
(2013) 05 BOM CK 0048
In the Bombay High Court
Case No : Writ Petition No. 68 of 2013

Parmeshwar and Dadasaheb

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 08-05-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 243K, 243O
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 324
Representation of the People Act, 1951 — Section 3, 49, 7

Citation : (2013) 4 ABR 738 : (2013) 4 ALLMR 673 : (2013) 4 BomCR 513 :
(2013) 4 MhLj 905

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : M.S. Karad, for Mr. S.S. Thombre, for the Appellant; P.P. More, Assistant Government Pleader for the Respondent No. 1 to 4 and Mr. Umakant Deshmukh, Advocate holding for Mr. V.D. Salunke, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—Rule. In view of urgency pleaded made returnable and heard forthwith. The petitioners have questioned validity and legality of the order dated 17th December 2012 passed by the Additional Collector, Beed, District Beed, whereby staying the elections to the post of Sarpanch/Up-sarpanch of Village Panchayat at Mauje Babhulwadi-Bedkuchiwadi, Taluka and District Beed. The petitioners also prayed for direction to the Returning Officer for election to Sarpanch and Up-sarpanch in the village panchayat of Babhulwadi, Taluka and District Beed to the effect that petitioners be declared as elected Sarpanch and Up-Sarpanch of group Grampanchayat of Babhulwadi and Bedkuchiwadi, Taluka and District Beed.

2. The facts briefly stated are as under:

Returning Officer (Respondent no. 4) for the election to the post of Sarpanch and Up-sarpanch for Grampanchayat, Babhulwadi had issued notices to members of

the Grampanchayat to hold meeting in the office of Grampanchayat, Babhulwadi on 17th December 2012. The meeting was for electing Sarpanch/Up-Sarpanch for Babhulwadi, Bedkuchiwadi and Belwadi Group Grampanchayat, informing members of the Grampanchayat that nomination forms would be submitted during the period between 10.00 and 12.00 noon on 17th December 2012 and at about 2.00 p.m. at noon time and meeting would be held for electing Sarpanch and Up-Sarpanch for Babhulwadi group Grampanchayat. Accordingly, it appears that nomination for the post of Sarpanch was filed by petitioner No. 1 Parmeshwar Kachru Satpute, proposed by Dadasaheb Baburao Khindkar, while nomination of Dadasaheb Baburao Khindkar was proposed by Parmeshwar Kachru Satpute, for the post of Up-Sarpanch. In the meeting, however, minutes dated 17th December 2012 indicate that members of the village panchayat were absent., In the result, for want of quorum, meeting was postponed to 18th December 2012 at about 2.00 p.m. in the noon time (vide Annexure "C" to the petition). Returning Officer on 17th December 2012, had received report from Ramnath Suryabhan Chinchkar, resident of Bedkuchiwadi, Taluka and District Beed reporting that while he along with his supporting members were coming by jeep No. MH-14-CV-8001 from Bedkuchiwadi to Babhulwadi, they were prevented by Parmeshwar Kachru Satpute and his twenty to twenty-five associates obstructing by means of J.C.B. (machine used for excavating the soil) and creating obstruction by means of placing wood, stones etc. The mob, which had collected had also pelted stones towards Police. Police had fired in the air to disburse the mob, but the mob had pelted stones towards the jeep. In the result, injuries were caused to members of the Grampanchayat namely Vandana Keshav Bhore, Champabai Karbhari More. Thus, Ramnath Suryabhan Chinchkar and members of the village panchayat were prevented from filing the nomination forms as well as attending the meeting. It is, under these circumstances, on 17th December 2012 considering the averments in the application/report from Ramnath Suryabhan Chinchkar on the ground that he was prevented from filing nomination form due to terrorizing steps taken against him by the petitioner Parmeshwar Kachru Satpute and his associates, the Additional Collector, Beed though it appropriate to register the election dispute u/s 33 (5) of the Bombay Village Panchayats Act, 1958. Considering that, under the circumstances, request from Ramnath Suryabhan Chinchkar is to be considered and inquiry is required into dispute. Thus, the incomplete election process for electing Sarpanch and Up-Sarpanch for Grampanchayat Bangladeshi-Bedkuchiwadi-Belwadi, Additional Collector, Beed, using his discretion, according to law decided to stay the election process.

