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In the Madhya Pradesh High Court

Ghanshyam Tiwari and Another — APPELLANT

Vs

State of M.P. and Others — RESPONDENT

Date of Decision : 26-04-2010

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2010) ILR (MP) 1517 : (2010) 3 MPLJ 407

Hon'ble Judges : Shyam Sunder Dwevedi, J;S.K. Gangele, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Appellants have filed this writ appeal against the order dated 14.02.2007 passed by the learned Single Judge of this Court in Writ Petition No. 811/2007.

Appellants are the members of Primary Agriculture Credit Cooperative Society Maryadit, Rajpur, Hinota, Tehsil Kurwai, District Vidisha. The State Government had taken a decision to hold elections of the Primary Agriculture Credit Cooperative Societies, consequently, the Returning Officer of Primary Agriculture Credit Cooperative Society Maryadit, Rajpur, Hinota, issued an election-programme u/s 41(2) of the M.P. Co-operative Societies Rules, 1962. The Returning Officer fixed the date, 5th February 2007 for submitting nomination papers; 6th February 2007 for scrutiny of the nomination papers and 7th February 2007 for withdrawal of nomination papers. In pursuance to the afore said notification 43 candidates, who were members of the society, including the original petitioners, 11 in number, submitted their nomination forms on 05.02.2007. The Returning Officer rejected the nomination forms of all the candidates, except 11 candidates, including general category and reserved category candidates. The petitioners on the very next day, i.e. on 06.02.2007 submitted a complaint to the Collector, Vidisha, mentioning the fact that they submitted their nomination papers to Returning Officer, Mr. Vijay Singh Raghuvanshi, and on the next day, i.e. on 06.02.2007 scrutiny of the nomination papers had to take place, however, Mr. Vijay Singh Raghuvanshi, Returning

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Officer, did not attend the office of the Society on 06.02.2007 and he had been sitting on the aforesaid date at the residence of a B.J.P. leader, Mr. Prem Narain Tiwari, and on his instructions the returning officer rejected all the nomination papers, except nomination papers of 11 candidates. The petitioners requested the Collector, Vidisha to take appropriate action against the Returning Officer and re-notify the election of the society. A Panchnama was also prepared to this effect by the petitioners. When no action was taken within a period of two days i.e. on 08-02-2007 the original petitioners, 11 in number, filed a writ petition before this Court, which was registered as Writ Petition No. 811/2007. The learned Single Judge of this Court vide order dated 14.02.2007 dismissed the writ petition after holding that the election process had been going on and during election process the Court could not interfere in the election disputes.

Learned Senior Counsel, appearing on behalf of the appellants, has submitted that there is no election in the eyes of law. The Returning Officer rejected all the nomination papers, except 11 nomination papers, on the instructions of the local ruling party member. There is gross violation of the provisions of the M.P. Co-operative Societies Rules, 1962, hence the learned Single Judge has committed an error of law in rejecting the writ petition. The learned Senior Counsel further argued that in the facts of the case the writ petition is maintainable and the election of the society is liable to be quashed. In support of his contentions learned Senior Counsel relied on the following judgments:

(1) Radhey Shyam Sharma v. Chairman, Sewa/Vriha Sahakari Samiti Lashkar, Gwalior and Ors. 1989 MPLJ 208;

(2) Jayrajbhai Jayantibhai Patel v. Anilbhai 1 and Ors. (2006) 8 SCC 200;

And unreported judgments of the Division Bench of this Court passed in-

(3) Writ Petition No. 2020/2007, Ravishankar Shukla v. State of M.P. and Ors., and

(4) Writ Petition No. 1968/2007, Ratan Singh Thakur v. State of M.P. and Ors.,

Contrary to this, learned Counsel appearing on behalf of elected candidates, respondents, No. 9 to 19, has contended that the order passed by the learned Single Judge is as per law. The writ petition filed by the appellants before this Court is not maintainable due to availability of alternative remedy u/s 64 of the M.P. Cooperative Societies Act, 1960. Learned Counsel further submitted that the disputed questions of facts are involved in the writ petition filed by the original petitioners before the writ Court and those could not be examined under Article 226 of the Constitution of India. In support of her contentions learned Counsel relied on the following judgments:

M.P. State Industrial Co-operative Federation Limited v. Uttam Singh and Ors. 2003 (4) MPLJ 206;

Avtar Singh Hit Vs. Delhi Sikh Gurdwara Management Committee and Others, ;

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Ganesh and Ors. v. State of M.P. and Ors. 2002 (5) MPLJ 246;

Umesh Shivappa Ambi and Others Vs. Angadi Shekara Basappa and Others, .

