
(1999) 09 BOM CK 0082
In the Bombay High Court
Case No : Writ Petition No. 365 of 1996

Shri Vinayak Kamat Tarcar

APPELLANT

Vs

State of Goa and others

RESPONDENT

Date of Decision : 18-09-1999

Acts Referred:

Constitution of India, 1950 — Article 10, 12, 13, 14, 17

Citation : (2000) 2 BomCR 727

Hon'ble Judges : R.M.S. Khandeparkar, J; R.K. Batta, J

Bench : Division Bench

Advocate : Girish Sardessai, for the Appellant; C.A. Ferreira, Govt., M.S. Usgaonkar, Sr.A. and S.S. Kantak, for the Respondent

Judgement

R.K. Batta, J.—The petitioner claims to be a "Dazan" (Associate) of Shree Bhagwati Chimulkarrin Devasthan of Marcela, Goa (hereinafter referred to as the said Devasthan). According to the petitioner, the said Devasthan has bye-laws, duly approved by Port aria (Order) No. 108, which were published in the Government Gazette No. 83 dated 27-10-1910. The said bye-laws contemplate two managing committees, namely one managing committee of "Mahajans" and the other managing committee of "Dazans". The functions of the said committees are distinct and defined in the bye-laws, as can be seen from various articles, especially Articles 3, 4, 10, 23, 29, 33 and 34. The petitioner further contends that the treasury of "Dazans" is distinct and independent from the treasury of the "Mahajans". Respondents No. 5 to 12 claimed that they should be appointed as "Mahajans" of the said Devasthan, but the same was denied to them, as a result of which, the said respondents moved the Government and obtained directions to the elected committee of "Dazans" to appoint them as "Mahajans" of the said Devasthan. The Managing Committee of the said Devasthan did not comply with the directions of the Government, as a result of which, the Government vide order dated 8-11-1995, dissolved the managing committee of "Dazans". The managing committee of "Dazans" filed Writ Petition 349/95, challenging the said order of dissolution dated 8-11-1995. The managing

committee of "Dazans" compromised the said Writ Petition 349/95 with respondents No. 5 to 12 pursuant to which the said petition was disposed of in the following terms:-

- "1. The petitioners will enrol those Mahajans whose names appear in the notice dated 6th April 1995 issued by the Mamlatdar, being Exhibit R-1 of the affidavit of the Government. This the petitioners should do within 15 days from today.
2. The first respondent is directed to conduct the elections of the Managing Committee of Mahajans within 2 months thereafter.
3. Till the new Managing Committee takes charge after the elections, the interim order passed by this Court wilt continue and thereafter the petitioners committee is not entitled to continue.
4. These terms are ordered subject to the contentions raised by the parties in the Special Civil Suit No. 79/92 pending in the lower Court. Order accordingly. The writ petition is disposed of."

According to the petitioner, the said compromise was arrival at by the managing committee of "Dazans" without consulting General Body of "Dazans" and in violation of the bye-laws of the aforesaid Devasthan. He further contends that the managing committee of "Dazans" had been duly elected by "Dazans" of the said Devasthan and in terms of Article 45 of the Devasthan Regulation, when an elected managing committee is dissolved, the Governor is required to appoint an administrative committee, which would replace the dissolved committee, till the elections are held in accordance with Devasthan Regulation. The petitioner's case further is that subsequently, the managing committee of "Dazans" who had filed the Writ Petition No. 349/95 and had entered into a compromise, realised that the statutes or the bye-laws contemplate 2 managing committees and, as such, the Devasthan had to have permanently a managing committee of "Dazans" to perform the functions attributed to it by statutes or bye-laws. Accordingly, Review Application 16/96 was filed, seeking clarification of the compromise order dated 25-6-1996 to the effect that after the election of the managing committee of "Mahajans", the managing committee of "Dazans" is not entitled to perform the functions of the managing committee of "Mahajans", but they would be entitled to continue to perform the functions of the managing committee of "Dazans", as contemplated by the bye-laws. This review petition was dismissed. The managing committee of "Dazans" filed SLP before the Apex Court against the compromise order dated 25-6-1996, but the said SLP was dismissed vide order dated 3-9-1996. The petitioner, therefore, contends that on dissolution of the managing committee of "Dazans" and especially in view of Articles 29, 33 and 34 of the statutes, it was the duty of the Government to appoint an administrative committee in terms of Article 45 in order to substitute the dissolved managing committee of "Dazans" till the elections were held. According to the petitioner, the managing committee of "Mahajans" is not entitled to take charge of the management, funds, books, furniture, records,

