
(2006) 03 BOM CK 0119
In the Bombay High Court
Case No : L.P.A. No. 145 of 2005

Pradeep Yogeshwar Nimje	Vs	APPELLANT
State of Maharashtra and Others		RESPONDENT

Date of Decision : 24-03-2006

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2006) 4 ALLMR 275 : (2006) 6 BomCR 239 : (2006) 44 MhLj 45

Hon'ble Judges : D.S. Zoting, J;A.H. Joshi, J

Bench : Division Bench

Advocate : P.C. Madkholkar, for the Appellant; AGP for respondent Nos. 1 to 4 and Bhandarkar, for respondent Nos. 6 to 11, for the Respondent

Final Decision : Dismissed

Judgement

A.H. Joshi, J.—Heard by consent of parties for final disposal.

2. The appellant herein has challenged the Judgment and order passed by the learned Single Judge of this Court (CORAM : B.P. Dharmadhikari, J.) in Writ Petition No. 6045 of 2004. It is seen that Writ Petition was filed on 15-12-2004 with main prayer (B) as to final reliefs which is as follows:

B) That, this Hon"ble Court be pleased to set aside the order passed by Deputy Registrar, Co-operative Societies, City-1 dated 24-4-2003 appended to the present petition at Annexure-E and also declare the voter list published by respondent No. 4 to be null and void and direct that only 23 members, who were as on 31-3-2001 were entitled to participate and vote in the election and direct that re-election be held within a period of 45 days from the date of order by appointing Election Officer for that purpose.

3. In the Writ Petition No. 4065/2004, the orders dated 24-4-2003 issued by the Dy. Registrar, Co-operative Societies, Nagpur, and order passed by Divisional Joint Registrar, Co-operative Societies passed on 21-12-2004 were challenged. It is seen that by said order, the DDR Co-operative Societies had rejected the

objections submitted by the present appellant to the voters list notified on 23-4-2003, while by the order passed by the Joint Registrar, he had dismissed the revision application preferred before him by present petitioner.

4. The case proceeds on common grounds as follows:

(a) Rival groups involved in the case claim that the Elections were held on different dates and rival groups were elected.

(b) The dispute No. 152 of 2002 was filed by the present appellant in which a direction was given for holding fresh election.

(c) Appeal was carried to the Co-operative Appellate Court wherein DDR Co-operative Societies was directed to hold elections by collecting records of the Society.

(d) The Election Officer was appointed on 27-3-2003 and the Election Programme was declared on 9-4-2003.

5. The facts in dispute are that:

(a) The provisional voters list was published as on 31-3-2001.

(b) The objections were invited till 16-4-2003, however, according to the respondents no objections were raised, while according to the appellant, the objections could not be raised as there was no proper publication.

6. According to the appellant, he came to know about finalisation of voters list on 23-4-2003 itself on which date, he has raised the objections. The DDR then passed order on 24-4-2003. The said order of DDR was initially challenged before the Joint Registrar who declined to interfere and matter took a route up to this Court, and ultimately in Writ Petition No. 3012/2003, this Court directed to hear and decide the revision application preferred before him by the present appellant against the order passed by the DDR dated 24-4-2004.

7. The Divisional Joint Registrar, Co-operative Societies has then passed the impugned order dated 2-12-2004 and refused to entertain the revision application. Present Writ Petition is, therefore, challenging both orders of DDR Co-operative Societies and Joint Registrar, Co-operative Societies dated 24-4-2003 and 2-12-2004.

8. It is not in dispute that there was no order of stay to the election from any Court in Writ Petition No. 6045/2004. In the result, the elections had proceeded and the appellant has participated in the election process. Ultimately, on 7-12-2004, results of election have been declared and notification of results of election is also issued.

9. The contentions which are raised in support of this Letters Patent Appeal are:

(a) Learned Single Judge was wrong in refusing to entertain the Writ Petition in view of Judgment in Shri Sant Sadguru Janardan Swami v. State of Maharashtra

reported in 2002(1) Mh.L.J. (S.C.) 659 case.

(b) Learned Single Judge ought to have considered law as emerged from Ramchandra Ganpat Shinde's case reported in 1993(4) SCC 216 and case of Ahmednagar Zilla S.D.V. and P. Sangh Ltd. and Another Vs. State of Maharashtra and Others, .

(c) The Joint Registrar was bound to decide the revision u/s 154 on merits and in view of Judgment and order in Writ Petition No. 3012/2003, which is not done, however this aspect has not been considered by the learned Single Judge.

(d) Crucial date for election was 31-3-2001 as basic date referring to which voters' list of members on that date was liable to be prepared and this question goes to the root of case, and therefore, was material and, therefore, petitioner had made out a case for interference in exercise of extraordinary prerogative writ jurisdiction of this Court by learned Single Judge.

10. It shall be convenient and useful to deal with the submissions relating to Judgments which according to the petitioner, govern the case.

