

PETITIONER:
SHRI SANT SADGURU JANARDAN SWAMI (MOINGIRI MAHARAJ)

Vs.

RESPONDENT:
VS.

DATE OF JUDGMENT: 25/09/2001

BENCH:
V.N. Khare & B.N. Agrawal

JUDGMENT:

V.N. KHARE, J.:

There is a specified Society in the district of Ahmednagar known as Godavari Khore Dudh Utpadak Sangh (hereinafter referred to as the Society). The Society is registered under the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as the Act). The society is a central society and number of other primary cooperative societies are its members and is governed by the Act and rules framed thereunder. The management of the society is run by the managing committee, the members of which are elected by the delegates of the members societies. The Chairman is elected from amongst the members of the committee of management. The term of the elected managing committee of the society was due to expire in the year 1999. The Collector, therefore, took steps for preparation of the electoral roll of the society. For that purpose, the Collector announced the programme for finalisation of the electoral roll of the society. On 4th of June, 1999, the provisional electoral roll was published. The objections against the provisional voter list were invited till 14th of June, 1999, which were required to be decided by 23rd of June, 1999 and the electoral roll was to be finalised and published on 2nd of July, 1999. The State Government on 8.6.1999 passed an order under Section 73 (1) (B) of the Act staying the elections in the cooperative societies in the State on account of rainy season. It was indicated in the said order that where nomination papers have not yet been filed the elections shall stand postponed till 30th September, 1999. In pursuance thereof, wireless message was sent to all the co-operative societies about the decision taken by the State Government. It appears that certain objections against the publication of the provisional electoral roll of the society was filed which allegedly was considered by the authority on 23rd June, 1999. On 29th June, 1999, the Collector, Ahmednagar informed that as per the Government order dated 8.6.1999, the election scheduled to be held stands postponed till 30th September, 1999. It appears in between time some representations were made to the State Government to exempt the society from the order dated 8th June, 1999. In pursuance of the said representations the Government of Maharashtra issued a Notification dated 30th June, 1999 making out a special case in favour of the present society and deleted its name from the Notification dated 8th June, 1999, with the result that the election for the Society which was postponed earlier was now required to take place. In view of the said Notification issued by the State Government, the authority on 2.7.1999 published final electoral roll of the members of the society. The Collector on 21st October, 1999 drew election schedule for holding election of the society. It is at this stage, the petitioners filed a petition under Article 226 of the Constitution before the High Court. It was prayed therein that the order dated 21st October, 1999 be set aside. The said writ petition was subsequently dismissed by the High Court. The petitioners thereafter preferred this appeal by means of Special Leave Petition.

While the appeal was pending, the election for constituting the managing committee was held but the declaration of the result was stayed by the order of this Court dated 26.11.1999.

Learned counsel appearing for the appellants urged that the electoral roll being substratum of the election for constituting the managing committee and the same having not 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. Learned counsel appearing on behalf of the respondents raised an objection regarding the maintainability of the writ petition on the ground that since the election process has already commenced and inasmuch as election has already taken place, the appellants have an alternative remedy to file an election petition under Section 144-T of the Act before the tribunal. It was further urged that the High Court has rightly declined to entertain the writ petition under Article 226 of the Constitution and, therefore, this Court is not required to go into the merits of the appeal. However, this was refuted by the learned counsel for the appellants. Their case is that the preparation of the voters list not being part of the election process, the Election Tribunal is not competent to go into the validity or otherwise of an electoral roll in an election petition. Therefore, the only remedy available to the appellants is to file writ petition under Article 226 of the Constitution.

On the arguments raised by the learned counsel for the parties the questions that arise for consideration are : (1) whether the preparation of the electoral roll for electing members to the managing committee of a specified society under the provisions of the Act and rules framed thereunder is an intermediate stage in the process of election; and (2) If the answer to the first question is in the affirmative, whether the High Court should interfere with the preparation of an electoral roll in a petition under Art.226 of the Constitution or decline to interfere in the matter leaving the parties to get the matter adjudicated by the tribunal by filing an election petition after declaration of result of the election.