Undisputed facts of the case are - that after publication of the election programme by the Returning Officer nearby 43 candidates of the society submitted their nomination forms. On the very next day the Returning Officer rejected all the nomination forms except nomination forms of 11 candidates. Thereafter a complaint was made to the Collector, Vidisha, as mentioned earlier in this order, and Deputy Registrar, Cooperative Societies. The Commissioner, Cooperative Societies vide order dated 13.02.2007 stayed the election process of the society and ordered that a fresh election be held. Before that the Deputy Registrar, Cooperative Societies submitted his report on 08.02.2007 to the Collector, copy of the report has been filed as Annexure P-14 in the appeal. In the afore said report the Deputy Registrar, opined that the whole procedure with regard to rejection of nomination forms by the Returning Officer was illegal and his action was not proper. He also recommended for suspension of the Returning Officer Mr. Vijay Singh Raghuvanshi. In spite of this order passed by the Registrar dated 13.2.2007, subsequently, the final order was passed by the Registrar dated 14.02.2007 by which he directed to complete the election process of the society and consequently the election process was completed by the Returning Officer and all the 11 candidates, whose nomination forms were found proper, have been declared elected unopposed on the post of Board of Directors of the Society. Thereafter, these persons have further been elected office bearers of the Society.

The questions for determination before this Court is that whether, in the facts and circumstances of the present case, a writ petition is maintainable under Article 226 of the Constitution of India and whether the election of the society as held by the Returning Officer is as per law?

Rule 41 of the M.P. Co-operative Societies Rules, 1962 prescribes procedure for election of members of the committee. Rule 41(9) thereof prescribes nomination papers duly received shall be scrutinised and rejection of nomination papers. The relevant Rule 41(9) is as under:

41. Procedure for election of members of the Committee.(1)....

(9)(a) Nomination papers duly received shall be scrutinized by the Returning Officer on the date fixed for the scrutiny under Clause (c) of Sub-rule (2):

(b) It shall be open to the persons filling the nomination paper to be present at the time of scrutiny:

(c) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a material character nor shall it be rejected on the ground of any irregularity in respect of a nomination form, if the candidate has been duly nominated by means of another nomination form, in respect of which no irregularity has been committed:

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(d) The Returning Officer shall for reasons to be recorded in writing, reject a nomination paper only on the following grounds:

(i) if the nomination paper is not in accordance with the preceding sub-rules:

(ii) if the candidate is dis-qualified to be elected or proposer/seconder is dis-qualified to vote by or under the Act, rules or bye-laws of the society:

(e) The Returning Officer shall prepare a list of valid nominations, if in the list more than one nomination papers are found valid for one post, then first valid nomination of the candidate shall be accepted and he will sign the list in token of its correctness and shall publish and affix on the notice board of the society.

It is clearly mentioned in Rule 41(9)(2)(a) and (b) that the persons filing the nomination papers to be present at the time of scrutiny and the nomination papers shall be scrutinized by the Returning Officer on the date fixed for the scrutiny. The allegation in the writ petition is that the Returning Officer was not present in the office of the society and he rejected all the nomination papers, accept nomination papers of 11 candidates, at the behest of one Mr. Prem Narain Tiwari and the Returning Officer was present at the residence of Mr. Prem Narain Tiwari, who was the member of B.J.P., then ruling party. On the very next day, i.e. on 06.02.2007 all the petitioners, 11 in number, filed a complaint before the Collector, Vidisha and thereafter they filed a writ petition before this Court on 8th February 2007.

With regard to the question of maintainability of the writ petition in election disputes, it is an admitted fact Section 64(2)(v) prescribes remedy for filing election disputes, which is as under:

64. Disputes.- (1)....

(2) For the purpose of Sub-section (1), a dispute shall include-

(i)....