cash, assets, documents of properties, etc. belonging to the association of "Dazans". The members of the dissolved managing committee of "Dazans" received letter dated 24-9-96 from the Mamlatdar, asking them to hand over charge of catalogue of the "Mahajans" and charge of functions of managing committee of "Mahajans". The "Mahajans" committee was elected in the elections held on 9-9-96 pursuant to which, letter dated 24-9-1996 was issued by the Mamlatdar to the members of the dissolved managing committee of "Dazans". The Mamlatdar sent another letter dated 9-10-1996 to the President of the dissolved managing committee of "Dazans" for handing over of the charge. Accordingly, the petitioner seeks directions to the Government to appoint an administrative committee of "Dazans" in terms of Article 45 of the statutes or bye-laws to substitute the dissolved managing committee of "Dazans" till the elections are held. Pending hearing and disposal of the petition, temporary injunction was sought seeking to restrain the respondents 5 to 12 from taking charge of funds, books, furniture, records, cash, assets, documents of properties, etc. belonging to the association of "Dazan"s.

2. Learned advocate for the members of the dissolved committee of "Dazans" who are respondents No. 13 to 20 in this petition agreed to hand over gold ornaments, without prejudice to the rights and contentions of the said respondents. It appears that the other charge had already been handed over by the dissolved managing committee of "Dazans" to the President of managing committee of "Mahajans".

3. Respondents No. 5 to 12, who have been elected as members of the managing committee of "Mahajans", have contended that the petition, in question, is filed by the petitioner in collusion with respondents 13 to 20 who were the members of the dissolved managing committee of "Dazans". The petitioner is the son of respondent No. 16. It is further contended that after the members of the managing committee had failed in the Special Leave Petition, filed before the Apex Court, the present petition has been filed through the petitioner who does not have any locus standi as he is not and cannot be a member of the association of "Dazans". It is pointed out that the scheme of bye-laws of the temple under Government Order No. 108, clearly provides that the association of "Dazans" has to continue till Article 43 of the said bye-laws comes into play. It is further contended by the said respondents that no committee of "Mahajans" has been formed as a result of which the managing committee was always formed from the members of the association of "Dazans". This committee of "Dazans" was required to appoint members as "Mahajans", but the said committee of "Dazans" not only overlooked their duty, but defied the order of the Mamlatdar and the Court, passed under Devasthan Regulation, as a result of which, the said committee of "Dazans" was ordered to be dissolved. This order was challenged by the committee of "Dazans" in Writ Petition No. 349/95 which ended in a compromise order. According to these respondents, as per Article 43 of the bye-laws, under Government Order No. 108, as soon as a managing committee of "Mahajans" is elected, the association of "Dazans" has no further part to play in

the administration of the temple and the said committee of "Dazans" is not entitled to continue once the managing committee of "Mahajans" is elected in terms of the order in the said writ petition. It is further submitted by these respondents that under the Devasthan Regulation, only the association of "Mahajans" is contemplated and the affairs of the temple are to be administered by the elected members of the managing committee of "Mahajans".

4. Respondents No. 13 to 20 who were the members of the dissolved committed of "Dazans" had filed a Writ Petition No. 349/95, have stated that the bye-laws of the temple provided for 2 distinct and separate committees, namely managing committee of "Dazans" and the managing committee of "Mahajans"; that when the committee of "Dazans" was dissolved, the administrator was bound to appoint an administrative committee under Article 45 of the Devasthan Regulation and the charge could not be ordered to be handed over to the managing committee of "Mahajans". According to them, the petitioner is a member of the association of "Dazans" and he is enrolled at serial No. 58 of the catalogue of "Dazans".

5. We have heard learned Advocate Shri Girish Sardesai appearing on behalf of the petitioner; learned Government Advocate Shri C.A. Ferreira on behalf of respondents No. 1 to 4 and learned Senior Advocate Shri M.S. Usgaonkar for respondents No. 5 to 12. No one appeared on behalf of respondent No. 13 to 20.

6. Learned Advocate for the petitioner took us through various provisions of bye-laws made under Government Order No. 108 of 26-4-1910 (hereinafter referred to as the said "Bye-laws") and the provisions of Devasthan Regulation (Act of Legislature No. 645 dated 30th March, 1933). According to him, there are two distinct committees, namely committee of "Mahajans" and the committee of "Dazans" with separate treasuries. In support of his contention, he placed reliance on Chapter III, section II and Chapter V of the said Bye-laws. He also drew our attention to Articles 25, 27, 29, 30 and 31 of the Devasthan Regulation and urged before us that by analogy, elections are required to be held in so far as the managing committee of "Dazans", is concerned. He specifically urged that the Devasthan Regulation recognises not only the concept of associates (Dazans), but also their right to vote under Article 31 of the Devasthan Regulation. He, however, had to admit, on repeated queries made by us that there was no provision for election of "Dazans" either in the Devasthan Regulation or in the bye-laws. Alternatively, he argued that the elections be ordered from "Dazans" to form a committee to manage resources and festivals to be performed by "Dazans". There is no such prayer in the petition and oral request of the learned Advocate for the petitioner for amendment of the petition was refused.

