

(2006) 09 BOM CK 0035

In the Bombay High Court

Case No : Writ Petition No. 6252 of 2006

Mohan Anandrao Munde and Another

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 20-09-2006

Acts Referred:

Citation : (2006) 6 ALLMR 517 : (2006) 6 BomCR 648 : (2006) 6 MhLj 813

Hon'ble Judges : Deshpande A.P., J; Borde R.M., J

Bench : Division Bench

Advocate : V.D. Hon and P.D. Bachate, for the Appellant; K.G. Patil, A.G.P. for respondent Nos. 1 to 5 and A.B. Girase,, V.D. Salunke and S.G. Jadhav, for the Respondent

Final Decision : Allowed

Judgement

Borde R.M., J.—Heard Shri V.D. Hone holding for Shri P.D. Bachate, Advocate for the petitioner, Shri K.G. Patil, A.G.P. for respondent Nos. 1 to 5 Shri A.B. Girase of respondent No. 6, and Shri V.D. Salunke and Shri S.G. Jadhav, Advocates for the intervenors.

2. Rule. Rule is made returnable forthwith, with the consent of the parties and the petition is taken up for final hearing at the admission stage.

3. The petitioners herein seek to challenge the action of postponement of elections of the respondent No. 6 society. The respondent No. 6 is a specified co-operative society within the meaning of Section 73G of the Maharashtra Co-operative Societies Act. The petitioners are members of respondent No. 6 society. According to the petitioners, the last elections of the society were held in 2002. The first meeting of newly elected members of the Managing Committee was held on 6th March, 2002. As per the provisions of Section 73G(2) the term of the elected Managing Committee is five years. As such, the term of the elected Managing Committee is to expire in the month of March, 2007.

4. It is contended by the petitioners that the general body of the respondent No.

6 society adopted a resolution bearing No. 12 on 7th January, 2006 and resolved to hold the elections of the Managing Committee of the society prior to November, 2006. The reason put forth was that the crushing season of the sugar factory is to commence from 1st November, 2006 and the same is likely to continue up to 30th April, 2007. The members of the society would be busy in the activities relating to crushing season and it would not be proper to hold elections during the said period. It was, therefore, resolved to complete the process of election before 1st November, 2006. It is further contended that the annual general body meeting of the society was convened and on 11th June, 2006 a similar Resolution bearing No. 10 (1) came to be adopted. The Board of Directors of the sugar factory also adopted a similar Resolution and communicated the decision to the Commissioner for Sugar and the State Government. Appropriate permission was sought for from the State Government for proposing the elections. It appears that, by communication dated 6th July, 2006, the State Government permitted the specified co-operative society to prepone elections and hold the same before November, 2006. Acting upon the permission accorded by the State Government, the Collector, Beed, by order dated 28th August, 2006, in exercise of his powers under Rules 9 and 10 of the Maharashtra Specified Co-operative Societies (Election to the Committees) Rules, 1971, appointed Sub-Divisional Officer, Ambajogai as the Returning Officer, whereas Tahsildar, Dharur came to be appointed as the Assistant Returning Officer. The Collector, on the same day, forwarded the tentative programme for the elections to the Returning Officer. The Collector also intimated Director (Information), Aurangabad to take steps for publishing the election programme in the local newspapers. The Director (Information), Aurangabad, accordingly instructed to the Manager, Advertisement, Majalgaon Times, district Beed to publish the programme of election in the newspaper dated 4th of February, 2006. As per the programme acceptance of nomination papers was to commence from the date of publication of the programme till 11th September, 2006. After completing all the steps, required for conclusion of the elections, the voting was scheduled to be held on 13th October, 2006 and the counting was to commence from 14th October, 2006. It is contended by the petitioners that they have tendered their nomination papers on 4th February, 2006. However, they were surprised to notice a publication of a notification by the Assistant Returning Officer, Majalgaon on 4th September, 2006 declaring therein that the programme of holding elections to the respondent No. 6 specified co-operative society has been stayed by the Collector, Beed until further orders. Being aggrieved by the action of stalling the process of election, the petitioners have approached this Court by filing this petition.

5. According to the petitioners, there is no power with the authorities to stay the process of election once the same has commenced. It is contended that the action has been taken at the instance of some individuals with political motive. It is contended that the provisions of the Act or the Rules of 1971 or the Bye-laws do not provide for stalling the programme of election once the process has been

set in motion.