Before we consider question no. 1, it is necessary to look into the relevant provisions of the Act and the Rules framed thereunder. Chapter XIA of the Act deals with the election of committee of management and officers of certain societies. Section 144A occurring in Chapter XIA provides that Chapter XIA shall apply only to elections to committees of management of the society belonging to the category specified in Section 73G. It is not disputed that the present society is one of the specified societies under Section 73G of the Act. Clause (b) of sub-section (2) thereof provides for the electoral rolls and the election of members of the managing committee or of officers of the specified society. Section 144T provides that any dispute relating to an election shall be referred to a tribunal and that the tribunal shall have the same powers as were vested in a court in respect of the matters enumerated therein. Sub-section (4) of Section 144T further provides that election petition shall be heard and disposed of as expeditiously as possible or an order passed on such election petition shall be final and conclusive and shall not be called in question before any court of law. Section 144X runs as under:

Without prejudice to any other power to make rules contained elsewhere in this Act, the State Government may make rules consistent with this Act generally to provide for and to regulate all or any of the other matters relating to the various stages of the elections including preparation of list of voters.

(emphasis supplied)

The State Government, in exercise of power conferred by sub-section (2) of Section 144F, sub-section (4) of Section 144T, Section 144X and

clauses (xi) and (xlv) of sub-section (2) of Section 165 of the Act framed Rules known as Maharashtra Specified Co-operative Societies Elections to Committees Rules, 1971 (hereinafter referred to as the Rules). The relevant portion of the Rules runs as under:

4. Provisional List of Voters.

(1) A provisional list of voters shall be prepared by every society for the year in which general election is due to be held. Persons who are members as on the 30th June of the year immediately preceding the year in which such election is due shall be included in the provisional list. If different constituencies are provided in the bye-laws, the names of voters shall be arranged constituency-wise as laid down in the bye-laws: Provided that, if in any case, the preparation of the provisional list of voters falls due after the expiry of a period of six months from the 30th June, the Collector may, in consultation with the Registrar in respect of the societies of the categories mentioned in clauses (i) (v) (vi) and (vii) of sub-section (1) of Section 73G, and in consultation with the District Deputy Registrar in respect of the societies of the other categories mentioned in sub-section (1) of Section 73G, by order, change the date of the 30th June and subsequent dates and fix revised dates for the purposes of these rules.

5. Particulars to be included in provisional list of voters.

(1) The provisional list of voters, in the case of individual shareholders shall contain the names, fathers or husbands name, surname (if any) of every person entitled to be registered as a voter, with such other particulars as may be necessary to identify him.

(2) Where a society is a member of a specified society, the specified society shall call for the name of the delegate duly authorised to vote at an election on behalf of the affiliated society, so as to reach it by the 2nd July. While communicating the name of its delegate to the specified society, the affiliated society shall enclose a copy of the resolution of the society or its committee under which the delegate is so authorised. The specified society shall include in the list of voters the names of all such delegates as have been communicated to it before the date fixed for publication of the provisional list. In addition to the names of the delegates, the list shall contain the names of the affiliated societies, their registration numbers and addresses and the names of constituencies, if any, to which they belong. A society which has communicated the name of its delegate shall be like resolution be permitted to change the name of its delegate nor later than seven days before the date appointed by the Collector under Rule 16 of said rules for making nominations.

6. Claims and objections to provisional list of

voters.--

(1) When any provisional list of voters is published for inviting claims and objections, any omission or error in respect of the name or address or other particulars in the list may be brought to the notice of the Collector by any member of society concerned who is a voter or any delegate authorised to vote on behalf of such society.

(2) Every person making a claim or raising an objection shall do so by a separate petition, which shall be presented to the Collector on or before the 31st July, during office hours.

(3) Every claim or objection shall be preferred in writing and state the grounds on which the claim is based or the objection is raised, as the case may be.