(v) any dispute arising in connection with the election of any officer of the society or representative of the society or of the composite society;

A Division Bench of this Court in Thaneshwar Shyam Bihari Mishra v. Jila Sahakari Kendriya Bank Maryadit Mandla reported in 1986 MPLJ 329, has considered the question of maintainability of writ petition under Article 226 of the Constitution of India in view of availability of alternative remedy u/s 64 of the M.P. Cooperative Societies Act, 1962 and held as under:

3. The learned Government Advocate appearing for the respondent No. 5 and the learned Advocate appearing for respondent No. 1, have raised a preliminary objection to the tenability of the present petition on the ground that efficacious alternative remedy u/s 64 of the M.P. Co-operative Societies Act, 1961 (hereinafter referred to as the ''Act''), will be available to the petitioner after the elections have been held. Reliance has been placed on a Full Bench decision of

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this Court in Malam Singh v. Collector, Sehore 1971 MPLJ 531. It is true that Section 64(2)(v) of the Act provides that "any dispute arising in connection with the election of any officer of the society or representative of the society or of composite society", can be referred to the Registrar by any of the parties to the dispute and the decision of the Registrar on the said dispute shall be final and not liable to be called in question in any Court, Proviso to the aforesaid sub-clause, however, prohibits the Registrar to entertain any dispute "during the period commencing from the announcement of the election programme till the declaration of result." Apparently, therefore, the petitioner could challenge the validity of these elections by filing a dispute under the aforesaid Clause after elections have been held. In Malam Singh''s case (supra), the Full Bench of this Court was considering the provisions of Section 357(1) of M.P. Gram Panchayats Act, 1962, which provided that "no election under the Act can be called into question except by a petition presented to the prescribed authority." The Full Bench held that though there is no constitutional bar to the exercise of writ jurisdiction in respect of elections, it is desirable to resolve election disputes speedily through the machinery of election petitions, and the Court should not exercise its discretion in the matter. After Malam Singh''s case (supra), the matter came to be considered on several occasions by this Court and the view taken always was that wherever efficacious alternative remedy of election petition is available, the writ jurisdiction of this Court shall not be exercised. The Court, however, carved out certain exceptions to this general rule with a view to do justice between the parties. In Sheo Dayal v. K.P. Rawat 1975 MPLJ 243, a Division Bench of this Court held that though generally this Court will direct the party to take resort to election petition, it can interfere and decide a writ petition in exceptional cases "in order to enable the petitioner to exercise his valuable civil right of contesting an election, which right was denied to him on altogether wrong premises". This view appears to have been followed in subsequent cases in Bhupendra Kumar v. Y.S. Dharmadhikari 1976 MPLJ 223 and Brij Behari Gupta Vs. L.L. Khare and Another, . In Brij Bihari Gupta''s case (supra), the Division Bench considered the provisions of Section 64 of the Act and held that once a writ petition has been admitted for hearing and stay granted, it will not be proper to throw the same out on the ground of alternative remedy after the declaration of election results. It is, therefore, clear that the rule of alternative remedy does not create an absolute bar to the exercise of power under Article 226 of the Constitution. It is merely a circumstance enabling the High Court to refuse exercise of this extraordinary and discretionary power. If the facts of the case so require, considering facts of the case, we do not think it proper to accept the preliminary objection and reject the petition on that score.

From the aforesaid judgment of the Division Bench of this Court, it is clear that in order to enable a person to exercise his valuable civil right of contesting an election, which right was denied to him on altogether a wrong premises, the writ petition is maintainable.

The Hon''ble Supreme Court in Avtar Singh Hit Vs. Delhi Sikh Gurdwara

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Management Committee and Others, , has considered in detail in regard to maintainability of writ petition in election disputes. The Hon''ble Supreme Court has discussed entire case laws on the aforesaid subject and previous decisions of the Supreme Court reported in (1) N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, ; (2) Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, ; (3) K.K. Shrivastava and Others Vs. Bhupendra Kumar Jain and Others, ; (4) Gujarat University Vs. N.U. Rajguru and Others, ; (5) S.T. Muthusami Vs. K. Natarajan and Others, ; (6) C. Subrahmanyam Vs. K. Ramanjaneyullu and Others, ; (7) Ashok Kumar Jain v. Neetu Kathoria (2004) 12 SCC 73 ; (8) Umesh Shivappa Ambi and Others Vs. Angadi Shekara Basappa and Others, and (9) Harnek Singh Vs. Charanjit Singh and Others, , and after analyzing the judgments the Hon''ble Supreme Court has clearly held that exceptional or extraordinary circumstances would justify recourse to the extraordinary remedy under Article 226 of the Constitution of India. The relevant findings are as under:

