

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 350 OF 2018

Dharmesh Saglani and Ors. Petitioners.

Versus

The State of Goa through Chief
Secretary and others. Respondents.

Mr. S. S. Kantak, Senior Advocate with Mr. Preetam Talaulikar,
Advocate for the Petitioners.

Mr. Dattaprasad Lawande, Advocate General with Mr. Deep
Shirodkar, Additional Govt. Advocate for Respondents No.1 and 2.

Mr. S. N. Joshi, with Ms. S. Bhat, Advocate for Respondent No.4.

Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.

Date : 4 April 2018.

P.C.:

By this Petition, the Petitioners have prayed for a writ of certiorari for quashing and setting aside the orders dated 21 December 2017 and 2 February 2018, passed by the Director of Urban Development/Municipal Administration. By the order dated 21 December 2017, the Director of Municipal Administration, exercising powers under Section 9 (2)(a) of the Goa Municipalities Act, 1968, has fixed the number of Councillors to be elected to

Sankhali Municipal Council for the purpose of the ensuing Municipal Elections. By the order dated 2 February 2018, the Director, by exercising power under Section 10(1) of the Act of 1968, has fixed the number of Wards.

2. The Petitioner No.1 is the Chairperson of the Sankhali Municipal Council, to which the elections are proposed to be held. The grievance of the Petitioners is primarily to the fixation of the number of Councillors by the Respondents-Authorities. It is the case of the Petitioners that the Sankhali Municipal Council is a Class C Municipal Council and as per Section 9 of the Act of 1968, the number of Councillors has to be 10, however, by the impugned order, the Respondents-Authorities have fixed the number of Councillors to 13. According to the Petitioners, even assuming Sankhali Municipal Council is Class B Council, as per the provisions of Section 9 of the Act of 1968, the methodology has been provided for calculating the number of Councillors which, firstly has to be minimum 10 and thereafter, each additional Councillor with increase of 3000 in the population. According to the Petitioners, even assuming the Council is Class B Municipal Council, since as per the last census of 2011 the population being 13651, it would permit maximum 12 Councillors. It is further the case of the Petitioners that out of total population of 13651, a separate Village Panchayat, namely Harvalem Village Panchayat was carved out from the area of

Sankhali Municipal Council in the year 2013 which has further reduced the population by 1700 and even assuming the Council is Class B Council, by the present population, as per the last census, it cannot exceed 11. It is the contention of the Petitioners that by carrying out this illegal exercise, which is not as per the provisions of the Act and the Rules, the Respondents-Authorities are proceeding to hold the elections and, therefore, the impugned orders are required to be quashed and set aside.

3. Reply affidavits have been filed on behalf of the Director of Municipal Administration and the Goa State Election Commission. It has been placed on record that the election programme has been declared on 22 March 2018. Preliminary objections have been raised by the Respondents as regards the relief sought for by the Petitioners and also certain documents and correspondence have been placed on record by way of affidavits. The contentions of the respondents is that the Petitioners have approached this Court with delay and are not entitled to any discretionary relief under the writ jurisdiction. It is contended by them that the Petitioners have filed this Petition, not for maintaining purity in the election process as alleged, but to achieve certain personal gains.

4. We have heard Mr. S. S. Kantak, learned Senior Advocate

appearing for the Petitioners, Mr. Dattaprasad Lawande, learned Advocate General for Respondents No.1 and 2 and Mr. S. N. Joshi, learned Council for Respondent No.4.

5. Mr. Kantak, appearing for the Petitioners submitted that Section 4 of the Act of 1968 specifies that the municipal area with population of 10000 shall be Class C Municipal Council and composition of the Council is provided for in Section 9 which states that in Class C Municipal Council, the number of elected Councillors shall be 10. He submitted that the action of the Respondents-Authorities is bad in law on both positions, that is treating the Council as Class C or treating the Council as Class B. He submitted that as of today, there is no notification issued by the State Government for reclassification of the Municipal Council as provided under Section 4(5) of the Act of 1968. He submitted that it is only by way of a notification that the State Government can change the classification and admittedly there is no such notification issued as on date. Mr. Kantak, relying upon the decision of the Apex Court in *MRF Limited vs. Manohar Parrikar & Ors.*,¹ submitted that once when the Act lays down methodology for exercise of the power in a particular manner, it can only be done in the manner so provided and other manners of exercise are prohibited. Mr. Kantak submitted that proceeding to treat the Council as Class C, the number of

¹ (2010) 11 SCC 374;

