

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1178 OF 2018

Yeshwant A. Shirodkar
& anr.,

... Petitioner

Versus

State of Goa,
Thr. Its Chief Secretary
and 3 ors.

... Respondents

Mr. Yogesh V. Nadkarni, Advocate for the Petitioner.

Mr. Nitin Sardesai, Senior Advocate, Amicus Curaie.

Mr. Pravin Faldessai, Additional Government Advocate for the State

Ms. John Lobo, Advocate for respondent no.3.

WITH

STA/793/2019

Mr. Rohit Bras De Sa, Advocate for the Applicant.

WITH

MISC. CIVIL APPLICATION NO.219/2019

IN

WRIT PETITION NO. 165/2019

Ms. Ketki Pednekar, Advocate for the Applicant.

Mr. D.J. Pangam, Advocate for Respondent no.13

Mr. Pravin Faldessai, Additional Government Advocate for the State.

***Coram : M.S. Sonak &
Prithviraj K. Chavan, JJ.***

Date : 26th February 2019.

P.C. :

Heard Mr. Nitin Sardessai, learned Amicus Curiae appointed in this matter.

2. We have also heard Mr. Yogesh Nadkarni, learned Counsel for the petitioner in Writ Petition No. 1178/2018, Mr. Pravin Faldessai, learned Additional Government Advocate for the Administrator of Comunidade, Mr. John Lobo, learned Counsel appearing for the Comunidade of Serula, Mr. Rohit Bras D'Sa, learned Counsel for the applicant in Misc. Civil Application in STAMP Application no.793/2019, Ms. Ketki Pednekar, learned Counsel for the applicant in Misc. Civil Application no. 219/2019 in Writ Petition no. 165/2019 and Mr. D. Pangam, learned Counsel for respondent no. 13 in the said Misc. Civil Application.

3. On 06.02.2019, we made a detailed order in relation to the elections to the Managing Committee of Comunidade of Serula which were partly held on 27.01.2019, but thereafter, disrupted by use

of force and strong-arm tactics by some of the miscreants present in the election hall. We had directed the police authorities to investigate in the matter and to place a status report in sealed cover. Such status report has been filed. We have heard learned Amicus Curaie, with whom, we shared the status report.

4. According to us, though, the investigation has commenced, the pace at which it is proceeding, is not quite satisfactory. Accordingly, we direct the Superintendent of Police, North, Porvorim, Goa to personally monitor the investigation and from time to time guide the investigating officer regards the pace and the direction of investigation. We further direct that the status report be placed on record by 18.03.2019 in a sealed cover. The copy of the status report, again in sealed cover to be furnished to the learned Amicus Curaie, if possible, by 17.03.2019 itself.

5. Today, clarification has been sought in regard to our order dated 06.02.2019, on the issue whether the voting at the continued election, now scheduled for 03.03.2019 can be extended to all the share holders/members/voters, even though they may not have remained present or attended the polling partly held on 27.01.2019, on which date, elections to the post of president and partly, the president

substitute could be completed.

6. In almost identical circumstances concerning elections to the Managing Committee of the Comunidade of Sancoale, we disposed of Writ Petition No. 153/2019 by our judgment and order dated 11.02.2019, in which we took the view that since part of the election was complete and this was a case of mere continuation and completion of the remaining part, voting will have to be restricted only to such of the voters, who were present in the election hall and upon record of whose presence, the elections actually commenced.

7. In the case of Comunidade of Sancoale, the elections were scheduled for 02.12.2018. The minutes of what transpired on 02.12.2018 recorded, had after 174 shareholders/voters assembled, the election process commenced with the nomination being filed for various posts. There was only one nomination for the post of president after finalization of the withdrawal of nomination. All that remained to be done was the formal declaration of results, after the conclusion of the election process for the balance posts for which, there was to be a contest. However, from this stage, the election process was disrupted by use of physical force or rather by creating an apprehension of law and order situation.

8. The continued elections were then notified for 17.02.2019. In such circumstances, by our judgment and order dated 11.02.2019, we directed that at the continued elections, only the 174 voters/share holders, whose names were clearly reflected in the minutes of the proceeding and who had actually signed against their names be permitted to take part. The reason was that, if this were not so, then, the miscreants who actually disrupted the election process would secure an undue advantage neither intended by the Code of Comunidade nor to be countenanced if free and fair elections has to be the norm. We also reasoned that no person should succeed in drawing any undue advantage of the unwarranted situation created by the miscreants. In fact, in our judgment and order dated 11.02.2019 in Writ Petition no. 153/2019, we expressly referred to and relied upon our order dated 06.02.2019 in the present matter.

