

(2021) 02 TEL CK 0004
In the Telangana High Court
Case No : Writ Petition No. 2299 Of 2021

Surthi Venkatesh

APPELLANT

Vs

Election Committee

RESPONDENT

Date of Decision : 04-02-2021

Acts Referred:

Telangana Mutually Aided Co-operative Societies Act 1995 — Section 23, 37
Representation Of the People Act, 1951 — Section 100
Constitution Of India, 1950 — Article 226

Citation : (2021) 02 TEL CK 0004

Hon'ble Judges : P. Naveen Rao, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P. Naveen Rao, J

1. Heard learned counsel for petitioner and learned Government Pleader for Cooperation.

2. Petitioner was Ex-Member of Sri Somavamsha Shasattrarjuna Kshatriya Mutually Aided Cooperative Thrift Society Limited, Hyderabad

(second respondent herein). His membership was terminated by resolution dated 22.2.2020. Challenging the said termination, petitioner filed

W P No. 15890 of 2020 which is pending consideration before this Court. Election notice was issued on 5.1.2021 to conduct elections to elect

two Directors who are retiring by rotation. As per the schedule announced, nomination forms were available from 11.1.2021 to 20.1.2021;

nominations were to be filed from 18.1.2021 to 22.1.2021 and election is scheduled to be held on 7.2.2021. One of the conditions imposed to

contest the elections is that person must be a shareholder/ member whose name

is on the membersâ?? rolls of the society as on 31.12.2020.

As petitioner was terminated from membership, this clause is staring at him. He therefore represented to the Chairman of Election Committee

on 16.1.2021 requesting him to permit him to file nominations as he is contesting the termination in writ petition pending consideration before

the High Court and likely to be taken up. Said request of the writ petitioner was rejected vide intimation dated 20.1.2021 informing the

petitioner that since he cease to be a member of the society and in view of first of the terms and conditions, he is not eligible to contest and

therefore the question of permitting him to file nominations, does not arise. The said decision and election notification is assailed in this writ

petition.

3. Extensive submissions are made by learned counsel for petitioner to persuade the Court to stop the election process or to direct the

respondents to receive the nomination of the petitioner and to permit him to contest the election. Learned counsel for petitioner sought to

contend that the termination of his membership of the society is ex-facie illegal as elementary principles required to be observed before

terminating the membership were not followed, in as much as no notice or opportunity was given to the petitioner as admitted by second

respondent management. That being so, as termination has civil and evil consequences, it is ex-facie illegal and unsustainable. Therefore,

petitioner is deemed to be a member of the second respondent society and thus entitled to contest the election. Depriving the petitioner to

contest the election would be offending Article 21 of the Constitution of India. He therefore pleads that it is a fit case for this Court to

exercise extraordinary jurisdiction under Article 226 of the Constitution of India and to direct the respondents to afford to petitioner

opportunity to contest in the elections.

4. Two significant aspects which have bearing on the issue are relevant to be noticed. Firstly, process of election to elect two Directors in

place of retiring Directors by rotation was set in motion on 5.1.2021 and elections are scheduled to be held on 7.2.2021; and secondly

petitioner was not permitted to file nomination having regard to the first of the terms and conditions of the election notification and the last date

for submission of nominations was over on 22.2.2021.

5. In the above backdrop, the issue for consideration is whether the writ petitioner is entitled to seek mandamus to direct the respondents to

permit him to contest the elections after the election process is set in motion ?.

6. I have given my anxious consideration to the submissions of the learned counsel for petitioner.

7. Sections 231 and 372 of Telangana Mutually Aided Co-operative Societies Act 1995 and Rule 22 of the Telangana Cooperative Societies

Rules, 1964 are relevant for the present.

8. Section 23 deals with elections. It adopts Rule 22 of the Telangana Cooperative Societies Rules to deal with all aspects of the elections to

the Board of Directors. Section 37 extensively deals with settlement of disputes on various aspects including election related disputes. Sub

Section 2 opens with "Any dispute relating to elections". This has a very wide import and encompasses all aspects of election including

issuing election notification, issuing nomination papers, filing of nominations, consideration of nominations and declaring the nominations, as

valid or invalid. It requires referring the election dispute to the Cooperative Tribunal. Rule 22 of the 1964 Rules is exhaustive provision which

deals with all aspects of how to conduct elections to the Board of Directors of a society.

9. A brief recapitulation of the principle of law on the scope of judicial review in election related disputes is noted hereunder.

10. Boddula Krishnaiah and another vs. State Election Commission, A.P. and others (1996) 2 SCC 416 is on identical facts as in this case. On

the scope of interference by the High Court in election matters, the Hon'ble Supreme Court held as under:

11. Thus, it would be clear that once an election process has been set in motion, though the High Court may entertain or may have

already entertained a writ petition, it would not be justified in interfering with the election process giving direction to the election officer to stall

the proceedings or to conduct the election process afresh, in particular when election has already been held in which the voters were allegedly

prevented from exercising their franchise. As seen, that dispute is covered by an election dispute and remedy is thus available at law for

redressal.