6. Learned A.G.P. has filed, on record, the copy of the order issued by the Deputy Secretary, Maharashtra State, on 2nd September, 2006, communicating the decision of the State to the Commissioner for Sugar directing postponement of elections until further orders. The order dated 2nd September, 2006 is taken on record and marked as Exhibit - X. The learned A.G.P. has submitted that the action has been taken by the State Government, of staying the elections, in view of the representation received from the intervenors. It is to be noted that the order dated 2nd September, 2006, directing stay of the election, do not contain any reasons.

7. Shri V.D. Salunke, learned Counsel for the intervenors submitted that the term of the elected body of the Managing Committee is prescribed as five years and there is no provision, either in the Act, the Rules or Bye-laws for holding mid-term elections of the co-operative society. It is contended that the term of the Managing Committee is due to expire in the month of March, 2007 and the preponement of elections, even by few months, is not permissible. It is contended that the action of the present Managing Committee of preponement of elections is intended with a view to pressurise the class of voters in casting their votes in favour of the members who are in power. It is contended that the voters in general are likely to be influenced as the harvesting of sugar-cane of the members would be depending upon their political leanings. It is further contended that the petition is not entertain able as the order passed by the State Government is not challenged in the petition, whereas merely the notification published on the notice board, by the Assistant Returning Officer, has been made subject-matter of challenge.

8. Mr. S.G. Jadhavar, Advocate for the intervenor, has supported the stand taken by Shri V.D. Salunke.

9. It is contended by the Advocate for the petitioners that the election process, once set in motion, can, in no circumstances, be stalled. He further submits that the order issued by the State Government, directing stay of election, is a non-speaking order and does not spell out any reasons for taking drastic action of staying the ongoing election process. It is further contended that, though provisions of Section 73G(2) prescribe the period of the elected committee to remain in office, to be five years, there is no embargo either in the Act, Rules or By-laws to prepone the elections by a few months, for appropriate reasons. It is further contended that the society had taken a Resolution in its general body on 7th January, 2006 as well as the Managing Committee of the specified co-operative society had taken a decision for preponement of elections in view of sugarcane crushing season, which is likely to commence since November, 2006. The resolutions adopted by the Managing Committee as well as the general body of the society, have been forwarded to the State Government and there was an approval for holding the elections of the society before November, 2006. The decision was communicated by the State Government as long back as in July,

2006. There was no reason to stall the process of election suddenly on behest of the intervenors. He, therefore, contends that the act of the State Government, in stalling the ongoing process of election, is bad in law and that consequently action is liable to be struck down.

10. Shri Hone, learned Counsel for the petitioner, placed reliance on a judgment reported in *Vijaysingh Krishnarao Parbat Vs. Returning Officer, Janata Sahakari Bank Ltd., Janata Sahakari Bank Ltd. and District Deputy Registrar of Co-operatives*, . The matter pertains to rejection of nomination paper of a candidate for election. While determining the question of rejection of nomination paper, in that case, it was observed that the election process having commenced, no interference is called for. The another judgment on which reliance has been placed is reported in *Anant Janardan Patil Vs. State of Maharashtra and Others*, . The matter pertains to rejection of nomination paper for contesting the elections of village Panchayat. While dealing with the aspect of the rejection of nomination paper, the Court has observed that the bar of Article 243-O fundamentally rests on two planks (i) the election process must culminate in formal declaration of result without intermediate interruption and (ii) the aggrieved party has an adequate or sufficient remedy under elections laws, in questioning the election under available ground and that must exclude other forum. Learned Counsel also placed reliance on a judgment reported in *Anugrah Narain Singh and Another Vs. State of U.P. and Others*, All the authorities, cited at Bar, by the learned Counsel for the petitioners, are based on different sets of facts. However, the fundamental principal that the programme of election, once set in motion, should not be stalled, is well settled.

11. Shri V.D. Salunke, learned Counsel for intervenors, placed a reliance on a judgment reported in 2002 (1) Mh. L.J. 436 in the case of *Ashok Shravan Patil and Ors. v. State of Maharashtra (sic)*. The decision relates to disqualification of membership of committee. Relying on the said Judgment the learned Counsel canvassed that the provisions of the Act, Bye-laws and the Rules are strictly required to be adhered. Reliance is also placed on a judgment reported in *Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others*, . And (2) *Babasaheb Rajaramji Dampurikar and Anr. v. Collector of Parbhani District and Ors.* It was a case wherein there was a failure to prescribe a representation to Backward Class within meaning of Section 73B of the Maharashtra Co-operative Societies Act and the Court, while dealing with the issue, has observed that, on account of failure to adhere to the provisions of Section 73B of the Act, the whole process of election has been rendered illegal and invalid. We do not find any parallel as far as the case cited and the instant matter. The another judgment, on which reliance is placed, is reported in *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, . The judgment deals with the principle of interpretation regarding which there cannot be any two opinions. The learned Counsel for the intervenors also placed reliance on the two judgments reported in *Kiran Singh and Others Vs. Chaman Paswan and Others*, and 1990 S.C.C. 193 in the case of *Sushil Kumar Mehta v. Gobind*