3. Thus, while petitioners prayed for declaration for their election to the post of Sarpanch and Up-Sarpanch, respondent No. 5 Ramnath Suryakant Chinchkar contested the petition on the ground of its maintainability in view of Article 226 of the Constitution of India, as also on the ground that petitioners had suppressed the fact of their creating atmosphere of terror in the village by obstructing members of Grampanchayat to enter in the village by means of

closing the way by putting J.C.B. machine and other things in the way preventing entry of respondent No. 5 and his supporting members. On behalf of respondent No. 5 it is contended that Rule 12 of the Bombay Village Panchayat (Sarpanch and Up-Sarpanch) Election Rules 1964 gave ample power to the Additional Collector to stay the election process to ensure process of free and fair and equitable elections to the post of Sarpanch and Up-Sarpanch for Babhulwadi-Bedkuchiwadi-Belwadi group Grampanchayat and prayed for dismissal of the petition on the ground that petitioners had resorted to prohibitive acts of violence or to distort the election process, which also resulted in a complaint, lodged as F.I.R. No. 1491/2012 dated 17.1.2012 at Pimpalner Police Station, District Beed u/s 307, 324, 341, 147, 148, 149, 353, 332, 333, 337, 504, 506, 427 of I.P.C. and also u/s 3 and 7 of Representation of People Act.

4. On behalf of State of Maharashtra, an affidavit is filed by Naib Tahsildar (Election) in the office of Naib Tahsildar, District Beed indicating that Ramnath Suryabhan Chinchkar was interested to submit nomination form but was restrained from doing so, as force was used against him. In the result, election process could not be completed due to problem of law and order, when the Police machinery had to resort to fire in the air in the interest of public security. The fact that Additional Collector, Beed was awaiting inquiry report from the Police is also disclosed in the affidavit-in-reply by Naib Tahsildar (Election). It is under these circumstances that Additional Collector, Beed resorted to emergent step to stay the election process to prevent further violence and hoodwinking in the village. Sub-Auditor Class II Officer of the Co-operative Societies (Flying Squad, Beed doing duty as Returning Officer for the election of Sarpanch and Up-Sarpanch of Grampanchayat of Babhulwadi-Bedkuchiwadi-Belwadi also filed affidavit sworn on 26.2.2013 that on 17th December 2012 only two members had submitted nominations supporting each other for the post of Sarpanch and Up-Sarpanch, but no member was present at the time of scrutiny and for want of quorum, meeting was adjourned and scheduled to 18th December 2012. The fact is that the Police had to fire in the air to disburse the mob because of chaos at about 11.30 am and because of that the meeting could not be concluded on 17th December 2012 and further fact must be noted that the matter was reported to Tahsildar, who forwarded the report to Collector who in turn had to stay the proceedings of election of Sarpanch and Up-Sarpanch of Group Grampanchayat Babhulwadi-Bedkuchiwadi-Belwadi.

5. Learned Advocate Mr. Karad, representing the petitioners sought to reply upon the following rulings:

- (i) Satish Nanote and Sau. Sarita Santosh Rathod Vs. State of Maharashtra, Department of Water Supply and Sanitation, Executive Engineer, Rural Water Supply Department, Block Development Officer and Secretary, ;
- (ii) Maruti Bandu Patil Vs. Village Panchayat, Sidhanerli and Others, ;
- (iii) Sangeeta Peplo Gaude and Others Vs. Tulshidas Bablo Gad and Others, ;

In case of Satish Babarao Nanote & Anr. Vs. State of Maharashtra and ors. (supra), the Division Bench of this Court has held that "the intention of the Legislature in enacting Section 49 of the Act is to confer the power of constitution of the Village Development Committee by whatever name called on the Gram Sabha and the power to designate a member as the President, the Secretary or any other bearer is also implicitly restricted in the Gram Sabha and the members of the Village Development Committee once appointed cannot be removed or withdrawn before completion of their term as provided in sub-section (2) except by express resolution passed by the Gram Sabha in a special meeting called for the purpose or any other cause mentioned in the said sub-section".

