
(1991) 09 BOM CK 0004
In the Bombay High Court
Case No : Writ Petition No. 229 of 1991

Sivnarayan Amarchand Paliwal	Vs	APPELLANT
Vasantrao Vithalrao Gurjar and Others		RESPONDENT

Date of Decision : 18-09-1991

Acts Referred:

Representation of the People Act, 1951 — Section 100, 117, 144T, 144U, 144V

Citation : (1992) 94 BOMLR 866

Hon'ble Judges : A.A. Desai, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.A. Desai, J.—This petition is directed against order dated 20.12.1990 passed by the respondent No. 4, a Specified Officer setting aside the election of petitioner on the Board of Directors of the respondent Bank, in exercise of powers u/s 144T of Maharashtra Co-operative Societies Act, 1960 (Act of 1960).

2. The petitioner was a representative of an affiliated sale purchase society on the respondent Bank. The Bank is a Specified Co-operative Society as envisaged by Section 73G of the Act of 1960. The State Government in exercise of powers u/s 144X of the Act framed the Maharashtra Specified Co-operative Societies Election to Committee Rules, 1971 (The Rules of 1971).

The respondent No. 2, returning officer on 21.9.1987 for the purposes of election of the Board of Directors of the Bank, under Rule 4 declared a provisional list of voters. He then on 21.10.1987 under Rule 7 declared the final list. On 15.4.1988 the Returning Officer, in accordance with Rule 16 declared the programme of election, notifying therein 29th April, 1988 as the last date for nomination.

3. One Bhaskar Hardikar was a representative of affiliated Haridas Grahak Sahakari Sanstha, on the Bank. His name was accordingly shown in the final list. This affiliated society by resolution dated 7.4.1988 nominated one Bhupal Rehapade in place of Hardikar as its representative. The Returning Officer on

13.4.1988 received copy of the resolution. Correction accordingly was, however, not carried out. On 20.4.1988 said Bhupal Rehapade filed an objection in pursuance of Sub-rule (2) of Rule 5 of the Rules of 1971 for substitution of his name in place of Hardikar. The Returning Officer, however, by order dated 28.4.1988 rejected the application observing that the same is beyond the period of limitation as prescribed under the rule. The Returning Officer then proceeded with the election programme and on 4.6.1988 conducted polling amongst others for the constituency of sale and purchase consumer co-operative store. He permitted Hardikar to cast vote on behalf of the affiliated society. The petitioner and respondent No. 1 Vasantrao Gujar only contested election from the said constituency. The result was declared on 6.6.1988. The petitioner succeeded by securing 15 votes as against the respondent No. 1 who secured 14 votes only.

Respondent No. 1, therefore, questioned the correctness and validity of election by presenting election petition before the respondent, Specified Officer. The Specified Officer by impugned order set aside the order dated 20.4.1988 passed by the Returning Officer rejecting the claim of Rehapade and directed to hold the election afresh.

4. Learned Counsel Mr. Daga, for the petitioner and Mr. D.K. Deshmukh, for the Bank made a common submission. According to them, the respondent No. 1 has not personally presented the election petition and attested copies thereof. There was as such a total non-compliance of mandatory provisions under Rule 74. Reasonings of the Specified Officer that the said rule merely prescribes a person competent to challenge the election and does not prescribe the mode of presentation of election petition and no discrepancy is noticed in the copy supplied to the petitioner, are patently wrong.

5. They made a submission that the election is not a common law right. It floats only from the Statutes. The right to challenge the election must be exercised strictly in compliance with provision of the Statute. The defect in compliance of Rule 74 is not curable. The election petition must, therefore, visit the consequence of dismissal.

In support they placed reliance on the decisions reported in:

- (1) Jagan Nath Vs. Jaswant Singh and Others,
- (2) Satya Narain Vs. Dhuja Ram and Others,
- (3) Shri Banwari Dass Vs. Shri Sumer Chand and Others,
- (4) Ramanlal Premy v. Shiv Pratap AIR 1978 NOC 182
- (5) Sharif-ud-din Vs. Abdul Gani Lone,

These authorities dealt with election petitions under the Representation of People Act, 1951 (the Act of 1951).

6. The Supreme Court in the case of Jagan Nath (cited supra) made an

observation in para 7 of its report as thus:

The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the Court possesses no common law power. It is also well settled that it is a sound principle of natural justice that the success of a candidate who won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law.