7. Learned Government Advocate Shri C.A. Ferreira urged before us that the petitioner has not been able to show his right to seek relief; that the "Dazans" committee could administer the fund of the association of "Dazans" as well as that of committee of "Mahajans" until such time the fund of committee of

"Mahajans" is established, which means that the "Dazans" committee is temporary till the "Mahajans" committee is substituted. He also pointed out that Article 437 of the Devasthan Regulation has repealed the rules, general as well as special, which are contrary to the Devasthan Regulation and that under the Devasthan Regulation, the entire control is with the "Mahajans".

8. Learned Senior Advocate Shri M.S. Usgaonkar drew our attention to Article 43 of the bye-laws that the administration of the fund of the association "Dazan" could be conducted by the "Dazans" committee till association/ committee of "Mahajans" is established and once the committee of "Mahajans" is elected, the committee of "Dazans" has no right to administer the fund of association "Dazan" as also that of association of "Mahajans". Therefore, according to learned Senior Advocate Shri Usgaonkar, "Dazans" committee was contemplated only as a temporary committee, which would, in due course of time, give way to the committee of "Mahajans". It was pointed out by him that the petitioner had correctly understood the scope of Article 43 of the bye-laws in para 20 of the petition, but even inspite of that a collusive petition was filed. It was pointed out that the issue, in question, has already been settled by the compromise arrived at in Writ Petition 349/95 and once the managing committee in terms of the said order in writ petition is constituted, the committee of "Dazans" is not entitled to continue. Therefore, no relief, as sought under Article 45 of the Devasthan Regulation, can be granted. It was also pointed out by learned Senior Advocate that elections cannot be imported into any statute, unless the statute specifically provides for elections and in this connection, reliance has been placed on para (8) of the judgment of the Apex Court in *Jyoti Basu and Others Vs. Debi Ghosal and Others*, . He has also pointed out that in various provisions of Devasthan Regulation, the expression "associate" also figures and explained that the said expression occurred in various provisions of the Devasthan Regulation since "Mahajans" of subsidiary or associate or related temples of Shree Bhagwati Chimulkarrin Devasthan of Marcela, Goa are associates for the main temple. He also drew our attention to Article 437 of the Devasthan Regulation, which provides that the rules to the contrary, general and special, and namely the Regulation approved by the Government, Order No. 584 dated 30th October, 1886, stood repealed.

9. In reply, learned Advocate for the petitioner urged that Article 23 of the bye-laws clearly provides for voting rights of the "Dazans" for election for the purpose of administration of fund of committee of "Dazans" and of the temple. He also pointed out that the right of "Dazans" passes, on succession, to their male heirs and "Dazan" can also be inducted in terms of Article 20 of the bye-laws.

10. A short point, which is raised in this petition is, whether the administrative committee could be appointed under Article 45 of Devasthan Regulation, as sought by the petitioner? We have examined the rival contentions in the light of the bye-laws and the Devasthan Regulation, upon which reliance is placed by the

petitioner.

11. The Devasthan Regulation relating to Hindu temples, was enacted by Act of Legislature No. 645 dated 30th March, 1933 by the Portuguese. It was felt that earlier regulation, governing Hindu temples in force, approved by the Government Order No. 584 dated 30th October, 1886, was required to be updated in the public interest. Accordingly the previous Devasthan Regulation under Government Order No. 584 dated 30th October, 1886, was repealed and the Devasthan Regulation by Act of Legislature No. 645 dated 30th March, 1933, was introduced. Article 437 of the Devasthan Regulation, in force repealed not only the Devasthan Regulation approved by Government Order No. 584 dated 30-10-1886, but also the rules to the contrary, general as well as special. It appears that the bye-laws under Government Order No. 108 were framed for the purpose of administration of temple of Shree Bhagwati Chimulkarrin Devasthan of Marcela, Goa and the associate temples thereunder in terms of the said Government Order No. 584 dated 3-10-1886. If it is so, then bye-laws under Government Order No. 108 would stand automatically repealed in view of Article 437 of the Devasthan Regulation in force. Even, otherwise, Article 437 of the Devasthan Regulation clearly postulates that the rules to the contrary, general and special, stand repealed. There is no provision in the Devasthan Regulation for election of committee of "Dazans" for the purpose of administration and management of the Devasthan. As rightly pointed out by learned Senior Advocate Shri Usgaonkar the concept of election is creation of a statute and unless statute provides for election, there is no question of ordering any election as sought by the petitioner. In this connection, it will be appropriate to reproduce para (8) of the judgment of the Apex Court in *Jyoti Basu and others v. Debi Ghosal and others* (supra), which is crystal clear on this aspect;-