Councillors can only be as provided under Section 9 of the Act of 1968 and, therefore, the entire exercise undertaken by the Respondents-Authorities, is bad in law. Mr. Kantak submitted that even though it is stated in the reply filed on behalf of the State Government that a decision has been taken to reclassify the Municipal Council as Class B Municipal Council, it is only a stand taken in the affidavit and no such formal notification as contemplated under Section 4(5) has been issued. Mr. Kantak submitted that, therefore, the Municipal Council continues to be Class C Municipal Council which will admit only 10 Councillors. It was contended that proceeding on the assumption that the Council has to be treated as Class B Council, again the exercise of the Respondents-Authorities is bad in law, since what should be the number of elected Councillors for Class B Municipal Council has also been specified in Section 9(2)(a)(iii). It was submitted that the minimum number of elected Councilors for Class B would be 10 and for over 3000 of the population or part thereof, there shall be one additional Councillor, however the number shall not exceed 15. Mr. Kantak submitted that since the last census of 2011 shows population as 13651, which was further reduced by 1700 approximately, the total number of Councillors cannot exceed 11. Mr. Kantak also relied upon the definition of population occurring in Section 2(36) of the Act of 1968 and the definition in Article 243P(g) of the Constitution of India, to contend that the

'Population' can only be the population as ascertained at the last preceding census, in the present case, of the year 2011. According to Mr. Kantak, the general statement made in the affidavit by the Respondent-State that the population has undergone an increase is vague and the contention cannot advance in the light of the specific definition of Population. Relying on the decisions of the Apex Court in the case of *Election Commission of India vs Ashok Kumar and ors.*,¹ and in the *Anugrah Narain Singh and another vs. State of U.P. And ors.*,², Mr. Kantak contended that the jurisdiction of this Court to entertain a Writ Petition and grant relief is not barred when patent illegality is brought to its notice and the Court is called upon to direct the authorities to hold elections as per law. Mr. Kantak also contended that if any direction is issued now to correct the exercise of fixing the number of Councillors, it will not affect the time schedule and the exercise of carrying out the delimitation will not take longer time as the Voters Lists are available. It was submitted that even assuming the present exercise is set aside and pursuant to the fresh exercise elections are directed to be held again after the term of the Council expires, the Court can always direct the State Government to appoint an Administrator, the Court can also direct the Respondent Government to complete the exercise in a time-bound period. Mr. Kantak submitted that therefore, in the facts and circumstances of the

1 (2000) 8 SCC 216

2 (1996) 6 SCC 303

present case where illegality is apparent and has virtually acknowledged, that the Court should intervene and correct the illegal exercise and ensure that the elections are held as per law.

6. Mr. Lawande, learned Advocate General submitted that the Petitioners have suppressed various facts from this Court and the Petition is entirely motivated. Mr. Lawande submitted that the Petitioners have not disclosed that Petitioner No.1 who heads the concerned Municipal Council had made a representation as far back as on 23 December 2014 for upgradation of the Municipality from Class C to Class B, whereas the stand taken by the Petitioners in the Petition is entirely different. It was contended that the meeting of the Council, chaired by the Petitioner No.1 in September 2014, itself had recommended for upgradation of the Council. Mr. Lawande submitted that the impugned order was passed on 21 December 2017 and thereafter except making certain representations, the Petitioners did not bother to approach this Court and have only filed this Petition on 14 March 2018. Therefore, there is a gross unexplained delay on the part of the Petitioners. Relying on the affidavit filed by the Director of Municipal Administration, Mr. Lawande submitted that interference by this Court in the election process which has already been commenced on 22 March 2018 would lead to postponement of the elections and if the process of delimitation has to be undertaken again, it will take minimum 90

days to complete the entire process of election. Mr. Lawande submitted that the exercise carried out by the Respondents-Authorities is not arbitrary as the Petitioners themselves sought upgradation earlier and had contested the elections even when the Municipal Council was a Class C Municipal Council and the number of Councillors was fixed at 11 ,not 10 as contended now. It was contended that as per the amendment to Section 9 by the Amendment Act of 2015, the number of Councillors for B-Class Municipal Council shall be an odd number, if possible, and since for some time the number has remained 11, to which the Petitioners had never taken objection, it was sought to be increased to 12 and rounded off to odd figure 13. It was contended that, therefore, there is no arbitrariness for this Court to interfere in the election process. It was also contended that there is an embargo under Article 243ZG of the Constitution of India in respect of the relief to be granted by the Courts in the election matters and Article 243ZG(b) states that no election to any Municipality shall be called in question, except by an election petition. Mr. Lawande submitted that as per mandate under Article 243U, the election to constitute a Municipality has to be completed before the expiration of its duration and in the present case, the same has to be completed by 20 May 2018.