9. Therefore, consistent with our view, in our judgment and order dated 11.02.2019, in Writ Petition No. 153/2019, it is quite clear that even in so far as the continued elections to the Managing Committee of the Comunidade of Serula is concerned, there is no question of extending the voting rights to the shareholders/voters, who were not even present on 27.01.2019, on which date the elections partly concluded but for disruption by extra legal means.

10. Mr. Yogesh Nadkarni, the learned Counsel for the petitioner in the present petition however, seeks to make a distinction by pointing out that the names of the 174 voters/shareholders in the case of elections to Comunidade of Sancoale, were clearly reflected in the minutes of the proceedings whereas, in the present case, there is no such reflection. He points out that on 28.01.2019 itself i.e. the next day of the elections, an RTI queriest, applied for copies of the registers, in which the voters/shareholders present on 27.01.2019 may have signed in token of their presence on the said day.

11. Mr. Nadkarni the learned Counsel pointed out that eight registers (copies) maintained alphabetic-wise were furnished to such queriest containing total names of 477 voters/shareholders. He submits therefore that the list of 575 voters/shareholders now presented by Mr. Pravin Faldessai, learned Counsel for the Administrator of Comunidade cannot be regarded as authentic or atleast accurate. He pointed out that now a ninth register has been produced containing extra 98 names and that too, without indication of such names in an alphabetical sequence. He submits that the ninth register is quite dubious and can never be relied upon. He submits that the disruption took place by about 12.00 noon and it is possible that several other voters would have come to exercise their franchise

later. On these grounds, he submits that the voting cannot be restricted to only those who were present on 27.01.2019.

12. Mr. D. Pangam and Mr. Rohit Bras De Sa the learned Counsel also supported the contentions raised by Mr. Nadkarni. Mr. Pangam submits that if for any reason, the elections are postponed, then voting must be permitted to all the voters on the voters' list and there can be no restrictions. Mr. Rohit Bras De Sa, the learned Counsel pointed out that even the procedure for holding elections on 27.01.2019 was contrary to the provisions of the Code of Comunidade. He pointed out that the Code requires the voters/shareholders who are interested in contesting elections to file nomination on the day of the elections. However, in the present case, the nominations were accepted in advance and this is a breach of the provisions of the Code. He submits that since the elections held on 27.01.2019, though partly, were in breach of the Code of Comunidade, the elections now scheduled on 03.03.2019 must be regarded as fresh elections at which, all eligible voters/shareholders must be allowed to exercise their franchise.

13. Mr. Pravin Faldessai, learned Additional Government Advocate submits that consistent with our order dated 11.02.2019 in Writ Petition No. 153/2019, no additional voters/shareholders can be

permitted to vote at the continued elections now scheduled for 03.03.2019. He submits that if this is permitted, this will clearly amount to giving undue and unwarranted advantage to the disruptors of the elections. He submits that for elections to the Managing Committee of Comunidade, it is not as if the polling is between some fixed time like 10.00 a.m. to 5.00 p.m. He submits that the polling commences after the voters/shareholders assemble at the election hall and in the present case, the voting actually commenced and took place for the post of president at which 575 voters/shareholders participated. Before the voting for rest of the posts for which nominations had been finalised, could proceed, the election was disrupted by use of physical force and extra legal means.

14. Mr. Pravin Faldessai, the learned Counsel pointed out that it was an inadvertent and unintentional mistake that the ninth register containing 98 names remained to be furnished to the RTI queriest in the first instance. However, soon after this mistake was realised, the officer of the Administrator, by a letter called upon this queriest to come and collect the ninth register containing 98 names. He submits that there is absolutely no reason to doubt the authenticity or accuracy of all the nine registers and the names registered therein particularly because, the voters/shareholders have actually signed against their

respective names in token of their presence.

15. Ms. Ketki Pednekar, the learned Counsel also supported the submissions made by Mr. Pravin Faldessai. She pointed out that just as the disruptors must not gain any undue advantage from the situation created by them, so also the other voters/shareholders who chose not to remain present on 27.01.2019, must also not secure any undue advantage out of the situation deliberately created by disruptors/miscreants. She submits that the order dated 06.02.2019 is quite clear in that. It specifies that the elections are to be held on the basis of the same voters' list which was in operation on 27.01.2019.

16. We have anxiously considered the submissions made before us by the learned Counsel for the parties. The basis for our order dated 06.02.2019 as well as our judgment and order dated 11.02.2019 in Writ Petition No. 153/2019 was to ensure that no person obtained any undue or unwarranted advantage as a result of disruption of part of the election process by use of physical force or other extra legal means. If now, the list of voters is extended or expanded as is sought to be contended, then, the same would amount to granting the shareholders/members undue and unwarranted benefits solely on account of disruption of the part of the election process by use of

physical force and extra legal means.