(l) Under these circumstances, we hold that the order passed by the High Court is not correct in law in giving direction not to declare the

result of the election or to conduct fresh poll for

(t) persons, though the writ petition is maintainable. The High Court, pending writ petition, would not be justified in issuing direction to stall the

election process. It is made clear that though we have held that the respondents are not entitled to the relief by interim order, this order does

not preclude any candidate including defeated candidate from canvassing the correctness of the election. They are free, as held earlier, to

seek remedy by way of an election petition as provided in the Act and the Rules.â??

11. In *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha vs. State of Maharashtra and others* (2001)

8 SCC 509, the Honâ??ble Supreme Court considered the view expressed by the Honâ??ble Supreme Court in *Bar Council of India*

(supra). The Honâ??ble Supreme Court observed:

â??11. In the aforesaid case, this Court held that a writ petition under Article 226 of the Constitution should not be rejected on account of an

alternative remedy by way of election petition where, firstly, the challenge is not a ground under the Act or the Rules for filing an election

petition and, secondly, where the validity of a rule is challenged being ultra vires and invalid. It is true that a tribunal being a creature of an Act

or the Rules has a limited jurisdiction and it is not open to a tribunal to decide the validity of the Act and the Rules. But, that is not the case

here and, therefore, the decision in the case of *Bar Council of India v. Surjeet Singh* [(1980) 4 SCC 211] is of no help to the case of the

appellants. In the case of *Ramchandra Ganpat Shinde v. State of Maharashtra* [(1993) 4 SCC 216] the parties to a writ petition obtained a

collusive order by applying fraud on the court and such an order was made the basis of the election. In that context, it was held that so long as

the order of the High Court continues, the Tribunal would be bound by that order of the High Court and, therefore, the writ petition was

maintainable and the same cannot be thrown out on the ground of an alternative remedy. Again, that is not the case of the appellants and,

therefore, the same is distinguishable. In *Shreewant Kumar Choudhary v. Baidyanath Panjiar* [(1973) 1 SCC 95] it was held that it was not

open to the Tribunal to go behind the entry in an electoral roll. This was in the context of the provisions of the Representation of the People

Acts, 1950 and 1951. It may be borne in mind that there is a distinction between the scheme of the provisions of the Representation of the

People Act, 1950 and the Representation of the People Act, 1951. The Representation of the People Act, 1950 provides for the delimitation of

constituencies and allocation of seats for purposes of election to the House of the People and the legislatures of States and preparation of the

electoral roll, whereas, the Representation of the People Act, 1951 provides for conduct of election. Under Section 100 of the Representation

of the People Act, 1951, one of the grounds amongst others is that an election can be challenged where there is non-compliance with the

provisions of the Constitution or of the said Act and the Rules or orders made thereunder "meaning thereby that breach of the

Representation of the People Act, 1950 cannot be called in question in an election petition filed under the 1951 Act. In that view of the matter,

the decision relied upon by the appellants is distinguishable."

12. Reiterating the principle in *Boddula Krishnaiah* (supra), in *Bharatiya Janata Party, West Bengal vs. State of West Bengal and others*

(2018) 5 SCC 365, the Supreme Court declined to interfere in the election process holding that on issuing election notification to conduct

panchayat elections, the election process was set in motion and from that stage Court cannot interfere.

13. It is settled principle of law that once election process is set in motion Courts of law should not interject the process. All issues relating to

elections, including drawing up voters list is part of election process. A person aggrieved by any aspect relating to elections has to wait till the

entire process is completed and results are announced and can agitate only in the form of election dispute. It is the consistent view of this

Court that once election process is set in motion, the High Court should not interfere and stall the elections. In election matters, no remedy is

provided at intermediate stage and only remedy is Election Petition after the election is over. [*Kalla Ramakrishna Vs State Election*

Commission: 2005 (1) APLJ 11 (HC)(FB); Prattipati Bhagyamma Vs Election officer : 2005 (6) ALD 350; Dhulipaka Narendra Kumar Vs

A.P Coop Tribunal: (2011) 1 ALD 292].

The view of this Court is in accord with the opinion expressed by the Honâ??ble Supreme Court in catena of cases. Thus, once an election

notification is issued, all the intermediary exercise forming part of election process can be questioned only after the elections are over and

results are announced. Every step from issuing election notification till announcement of result of election forms part of â??electionâ??. In

the case on hand, petitioner was not permitted to submit his nomination to contest the election. â??The rainbow of operations, covered by the

compendious expression â??electionâ??, thus commences from the initial notification and culminates in the declaration of the return of a

candidateâ??. [Mohinder Singh Gill Vs. Chief Election Commissioner, New Delhi and others (1978) 1 SCC 405:AIR 1978 SC 851]

15. As of now the petitioner is not a member of the second respondent society. The manner of termination of the membership of the petitioner

is pending consideration in the writ petition no.15890 of 2020. Having regard to the consistent view taken by the Constitutional Courts it is not

permissible to interdict the election process on the premise that petitioner is most likely to succeed in the writ petition no. 15890 of 2020

against termination of his membership from the second respondent society and therefore he is entitled to contest the election but was illegally

denied. It is premature to assume as such. Even assuming that termination was illegal, it is no ground to stall the election process. I therefore,

see no merit in the writ petition.

Accordingly, the writ petition is dismissed. No costs. Miscellaneous petitions, if any pending, are closed.