
(2011) 10 BOM CK 0023
In the Bombay High Court
Case No : Writ Petition No. 7509 of 2011

Tanaji Bhoite

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 03-10-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226

Citation : (2012) 114 BOMLR 261

Hon'ble Judges : A.R. Joshi, J;A.H. Joshi, J

Bench : Division Bench

Advocate : V.D. Hon, for the Appellant; S.D. Shelke, A.G.P. for Resp. Nos. 1 to 4, M.S. Deshmukh, for Resp. No. 5, V. D. Salunke, for Resp. No. 6, for the Respondent

Final Decision : Dismissed

Judgement

A.H. Joshi, J.—Rule. Rule made returnable forthwith and heard, by consent.

2. Petitioner herein is an elected director of Respondent No. 5-Bank. He is under detention since 10.1.2011 in furtherance of the order passed by the Collector, Jalgaon under Maharashtra Prevention of Dangerous Activities and Slumlords and Bootleggers Drug Offenders and Dangerous Persons Act 1981 ("MPDA Act" for short). While under detention, the Petitioner received agenda of elections for the Chairman and Vice Chairman of Respondent No. 5-Bank, scheduled to be held on 5.10.2011.

3. According to the Petitioner:

(a) He is an elected member of the specified society

(b) The elections for Chairman and Vice Chairman of the society

- Respondent No. 5 are to be held by the Collector or his nominee.

(c) The Presiding Officer has issued the agenda to hold the said meeting on

5.10.2011.

(d) He is entitled to attend the said meeting and vote at the said elections.

(e) The Petitioner, however, is unable to attend the meeting due to his detention.

(f) He had applied to the jail authorities for releasing him to enable him to attend the said meeting, by application dated 19.9.2011.

(g) The jail authorities did not respond to the same.

(h) Considering the shortest span of time, the Petitioner approached this Court, by filing this writ petition, and is praying for relief by way of mandatory direction to the jail authorities to escort the Petitioner for attending the meeting on 5.10.2011 and participation, if voting is needed.

4. The submissions on facts and law advanced by learned Advocate for the Petitioner, and as reflected in the petition, are summarized as under:

(i) The Petitioner is a elected director of Respondent No. 5-Bank and has secured the said status, in view of the elections conducted-furtherance to Maharashtra Cooperative Societies Act, 1960 and Rules thereunder.

(ii) He still legally holds the office as a director of Bank - the Respondent No. 5 which can be demonstrated from the agenda at page 50 which he has received while in the jail, through the Respondent No. 5.

(iii) He is not removed from the post, nor any notice in that respect is issued to him.

(iv) The office of Chairman and Vice Chairman of the Bank is an important office from development point of view in the Dist.

(v) The right available to him is by virtue of provisions of the Maharashtra Cooperative Societies Act and Rules pertaining to Respondent No. 5-Bank and, therefore, he has right to participate in the election proceedings and cast his vote.

5. Alternatively, it is submitted that in the event it is not possible to release or escort him, in that event the ballot paper may be sent to the jail, or any other mode be adopted for enabling him to cast his vote.

6. In response to the query by the court as to who would bear the expenses for to and fro Nagpur to Jalgaon for the Petitioner and escort party, brother of the Petitioner has filed an affidavit undertaking to bear such expenses.

7. Mr. Hon, learned Advocate for the Petitioner pointed out that similar situation has been dealt with by the Apex Court in Mohd. Shahabuddin v. State of Bihar (2007) 10 SCC 28, and the Court allowed the detenue, a Member of Parliament, to vote in the Presidential election.

8. Shri Deshmukh, learned Advocate for Respondent No. 5-Bank, supported the petition.

9. Learned A.P.P. Smt. Shelke, opposed the petition, urging short span of time, and also that the right in favour of the Petitioner does not exist.

10. Learned Advocate Mr. V.D. Salunke for the intervenor has also strongly opposed the petition, on grounds which are summarized as follows:

(a) Voting at the election is not a fundamental right, and at least it is not a right against the State, or enforceable by the State.

(b) Considering the conduct of the Petitioner, he is required to be detained in jail under MPDA Act, and judicial seal is received to the order of detention, as the writ petition for issue of Habeas Corpus has been dismissed and case is now pending in Hon''ble Supreme Court and no interim relief has been granted.

(c) Petitioner is not entitled to be granted any discretionary relief, though in the case of Mohammad Shahabuddin (supra) the Apex Court had granted the relief.

(d) More or less similar relief was prayed by a Member of Parliament but Hon''ble Apex Court did not grant it in case of Suresh Kalmadi. (Writ Petition No. 5367 of 2011 Suresh Kalmadi (In Judicial Custody) v.. Union of India, decided on 5.8.2011).

(e) Election to office bearers of society, is governed by Statute and no violence to a legal right of Petitioner would occur, if the Petitioner is not allowed to participate in the proceedings of election.

(f) There does not exist in the Petitioner, a vested right to get the relief prayed for him in the present petition.

(g) No enforceable legal right is violated and, therefore, mandamus cannot be issued.

11. We have considered the rival submissions and the judgments relied on by the parties.

12. The case proceeds on the ground that the Petitioner has been served with an order of his detention for one year under MPDA Act. The order of detention was challenged in this Court. However, the challenge was negated and now the matter is pending in the Hon''ble supreme Court.

13. As we see, the preventive detention, though does not in totality deep-freeze and undermine all Fundamental rights of citizen, yet right of liberty, to be in the society and rights which flow therefrom, come under clog. The Constitutional guarantees which remain unaffected are those available under Article 14 and Article 21 of the Constitution of India.

14. Petitioner's prayer in the petition to release him, may be for short duration, to attend the meeting and cast his vote at the elections for Chairman and Vice Chairman of Respondent No. 5-Bank, is a right emerging from the MCS Act and 1971 Rules thereunder applicable to Respondent No. 5, and bye-laws of the said society. The said right is thus carved out under the statutory rules and is

exercisable only on appearance and attendance in the meeting.

15. Moreover, said right cannot be regarded as a legal right justiciable in Court against "State", as long as the State has not acted in any manner which can attract the description "denial of a right by the State".

16. What the Petitioner wants is the release from preventive detention, may be for three days and be away from the jail, for the purpose of voting. However, although right to cast vote is available on attendance at the meeting, right of attendance is not exercisable on the face of preventive detention order of the Petitioner.

17. Moreover, considering the background and the social stigma on account of preventive detention, the relief in equity and as a constitutional right, enforceable through Article 226 of the Constitution of India would not be available to the Petitioner, as the right claimed by Petitioner would not fall under Articles 21 and 14 of the Constitution of India.

18. We, therefore, dismiss the petition and discharge the rule. In the circumstances, no order as to costs.