11. Learned Advocate Mr. Madkholkar urged in support of the appeal by persuading this Court relying upon the reported Judgment Ramachandra Ganpat Shinde and another Vs. State of Maharashtra and others, that High Court would be competent to interfere in the election process. Learned Advocate Mr. Madkholkar further urged that the Judgment in a case of Shri Sant Sadguru Janardan Swami v. State of Maharashtra reported in 2002 (1) Mh.L.J. (S.C.) 659 is not an impediment in his way, in view of the latter judgment of the Hon'ble Supreme Court namely Ahmednagar Zilla S.D.V. and P. Sangh Ltd. and Another Vs. State of Maharashtra and Others, . According to the learned Advocate Mr. Madkholkar, in this case (Ahmednagar Zilla S.D.V. and P. Sangh Ltd.) Their Lordships of Supreme Court on the face of and upon referring said Sant Sadguru Janardan Swami's case have clearly found that non interference in the matter of election process is not a rigid rule since, interference that was done by the High Court in the process of election in said (Ahmednagar Zilla S.D.V. and P. Sangh Ltd. case) was not interfered by the Supreme Court. According to learned Advocate Mr. Madkholkar had Lordship of Supreme Court to disapprove the interference by this Court, could have following Sant Sadguru Janardan Swami's case, interfered the order of High Court which has not been done. This according to Mr. Madkholkar is a departure from the precedent in case of Sant Sadguru Janardan Swami's case supra.

12. This Court has perused the Judgment in Ramchandra Shinde's case supra which is strongly relied upon by the petitioner. In this case, the voters list was prepared in view of the statement which was made before the High Court in the proceedings where the preparation of Voters list was the subject-matter of challenge in the Writ Petition, and under the orders of High Court based on said statement. Their Lordships of Supreme Court held that in said case since the voters list was prepared pursuant to the direction issued in the writ jurisdiction,

the Election Tribunal acting under the statute would not be competent to adjudicate upon the legality of such inclusion.

This Court finds that present is not a case of such nature, i.e., as in Ramchandra Shinde's case. Converse thereof is that in all other cases, the election tribunal has to examine the legality of the voters list as well and it would not be competent for this Court to interfere in the process of election.

13. This Court has keenly perused the Judgment in the case of Ahmednagar Zilla S.D.V. Sangh Ltd. and Anr. v. State of Maharashtra and Ors. supra for testing the submissions of learned Advocate Mr. Madkholkar. This Court finds that Lordships of Supreme Court again found against the challenge to election process in the midst, and against the appellants before Their Lordships that the High Court had granted indulgence by direction to Returning Officer to include the names of the respondents. However, for seeking interference by the Supreme Court, it was the appellant (before the Supreme Court) to show that the preparation of the Voters list was done on the basis of bylaws which were legally passed which the appellant was not able to show.

14. This Court finds that Their Lordships of Apex Court have not recorded any note of departure from the rule of precedent emerging from Sant Sadguru Janardan Swami's case. Their Lordships of Supreme Court considering the balance of equity between the parties found that while directing the inclusion of names of the Writ Petitioners before it whose names were included on account of illegally amended by-laws was a challenge before the Supreme Court and Their Lordships, in turn, observed as follows:

6. The question as to whether the High Court ought to have entertained the writ petition filed by the respondent or not takes a back seat in the instant case as it was for the appellants herein to show that the amendments in the bye-laws have been carried out in accordance with law. Both the Appellate Authority as also the revisional authority have pointed out that conditions precedent for amending the bye-laws had not been complied with. Such a finding on jurisdictional fact has been held by the High Court as not "perverse" warranting interference under Article 227 of the Constitution of India. Before us also the learned Counsel appearing on behalf of the appellant has failed to show as to why this Court should take a different view. We, therefore, do not find any merit in these appeals. The appeals are dismissed accordingly.

15. Thus, the ratio as emerging from Sant Sadguru Janardan Swami's case still holds the field. In case of Ahmednagar Zilla S.D.V. and P. Sangh Ltd. and Anr. v. State of Maharashtra and Ors. supra, on the facts of the case, it is seen that the High Court had not stayed the election, but had directed the inclusion and the said inclusion by the High Court of the petitioners concern in the voters list was not interfered by the Lordships of the Supreme Court.

16. It is in this background that without upsetting the law as laid down in Shri Sant Sadguru Janardan Swami case supra, Hon'ble Supreme Court declined to

interfere. Thus, interference by way of corrective measures by High Court was not interfered, yet staying of process of election is found still un-welcome rather is the rule as laid down by the binding precedent which still governs the field.

17. Next point according to the learned Advocate Mr. Madkholkar point to be considered was as to whether the Revisional Court had correctly exercised the jurisdiction. For this purpose, he has placed reliance on the case Juhu Co-operative Housing Society Ltd. Vs. State of Maharashtra and Others, It is not necessary to deal with these aspects in view of what this Court has held hereinabove, and on facts herein after.

18. In the background, this Court finds that it is totally unnecessary to adjudicate the factual matter of the case.

In the result, consideration of challenge in the present appeal which was subject-matter of the jurisdiction of learned Single Judge with Writ Petition is rendered a matter of totally academic nature, when alternate remedy was available and has not been availed of. This Court, therefore, considers that it is total unworthy to exercise its jurisdiction in present Letters Patent Appeal, more particularly, when the results were declared and Section 91 of Maharashtra Co-operative Societies Act does not create any fetters as to challenge therein, the challenge to the finalisation of voters list does not serve any practical purpose.

19. In view of this, the Writ Petition which was decided by the learned Single Judge as well the present Letters Patent Appeal are nothing, but exercise of luxurious continuation and availment of Constitutional Forum when to the knowledge of the parties, the election process has come to an end and the ultimate result of election was not brought into the challenge before the Cooperative Court as well as in the said Writ Petition.

20. In the result, appeal is liable to be dismissed and is dismissed.