

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10929 OF 2014

Raghunath Narayan Keskar & Ors.

.. Petitioners

Versus

**Akhil Bhartiya Gandharva
Mandal, Mumbai & Ors.**

.. Respondents

.....

Shri. A.A. Valsangkar i/b Shri. Pankaj Das, for the Petitioners.

**Shri. A.M. Kulkarni a/w Shri. Nagesh Chavan, for the Respondent
No. 1.**

Shri. Umesh Mankapure, for the Respondent No. 2.

Shri. P.G. Sawant – AGP, for the Respondent No. 3.

.....

CORAM : M.S. SONAK, J.

DATE : 29 JANUARY 2015

PC. :-

1. Parties were put to the notice by Order dated 12.01.2015 that this matter would be finally disposed of on 29.01.2015.

2. Accordingly, heard Learned Counsels for the parties.

spk.

3 . By this Petition, under Articles 226 and 227 of the Constitution of India, the Petitioners basically challenge the rejection of their nomination papers for elections to the Governing Council to the Akhil Bhartiya Gandharva Mandal, which is a Public Charitable Trust under the provisions of Bombay Public Trust Act, 1950 (**the said Act**).

4 . The rejection of nomination papers was by means of communication dated 13.11.2014. The Petitioners' representations protesting against the rejection and/or seeking opportunity to cure the so called irregularity, was rejected by the Election Officer on 27.11.2014. The only reason for rejection of the nomination papers was that the Petitioners had not signed across their photographs in the nomination forms, even though the nomination forms, required them to do so.

5 . The Learned Counsel for the Petitioners contended that there are no rules and regulations or bylaws in the matter of conduct of elections. The breach of instructions in the matter of signing across the photographs on the nomination forms was trivial and in any case curable defect. The real reason for rejection of nomination papers was to deny the Petitioners' opportunity to contest

the elections, even though the Petitioners have been members of Governing Council for almost four terms in the past. Besides, there was more than ample time, within which the so called defect could have been cured and the election process could have thereafter proceeded, as per the prescribed schedule. The rejection of nomination papers and denial of opportunity to cure the trivial defect was unfair. For all these reasons, the Learned Counsel for the Petitioners submitted that this Court ought to interfere in the matter.

6. Learned Counsels for the Respondents No. 1 and 2 i.e. the Trust and the Election Officer, at the outset, submitted that since the election process was already underway, this Court ought not to interfere in the matter. They pointed out that the Petitioners have alternate remedy after conclusion of the election process by way of opposing the change report, which shall have to be lodged before the Charity Commissioner, under the provisions of the said Act. The Learned Counsel further submitted that the Petitioners had committed the grave mistake by not signing across their photographs, even though such a requirement was mandatory. They pointed out that in the present case, the elections were to be held by postal ballot and the electorate comprises of members which are spread all over country. In such a situation, it is vital that the electorate knows the

candidates and there is no dispute with regard to identity. For all these reasons, the Learned Counsel submitted that this Court should not exercise its extra ordinary jurisdiction in the matter.

7. The rival contentions now fall for my determination.

8. Admittedly, there are no rules and regulations prescribed by the Trust in the matter of conduct of election to the Governing Council. All that the bylaws of the Trust prescribe, is that the elections to the Governing Council take place before the end of every five accounting years, when all the elected members retire. The Executive Committee has to decide the date of the election and appoint an Election Commissioner, at least, six months before such date. It is when for the Election Commissioner so appointed to set out the procedure and that the administrative machinery necessary for conduct of election by postal ballot.

9. The Election Officer was appointed to publish election schedule for the election of 2015 on 22.08.2014. In terms of the same, the last date for filing of nomination papers was 08.11.2014; date of scrutiny was 11.11.2014; date for withdrawal

of nomination was 29.11.2014; date for publication of list of candidates was 05.12.2014; date for dispatch of ballot papers was 22.12.2014; and the last date for receipt of ballot papers was 07.02.2015. The elections are by postal ballot and the electorate comprises in all 2480 voters, spread throughout the country.

