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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 42 OF 2013

Chandrakant Laxman Parab. Petitioner
 Versus.
 State of Goa, and others. Respondents.

Mr. P. Arolkar, Advocate for the Petitioner.

None for the Respondents.

WITH
WRIT PETITION NO. 828 OF 2012

Sitakant K. Parab & Ors. Petitioners.
 Versus.
 State of Goa, and others. Respondents.

None for the Petitioners

None for the Respondents.

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

Date : 18 September 2018.

P.C.:

The primary grievance raised in this petition is in respect of election to the Comunidade in the context of challenge to the election process which was initiated in the year 2013. The grounds have been raised in both these petitions regarding voter's lists.

2. Both these petitions were taken up for consideration for interim relief and the following order was passed at the time of issuance of Rule on 22/1/2013:

“Heard learned counsel appearing on behalf of the petitioners and both the learned counsel appearing on behalf of the respondents.

2. Petitioner in Writ Petition No. 42/2013 has challenged the validity of Article 49 of Code of Comunidade and also has challenged voters list which has been published by the Administrator and also on various grounds. It is submitted that procedure for preparing and publishing the said list has not been followed and as such, the elections which are to be held on 27.1.2013 on the basis of the said voters list therefore be stayed pending the hearing and final disposal of the petition.

3. Learned counsel appearing on behalf of the petitioner submitted that there is no provision under Constitution of India which prohibits grant of stay to the election of the members of the comunidade after the process of election has commenced and secondly non obstante clause which is included in Article 329 of Constitution of India and other provisions of the Constitution cannot be applied to the election of the Comunidade. He has relied on the judgment of the Apex Court in the case of Election Commission of India Vs. Ashok Kumar and others reported in (2000) 8 SCC 216 and also three judgments of this Court in support of his submission. He has also submitted that though Code of Comunidade was amended in 1998 and under the amended code only one list has to be prepared, the Administrator has published two lists one of the voters and second of the persons, who are eligible to contest the election. He has invited our attention to the various judgments of this Court which have interpreted the provisions of the said Code of Comunidade.

It is, therefore, submitted that the elections which is to be held on 27.1.2013 may be stayed and matter be fixed for final hearing at the stage of admission. He has also submitted that after the elections were postponed in December, 2012 a new committee has been constituted and since the list was not published the petitioner could not avail of alternate remedy of challenging irregularities in preparing the list by filing an appeal before the Administrative Tribunal. He has raised several other issues regarding the eligibility of the voters in the said list. He has further submitted that some of the voters whose names are included in the list are minors.

4. Mr. Parab, learned Advocate appearing on behalf of the petitioners in Writ Petition No. 828 of 2012 also has urged that the elections which is to be held on 27.1.2013 may be stayed. He has also pointed out several irregularities committed by Administrator in preparing the said list. He has submitted that names of number of persons, who are foreigners as defined by Code of Comunidade, have been included in the said voters list. He has also submitted that said list was not published. He has invited our attention to the photographs of the said list which are annexed to the petition.

5. On the other hand, learned counsel appearing on behalf of the respondent nos. 1, 2 and 4 and Comunidade of Sirsaim made a statement that Administrator will permit any person whose name is in the voter's list of 332 voters to contest the election. He submitted that those who are desirous to contest the election may give their names one-two hours before the election and said person will be entitled to contest the election. He has submitted that list was published on 24.12.2012 and petitioners could have availed of alternate remedy by filing an appeal. He has submitted that instead of availing alternate remedy which was available to them, the petitioners have chosen to file the petition in this Court.

6. *After having heard both the counsel for the petitioners and learned counsel for the respondents in our view it will not be possible to stay the election which is to be held on 27.1.2013 since election process has commenced, voters list have already been published. We, therefore, decline to interfere in the said election process while exercising our writ jurisdiction under Article 226 of the Constitution of India. All the contentions raised by the petitioners are kept open and the petition will be heard finally at the stage of admission in the month of February, 2013. Respondents are directed to file affidavit in reply within a period of two weeks. Rejoinder may be filed two weeks thereafter.*

7. *Notice is given to learned Advocate General in Writ Petition No. 42/2013. Mr. Nadkarni, learned Advocate General waives service of notice on behalf of respondent nos.1 to 3.*

8. *Both these Writ Petitions to be heard together.*

9. *Issue notice to respondent no.4 in Writ Petition No. 42/2013 returnable on 25.2.2013."*

3. By a detailed interim order as above, interim relief was refused.
4. As a consequence of refusal of interim relief, we are informed that the elections were conducted and the term of the election committee as also now over.
5. In these circumstances, the challenge to the election process does not survive.
6. As regards the other issues, questions of law raised in this

petition have been rendered academic. The same are left open to be considered at an appropriate stage. Both the writ petitions are disposed off.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.