioner, the petitioner resigned his office as President of the Marathwada Sahitya Parishad. Respondent No. 3, therefore, contended that the petitioner was not entitled to continue this writ petition in these state of affairs. But Shri Bhalekar, appearing for him agreed, that the petitioner was entitled to continue this writ petition in his position even as a voter Incidentally there is one more point that was urged and the point was that the petitioner having resigned his office as a President of the Marathwada Sahitya Parishad, he can not continue to remain as a President of the Marathi Sahitya Mahamandal also. In this respect, Shri B. N. Deshmukh placed reliance upon the constitution of Marathi Sahitya Mahamandal, As already stated, we have to go through the constitution of the Mahamandal prior to October 1, 1983. Clause 6 of this constitution is important. Sub-clause (a) of Clause 6 lays down that one representative sent by Ghatak Sansthas of the Mahamandal should be the President of the Mahamandal. We are not concerned with the other clauses. Sub-clause (aa) mentions that Mahamandal would elect from its members one President, one Vice President, one Treasurer and one Secretary. Now contention is that the petitioner having resigned his office as the President of the Marathwada Sahitya Parishad. he loses his seat on the Marathi Sahitya Mahamandal and that is why, he is disabled from acting as the President of the Marathi Sahitya Mahamandal. Shri B. N. Deshmukh placed reliance upon the note below Sub-clause (a) to (e) of Clause 6. This note is of importance. It lays down that until new office bearers of Mahamandal are elected without prejudice to the provisions in the earlier clauses, the old office bearers would continue to remain in their office. The exact Marathi words are as follows: -

Vhi %& **egkeaM?Gkps uos inkf?kdkjh fuoMqu gksbZikosrks ;k fu;ekpk dlykgh ck/k u ;srk iwohZpsp inkf/kdkjh vkikiY;k inkoj dk;e vlrhay**

Shri Deshmukh placed strong reliance upon this note and contended that till a new President is elected by the Mahamandal, the petitioner would continue. Prima facie there appears to be some force in what Shri Deshmukh has contended and, therefore I would hold that the petitioner has a right to continue this writ petition.

12. Now this takes me to the crucial questions which are argued before me. Shri Deshmukh has challenged the orders of the courts below on several grounds. First ground is that according to the constitution of the Mahamandal, the area of Goa is included in the jurisdiction of Maharashtra Sahitya Parishad and, therefore, Gomantak Sahitya Sewak Mandal can not act within the area of that

Parishad and the sum and substance of the argument was that unless area of Goa was excluded, from the operation of Maharashtra Sahitya Parishad, Gomantak Sahitya Sewak Mandal could not work within the area of that Parishad. The second ground of the attack of Shri Deshmukh was that the resolution passed on August 7, 1983 required confirmation of the minutes in the next meeting and according to him, this was a practice followed for a number of years and, therefore, the resolution dated August 7, 1983 recognising Gomantak Sahitya Sewak Mandal as a Samavishta Sanstha could not be said to be operative till the proceedings dated August 7, 1983 were confirmed in the subsequent meeting. The third ground urged by him was of a subsequent event and for this purpose, he placed reliance upon the resolution dated December 31, 1983 and his fourth ground was that the election process cannot be challenged once the election had started and therefore, injunction ought not to have been granted by the courts below. Now I shall proceed with these arguments in the chronology in which they were pressed before me.

13. First ground relates to the area of Mahamandal. Now constitution of Maharashtra Sahitya Parishad is also produced at page 87 of the paper book. Clause 3 of this constitution relates to means; Clause 1 gives the name of the institution and Clause 2 relates to the purpose of the institution and Clause 3 relates to the means by which this purpose is to be achieved. Now Sub-clause (a) reads as follows:

To hold Marathi Sahitya Sammelans according to the needs and to encourage the holding of such Sammelans within the area of Parishad.