However, in the instant case, the nomination forms could not be filed by the other members, who were contesting the elections for the post of Sarpanch and Up-Sarpanch, as they were restrained and obstructed by putting the J.C.B. machines in their way. Thus, the ratio laid down by the Division Bench of this Court in aforesaid case would not be applicable to the present case.

So also, ratio laid down in the cases of Maruti Bandu Patil Vs. Village Panchayat, Sidhnorli & Others, and Sangeeta Peplo Gaude & Others vs. Tulshidas Bablo Gad & others (supra) is not applicable to the facts of the present case.

6. Per contra, learned Counsel Mr. Deshmukh representing the respondent No. 5 has relied upon the following ruling to substantiate his contention.

(i) Maroti Sakhararam Wasekar Vs. Tahsildar, Mul and Another ;

(ii) Shambhu Singh Vs. State Election Commission, U.P. and others, ;

(iii) Surinder Kaur Vs. State of Punjab and others, ;

(iv) Baburao Shankarrao Wadikar and Others Vs. State of Maharashtra and Others, ;

(v) Kameshwar Singh Srivastava Vs. IV Addl. District Judge, Lucknow and Others, .

In case of Surinder Kaur Vs. State of Punjab (supra), the Honourable Supreme Court held that:

It is her case that the 7th respondent had forcibly taken the nomination papers from her and torn them off and since her husband was already under police custody at the relevant time, she was incapable of resisting the high-handed action. It is obvious that she was prevented from filing the nomination papers. Under these circumstances, she was constrained to approach the authorities. But when she did not get any tangible result, she had gone to the High Court and filed the writ petition. Under these circumstances, we are of the considered view that the conduct of the election in the circumstances was not valid in law.

7. It is urged on behalf of the Petitioners that in view of Rule 10 of the Maharashtra Village Panchayats (Sarpancha and Up-Sarpancha) Election Rules,

1984, when only one candidate has been nominated each for the post of Sarpanch and Up-Sarpanch they must be declared duly elected in the absence of any contest. The submission in the Petition conveniently ignores the other relevant provisions of law and Rules which have to be harmoniously read together in their totality and not in isolation, for to ensure that the process of the election to the office of the Sarpancha and the Up-Sarpanch for each village panchayat or each group of village panchayat for smaller villages must be fair, socially equitable and just. In my opinion, the Rule 12 can meet the contingency arising for any reason other than the lack of quorum and subsequent adjournment of the meeting called for to elect Sarpanch or Up-Sarpanch irrespective of quorum is permissible if there is good reason for the authority concerned for to act upon. Rule 10 of the Maharashtra Village Panchayats (Sarpancha and Up-Sarpancha) Election Rules, 1984 reads thus:

10. Procedure for election-(1) If only one candidate has been duly nominated for the office of the Sarpanch or Up-Sarpanch, he shall be declared to have been duly elected as Sarpanch or, as the case may be, Up-Sarpanch.

(2) If more than one candidate have been so nominated, the Presiding Officer shall proceed to elect the Sarpanch or as the case may be. Up-Sarpanch. The voting at such election shall be by show of hands. If, however, [any member present at the meeting so demands.] the voting shall be by ballot. The candidate who obtains the highest number of votes shall be declared to have been duly elected as Sarpanch or, as the case may be, Up-Sarpanch. When any equality of valid votes is found to exist between any two or more candidates and the addition of one vote will entitle any of them to be declared as Sarpanch or, as the case may be, Up-Sarpanch, the determination of the candidate to whom such additional vote shall be deemed to have been given shall be made by lot to be drawn by the Presiding Officer in such manner as he shall determine.