"8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right for a Common Law Right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at common Law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply, but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to Common Law and Equity must remain strangers to Election Law unless statutorily embodied. A Court has no right to resort to them on considerations of alleged policy because policy in such matters, as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, Court is put to a straight jacket. Thus the entire election process commencing from the issuance of the notification calling a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different

stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State Legislature except as provided by the Representation of the People Act, 1951 and again no such election may be questioned except in the manner provided by the Representation of the People Act. So the Representation of the People Act has been held to be a complete and self-contained code within which must be found any right claimed in relation to an election or an election dispute. We are concerned with an election dispute. The question is who are parties to an election dispute and who may be impleaded as parties to an election petition. We have already referred to the Scheme of the Act. We have noticed the necessity to rid ourselves of notices based on Common Law of Enquiry. We see that we must seek an answer to the question within the four corners of the statute. What does the Act say?"

12. Be that as it may, we shall examine the contentions advanced by learned Advocate for the petitioner. Bye-laws, under Government. Order No. 108 did provide for 2 committees, namely the committee of "Dazans" and the committee of "Mahajans". Article 1 of the said bye-laws provides that the bye-laws shall govern the administration of the temple of Shree Bhagwati Chimulkarrin and affiliates that of the Mahajans, the association and their funds. Chapter III of the bye-laws deals with the Mahajans and of the association. Article 3 provides that the Mahajans of the temple are the Hindu Brahmins (Gauddo Saraswats), male descendants of the original guankars, hailing from the village of Chimbhel (the original residence of the said goddess) of the surname of Porobo Chimulcar, descending from the tribe (Gotra) Couxico. Article 6 speaks of elections to any office, relating to any administration of Mahajans and its fund. Article 7 provides for religious and festive acts, prescribed in Articles 27 and 28 and other acts which are to be performed by Mahajans, according to their means, until such time the fund, which, at present, they do not have, is established. Article 10 provides that the association known as "Mahajans" is different from the association dealt with in the next section, i.e. to say section II, which deals with association of "Dazans". Article 12 provides that those Hindu Brahmins Goud Saraswat, inhabitants of the village of Chimbhel who adore and render worship to the Goddess of the said temple Shree Bhagwati, patroness of the same village, are the members of the association. Article 13 provides that this association was constituted by the Hindu Brahmins, inhabitants of the four wards of the village of Chimbhel, to offer divine service in honour of the Goddess Shree Bhagwati as patroness of the village of their habitation and it is called association (Dazan). Article 14 speaks of establishment of the fund by the association "Dazan", as mentioned in the respective inventory book, contributed, solely to help the association to meet the expenditure, which is required to celebrate the ceremonial acts. Article 15 states that the members of the association referred to in Article 14 also contributed with their share along with the Mahajans for the re-edification, construction, maintenance and cleanliness of the said temple on all occasions when the contribution was needed. Article 17 provides that the associates have right to elect and to be elected to any office in the administration

of the fund of the association referred to in Articles 13 and 14. As per Article 19, the right of the associates to the fund, passes to their male heirs. Article 22 provides that the association of associates is distinct from that (association) of Mahajans, which is not incompatible with what is prescribed in the laws relating to temples, concerning the administration of the temple or funds. Article 23 provides that an associate who has legal capacity and has completed 18 years of age, shall be eligible to vote and to be elected to the administration of the fund of the association "Dazan" and of the temple. As stated in Article 32, the fund of Mahajans consists solely of a hilly property and since the Mazankar does not possess any other property, the expenses of the festivities, referred to in Articles 27 and 28 are defrayed by the Mahajans by sharing among themselves the amount required. As per Article 33, the fund of the association "Dazan", consists of moveable and Immovable properties and amount in cash, which are described in the inventory book and they have come either from gifts or through subscriptions collected from the associates mentioned in the said inventory book.