(4) xxx xxx

(5) Notwithstanding anything contained in sub-rule (4) any person who is a member of the society as on the 30th day of June of the year immediately preceding the year in which such election is due or on such subsequent date as may be fixed by the Collector under sub-rule (1) of Rule 4 and whose name is not included in the final list of voters prepared by the Collector under sub-rule (4) and who is desirous of being registered as a voter may apply in writing to the Collector in Form !-A within a period of fifteen days from the date of display of the final list of voters under Rule 7.

(6) Every such application received by the Collector shall be forwarded by him within three days of the date of receipt by him to the District Deputy Registrar for enquiry. The District Deputy Registrar shall cause an enquiry to be made into the application and submit his report to the Collector along with his recommendations within seven days from the date of receipt of the application by him from the Collector.

(7) The Collector shall after considering the application and the report of the District Deputy Registrar give his decision in writing to the persons concerned, before the first date fixed for making nominations. If the Collector decides that the name of the applicant should be registered as a voter, he shall accordingly modify the list finalised by him earlier under sub-rule (4) and the list so modified shall then be treated as the final list of voters.

(7) Final list of voters.
Copies of the final list of voters of every society shall be displayed on the notice-board of offices of the Collector, the District Deputy Registrar and the society.

(8) Power to Collector to alter dates for list of voters.--

Notwithstanding anything contained in the foregoing rules, the Collector may, in the case of all or any of the societies of the categories mentioned in clauses (i), (v), (vi) and (vii) of sub-section (1) of Section 73G in consultation with the Registrar, and in the case of all or any of the societies of the categories mentioned in other clauses of sub-section (1) of Section 73G in consultation with the District Deputy Registrar, by general or special order, alter all or any of the dates prescribed therein and appoint such revised dates as he deems fit.

(8) Appointment of Returning Officers.
The Collector shall whenever necessary appoint a Returning Officer for one or more constituencies of a society as specified in its bye-laws:

Provided that, in case where no other person is appointed as a Returning Officer, the Collector himself shall be deemed to be the Returning Officer and shall perform all the functions of a Returning Officer under these rules.

In the light of the aforestated provisions of Chapter XIA of the Act and the Rules, we will examine as to whether preparation of electoral rolls is an intermediate stage in the process of election. The provisions referred to above shows that Chapter XIA was enacted and the rules were framed specially to deal with the election of the specified societies under Section 73G of the Act. Section 144X provides that various stages of election shall also include preparation of the list of voters. Once the statute provides that the preparation of the voters list shall be part of the election process, there is no reason to hold that the preparation of the electoral roll is not an intermediate stage in the process of the election of a specified society. This matter can be examined from another angle. A perusal of the Rules discloses that the preparation of provisional list of voters, filing of objection against the provisional list of voters, consideration of the objection by the Collector and finalising the list of voters, all occur in the Rules which cover the entire process of the election. The Rules framed for election of specified societies are complete code in itself providing for the entire process of election beginning from the stage of preparation of the provisional voters list, decision on the objection by the Collector, finalisation of electoral rolls, holding of election and declaration of result of the election. In view of the scheme of the Act and Rules, the preparation of voters list must be held to be part of the election process for constituting managing committee of a specified society. In *Someshwar Sahakari Sakhar Karkhana Ltd. Someshwarnagar vs. Shriniwas Patil, Collector, Pune & Ors.* 1992 Maharashtra Law Journal, 883, it was held that in the scheme of the provisions of the Act and the Rules, the preparation of the list of voters for election to the managing committee of a specified society is an intermediate stage in the process of the election. Similar view was taken in *Shivnarayan Amarchand Paliwal vs. Vasantrao Vithalrao Gurjar and Ors.* 1992 (2) (vol 30) Maharashtra Law Journal, 1052. However, in *Karbhari Maruti Agawan and Ors. vs. State of Maharashtra and Ors.* 1994 (vol 2) Maharashtra Law Journal, 1527, although it was held that the preparation of the list of voters is an intermediate stage in the process of election, but that does not debar the High Court to entertain a petition under Article 226 of the Constitution challenging the validity of the electoral roll. It appears that the consistent view of the Bombay High Court on the interpretation of Chapter XIA of the Act and the Rules framed thereunder is that the preparation of electoral roll is an intermediate stage of the election process of the specified societies. This being the consistent view of the High Court on the interpretation of provisions of a State Act, the same is not required to be

disturbed unless it is shown that such a view of the High Court is palpably wrong or ceased to be good law in view of amendment in the Act or any subsequent declaration of law. We are, therefore, of the view that the preparation of the electoral roll for election of the specified society under Chapter XIA and the Rules framed thereunder, is an intermediate stage in the process of election for constituting managing committee of a specified society.

