

(1993) 06 BOM CK 0008

In the Bombay High Court

Case No : Writ Petition No. 1541 of 1993

Subhash Agarwal and Others

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 28-06-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 1 BomCR 356

Hon'ble Judges : N.P. Chapalgaonker, J

Bench : Single Bench

Advocate : N.P. Patil-Jamalpurkar, for the Appellant; E.P. Sawant, A.G.P. for respondent Nos. 1 to 3, V.D. Hon, for P.B. Shirsath, for respondent Nos. 5 to 9 and V.D. Hon, for respondent Nos. 10 to 17, for the Respondent

Final Decision : Allowed

Judgement

N.P. Chapalgaonker, J.—Elections to the Managing Committee of Vividh Karyakari Seva Sahakari Society Ltd., Rahata (Taluka : Kopargaon, District : Ahmednagar) were scheduled to take place in the month of March, 1993. This Society is a Co-operative Society within the meaning of section 2(27) of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "Co-operative Societies Act" for the purpose of brevity) and is also a notified Society within the meaning of section 73-IC of the said Act. Respondent No. 3 was appointed as Returning Officer for holding the said elections. Provisional list of voters was to be published on 4th March, 1993. The last date for filing objections and claims was 18th March, 1993 and publication of final list of voters was to be made on 20th March, 1993. The nomination papers were to be filed on 22nd March, 1993. Voting was to take place on 25th April, 1993. This election programme was published on 22nd February, 1993. For this election, respondent No. 4 - Society, had sent a list of about 1,280 members to the Assistant Registrar and this list was published as provisional list. An objection was filed by respondents 5 to 9 in this petition, in respect of 110 members from the said list and it was contended

that the names of these persons are to be deleted from the voters list since the membership is not confirmed by following due procedure of law and in accordance with the bye-laws. Those objections and claims were considered by respondent No. 2 - Assistant Registrar of Co-operative Societies at Kopargaon, discharging the functions of the Registrar under Rule 56-D(2) of the Maharashtra Co-operative Societies Rules, 1987 and he was pleased to reject the objections and held that these 110 voters has right to vote in the election. Thereupon, further programme of election continued, nominations were filed. Those were scrutinized and voting was to take place as scheduled. On the morning of the voting day, an injunction issued by the learned Judge of the Co-operative Court, Kopargaon, was served on the Returning Officer, directing him not to allow 110 disputed voters to vote in the said election. This order was passed on 23rd April, 1993. The operative part of the order reads as under :

"The Opponent No. 2, Election Officer is hereby directed not to allow for voting to the persons 1 to 110 as per Annexure-A to the plaint in the election of opponent No. 1 Society which will be held on 25-4-1993.

E.P. allowed.

Returnable on 4-5-1993."

Five persons -respondents 5 to 9 had filed a dispute before the learned Judge of the Co-operative Court, impleading Society and the Returning Officer as defendant and contending that the said 110 disputed members have no right to vote in the ensuing election. It was alleged that the membership of these 110 persons was approved at the meeting of the Managing Committee held on 6th May, 1992 but since there was no quorum on that day, the meeting itself was illegal. This dispute came to be filed on 23rd April, 1993. It is worthy to note that though the claim of these 110 persons was held to be valid by the Assistant Registrar sometime before 20th March, 1993, nothing was done by the objectors till 23rd April, 1993 barely 48 hours before the time of the polling. Because of this injunction, said 110 disputed members were not allowed to vote and it is further alleged that some other persons also did not participate in the election of the Society. Present petitioners were prevented from voting in the said election and respondents 10 to 17 were elected as members of the Managing Committee of the said Society. This writ petition firstly challenges the order of injunction passed by the learned Judge of the Co-operative Court, Kopargaon, on 23rd April, 1993 in ABN Case No. 151 of 1993 and has also prayed that the elections held should be quashed.

2. I have heard Shri N.P. Patil-Jamalpurkar, learned Counsel appearing for petitioners; Shri E.P. Sawant, learned Assistant Government Pleader appearing for respondents 1 to 3; Shri V.D. Hon, learned Counsel appearing for respondents 5 to 9 - Disputants and also for respondents 10 to 17 - Elected Members.

3. Shri Patil-Jamalpurkar, learned Counsel appearing for petitioners, firstly contended that unless the elections are over, Co-operative Court does not get

any jurisdiction to interfere with the election process of a Co-operative Society in a dispute filed u/s 91 of the Co-operative Societies Act. He further contended that the list of voters as was on the last day of filing of nomination papers cannot be altered, amended or added till the election process is complete. He contended further that in view of the peculiar facts of the case, a dispute u/s 91 is not an efficacious remedy and this Court should quash the election results also. Shri V.D. Hon, learned Counsel appearing for the contesting respondents, submitted that since the election process is already over and the results have also been announced, remedy available to the petitioners is a dispute u/s 91 of the Co-operative Societies Act. He contended that an approval of the membership is a must under the bye-laws and the Managing Committee.

