
(2008) 02 OHC CK 0003
In the Orissa High Court

Sri Sulabh Charan Samal and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 25-02-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227

Citation : (2008) 106 CLT 153 : (2008) 1 OLR 687 Supp

Hon'ble Judges : S.C. Parija, J;I.M. Quddusi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.C. Parija, J.—The Petitioner in this Writ Petition have assailed the voter list prepared for election to the Committee of Management of Cuttack Central Co-operative Bank (here in after referred to as the "Bank"), a Central Society for electing 15 member Directors to its Committee of Management on the basis of constituencies/zones numbering about 8 in all, organized and carved out as Scheduled Caste (Male), Scheduled Caste (Female), Scheduled Tribe (Male), Scheduled Tribe (Female), Other Backward Class and S.E.B.C. (OBC and SEBC) (Female), all other Female and unreserved, on the basis of race, caste and sex, as discriminatory, unreasonable and violative of the equality clause of Article 14 of the Constitution. Accordingly, the Petitioners have prayed for the following relief:

Issue a Rule Nisi in the nature of a writ of Mandamus or any other appropriate Writ or Writs, order or orders calling upon the Opposite Parties to show cause as to why such a writ or writs, order or orders should not issue to quash the finally published Electoral Roll prepared on the basis of caste and sex with all fictitious manipulations, illegally benefitting the member Societies of the Bank with number of Votes than each of them and they are entitled to for their S.C. Male and Female S.T. Male and Female, O.B.C. and SEBC Male and Female etc. as stated in this writ application with a direction not to act upon these illegally prepared voters list and the programme.

2. Sri S.D. Das, Learned Senior Counsel appearing for the Petitioners submitted that the Petitioners are the elected member Directors of their respective Primary Cooperative Society and hence are members of the electorate for the election to the Bank and accordingly each one of them has a right to vote and elect their candidates to the Committee of Management of the Bank. With the preparation of the impugned voter list and organization of the constituencies/zones for election to the Committee of Management of the Bank, the Petitioners' valuable right to contest the election as a candidate as well as a voter has been adversely affected and as such the finally published electoral roll, prepared on the basis of caste and sex is liable to be quashed being discriminatory, unreasonable and violative of the equality clause contained in Article 14 of the Constitution.

3. Sri M.S. Panda, Sri P. Acharya and Sri B.R. Sarangi, Learned Counsel appearing for some of the intervenors have supported the case of the Petitioners and have pleaded that since the preparation of the impugned electoral roll is in breach of the rule and the same has been prepared and published in a most arbitrary and illegal manner, directly vitiating the entire election process, this Court should exercise its extra ordinary writ jurisdiction for redressal of their grievances.

4. Sri R.K. Rath, Learned Senior Counsel and Sri M. Kanungo, Learned Counsel appearing for some intervenors have opposed the Writ Petition on the ground that the Petitioners having not objected to the provisional electoral roll prepared by the Chief Executive of the Society as prescribed under Rule 6(5) of the Orissa Co-operative Societies (Elections to the Committees) Rules, 1992 (herein after referred to as the "Rules") and the said provisional electoral rolls having been finalized by the Election Officer, as prescribed under Rule 6(6) of the Rules, it is not open for the Petitioners to now assail the said final electoral roll in the Writ Petition. Mr. Rath further submits that the election to the Committee of Management of the Bank, which was scheduled to be held on 6.1.2008, has already been held and the result thereof has not been declared only because of the interim order of this Court.

5. It is contended by Sri Rath that as the preparation and publication of final electoral roll comes within the comprehensive ambit of the election process, the only remedy available to the Petitioners is by way of filing election petition before the Co-operative Tribunal, as prescribed u/s 67-B of the Orissa Cooperative Societies Act, 1962 (herein after referred to as the "Act") and the present Writ Petition filed under Article 226 of the Constitution of India is not maintainable. In this regard, Sri Rath relies on a decision of this Court in the case of Rabindra Kumar Das and Another Vs. State of Orissa and Others, wherein this Court came to hold that on a reading of the provisions of the Act and the Rules it must be held that the preparation of the electoral roll also comes within the comprehensive ambit of the election process and once it is construed as an election process, the only remedy is to challenge the same before the appropriate forum other than Writ Court as provided by Section 67-B of the Act.

6. In response, Sri S.D. Das, Learned Senior Counsel appearing for the Petitioners contended that strictly speaking, preparation of electoral roll may not come within the ambit of the election process and since the breach of rule in preparation of the electoral roll cannot be questioned in an election petition before the Cooperative Tribunal u/s 67-B of the Act, therefore, the Writ Petition challenging the preparation and publication of final electoral roll is maintainable and this Court is competent to adjudicate the matter in exercise of its extraordinary jurisdiction under Article 226 of the Constitution. Sri Das has relied on a decision of the Supreme Court in the case of Pundlik v. State of Maharashtra and Ors., reported in 2005 (6) SC 115, in support of his contention that as the electoral roll or voters' list has been prepared in an improper and illegal manner, this Court can interfere under Article 226 of the Constitution, irrespective of the fact that the election has already been held on 6.1.2008.