Rule 12 of the Rules of 1964 reads as under:

12. Power to adjourn and hold meeting again if election is not made. - If for any reason (other than lack of quorum) the meeting called for the election of Sarpanch or Up-Sarpanch does not result in the election of Sarpanch or Up-Sarpanch, the Presiding Officer shall adjourn it, and hold it again for the purpose on the next day at the same place and hour. A notice of such adjournment shall be fixed on the notice-board at the office of the Panchayat. The business which would have been brought before the original meeting, had there been a quorum thereat, shall be brought before the adjourned meeting and may be disposed of at such meeting or at any subsequent adjournment thereof whether there be a quorum present or not.

8. I have perused the rulings cited in the light of submissions advanced before me. I have also perused the Bombay (now "Maharashtra") village Panchayats (Sarpanch and Up-Sarpanch) Election Rules, 1984 as amended from time to time. It must be borne in mind that any Gram Panchayat function at the village

level. It is the primary and important unit of local self-government. Gram Panchayat is expected to act as village level self-Government under the three tier system of democratic decentralization of Panchayat Raj democratic system. A Gram Panchayat is also a local self-government responsible for orderly administration of the village and the agency for planning and executing the local development programs for the welfare of the people in the village or group of villages. Importance of Gram Panchayat cannot be undermined as it helps to train the villagers in the art of governing themselves. It trains and develops local leadership. It trains rural people in democratic procedure. In smaller villages a group gram panchayat for two or three villages is established. Members of gram panchayat are elected by villagers for a period of five years. One of the members is elected as Sarpanch and another Deputy Sarpanch. Grampanchayat has a paid secretary (Gramsevak) who is appointed by Zilla Parishad. Election of Gram-Panchayat is conducted by state's election Commissioner through District Collector and Tahsildar. The elections are conducted for every five years. An adult with an age of 21 years and above is eligible for contesting the election and for voting in the same. The Chief executive officer makes the inquiry and collects the information in prescribed form and put in the meeting of standing committee. Election of Sarpanch and Deputy Sarpanch is conducted in 1st meeting of Panchayat under Chairmanship or representative of Collection. The 1st meeting is called as early as possible after election. The notice of election is given to elected members at least before three days. The names in prescribed form are accepted form are accepted before 2 hours of meeting from elected members The election is conducted by open voting election method but if any member desires, the secret ballot method is may be used. Onerous responsibility have been placed upon the authorities concerned under the Rules of Election to the post of Sarpanch and Deputy Sarpanch of the village Panchayats. The appointments may be subject to reservation for the Post of Sarpanch and/or Deputy Sarpanch. The State Government is required under the Rules to specify by the notification in the official gazette the number of the offices of the Sarpanchas and Up-sarpanchas kept reserved for the scheduled tribes and the Scheduled castes and for the category of the backward class of Citizens in the State of Maharashtra. 1/3 of the seats is reserved for women. 27% seats are reserved for other backward class (OBC) members. In proportion of population of NT and VJ to total population the seats of the Sarpanch are reserved. The reservation of seats is fixed by Collector by draw method. The collector of the District is under the statutory obligation to notify the offices reserved for the Sarpanchas in the District by drawing lots according to the instructions given from the State Government from time to time. The roster of reservation for each block of five years need to be prepared. In substance the Rule have to be harmoniously read to vouchsafe that entire election process for village Panchayats in the State has to be fair, socially equitable and just according to prevalent law. The rules as to election of Sarpanch and deputy Sarpanch are enacted and amended from time to time in the State of Maharashtra to ensure the orderly, free and fair election process. Any candidate aspiring to be Sarpanch or Deputy Sarpanch must have due