In the bracket are mentioned the names of the places, such as Pune, Satara, etc. There is mention of Goa also alongwith the list of other places mentioned therein. Thus according to Shri Deshmukh, as Goa is included by Maharashtra Sahitya Parishad in its area, Goa cannot operate within the area of that Parishad. I requested Shri Deshmukh to point out from the constitution of Maharashtra Sahitya Parishad or from the constitution of Mahamandal that there was a prohibition from starting any new other institution within that area. When I questioned Shri Deshmukh as to whether any individual, say by name A can start another institution under the name and style "New Maharashtra Sahitya Parishad" and whether there was any prohibition against him from starting such an institution. His obvious answer was in the negative. If that were so, it was open to the Marathi Sahitya Mahamandal to pass a resolution on August 7, 1983 that recognition would not be granted to Gomantak Sahitya Sewak Mandal unless and until that area was excluded from the operation of Maharashtra Sahitya Parishad by a suitable amendment, which of course would have been required to be made by the Parishad itself. Shri Chapalgaonkar for respondent No. 1 made some other submission in this respect and according to him, Maharashtra Sahitya Parishad by describing its area could not bind the people of Goa in this fashion and there is certainly some force in this submission. But all the same, there is nothing which is brought to my notice that the constitution of the second body is

prohibited and I have already pointed out that Mahamandal has given a clear recognition to Gomantak Sahitya Sewak Mandal as Samavishta Sanstha. At the point of repetition, I may point out that the Mahamandal could refuse recognition or at least could delay it till such amendment was made by the Parishad. Hence I do not find any force whatsoever in this submission.

14. Now the second objection is based on the confirmation of the minutes in the next general meeting. Shri Deshmukh invited my attention to page 97 of the paper book. These are the minutes of the meeting held on May 15, 1974. In this meeting, the minutes of the meeting dated December 23, 1973 were approved with the modifications mentioned in resolution No. 3. Now there is nothing new in this procedure. In all the meetings, the minutes are recorded and these minutes are normally confirmed in the next meeting before proceedings of the next meeting started. The real question is whether the non confirmation invalidates next resolution or whether confirmation is required for the validation of such a resolution. I requested Shri Deshmukh to point out from any book on the law of meetings that confirmation of the minutes of the earlier meeting was necessary for validating the resolution. He was unable to point out any. In Shackleton on "The Law and Practice of Meetings" (Sixth Edition) it is clearly stated that it is not necessary that there should be confirmation of the minutes of the earlier meeting for its validation. On page 121 there is the following statement on decision:

Should there be something recorded at an earlier meeting which is not acceptable to a later meeting the correct procedure is to pass a subsequent minute rescinding the terms of the old; the former should not under any circumstances be deleted, or crossed out at the confirmatory meeting, as all the latter meeting is asked to do is to certify as to the correctness of the record of the proceedings at the previous meeting, or of the present meeting if the minutes are prepared at once.

It is therefore, quite clear that the convention of confirming the minutes of the earlier meeting is there only for certifying as to the correctness of the report of the proceedings and it has no more value. On the same page itself, there is another citation:

When minutes are signed by the Chairman of the meeting, or the next succeeding meeting they are prima facie evidence of the proceedings thereat and decisions recorded therein are deemed to be valid until the contrary is proved.

Now it is not disputed before me that the proceedings of the meeting dated August 7, 1983 are signed by the petitioner as the President of the Mahamandal. At page 122 there is following statement:

Decisions once arrived at do not need confirmation, and the practice adopted by some authorities of "confirming" minutes has no legal significance. The word "confirm" sometimes means Verify" and it is commonly used in that sense at meetings of public bodies, who confirm the minutes of their last meeting, not

meaning thereby that they give them force, but merely that they declare them accurate.

At page 123, he has given some citations on some English rulings. But I do not think that it is necessary to mention these rulings. All those citations clearly go to show that the confirmation is normally ministerial and the confirmation is not required for validation of the resolution.

15. Shri Chapalgaonkar was right in arguing that by accepting the submissions made by the petitioner, a very anomalous position would arise. Now it is not disputed that the entire election programme was fixed in this very meeting dated August 7, 1983 and if the submission on behalf of the petitioner is to be accepted, then the election can not be held till the minutes of this meeting are confirmed in a subsequent meeting. The petitioner cannot play hide and seek at the same breath. If this argument is accepted, election cannot be held at all unless the minutes of the meeting dated August 7, 1983, are confirmed in the subsequent meeting. Now it is not disputed that after August 7, 1983, the next meeting was held on December 31, 1983 and hence the election programme of a period prior to December 31, 1983 cannot be held if that argument is accepted.

16. Even otherwise, at the time of deciding this petition today, it is not disputed that the minutes of the meeting dated August 7, 1983 are confirmed on December 31, 1983 with a division of votes as 10 in favour and 2 against and hence I do not think that there is any substance whatsoever in this submission made by Shri Deshmukh.