7. For better appreciation the relevant provisions of Rule 6 of the Rules which deals with the preparation of electoral roll are extracted below:

6. Electoral roll - (1) The Chief Executive of the Society shall prepare the provisional electoral roll for each constituency incorporating therein -

(a)xxx xxx xxx (b)xxx xxx xxx (2)xxx xxx xxx (3)xxx xxx xxx

(4) The Chief Executive shall furnish authenticated copies of the provisional electoral rolls to the Election Officer at least forty days prior to the date fixed for elections and the Election Officer or any person authorized by him in that behalf, shall publish the same by affixing it on the notice-boards of the head office of the society and its branches, if any, thirty days prior to the date of election.

(5) Objections to the provisional electoral rolls published under Sub-rule (4) shall be filed before the Election Officer in writing showing therein the details of the objections, and full particulars of the objectors within four days from the date of publication of the said electoral rolls, and the same shall be heard and decided by the Election Officer after such enquiry as he may deem necessary. The Election Officer shall correct the electoral roll after deciding all claims and objections and finalise the same within three days from the last date of receipt of objections.

(6) The electoral rolls finalized under Sub-rule (5) shall be displayed by the Election Officer on the notice-boards of head office of the Society, within two days immediately following the day the electoral roll is so finalized.

(7) Copies of the final electoral roll shall be supplied by the Chief Executive to any member of the society on payment of such fees as may be specified by him from time to time.

8. A perusal of the aforesaid provisions of the Rules clearly goes to show that the Chief Executive of the Society shall prepare the provisional electoral roll for each constituency and shall furnish the authenticated copies of the provisional electoral rolls to the Election Officer at least forty five days prior to the date fixed for election and the Election Officer shall publish the same by affixing it on the

notice-boards of the head office of the society and its branches, if any, thirty days prior to the date of election. Objections to the provisional electoral rolls, if any, shall be filed before the Election Officer in writing furnishing the details of such objections along with full particulars of the objectors within four days from the date of publication of the said electoral rolls and such objection shall be heard and decided by the Election Officer, after such enquiry, as he may deem necessary. The Election Officer shall correct the electoral roll after deciding all claims and objections and finalise the same within three days from the last date of receipt of objections. The final electoral rolls shall be displayed by the Election Officer on the notice-boards of head office of the Society, within two days immediately following the day the electoral roll is so finalized.

9. The aforesaid provisions of the Rule provides for correction of the electoral roll, on the objections received and such correction shall be carried out by the Election Officer after deciding all claims and objections. Admittedly in the present case, the Petitioners have not filed any objection to the provisional electoral roll published u/s 6(5) of the Rules and they have assailed the final electoral roll prepared and published under Rule 6(6) of the Rules. The question that arises for consideration is whether the Petitioners, who have not availed the procedural remedy of correction/rectification of the provisional electoral roll under Rule 6 (5) of the Rules can now be permitted to raise objection against the finally published electoral roll by way of Writ Petition before this Court.

10. During hearing of the case, it was admitted by all the parties that the election to the Committee of Management of the Bank has already been held, as scheduled, on 6.1.2008 and that the results of such election has not been declared because of the interim order of this Court dated 04.01.2008, wherein it had been directed that the election as per schedule, may be held, but the result of the same shall not be declared without leave of this Court.

11. Section 28-B of the Act provides as under:

28-B. Election process not to be held up - Notwithstanding anything contained in this Act and Rules, election process of a Society, once started, shall not be held up, and no matter relating to election of the President or members of the Committee shall be called in question before any authority under this Act until the declaration of the result of such election.

12. A reading of the aforesaid statutory provision goes to show the intention of the legislature to prevent interference in the election process of a Society once started, until the declaration of the results of such election.

13. Section 67-B of the Act reads as follows:

67-B. Powers of the Tribunal(1)(i) Notwithstanding anything contained in any law for the time being in force, any dispute arising in connection with the election of any office-bearer of a Society, or the disciplinary action taken by a Society or its committee against any paid servant of the Society who is not a workman within

the meaning of Clause (s) of Section (2) of the Industrial Disputes Act, 1947, shall be referred to the Tribunal in the manner and within the period prescribed in that behalf.

(ii) If any question arises as to whether a dispute referred to the Tribunal under Clause (i) is a dispute within the meaning of that clause, the decision of the Tribunal thereon shall be final and shall not be called in question in any Court.