29. As discussed earlier, the pleadings of the parties show that the dispute raised was purely factual in nature as to whether some confusion had been created regarding the date fixed for holding of the meeting of the Committee for electing the office-bearers of the Executive Board. The dispute could more appropriately be resolved by examination of oral evidence to be led by the parties. The writ petitioner Avtar Singh Hit claimed that on account of the confusion in dates he could not attend the meeting though he was very keen to participate in the meeting and contest for the office of the President of the Executive Board. In view of the nature of the dispute raised, the proper remedy for the petitioner was to file an election petition as provided in Section 31 of the Act where parties could have got opportunity to lead oral evidence. No exceptional or extraordinary circumstances were disclosed which could justify reco0urse to the extraordinary remedy under Article 226 of the Constitution and for not availing the remedy provided by the statute. We are, therefore, of the opinion that on the facts and circumstances of the present case, the writ petitions ought not to have been entertained for resolving the dispute relating to election and on this count alone the writ petitions were liable to be dismissed.

In the aforesaid judgment Avtar Singh Hit (supra) Hon''ble the Supreme Court relied on the earlier judgment of the Hon''ble Supreme Court Ashok Kumar Jain v. Neetu Kathoria (2004) 12 SCC 73, wherein the Hon''ble Supreme Court has considered the maintainability of the writ petition in an election dispute under the provisions of Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972. Hon''ble the Supreme Court has specifically held in the aforesaid judgment that "Except in some exceptionally extraordinary circumstances, normally remedy under Article 226 of the Constitution, challenging the election by filing a writ petition would not be available to the petitioner."

A Division Bench of this Court in an unreported judgment passed in Writ Petition No. 1968/2007, Ratan Singh Thakur v. State of M.P. and Ors., decided on

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13.03.2007, has held, after relying on the earlier judgment of this Court in Radhey Shyam Sharma v. Chairman, Sewa/Vriha Sahakari Samiti Lashkar, Gwalior and Ors. 1989 MPLJ 208, that if the election process is so vitiated that it cannot be said to be an election held in accordance with the law, a petition is maintainable. The relevant findings are as under:

10. In Radhey Shyam Sharma v. Chairman, Sewa/Vriha Samiti, Lashkar, Gwalior and Ors. 1989 MPLJ 208, a Division Bench of this Court has held that the High Court will not interfere in an election dispute in respect of election of a co-operative society unless and until it is shown that the election process is so vitiated that it cannot be said to be an election held in accordance with law. This is one such case where the election is a sham election and not an election in the eyes of law.

The same principle has been reiterated by the same Division Bench in another order passed in Writ Petition No. 2020/2007, Ravishankar Shukla v. State of M.P. and Ors., decided on 13.03.2007.

From the aforesaid principle of law laid down by Hon''ble the Supreme Court in the above mentioned judgments, it is clear that ordinarily a remedy of petition under Article 226 of the Constitution is not available to a person to challenge the election dispute or election process. However, in exceptional or extraordinary circumstances the petition under Article 226 of the Constitution is maintainable. That view has been further elaborated by the Division Bench of this Court in Thaneshwar Shyam Bihari Mishra v. Jila Sahakari Kendriya Bank Maryadit Mandla reported in 1986 MPLJ 329, that if a valuable civil right of contesting an election of a person has been denied to him on altogether wrong premises the writ petition is maintainable. A Division Bench of this Court further in an unreported judgment, Writ Appeal No. 18/2008, Brajraj Singh Tomer v. State of M.P. and Ors., decided on 30-01-2008, held that if there is no election in the eyes of law and it is a sham election, the petition is maintainable.

We are clear in our mind that in generally in an election dispute writ petition under Article 226 of the Constitution is not maintainable, however, where there is no election at all and number of persons have been denied their valuable civil right to contest the election by fraudulent measures by the Authorities whether in those circumstances also a petition under Article 226 of the Constitution be thrown away on the premises of availability of alternative remedy? Our answer is ''No''. Because, in our opinion, the right to contest an election and holding free and fair election is a valuable right in a democratic society and if that civil right has been denied to a person or if the whole election procedure is only an eye-wash, in those circumstance, in our opinion, the Court can not lay down its hand on the ground of availability of alternative remedy because it is a well settled principle of law for issuance of a writ of certiorari the availability of alternative remedy is no bar.