17. From the tenor of our order dated 06.02.2019, it is quite clear that the elections now scheduled on 03.03.2019, is nothing but a mere continuation of the election process which had commenced on 27.01.2019 until it was rudely interrupted by use of physical force and extra legal means. In fact, none of the parties disputed this position. Besides, as pointed out by Mr. Pravin Faldessai, the learned Counsel, this is not a case where the polling was to take place during some specified hours and therefore it was possible for voters/shareholders to attend the election hall much later. The polling commenced after the presence of 575 voters was recorded and even concluded in so far as polling to the post of president was concerned. Obviously therefore, the balance part of the election process has to be completed by the 575 voters/shareholders whose names are recorded and reflected in the registers produced in this Court. As against the names of said voters, there appear the signatures of such voters. These are records prepared by Government officers like Administrator of Comunidade or his delegates like the Presiding Officers, who are again government servants. There is a presumption with regards to such records and the same cannot be lightly brushed aside.

18. From the submissions of Mr. Yogesh Nadkarni, it is clear that the RTI queriest was furnished with eight registers with names of 475 voters/shareholders. About these names, there can be no doubt or dispute. In so far as the ninth register is concerned, the same contains 98 names against the voters who have put their signatures. The explanation furnished by Mr. Yogesh Faldessai is liable to be accepted. There is really no good reason to raise doubt about the authenticity or accuracy of the said list placed at this prima facie stage. Thus, there is really no difference in the fact situation which obtained in Writ Petition No. 153/2019 and the present matter. The registers represent a contemporaneous record prepared by the authorities. This record is further fortified by the signatures of 575 voters/shareholders who were present on 27.01.2019 and actively took part in the election process held on that day.

19. The acceptance of the contentions made by Mr. D. Pangam or Mr. Rohit Bras De Sa, the learned Counsel, would virtually amount to awarding a premium to the disruptors of lawful election process, atleast in the facts and circumstances of the present case. In any case, the voters/shareholders who were not even present on 27.01.2019 cannot seek to assert any alleged rights by taking advantage of the extra legal disruption of the election process after the election process

was partly completed. Accordingly, we are unable to accept such contentions.

20. To consider the contentions raised by Mr. Rohit Bras De Sa as regards the alleged defects in procedure for conduct of elections on 27.01.2019, we are afraid, this is neither the proper forum nor is this the occasion to consider such contentions. The parties whom Mr. De Sa represents, have an alternate remedy to raise such contentions upon the conclusion of election process.

21. Article 49 of the Code of Comunidade, clearly provides that in case of any irregularity in the election, any member of the Comunidade with voting right, may appeal to the Administrative Tribunal within five days. Besides, we find that the expression “*any irregularity in elections*” used in Article 49 of the Code of Comunidade at prima facie is quite wide and therefore, the Administrative Tribunal will have jurisdiction to go into atleast most of the contentions now sought to be raised in relation to inter alia the authenticity of the ninth register containing the 98 names of voters/shareholders.

22. Further in our earlier order dated 06.02.2019, we had already

made it clear that nothing in the said order was intended to affect or deprive any person of their statutory rights to question the election process to instituting election petition before the Administrative Tribunal under Section 49 of the Code of Comunidade. We clarify that the same is the position with the present order and nothing in this order is intended to affect or deprive any person of their statutory rights to question the election process. This, according to us, should to a great extent ally the apprehensions expressed by Mr. Rohit Bras De Sa, the learned Counsel.

23. Since now, we have declined to extend the voters' list, an apprehension was expressed that it might be argued that the right to institute an election petition is to be restricted only to 575 voters/shareholders. Such arguments if made, will obviously be quite misconceived. The expression “*any member of the Comunidade with voting right*” in Article 49 of the Code of Comunidade, obviously, refers not only to 575 voters but also to any other voters of the Comunidade. Accordingly, the apprehension now expressed is quite hypothetical and in any case misconceived.

24. Accordingly, we clarify that at the continued elections scheduled on 03.03.2019, there is no question of any additional voters or

shareholders taking part and the polling process has to continue from the stage at which it was disrupted and only 575 voters/shareholders as recorded in the registers produced before us, are to participate in the continued election process and not the others.

25. In view of this clarification in Writ Petition No. 1178/18, there is no necessity to make any further order in Misc. Civil Application No. 219/2019 which application is disposed of.

26. So far as the intervention application bearing STAMP No. 793/2019 is concerned, the same is allowed in the sense that the applicants are permitted to intervene in Writ Petition No. 1178/2018, particularly because the applicants have some submissions to make with regard to the conduct of comunidade elections.

27. Place Writ Petition No. 1178/2018 for further consideration on 19.03.2019.

28. All concerned to act on the basis of authenticated copy of this order.

PRITHVIRAJ K. CHAVAN, J.

M.S. SONAK, J.