7. Mr. Joshi appearing for Respondent No.4 adopted the arguments advanced by the learned Advocate General and contended

that as per Rule 4 of the Goa Municipalities (Election) Rules, 1969, which fixed various stages of elections, programme has been declared on 22 March 2018 and the date for receipt of nomination papers is 12 April 2018 and any relief granted now will disrupt the entire election programme which will lead to postponement and if the delimitation is set aside, fresh exercise will necessarily lead to a situation in breach of Article 243U.

8. We have considered the rival contentions. The Apex Court in the case of *Election Commission of India vs Ashok Kumar and ors.* has laid down parameters for exercise of jurisdiction by the Courts in the matters of elections. In paragraph 32, the Apex Court has culled out certain principles. The Apex Court has held that without interrupting, obstructing or delaying the progress of the election proceedings judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings. The Apex Court has, however, cautioned that the Court must be very circumspect and act with caution while entertaining any election dispute to ensure that the process is not interrupted, protracted or stalled and care must be taken to ensure that there is no attempt to utilise the Court's indulgence by filing a petition outwardly innocuous, but essentially a subterfuge or pretext for achieving an ulterior or hidden end.

9. In the case of *Anugrah Narain Singh and another vs. State of U.P. and ors.*, the Apex Court has observed that it is well settled by now that if the election is imminent or well under way, the Court should not intervene to stop the election process. The Division Bench of this Court in *Francisco Colaco vs. The State of Goa and Ors.*, (Writ Petition no.312/2012) decided on 30 April 2012 had considered a challenge to the formation of Wards in a Village Panchayat in Goa. The Division Bench held that the Court should not interfere with the election programme as declared and any interference would lead to postponement of the elections. Even in the decision of the Division Bench of this Court in *Naresh Krishna Gaunekar & Ors. vs. State of Goa & ors.*¹ on which Mr. Kantak has placed reliance to contend that the population figure must be as per law i.e. Article 243P(g), the Division Bench reiterated the position that Court must be circumspect while entertaining or intervening in an election process.

10. In these circumstances, we have to consider whether a case is made out by the Petitioners to invoke an extraordinary jurisdiction of this Court to set aside the exercise of delimitation at this stage. We cannot be oblivious to the fact that the order has been passed on 21 December 2017 and that the Petitioners have filed this Petition on 14 March 2018. The Petitioners have annexed certain

¹ 2008(1) Bom.C.R. 788

representations they have made. We have gone through those representations. After the order of 21 December 2018 was passed, the Petitioner No.1 has written in the capacity as Chairman to the Director of Municipal Administration only on 18 January 2018. Thereafter, the order has been passed on 2 February 2018. On 14 February 2018, another representation has been made. One month thereafter, the present Petition has been filed. In the Petition, we do not find any cogent explanation whatsoever for the delay of three months. This delay has gone unexplained and thus there are gross laches on the part of the Petitioners. This is one of the grounds against the Petitioners when they seek to invoke the writ jurisdiction.

11. We have to also take note of the conduct of the Petitioners. In the representations on 23 December 2014 made to the Authorities by the Municipal Council under the Chairmanship of the Petitioner No.1, it is said that after the census of 2011 due to urbanization of the city of Bicholim, people are flowing towards Sankhali for settlement and the population has increased and, therefore, the Municipal Council should be upgraded from Class C to Class B. However, in the Petition, the Petitioner No.1 has asserted that after the year 2011, due to separation of Harvalem Village Panchayat 1700 voters will have to be deducted. The Petitioners, therefore, are stating at one place that the population has gone down

and in the other place that the population has gone up .The Petitioners in their representations indicate their willingness to continue the number of counsellors as 11 even if the Municipal Council classified as Class C Municipal Council. The learned Advocate General is right in contending that the Petitioner No.1 only appears to be interested in perpetuating the position suitable to the petitioners and is not invoking writ jurisdiction to bring in purity in the election process. We cannot accept the contention of Mr. Kantak that the communications made under chairmanship of the Petitioner No.1 were not germane to the controversy at hand. Therefore, the Petitioners have suppressed the material facts that that the Petitioner No.1 himself, as a Chairperson of the Council, through the Council, has sought reclassification of the Municipal Council from Class C to Class B on the ground that the population has gone up. It appears from the affidavit filed by the Director that reclassification exercise has been completed and the notification reclassifying from Class C to Class B, is imminent and can be published at any time.