It was then urged that the tribunal constituted under the Act has no power to go behind the preparation of the electoral roll and, therefore, the writ petition is maintainable. Learned counsel also strongly relied upon the decisions in the case of Bar Council of India and Ors. vs. Surjeet Singh and Ors. 1980 (4) SCC, 211 and Ramchandra Ganpat Shinde and Anr. vs. State of Maharashtra and Ors. 1993 (4) SCC, 216. Learned counsel also referred to Section 100 of Representation of Peoples Act and a decision in the case of Shri Shreewant Kumar Choudhary vs. Shri Baidyanath Panjiar - 1973 (1) SCC, 95. In sum and substance, the argument is that since the breach of rule in preparation of the electoral roll cannot be questioned in an election petition before the election tribunal, therefore, the writ petition challenging the preparation of the electoral roll could not have been dismissed on the ground that the appellant had an alternative remedy of filing an election petition. In this regard, it is relevant to notice Rule 81 of the Rules which provides for grounds for declaring election to be void. The relevant portion of the Rule runs as under:

81. Grounds for declaring election to be void.-

(d) (iv) by any non-compliance with the provisions of the Act or any rules made thereunder, the Commissioner shall declare the election of the returned candidate to be void.

If the contention of the appellant is that there was a breach of rule or certain mandatory provisions of the rules were not complied with while preparing of the electoral roll, the same could be challenged under Rule 81 (d) (iv) of the Rules by means of an election petition. In view that, the preparation of electoral roll is part of the election process and if there is any breach of the rules in preparing the electoral roll, the same can be called in question after the declaration of the result of the election by means of an election petition before the tribunal.

In the case of Bar Council of India & Ors. vs. Surjeet Singh & Ors. (supra), Untwalia, J. speaking for the Court observed thus:

There is no substance in the last submission made on behalf of the appellants. The manner of resolving disputes as to the validity of election is provided for in Rule 34 of Delhi Council Election Rules. This is not an appropriate and adequate alternative remedy to defeat the writ petitioner on that account. Firstly, no clause of Rule 34 covers challenging of the election on the ground it has been done in this case. Secondly, the Election Tribunal will not be competent to declare any provision of the Election Rule ultra vires and invalid.

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 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 & Ors. vs. Surjeet Singh & Ors. (supra) is of no help to the case of the appellant. In the case of Ramchandra Ganpat Shinde & Anr vs. State of Maharashtra & Ors. (supra), the parties to a writ petition obtained a collusive order by applying fraud on the court and such an order was made 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 appellant and, therefore, the same is distinguishable. In Shri Shreewant Kumar Choudhary vs. Shri Baidyanath Panjiar (supra), 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 Representation of Peoples Act, 1950 and 1951. It may be borne in mind that there is a distinction between the scheme of the provisions of the Representation of Peoples Act, 1950 and the Representation of Peoples Act, 1951. The Representation of Peoples 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, Representation of Peoples Act, 1951 provides for conduct of election. Under Section 100 of the Representation of Peoples Act, 1951 one of the grounds amongst other is an election can be challenged where there is non-compliance of 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 Peoples Act, 1950 cannot be called in question in an election petition filed under 1951 Act .

In that view of the matter, the decision replied upon by the appellant is distinguishable.

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.

In that view of the matter, we are in agreement with the view taken by the High Court that the appellant having an alternative remedy, the writ petition deserved dismissal.

For the aforesaid reasons, we do not find any merit in the appeal. The appeal is, accordingly, dismissed. There shall be no order as to costs.

J.
(V. N. Khare)

J.
(B. N. Agrawal)

September 25, 2001