4. Every election process provides for the filing of claims and objections to the provisional voters list and then at a stage prescribes that the voters list shall be final. It is always necessary that the finality will have to be attached to every voters list during the process of election. Normally, no election process admits change in voters list after the last day of nomination since a change in the voters list at a later stage is likely to affect the validity of nomination of the candidate also, if the name of the candidate or the proposer is deleted at a later stage. If the name of the candidate is not there on the last day of nomination, his subsequent inclusion will not validate his nomination. A voters list can never be allowed to remain in dispute when the election process is going on since it is the basis of a valid election. The rights of the contestants and voters will have to be judged on the basis of the voters list and once it is held to be finalised by the authority prescribed under the Act, further interference in the voters list would invalidate the whole election process. Finality of the voters list during the election process is one of the basic principle of the valid election process.

5. The very objection about the validity of 110 voters whose membership was accepted at the meeting held on 6th May, 1992, was considered by the Assistant Registrar discharging the functions of the Registrar and a further challenge in the Co-operative Court was not at all tenable.

6. Apart from the fact that the voters list had become final and a further challenge in the Court was not maintainable during the course of election, the impugned order of the learned Judge of the Co-operative Court is without jurisdiction on another count also. The dispute was filed before the learned Judge u/s 91 of the Co-operative Societies Act. Section 91 provides that any dispute touching the elections of the Committee or its officers other than elections of committees of the specified societies including its officers, shall be referred by any of the parties to the dispute to the Co-operative Court. Relying on this provision, Shri V.D. Hon, learned Counsel appearing for respondents 5 to 17, submitted that the Co-operative Court had jurisdiction to entertain the challenge to the validity of voters list u/s 91. I am afraid, that this is misconception of law. Though notified Societies are not Specified Societies and elections to the notified Societies can be challenged u/s 91, the challenge would

be maintainable only after the election is over. The legislature specified that the challenge should be in respect of the election. A challenge to any stage of election process is not contemplated by section 91. Particularly, regarding the voters list, when rule made by the State Government, under rule making power given to it by the legislature provides for a separate remedy and attaches finality to it, further challenge cannot be made in the jurisdiction vested in the Co-operative Court u/s 91. A Division Bench of this Court Madhukar Ganpatrao Somvanshi Vs. Sheshrao Narayanrao Biradar and Others, , had an occasion to consider this question. In the circumstances similar to the case at hand, two days prior to the election, a dispute was filed u/s 91 mainly on the ground that some of the voters were disqualified and they are being allowed to contest the election. This dispute was raised before the Registrar's nominee. His decision was challenged before the Maharashtra State Co-operative Tribunal, Bombay. But the tribunal held that the dispute is not covered by section 91 and hence no appeal lay to the tribunal. The Division Bench of this Court ruled that the objection raised was untenable u/s 91. Elections cannot be held up by entertaining grievances arising prior to the declaration of the results. Otherwise it will put the public to inconvenience. Thus, any grievances prior to the declaration of the results cannot be challenged u/s 91 of the Co-operative Societies Act. This is evident from another provision of the Act. Section 91(1)(d) provides a limitation for the disputes in respect of the election. It reads as under :

"When the dispute is in respect of an election of a committee or officers of the society, be two months from the date of the declaration of the result of the decision."

Therefore, whatever disputes are admissible u/s 91, limitation has been provided u/s 92 and since the legislature has provided for limitation disputes in respect of the elections can be filed within two months from the date of declaration of the result, it follows that no dispute arising before the declaration of the result would be subject matter of section 92. Otherwise, the limitation would have been prescribed covering those cases also. Therefore, the learned Judge of the Co-operative Court had no jurisdiction to entertain the dispute and should not have entertained the dispute and the application for interim relief.

7. Even in cases wherein there is no statutory or constitutional bar in entertaining a challenge to any stage of election before the election process is completed, it is always desirable that the election process is not interfered. In a decision of Supreme Court, S.T. Muthusami Vs. K. Natarajan and Others, , Supreme Court disapproved the interference by the High Court in writ jurisdiction on the ground of error in allotment of symbols. The same restraint will have to be exercised by the Civil Courts and Co-operative Courts also.