It is further observed:

None of these propositions however has any application if the special law itself confers authority on a Tribunal to proceed with a petition in accordance with certain procedure and when it does not state the consequences of non-compliance with certain procedural requirements laid down by it.

(Emphasis supplied)

7. What is, therefore, pertinent to be ascertained is, whether the provisions under Act of 1960 and the Rules of 1971 operate with the same rigour or design as under the Act of 1951?

Mr. Daga made a submission that the relevant provisions under the Act of 1951 are *pari materia* with those under the Rules of 1971. The ratio as laid down in the authorities cited *supra* has an application with full force.

A provision in particular Statute does not become a *pari materia* of other merely on the similarity of words. It is all the more necessary that these similar provisions in the different statute must be part of an identical scheme and object and they intend to achieve the similar result. As such as a cardinal principle each provision needs to be examined in the context in which it is incorporated.

The object of the Act of 1951 amongst others as considered is to provide speedy and expeditious remedy in election dispute. Section 81 prescribes a limitation of forty five days for presenting an election petition. The Act, however, does not provide for condonation, in case of delay. Sub-section (6) of Section 86 emphasizes for day to day hearing of the petition whereas Sub-section (7) lays down for disposal within six months. Any defect or deficiency in compliance of the provisions, it is obvious, would certainly tend to defeat the object of the Act of 1951. Sub-section (1) of Section 86, therefore, provides:

The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117.

(Emphasis supplied)

8. Section 144T of the Act of 1960 provides that the election dispute is to be referred to the Specified Officer by an aggrieved person within a specified period. Proviso to Sub-section (2) empowers the Specified Officer to condone the delay.

The Tribunal, however, does not possess such power under the Act of 1951. Sub-section (4) of Section 144T of the Act of 1960 no doubt provides for expeditious hearing and disposal as far as possible of an election petition. However, Act of 1960, as analogous to the Act of 1951, does not adhere to the rigour of the Act of 1951.

9. Rule 73 of the Rules of 1971 lays down that the election of the specified society shall not be called in question, except by an election petition presented to the Specified Officer in accordance with the provisions of Section 144T. Rule 74 reads thus:

74. (1) An election petition calling in question any election may be presented by any candidate or any voter within two months from the date of declaration of result of the election.

(2) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and one spare copy for use of the Commissioner and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

10. The election laws no doubt as normal rule are to be construed strictly. However, as a note of caution they need not be subjected to a super-technical treatment. According to me, the mandate of the relevant provision is that the election to the committees of the specified society could be questioned only by presenting election petition to the Specified Officer and that too by a candidate or member. However, such presentation essentially by the aggrieved, in person and failure thereof to entail an inevitable consequence of dismissal of the petition, could not fairly be an import of the scheme.

Section 144V of the Act of 1960 provides for the contents of election petition. Clause (c) thereof lays down the verification and signing of the petition as required by the provisions of Code of Civil Procedure. The Act of 1960, however, does not provide the attestation of the copies thereof. This requirement is incorporated by Sub-rule (2) of Rule 74 as discussed above. To construe such attestation as imperative would not be complimentary to object of the Act or the Rule. Attestation as prescribed cannot be held to be a mandatory or omission thereof as incurable. This is crystal clear from the provision in Sub-rule (2) of Rule 76 which reads thus:

The Commissioner may dismiss an election petition which does not comply with the provisions of Rule 74.

(Emphasis supplied)

It is thus explicit that the dismissal depends on a decision of the. Specified Officer. Such a result, however, cannot be claimed Ipso facto as a mandate of law. The legislature has thoughtfully engaged the term "may" in contradiction of the term "shall" as employed in Sub-section 1 of Section 86 of the Act of 1951.

The term "may" as engaged in Sub-rule 2 of Rule 76 definitely connotes that the dismissal of election owing to non-compliance would not be an unavoidable result.

11. The Legislature, however, u/s 144U while empowering the Specified Officer to dismiss the election petition summarily for noncompliance of payment of costs has engaged the term "shall". It is, therefore, evident that the legislature did not propose to achieve the result of dismissal u/s 76(2) of the Act, 1960 with the same rigour as envisaged by the Act of 1951.

The Specified Officer except summary dismissal u/s 144U has to proceed with the trial of election petition as laid down under Rule 76(1) and to pass the orders as prescribed under Rules 79 and 80 of the Rules, 1971. In view of this the petitioner cannot legitimately claim a summary dismissal as an inevitable consequence of non-compliance of Rule 74. The Specified Officer in para 7 of the impugned order considered the objection and justified in exercising jurisdiction under Rule 76(2).