12. Apart from this position, the law is settled that interference in the matters of elections, once the election process is started, should be kept to absolute minimum, if at all it is permissible. The Election Commission and the Director of Municipal Administration have stated that if the delimitation

exercise already carried out is set aside, it will have to be conducted all over again. It is quite obvious that it will take substantial period of time. Rule 4 of the Goa Municipalities (Election) Rules, 1969 reads thus :

“4. FIXATION OF VARIOUS STAGES OF ELECTION

(1) For the purpose of holding a general election, the State Election Commission shall by order in Form I, appoint :-

- a) the last date, time and place for making nominations;*
- b) the date, time and place for scrutiny of nominations, which shall be a date not later than the third day after the last date for making nominations;*
- c) the last date for withdrawal of candidature, which shall be a date not later than the fifteenth day and not earlier than the fifth day for scrutiny of nominations;*
- d) the date or dates on which a poll shall, if necessary, be taken, which or the first of which dates shall be a date not earlier than the twelfth day after the last date for the withdrawal of candidatures, and the time during which the poll shall be taken on the date or dates so fixed:*

Provided that, such date or dates shall not be earlier than two months before the date of expiry of term of office of councillors of the council to which such election is to be made and shall not be later than fifteen days before the date of such expiry.

Provided further that in the case of the first general elections to be held under the Act, the

date or dates to be fixed for the poll shall be such as the State Election Commission may deem fit, but such date or dates shall not be earlier than the twelfth day after the last date for the withdrawal of candidatures.

- e) the date or dates, time and place for the counting of votes, and*
- f) the dates, time and places for other stages of the elections.*

(2) The State Election Commission shall, not less than four weeks before the last date fixed for the nomination of candidates, cause the order under sub-rule (1) to be published as a public notice in the same manner as is provided in clauses (a) and (c) of sub-section (2) of section 311 of the Act, and where there are local newspapers, also additionally by publication in one or more of such newspapers. The State Election Commission shall also arrange to give wide publicity to the election programme by affixing copies of the order in local languages at the municipal office and at such other conspicuous places within the municipal area as may be deemed fit and by causing the said order to be published in such other manner as he deems fit.

(3) Where an appeal is presented under rule 15 against the decision of a Returning Officer accepting or rejecting a nomination paper in respect of the election in any ward, the revised last date for the withdrawal of candidatures in respect of such election shall be the third day after the date on which such appeal is decided. If it is necessary to take a poll and the date appointed therefor under sub-rule(1) is already passed or is earlier than the twelfth day after the revised last date for the withdrawal of candidatures, the State Election Commission shall

appoint a revised date on which the poll shall be taken (which shall be a date not earlier than the twelfth day after the revised last date for the withdrawal of candidatures), and a revised date for the counting of votes, in respect of that election. Such order shall be published in the same manner in which the original order made under sub-rule (1) is published.”

The above Rule lays down a time schedule. First proviso to Rule 1(d) specifies that the date scheduled shall not be earlier than two months before the date of expiry of the term of the office of Councillors of the Council. We are informed that the term of the office of the Councillors in the present Council ends on 20 May 2018. The learned Advocate General is right in contending that if the delimitation exercise is set aside and direction is issued to the State Government to classify the Municipal Council as Class C, and thereafter the notification is issued upgrading the Municipal Council as B-Class, which notification is imminent, it will create various complications in the election process.

13. Considering all these factors, we are of the opinion that the interference in the writ jurisdiction, at the behest of the Petitioners, is not warranted. The Petitioners have approached this Court three months after the order was passed on 21 December 2017. This delay is not explained at all. It is the petitioners own case that the Municipal Council should be treated as a Class B Municipal

Council. It is the argument of the State that for the Class B Municipal Council the reference to the number of the councillors is only to denote the minimum and considering the fact that 11 Councillors were present throughout and since the amendment refers odd number it has been made 13 cannot be termed, as *ex facie* to stop the election process altogether once it has started.

14. Considering the totality of the circumstances, therefore, we do not find that interference in the election process is warranted. If any order is passed in favour of the Petitioners, it will certainly disrupt the election schedule and the mandate of Article 243U of holding the elections as per the provisions therein will be violated.

15. In these circumstances, the Petition cannot be entertained and is, accordingly, rejected.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.