regard and respect for the well established and sound principles of the law providing for the healthy democratic way of conducting the elections and socially equitable appointments of Sarpanch at local level of village Panchayats. If any body have decided to adopt Strong arm tactics, to use influence by money or otherwise upon the members of the body and resorting to dirty village level politics of any sort, and when any such act is complained against the person concerned, it need to be inquired in to expeditiously, and recurrence thereof ought to be prevented at such important village level election. Hooligans whosoever they may be, can never be allowed to take control of the situation so as to override the just and fair democratic election process. We find in the facts and circumstances disclosed in the case in hand the respondent aspirant for the post of Sarpanch had made a serious grievance that he and his supporting members were prevented at the instance of the Petitioners from attending the meeting of the Gramsabha, by hooligans causing the obstructions created on their way by digging done by means of JCB machine, laying of stones, ploughs etc. on the access way to the place of Gramsabha. A complaint to the police was also lodged in respect of the incident and the police who arrived on the scene had reportedly fired shot in the air to disburse the mob to help restoring the normalcy in the village. The incident was reported widely by local newspapers as well as it appears so from the Newspaper cuttings annexed with the affidavit-in-reply of the respondent. The impugned stay order therefor passed by the Additional Collector of Beed District was a just, necessary and proper step in an emergent situation, pending the inquiry in to the alleged violent incident in the village considering the fact and circumstances of the case to ensure the free and fair, equitable election process for the Group village Panchayat of Babhulwadi, Bedkuchiwadi and Belwadi. The policy of the law as revealed from the Article 243-O of the Constitution of India is to prohibit any election to the Panchayat from being called in question except otherwise than by an Election Petition to be presented as prescribed by the law framed by the State Legislature. Thus there is no option for the candidate at such election except to adopt the statutory remedy when any dispute is raised about the Panchayat election. Under Rule 12 of the Maharashtra village Panchayats (Sarpanch and Up Sarpanch) Election, 1964 Rules there is power vested with the presiding officer to adjourn the Meeting if for any reason the election could not be held to the post of Sarpanch and Deputy Sarpanch (for reason other than the lack of quorum). In the facts and circumstances of the case, therefore, use of the power to pass the impugned order by the respondent additional Collector to stay the meeting of the group village Panchayat can not be faulted as material irregularity or illegality so as to require interference by this Court in exercise of the writ jurisdiction. It is our hope and trust that the Additional collector, Beed can and will surely take further requisite steps according to law after receiving the inquiry report and upon obtaining the prompt instructions from the State Government to complete the election process in the village Panchayat concerned as early as possible. In the facts and circumstances it is not at all proper to keep the Petition pending in this court indefinitely for long period when no any ground is made out to interfere

with the impugned action in the present case. Impugned action can not be labelled as unreasonable, arbitrary or malafide in the facts and circumstances of this case. Article 243-O of the Constitution of India reads thus:

243-O. Bar to interference by courts in electoral matters-Notwithstanding anything in this Constitution-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243-K, shall not be called in question in any court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

9. The Petitioners have raised dispute in respect of an election to the post of Sarpanch and have sought relief in respect of an election to the group village Panchayat. Article 243-O of the Constitution of India operates notwithstanding any thing in the Constitution and prohibit any action calling such election in question except by way of an Election Petition instituted as prescribed by the law enacted by the State legislature for the said purpose. The Courts are generally barred from causing interference in electoral matters of village Panchayats except in cases of Election Petition duly instituted as prescribed under the law enacted by the Legislature of the State. Therefore the objection as to maintainability of this writ Petition is sustainable.

10. Even otherwise there is alternate remedy of appeal statutorily prescribed, since the impugned order passed by the Additional Collector, Beed is passed u/s 33(5) of the Bombay (now "Maharashtra") Village Panchayat Act, 1958 the decision was appealable before the commissioner. For the reasons stated therefore the Petition is dismissed. Rule is discharged. No costs.