10. In the present case, there is no dispute that the Petitioners lodged their nomination papers before 08.11.2014. The nomination papers were rejected by communication dated 13.11.2014 on the sole ground that the Petitioners failed to sign across their photographs upon the nomination forms. No sooner, the Petitioners were communicated of the rejection, they addressed representations dated 21.11.2014 protesting against their rejection and in any case seeking liberty to cure the trivial defect. This was followed by two further representations in quick succession. The Election Officer, by communication dated 27.11.2014 rejected the representations. This was received by the Petitioners after about 2-3 days by R.P.A.D. Immediately thereafter, i.e. on 02.12.2014, the Petitioners instituted the present Petition.

11. There is merit in the contentions of the Petitioners that the reason for rejection of their nomination forms

was trivial. There was no dispute whatsoever with regard to the identity of the Petitioners. In fact, none was raised by the Election Officer. The Petitioners have been members of the Governing Council for almost four terms in the past. In these circumstances, the Election Officer was not justified in adopting such an over rigid stand in the matter. In pursuance of representations addressed by the Petitioners, there was no real reason to deny the Petitioners opportunity of curing the so called defect in the nomination forms. Looking to the election schedule, the opportunity to cure such defect would have neither prejudiced any one nor disturbed the schedule of election. The Election Officer is only partially right in his submissions that the manner of conduct of election is within his exclusive domain or constitutes his sole prerogative. Inherent in the exercise of such prerogative is the requirement to act with fairness. In the facts and circumstances of the present case, it cannot be said that Election Officer, in rejecting the Petitioners' nomination papers or in denying the Petitioners opportunity to cure the trivial defect, even though the same would have in no manner disturbed the election schedule has acted in a fair manner.

12. The amount of time which the Petitioners and the Election Officer spent in exchanging correspondence, could

have been better utilised in permitting the Petitioners to sign across their photographs on the nomination papers. Such a course would be not merely a fair course of action to follow, but further the same would involve no disruption whatsoever of the election process. The Election Officer, in the present case ought to have appreciated that this is not an election involving lacs of voters. There is no serious dispute with regard to identity of the Petitioners. The requirement of signing across the photographs on the nomination papers was neither some statutory requirement nor the requirement prescribed by the rules and regulations of the Trust. Exercise of free play in the joint, in such a situation would have been consistent with a doctrine of fairness, which ought to inform the functioning of Election Officer. Prerogative to determine procedure for the conduct of elections is certainly not a licence to act in an over rigid or unfair manner. This precisely, what has happened in the present case.

13. Learned Counsel for Respondents No. 1 and 2 however, submitted with vehemence that since the election process was at an advanced stage, this Court could not interfere in the matter. True, the normal rule is that this Court would not interfere with the election process, which has already reached at advanced stage. However, the impression that this is invariable rule

is to be set right. At least in the present case, the Respondents seem to be under impression that they can resort to unfair procedures and thereafter, stonewall judicial interference by presenting a situation of *fait accompli*. Such impression is not correct. The normal rule of non interference is, neither statutory nor constitutional. The rule, is in the nature of a self imposed restriction. The rule shall apply in the facts and circumstances as presented before the Court in a given situation. In the present case, we are dealing with a Trust which comprises hardly 2500 members. If the situation could be remedied, without seriously disturbing the election schedule, then there can be no bar to interference.

14. Despite the aforesaid, in the present case, cognizance shall have to be taken of the position that the election process has reached fairly advanced stage. Ballot papers, contained names of all validly nominated candidates have already been dispatched to 2480 voters all over the country. Almost 1100 ballot papers have already been received by the Election Officer. Any interference, at this stage, would virtually involved the requirement of publishing fresh ballot papers and inviting fresh votes. At this stage, therefore, it is not possible to interfere with the election process, notwithstanding the unfairness involved in the rejection of

Petitioners' nomination papers by the Election Officer. The Petitioners could always avail the alternate remedy before the Charity Commissioner, should they desire to avail of the same.

15. This Petition, is accordingly, not entertained. Notwithstanding the same, this is a fit case to direct the Election Officer i.e. the Respondent No. 2 to pay costs of Rs. 5,000/-, to each of the Petitioners, and this is directed accordingly.

[M.S. SONAK, J.]