(iii) All disputes arising in connection with the election of any office-bearer of a Society or the disciplinary action taken by Society or its committee against any paid servant of the Society, with whatever authority under this Act, Rules or any Regulations framed under this Act pending as on the date of commencement of the Orissa Cooperative Societies (Amendment) Act, 1991 shall stand transferred to the Tribunal which shall dispose of the same in accordance with law.

(4) The Tribunal may, pending the decision of the dispute, make such interlocutory orders as it may deem necessary in the interest of justice.

(3) The Tribunal may call for and examine records of proceeding in which appeal lies to it, but appeal has not been filed, for the purpose made therein and if any such case it appears to the Tribunal that any order or decision should be revised, modified or annulled, it may make such order as it thinks fit, after affording to the person likely to be affected adversely by such order an opportunity of being heard.

(4) While deciding appeals, the Tribunal may exercise all the powers conferred upon the Appellate Court by Order XLI of the first Schedule of the Code of Civil Procedure, 5 of 1908.

14. A combined reading of the aforesaid provisions contained in Section 28-B read with Section 67 -B of the Act would imply that the Co-operative Tribunal exercising jurisdiction with regard to any dispute arising in connection with the election of any office-bearer of a Society cannot interfere with the process of election of the President or members of the Committee until the declaration of the result of such election.

15. In the present case, the election to the Committee of Management of the Bank having already been held on 6.1.2008, as scheduled and the results having not been declared because of the interim order of this Court, there is no impediment for the Petitioners to approach the Tribunal u/s 67-B of the Act for redressal of their grievances, once the result of the election is declared.

16. In our considered opinion, the ratio laid down in the decision reported in 2005(6) SC 115 (supra), will have no applicability to the facts of the present case. In that case, as election process had not started and since the same was to start from a future date, the Hon'ble Court considered the said fact and granted relief to the Appellant by allowing the appeal.

17. In a similar case of Shri Sant Sadguru Janardan Swami (Moingirid Maharaj)

Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others, , objections against publication of provisional electoral roll of the society were filed which were considered by the Collector and disposed of. Final electoral roll was published on July 2, 1999. Election programme was drawn by him on October 21, 1999. Thereafter, the Petitioner filed a petition under Article 226 of the Constitution in the High Court. A prayer was made in the petition that the order passed by the Collector on October 21, 1999 was required to be set aside.

Obviously, therefore, the election process was already in motion and prayer of the Petitioner was for quashing of Schedule for holding election. In the light of the factual position before the Court, the Petition was dismissed and it was held that the only remedy available to the aggrieved Petitioner was to file election petition after the election is over in accordance with Rule 81 of the Maharashtra Specified Co-operative Societies Election to Committee Rules, 1971.

18. It had been urged before the Supreme Court that the electoral roll being substratum of the election for constituting the Managing Committee and the same having not been prepared and finalised in accordance with the mandatory rules, no election can be held on such electoral roll and the same is liable to be set aside. It was accordingly pleaded that the Tribunal constituted under the Maharashtra Co-operative Societies Act, 1960, has no power to go behind the preparation of electoral roll and therefore, the Writ Petition was maintainable and that the High Court erred in declining to entertain the Writ Petition on the ground of availability of alternative remedy. The sum and substance of the argument in the said case was that as the breach of rule in preparation of the electoral roll cannot be questioned in an election petition before the Tribunal, the Writ Petition challenging the preparation of the electoral roll is maintainable.

19. The Supreme Court considering the aforesaid submissions came to the following conclusion:

In view of our finding that preparation of the electoral roll is being 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 or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the Appellant to challenge the election of returned candidate, if aggrieved by means of an election petition before the election tribunal.

20. Right to election is not a civil right but it is a right granted by a statute and hence where the statute itself provides the forum to adjudicate the questions connected with it, infringement of right granted can be assailed only in the designated forum and not by a petition invoking jurisdiction of the High Court under Articles 226 and 227 of the Constitution. It is therefore logical to hold that

a Petition under Articles 226 and 227 of the Constitution would not lie because if the legislature creates a right and also creates the adjudicating body to decide disputes arising from infraction of the right, Writ Petition in the High Court should not be entertained for relief against such infraction.

21. For the aforesaid reasons and in view of the admitted fact that the election to the Committee of Management of the Bank has already been held on 6.1.2008, we are not inclined to entertain this writ Petition. The Petitioners and/or the interveners are free to approach the Co-operative Tribunal by way of filing election petition in accordance with the provisions of Section 67B of the Act.

22. Accordingly, we find no merit in the Writ Petition and the same is dismissed and the interim Order Dated 04.01.2008 stands vacated.

M. Quddusi, J.

23. I agree.