Hon''ble the Supreme court in Jayrajbhai Jayantibhai Patel v. Anilbhai Nathubhai

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Patel and Ors. (2006) 8 SCC 200, has considered number of authorities on the point of interference by the Court in the matter of administrative action and the Hon''ble Supreme Court has held as under:

18. Having regard to it all, it is manifest that the power of judicial review may not be exercised unless the administrative decision is illogical or suffers from procedural impropriety or it shocks the conscience of the court in the sence that it is in defiance of logic or moral standards but no standardised formula, universally applicable to all cases, can be evolved. Each case has to be considered on its own facts, depending upon the authority that exercises the power, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affects the individual or society. Though judicial restraint, albeit self-recognised, is the order of the day, yet an administrative decision or action which is based on wholly irrelevant considerations or material; or excludes from consideration the relevant material; or excludes from consideration the relevant material; or it is so absurd that no reasonable person could have arrived at it on the given material, may be struck down. In other words, when a court is satisfied that there is an abuse or misuse of power, and its jurisdiction is invoked, it is incumbent on the court to intervene. It is nevertheless, trite that the scope of judicial review is limited to the deficiency in the decision-making process and not the decision.

The following passage from Professor Bernard Schwartz''s book Administrative Law, (3rd Edn.) aptly echoes our thoughts on the scope of judicial review:

Reviewing courts, the cases are now insisting, may not simply renounce their responsibility by mumbling an indiscriminate litany of deference to expertise. Due deference to the agency does not mean abdication of the duty of judicial review and rubber-stamping of agency action: We must accord the agency considerable, but not too much deference; it is entitled to exercise its discretion, but only so far and no further.

Quoting Judge Leventhal from Greater Boston Television Corporation v. FCC 444 F 2d 841. 851 (DC Cir 1970) he further says:

...the reviewing court must intervene if it ''becomes aware...that the agency has not really taken a "hard look" at the salient problems, and has not genuinely engaged in reasoned decision-making....''

Tested on the touchstone of the above principle, we are of the view that on the facts in hand the High Court was fully justified in exercising its power of judicial review and set aside the election of the appellant.

The facts of the present case are sufficient to establish that the Returning Officer has acted in utter disregard to the statutory Rules of 1962. He did not follow the procedure properly and his intention was to give benefit to certain persons and elect them by way of rejecting all the nomination papers of other members of the Cooperative Societies so that only 11 persons could be declared as elected

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unopposed. On the very next day i.e. on 6th February 2007 a complaint was lodged to this effect by 11 persons, who submitted their nomination forms, to the Collector, Vidisha. The matter was also investigated by the Deputy Registrar and he found the conduct of the Election Officer suspicious and further recommended his suspension. We have perused the record and particularly the order passed by the Returning Officer on the back of the nomination papers with regard to rejection of the nomination papers. In all the cases, he rejected the nomination papers on some technical ground. In some of the nomination papers there are some over writings and even though the signatures of the candidates have been scored out. It appears that it has been done deliberately to benefit other persons. Some of the nomination papers have been rejected on the ground that the contesting candidate did not submit nomination papers. However, there is evidence to show that the contesting candidates had been confronted the aforesaid fact by the Returning Officer. The allegation is that the Returning Officer was not present in the office of society and he had rejected the nomination papers at the residence on the instructions of Mr. Prem Narain Tiwari, who was a member of B.J.P. then ruling party. That appears to be true.

The conduct of the Returning Officer and the manner of holding election of the Society shocked the conscience of this Court, and, in our opinion, in the facts and circumstances of the case, these are extraordinary and exceptional circumstances under which the writ petition is maintainable, to save the civil right of the petitioners to contest the election and also up hold the purity of holding elections, which is the soul of a vibrant democracy. In our opinion, the learned Single Judge has committed an error of law in rejecting the writ petition of the appellants.

Consequently, the appeal filed by the appellants is allowed. The order passed by the learned Single Judge is hereby set aside. We declare the election of the candidates of Primary Agriculture Credit Cooperative Society Maryadit, Rajpur, Hinota, Tehsil Kurwai, District Vidisha, is vitiated and direct that the election process in the case of Primary Agriculture Credit Cooperative Society Maryadit, Rajpur, Hinota be restarted by a new Returning Officer afresh from the stage of scrutiny of nomination papers in accordance with law. No order as to cost.

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