

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.223 of 2018**

Peter Cardozo .. Petitioner

Vs.

Agnelo Da Silva and 3 Ors .. Respondents.

Shri G. Teles, Advocate for the petitioner.

Shri D. J. Pangam, Advocate for the respondent no.1.

CORAM :- C. V. BHADANG, J.

Date : 16th July, 2018

ORAL ORDER :

The petitioner and the respondents were the contesting candidates from Ward No.6 of Village Panchayat, Seraulim, Salcete, Goa. The petitioner lost the election by 208 votes to the first respondent. The petitioner challenged the election of the first respondent before the Administrative Tribunal by filing Election Petition No.24/2017 on the solitary ground that some 70 voters from "reliance park" were illegally shifted from Ward No.5 to Ward No.6 of the said Village Panchayat.

2. The first respondent, after he appeared in the Election Petition, filed an application purportedly under Order VII, Rule 11 of the Code of Civil Procedure (CPC, for short) for rejection of the Election Petition. It was contended that the first respondent had

polled 219 votes while the petitioner polled only 11 votes and out of 70 voters, which according to the petitioner, have been illegally shifted to Ward No.6, only 39 voters had cast their votes and even assuming that these persons had cast their votes in favour of the petitioner, no different result can ensue.

3. The application was opposed on behalf of the petitioner, *inter alia*, on the ground that the Election Petition cannot be rejected at the threshold.

4. The Administrative Tribunal, by the impugned order dated 30/10/2017, has dismissed the petition with costs. Feeling aggrieved the petitioner is before this Court.

5. I have heard Shri Teles, the learned Counsel for the petitioner and Shri Pangam, the learned Counsel for the first respondent. With the assistance of the learned Counsel for the parties, I have gone through the impugned judgment of the learned Administrative Tribunal.

6. It is submitted by Shri Teles, the learned Counsel for the petitioner that the voters' list for Ward No.6 was illegally prepared in defiance of the notification dated 06/05/2017, in which

70 voters from Ward No.5 were illegally added to the voters list in Ward No.6. It is submitted that this illegality would affect the outcome of the election. He also submitted that the Election Petition could not have been dismissed at the threshold.

7. On the contrary, Shri Pangam, the learned Counsel for the first respondent has placed reliance on Section 20(1)(d)(iv) of the Goa Panchayat Raj Act, in order to submit that any non-compliance with the provisions of the Act or any rules or an order made thereunder, unless and until it affects the outcome of the election, cannot be a ground to declare the election as void. It is submitted that even assuming that 70 voters from Ward No.5 were transferred to Ward No.6 illegally, the same cannot have a bearing on the outcome of the election.

8. I have considered the circumstances and the submissions made and I do not find that any case for interference is made out.

9. Section 20(1)(d)(iv) of the Act reads thus :

“20. Grounds for declaring election to be void.—

(1) Subject to the provisions of subsection (2), if the prescribed authority is of opinion,—

(a)

(b)

(c)

(d) *that the result of the election, in so far as it concerned a returned candidate, has been materially affected,—*

(i)

(ii)

(iii)

(iv) *by any non-compliance with the provisions of this Act or of any rules or order made thereunder;*

the prescribed authority shall declare the election of the returned candidate to be void.”

10. It can, thus clearly, be seen that the election of the returned candidate cannot be declared void merely on account of non-compliance with the provisions of the Act or any Rules or order made thereunder, unless the result of the election, in so far as it concerns the returned candidate, has been material affected by such non-compliance. In the present case, it is not disputed that the first respondent, who was declared elected, had polled 219 votes, while the petitioner had only polled 11 votes. Out of 70 voters from “reliance park”, (which, according to the petitioner, have been illegally added to the voters list of Ward no.6), only 39 voters exercised their franchise. In the first place, it is difficult to envisage as to how addition of 70 voters from Ward No.5 to Ward No.6 can affect the outcome of the election when, the first

respondent was declared elected by a margin of 208 votes. Thus, even assuming that all the 70 voters (allegedly transferred from Ward No.5 to Ward No.6) had exercised their franchise and cast their votes in favour of the petitioner, still the outcome of the election cannot change. The learned Administrative Tribunal was justified in dismissing the Election Petition in as much as even going by the grounds as raised in the Election Petition to be accepted, the same cannot affect the outcome of the election. The petition is, thus, without any merit and is, accordingly, dismissed, with no order as to costs.

C. V. BHADANG, J.

SMA