13. The above provisions do contemplate that initially bye-laws provided for two separate associations, namely association of "Mahajans" and the association of "Dazans, having separate funds. However, this initial arrangement was to continue until such time the fund of Mahajans association was established. This position is crystal clear from Article 43 of the bye-laws, which reads, as under:

"Article. 43. The administration of the fund of the association "Dazan", as well as that of the Mahajany until such time the fund of this latter association is established, shall be carried out by the Managing Committee, elected by the associates and approved by Governor General, which Committee shall consist of four members, President, Treasurer, Attorney and Clerk, with their respective substitutes, their services being honorary and they are responsible to perform their functions relating to the administration which is incumbent in terms of the provisions of laws relating to temples."

Thus administration of the fund of the association "Dazan" as well as that of the Mahajans, was to be carried out by the managing committee elected by the associates until such time, the fund of association of Mahajans was established. Thus, even irrespective of the Devasthan Regulations being in force, once the Mahajans association is established, the association of "Dazans" would have no control over the administration of the fund of the Devasthan. The position is, however, made crystal clear by the Devasthan Regulation. Article 3 of the Devasthan Regulation provides that from the date of coming into force of this Regulation, all the provisions previously promulgated that may be related to the subject matter comprised in it, shall stand repealed. The Devasthan Regulation provides for only one body of members (Mazanias) of Hindu temples (Devasthans). As per Article 17, the bodies of members (Mazanias) in order to have a legal constitution, shall be required to have bye-laws approved by Government, draft of which shall be prepared by special committees appointed by Governor General in terms of Article 18 of the Devasthan Regulation. Chapter

II, section I relates to the bye-laws of the bodies of members (Mazanias) and section 2 thereunder relates to the management of bodies of members (Mazanias). Section I of Chapter III of Devasthan Regulation relates to body of members (Mazanias) and the members, their enrolment, rights and obligations. Section II deals with the meetings of the bodies of members (Mazanias). Section III is relating to the managing committees and their appointment and dissolution. It is no doubt true that various articles speak of capable "members" (Mahajans) or associates, but as explained by the learned Senior Advocate Shri Usgaonkar, the reference to associates is due to the fact that "Mahajans" of subsidiary or associate or related temples of the main temple are associates for the main temple. Chapters II and III of Devasthan Regulation speak of only bodies of members (Mazanias) and election to the managing committee. The members (Mahajans) or associates are entitled to vote and be voted for the office of members of the managing committee and their substitutes. There is no separate committee of "Dazans" provided under the Devasthan Regulation nor there is any provision for election to any such committee of "Dazans". In such circumstances, reliance on Article 45 of the Devasthan Regulation in support of the relief sought, is totally misplaced. Article 44 of the Devasthan Regulation, which comes u/s III, relating to managing committees and their appointment and dissolution, provides that the elective part of the committee may be dissolved by the Governor General with a prior consultation in the contingency provided thereunder. It appears that the "Dazans" committee was dissolved in view of Article 44(2) of the Devasthan Regulation, which was challenged by the members of "Dazans" committee in Writ Petition No. 349/95 where compromise was entered to the effect that the Government shall conduct elections to the managing committee of "Mahajans" within 2 months after the enrolment of the "Mahajans" and till the new managing committee takes charge, after the elections, the interim orders passed by the Court will continue and thereafter, the petitioner's committee, namely the committee of "Dazans" would not be entitled to continue. In view of the said arrangement, there would be no question of appointing a managing committee under Article 45 of the Devasthan Regulation and once the managing committee of "Mahajans" was elected, the committee of "Dazans" does not have any existence under the Devasthan Regulation.

14. In view of the above, we do not find any merit whatsoever in this petition. It would be appropriate at this stage to deal with the question whether the petition, in question, is collusive in nature. The petitioner is the son of respondent No. 16, who was the committee member of "Dazans" and had filed Writ Petition 349/95. The petition, in question was filed after rejection of review petition as well as SLP filed by the "Dazans" committee members. The petition is, apparently, not only collusive, but designed to set at naught the compromise arrived at by the committee members of "Dazans" with respondent Nos. 5 to 12 who were refused enrolment as "Mahajans". The election of the managing committee of "Mahajans" was ordered in view of the compromise in the said writ petition,

pursuant to which the managing committee was duly elected in the election held on 9-9-1996. Therefore, the present petition, which was filed on 14-10-1996 is not only misconceived, collusive, but frivolous in nature. It is, therefore, deemed necessary that exemplary costs be awarded in the circumstances while dismissing the petition.

15. For the aforesaid reasons, the petition is, hereby, dismissed with exemplary costs of Rs. 10,000/- The rule is, accordingly, discharged.

16. Petition dismissed.