Ram Bohra (Dead) Through his L.R.S. Those cases are relating to questions involving interpretation of provisions of Suits Valuation Act, 1887 and Rent Control Legislation, respectively and have no application to the instant case.

12. After examining the rival contentions, we find that the State Government has acceded to the request of the petitioners and had permitted to hold the elections prior to November, 2006 by a communication dated 6th July, 2006. Pursuant to the permission granted by the State Government, the Collector proceeded to appoint the Returning Officer and Assistant Returning Officer and had taken steps by publication of the programme of election. After publication of the programme of election, all of a sudden the State Government passed an order directing stay of election. There are no reasons spelt out in the order, directing stay of elections. Merely because a few individuals object to the holding of elections, the programme of election, once set in motion, ought not to have been stayed. We also find that neither the Act, nor the Rules empower the State Government or the authorities to stall the on going process of election, in such manner. The provisions of Section 73IB empowers the State to postpone the elections. The reasons for postponement given, as spelt out in the section are, scarcity, drought, flood, fire, or any other natural calamity or rainy season or any election programme, of the State Legislative Assembly or Council or the House of the People or a local authority coinciding with the election programme of any society or class of societies or such other reasons as, in the opinion of the State Government, are exceptional, it is not in the public interest to hold elections to any society or class of societies, the State Government can exercise the powers and postpone the elections. The power exercisable by the State Government u/s 73IB is required to be exercised in the given circumstances and such power is expected to be exercised before the programme of election is set in motion. The instant case is not that of postponement of the election. However, the State authorities have stayed the ongoing process of election. We find no justification for the action of the State Government for stalling the ongoing process of election.

13. Reliance is placed on a judgment reported in Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others, . The Apex Court, was, in the aforesaid judgment dealing with an aspect relating to preparation of electoral roll of a specific society. It is observed, in the reported judgment:

Chapter XIA of the Act was enacted and the Rules were framed specially to deal with the election of the specified societies u/s 73G of the Act, Section 144X provides that various stages of election shall also include preparation of the list of voters. Once the statute provides that preparation of the voters' list shall be part of the election process, there is no reason to hold that the preparation of the electoral roll is not an intermediate stage in the process of the election of a specified society. A perusal of the Rules discloses that the preparation of list of voters, filing of objection against the provisional list of voters, consideration of

the objection by the Collector and finalising the list of voters, all occur in the Rules which cover the entire process of the election. The Rules framed for election of specified societies are complete Code in itself providing for the entire process of election beginning from the stage of preparation of the provisional voters list, decision on the objection by the Collector, finalisation of electoral rolls, holding of election and declaration of result of the election. From the scheme of the Act and Rules it is clear that the preparation of voters' list is a part of the election process for constituting Managing Committee of a specified society. The writ petition challenging the order declaring the election schedule on ground of illegality in preparation of voters list would therefore be not maintainable.

The Honourable Apex Court has further observed:

Since preparation of the electoral roll is an intermediate stage in the process of election of the Managing Committee of a specified Society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality of breach of rules while preparing the electoral roll.

In view of the authoritative pronouncement of the Honourable Supreme Court, it is clear that once the election process, having been set in motion, it was not proper for the authorities to stay the ongoing process of election.

14. For the reasons recorded above, we, therefore, allow the petition and quash and set aside the action of the respondents, contained in the order dated 2nd September, 2006 of staying the programme of election of the respondent No. 6 specified co-operative society and the consequential notification published by the Assistant Election Officer for Majalgaon Sahakari Sakhar Karkhana Ltd., Sundarnagar, Telgaon, Tq. Majalgaon, district Beed, dated 4th September, 2006. We also direct the respondent Nos. 1 to 5 to hold the elections, in accordance with the provisions of Maharashtra Specified Co-operative Societies (Election to the Committees) Rules, 1971 from the stage where the programme was stayed after publishing the revised programme. The revised programme shall be published within one week from today.