12. Mr. Daga, then contended that the application under Sub-rule (2) of Rule 5 to cause a change in the name of representative of a society affiliated to the Specified Society is to be presented before seven clear days, from the date notified under Rule 16. This rule notifies the last date for nomination. It, therefore, contemplates total period for filing the nomination. As such, clear seven days as envisaged are to be counted from the commencement of a period for filing nomination. The Specified Officer erred in counting the period from the last date notified for nomination. According to the learned Counsel, permitting any change after the commencement of nomination would lead to a drastic consequence such as incurring disqualification for a candidate, proposer or a voter. The submission is totally erroneous.

13. Rule 4 of the Rules of 1971 provides for publication of provisional voters' list. Rule 5(1) lays down the particulars to be included in such list. Sub-rule (2) of Rule 5 further lays down that a member society to communicate the name of the representative on the specified society by passing necessary resolution. Name of such affiliated society, its registration and the name of its representative are to be included in the provisional list. This rule adds:

A society which has communicated the name of its delegate shall by like resolution be permitted to change the name of its delegate not later than 7 days before the date appointed by the Collector under Rule 16 of said rules for making nominations.

Rule 7 provides for the publication of the final voters' list. The provision as quoted permits a change in the name of the representative even after the finalisation of the voters' list but before 7 days from the date notified by the returning officer under Rule 16.

14. Rule 6 of Rules of 1971 provides for claims and objections to the provisional list. Sub-rule (7) of Rule 6 emphasizes that the Collector to take and

communicate the decision before the first date fixed for making the nomination. The State Government thus cautiously used the term "first date" or last date under the relevant provisions. As such the date as notified under Rule 16 for the purposes of Sub-rule (2) of Rule 5 would be only the last date for filing of the nomination and could not be permitted to mean the entire period prescribed for filing nomination. Moreover, Sub-rule (1) of Rule 19 which provides for the presentation of nomination paper, states that:

On or before the date appointed under Sub-rule (1) of Rule 16, each candidate shall either in person or by his proposer deliver to the Returning Officer during the time and at the place specified in the order made under the said rule, a nomination paper completed as provided by Rule 18 and signed by the candidate and by two voters of his constituency one of whom shall be a proposer and the other seconder.

Rule 19 also emphasizes the date appointed under Rule 16. If that date is taken to mean the entire period for filing nominations, then it would be permissible to file nomination even before the first date. It would then lead to an anomalous situation. Interpretation as canvassed is, therefore, totally impermissible.

15. The Collector as per Rule 16 has to draw a programme of election. The last date for filing nomination is to be notified after 15 days from such order. The voters or candidates acquire the knowledge of the first date for nomination only after the publication of programme. It would be impracticable to apply under Rule 5(2), seven clear days before first date of nomination.

In the instant case the election programme as envisaged under Rule 16 was published on 15.4.1988. 15.4.1988 to 29.4.1988 was the period for filing nomination. Since the publication itself was on 15.4.1988 nobody could have applied under Sub-rule (2) of Rule 5 earlier to the publication.

As such the specified officer was justified in counting the period from the last date notified under Rule 16 of the Rules of 1971.

16. It is then contended that the returning officer on 21.10.1987 under Rule 7 finalised the voters' list. Preparation, finalisation of electoral roll is not a part of the election process. Election process, begins only on filing of nomination. As such any grievance of inclusion or non-inclusion of a particular voter cannot be a subject matter of election dispute u/s 144T of the Act of 1960. Reliance is placed on a decision reported in *Indrajit Barua and Others Vs. Election Commission of India and Others*, .

The authority deals with the election under the Act of 1951. The electoral roll is prepared under the Representation of the People Act of 1951. Section 24 therein provides for the remedy of appeal for grievance in that regard. Section 100(1)(d) (iv) of the Act of 1951 confines the election dispute arising out of non-compliance either of the Constitution or the Act of 1951 or the Order and Rule made thereunder. Since the preparation of electoral roll is not carried out under

the Act of 1951, any violation, omission or breach in the preparation could not be a subject matter of the election dispute as envisaged. The ratio laid down in the authority as cited, has therefore, no application.

17. The Rules of 1971 as discussed specifically deal with the inclusion, preparation of the electoral roll and also the constituencies. As such non-compliance of any provision of the Rules of 1971 as prescribed, is a ground under Rule 81 for challenging the election u/s 144T.