8. Civil Courts or the Co-operative Courts entertaining Civil Suits in respect of the election matters should always be very cautious in exercising their jurisdiction. Interference by them which may either impermissible or undesirable, often stalls the process of election and causes great public inconvenience. Once that

interference is there, it is very difficult to put the wheel back in action. The damage which is done can never be undone. Despite all the warnings by the Apex Court and this Court, in many cases, lower courts entertain a challenge in the midst of the election process and passes interim orders often without hearing the other side. If a suit is filed or application for interim relief is moved just a day or two days before the actual date of poll, the bona fides of the plaintiff or the applicant should be seriously doubted and examined thoroughly. This leaves no room for other side to prevent the mischief which the plaintiff or the applicant, in many cases, wants to cause by misuse of the process of law. The first question the learned Judge should ask is, as to why this challenge is filed so late. The second question is, whether the grievance can be made after the declaration of the result. If the answer of any of these questions is in the affirmative, Court should stay its hands off, particularly in the elections to the Co-operative Societies and the local bodies. The public money, for which neither of the parties may care, is lost because of such interference in the election. Therefore, the stay of the election process in unwarranted circumstances must be totally deprecated. In the instant case, though the Assistant Registrar considered the same objections and declared the final list of voters, nothing was done for a month and the dispute was filed about two days before the election. That itself was sufficient for the learned Judge to refuse to entertain the prayer for interim relief.

9. Shri V.D. Hon, learned Counsel appearing for respondents 5 to 17, submitted that since now the election results are declared, the proper remedy for the petitioners is to file dispute u/s 91 of the Co-operative Societies Act and since the alternate remedy is available, this Court should refuse to entertain the petition. It is true that if there is an efficacious alternate remedy, extraordinary jurisdiction under Article 226 and Article 227 of the Constitution of India should not be ordinarily resorted by the High Court. But presence of alternate remedy is no bar to the jurisdiction of this Court. If the circumstances warrant and the injustice is so glaring that it would be unjust to direct the petitioner to go for an alternate remedy, it may consume time and would continue the illegality, then this Court can interfere in the writ petition. The rule in this respect is not of jurisdiction but is of prudence. In the instant case, there only a pure question of law and of jurisdiction which goes to the root of the case and the circumstances warrant that this Court should interfere and set the things right. Therefore, the challenge in the writ petition is entertained.

10. Shri Hon further submitted that the results of the election would show that the respondents 10 to 17 are elected by a margin of more than 400 votes and, therefore, assuming that these 110 persons would have allowed to vote and would have voted en bloc in favour of the petitioners, even then the election results would not have been different. He submitted that since the result of the election is not materially affected, the election results be not quashed. It is true that every infraction of the rule will not vitiate the election. In some cases, it will have to be shown that the contravention of the rule did materially affect the result of the election. Therefore, some statutes providing ground for setting aside

the election do specify that the contravention of the rule should have materially affected the result of the election. But to follow the final list of voters at the process of election is a requirement which is foundation of a valid election. When the electoral roll was prepared by Delhi Bar Council on the basis of an invalid rule, Supreme Court, Bar Council of Delhi and Others Vs. Surjeet Singh and Others, , observed that the infraction goes to the root of the matter and no election held on the basis of such an infirmity can be upheld. It was pleased to observe that there is no question of the result being materially affected in such a case. The same principle will have to be followed here. The final list of voters was prevented from being operative and 110 persons were illegally estopped from exercising their franchise. It is also contended that many others did not come to vote looking to these uncertainties. It is alleged that in protest some persons boycotted the election. It is not necessary to go into that question. If the voters list which was valid one for the election was not allowed to be operative and it was interfered, that too in respect of 110 voters, it invalidates the whole election process and for maintaining sanctity of the election process, it is necessary to quash the election and direct fresh elections on the basis of the voters list finalised by respondent No. 2 - Assistant Registrar. Shri Hon further submitted that the approval of these 110 disputed persons as members of the Society was itself illegal since this resolution was passed in a meeting where there was no quorum, the question need not be gone into at this stage. The objection was considered by the Assistant Registrar and was disposed of. If the law permits, their membership can be challenged at the appropriate time before the appropriate forum. But their right to vote should not have been disturbed till the process of election was complete.

11. In the result, writ petition is allowed. The order passed by learned Judge of the Co-operative Court (No. 2), Kopargaon, below Exhibit 5 in A.B.N. Case No. 151 of 1993 on 23rd April, 1993, is hereby quashed. The result of the election of respondent No. 4 - Society declared by respondent No. 3, in pursuance to the polling held on 25th April, 1993, along with the polling, is hereby quashed. Respondent No. 3. Returning Officer, shall declare a fresh date for polling which shall not be later than four weeks from today and will take the fresh poll. The list of contesting candidates shall remain unchanged. The date of the election to be notified on the notice board of the Society and by pasting notice in the conspicuous place in the village and also to be notified in the newspaper having wide circulation in the area. It shall also be notified that all the persons whose names are found in the final list of voters published on 20th March, 1993, shall have right to vote. Rule is made absolute in the above terms. In the circumstances of the case, there shall be no order as to costs of this writ petition.

12. At this stage, Shri V.D. Hon, learned Counsel appearing for respondents 5 to 17, prays for suspension of this order for a period of two weeks from today. Prayer granted. Order accordingly.