17. Then Shri Deshmukh invited my attention to resolution No. 4 passed on December 31, 1983. It is at page 93 of the paper book. It is mentioned in this resolution that some constitutional difficulties have arisen to implement the resolution recognising Gomantak Sahitya Sewak Mandal as Samavishta Sanstha in the meeting of the Mahamandal at Nagpur and these are brought to the notice by the representatives of the Maharashtra Sahitya Parishad. The resolution further says that the working President or President of Maharashtra Sahitya Parishad Pune and Gomantak Sahitya Sewak Mandal should take decisions consistent with their constitution and the constitution of the Maharashtra Sahitya Parishad and should submit report to the Mahamandal after considering all the pros and cons of the matter and thereafter the Mahamandal would take final decision. This resolution is moved by Shri Bapurao Naik and is seconded by Shri Ram Shewalkar. I do not know how this resolution has any effect on the resolution dated August 7, 1983. I do not think this resolution would bind the hands of the court in declaring validity or invalidity of the resolution dated August 7, 1983, and I do not, therefore, think that this resolution is germane for deciding the validity or otherwise of the resolution dated August 7, 1983 granting recognition to Gomantak Sahitya Sewak Mandal as Samavishta Sanstha.

18. Then Shri Deshmukh made a reference to resolution No. 7 passed by the Marathi Sahitya Mahamandal on April 30, 1978 and it was in the annual meeting

of the Mahamandal. It appears that Khristi Sahitya Parishad had written to the Mahamandal that it should be recognised as a Salagna Sanstha with Mahamandal and this request was considered and the following rules were laid down:

- (i) Salagna Sanstha will have to pay Rs. 100/- per year;
- (ii) While making Salagna:
 - (a) this Sanstha must be registered;
 - (aa) Sanstha must be working at least for a period of 5 years;
 - (b) It must give report about the work done regarding Marathi language and literature;
 - (c) reports for the last 5 years along with the accounts must be submitted, and
 - (d) It must inform that it agrees with the Constitution of the Mahamandal with the aims and objects of the Mahamandal etc.; and after the Sanstha agreed with these rules the matter about salagna will be considered.

Now on the face of it, this resolution has nothing to do with the Samavishta Sanstha. That is why while stating the facts earlier, I have clearly stated that there are two different clauses in this respect, one is Samavishta Sanstha and the other is Salagna Sanstha. Now this resolution No. 7 relates to Salagna Sanstha and not to Samavishta Sanstha and, therefore, it has no relevance whatsoever in this respect and there is no force in this contention also.

19. Now the last submission of Shri Deshmukh is that once the election process had started, it should not be interfered with and for this purpose, he placed reliance upon a decision of the Supreme Court in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, . As against this, Shri Chapalgaonkar invited my attention to a decision of the Division Bench of this Court in Pandurang Hindurao Patil v. State of Maharashtra [1983] M. L.J. 1081. This decision of the Division Bench of this Court is under the Maharashtra Co-operative Societies Act and the ratio in Ponnuswami's case was considered by the Division Bench in this ruling. Shri Chapalgaonkar invited my attention to several paragraphs and particularly to paragraph No. 19 in which the Division Bench observed as follows (at p. 1088 para 19):

The decision in Khare's case and in Panuswami's case, therefore, expressly turned on the special provisions in Section 329(b) of the Constitution which specifically dealt with the election to the Parliament and elections to the State Legislature.

In this ruling, the Division Bench clearly observed that the Division Bench was unable to" uphold the argument that any petition filed challenging the order of the returning officer raising a question as to wrong acceptance or rejection of a nomination paper must be rejected on the ground that such a petition does not lie, in the sense that there is a complete bar against filing of such a petition and

that it should never be entertained. There may be cases where there is a patent wrong being committed and it cannot be said that the courts are powerless in this respect. Therefore, this point is not germane for deciding this case. Not to interfere in such a case would mean to allow such apparent wrong being committed to continue and in such a process, there would be loss of public time and money also. I, therefore, do not think that there is any express bar in this respect for considering such a request for injunction as prayed by respondent No. 1. Now I have already pointed out that Samavishta Sanstha has 20 voters and Gomantak Sahitya Sewak Mandal is recognised by the Mahamandal as Samavishta Sanstha. There is no difficulty whatsoever in coming to this conclusion and hence if the voters are refused their right to cast their votes, then it is a case of grave injustice and, therefore, there is no harm in interfering with the election process in such cases. I, therefore, do not find any force in the last mentioned objection also raised by Shri Deshmukh.

20. I, therefore, do not find any reason whatsoever to interfere with the orders of the courts below and the petition deserves to be rejected and it is accordingly rejected.