Mr. Samarth, learned Counsel appearing for respondent No. 1 rightly submitted that even otherwise application under Sub-rule (2) of Rule 5 as presented by Mr. Rehapade does not affect in any manner the finality of the voters' list as published under Rule 7. In the particular constituency the individuals are not the member-voters. The membership is only to the sale-purchase society. The complaint under Sub-rule (2) of Rule 5 was not as regards inclusion or exclusion of a particular member voter. The provisions merely enable the affiliated society to change the name of its representative, to authorise such person to cast vote on its behalf. Such change does not in any manner increase or decrease the voters as enrolled in the final list. According to me, the submission as made is well founded.

18. Mr. Daga, relying on a decision reported in R. Chandran Vs. M.V. Marappan, , made a submission that once a voter is enrolled in the final list, he is entitled to vote. And change in the names amounts to change in the voters' list. Hardikar's name was entered in the final list and as such he alone was competent to vote on behalf of the affiliated society. The submission is totally untenable. The right to vote is conferred on the society and not to the individual. The Society exercised such right through its representative. Sub-rule (2) of Rule 5 permits change as discussed even after finalisation of voters' list. The ratio laid down in the case (cited supra) has, therefore, no application.

19. Mr. Daga then made a submission that respondent No. I, election-petitioner has not specifically pleaded that the change in the name of a representative of the affiliated society is brought by a like resolution as envisaged by Sub-rule (2) of Rule 5. As such, the election-petitioner could not make out any triable issue. In support, he placed reliance on the decisions reported in:

- (1) Samant N. Balkrishna and Another Vs. V. George Fernandez and Others,
- (2) Hardwari Lal Vs. Kanwal Singh, ,
- (3) Dhartiakar Madan Lal Agarwal Vs. Rajiv Gandhi, .

The authorities deal with material fact and particulars as regards the ground of corrupt practices in the election petition under the Act of 1951, and, therefore, are of no assistance.

20. Mr. Samarth, however, on merit successfully repelled the submission. He pointed out that the respondent No. 1 in para 2 of the petition has pleaded that

Bhaskar Narayan Hardikar was shown as a representative of the affiliated society. The society on 7.4.1988 passed a resolution nominating Shri Bhupal Rehapade. This resolution along with the accompanying letter as provided under Rule 5(2) was submitted to the Returning Officer. It is further stated that it was obvious that the representative of the said society was bound to be replaced by Bhupal Rehapade in place of Bhaskar Hardikar. In para 7 it is stated that the cause of action arose on 13.4.1988 when the said society sent a resolution regarding the representation along with the objections under Rule 5(2). The petitioner's reply was merely of a denial. The respondent No. 3 in its reply tried to support the petitioner and was on the same line. The petitioner or the Bank has not made a grievance that the mode of change of the representative was not in the like or similar manner as adopted while nominating Shri Hardikar.

21. The Specified Officer in Para 9 has considered the point of dispute between the parties. It was mainly directed towards the resignation tendered by Mr. Hardikar. The Specified Officer has observed in para 9 that besides the controversy what is material in the resolution dated 7.4.1988 is that the Executive Committee has recommended the name of Bhupal Rehapade instead of Bhaskar Hardikar. It is also observed that Shri Hardikar did not raise any objection to this resolution dated 7.4.1988.

Mr. Samarth placed reliance on the decisions reported in Rajbir Kaur and Another Vs. S. Chokesiri and Co., and F.A. Sapa Etc., Etc., Vs. Singora and others, . His submission is that when the parties understood the substance of pleading and went to trial with full knowledge, they are not misled and hence no prejudice can be canvassed. The objection as raised, therefore, cannot be sustained. I agree with this submission. Rules of pleadings are instrumental to lead to a fair trial and just decision. The pleadings as incorporated were sufficient to make aware the opponent about the grievance or ground of the election-petitioner.

22. In the instant case owing to rejection of application under Sub-rule (2) of Rule 5, the affiliated society namely Haridas Grahak Sahakari Sanstha which is enrolled in a final list could not exercise its right to vote. The petitioner in the election could succeed only by one vote as against the respondent No. 1. As such rejection of application by the Returning Officer vide order dated 20.4.1988 has materially affected the election. The Specified Officer was, therefore, justified in directing to hold the fresh election. The impugned order as passed does not warrant any interference.

The petition being without any merit must fail. Petition is dismissed, however, under the set of circumstances there is no order as to costs.