

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1190 OF 2018

Sitakant L.Parab and anr.

... Petitioners

Versus

The State of Goa & Ors.

.... Respondents

Mr. Prabhakar H.Parab with Mr.Eeeshan Usapkar, Advocates for the Petitioners.

Mr. V.Sardessai, Additional Government Advocate for Respondent Nos.1 to 3.

Mr. S.D.Patil, Advocate for Respondent No.4.

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

Date : 9 January 2019.

P.C. :

Heard Mr. P. Parab, learned counsel for the petitioners, Mr.V. Sardessai, learned Additional Government Advocate for respondent Nos.1 to 3 and Mr. S.Patil, learned counsel for respondent No.4.

2. By this petition under Article 226 of the Constitution of India, the petitioners, who claim to be Gaonkars/Components of Comunidade of Sirsaim, seeks the following reliefs:

“(a) Issue instructions to the State/Collector to direct the Administrator of Comunidades to prepare the voters list as provided under Article 42 and display it in the office of the Comunidade taking into account provisions of Articles 28 and 29 of the Code.

(b) To entertain objections to the voters list by the Gaonkars and dispose of them as per the law.

(c) To hold election by ballots.

(d) The Presiding Officer to admit the voters for casting votes only after identifying by production of voters identity cards, issued by the Election Commission of India.”

3. Mr. Parab, learned counsel for the petitioners, contends that under Article 42 of the Code of Comunidade, it is the responsibility of the Clerk and the Attorney of the Comunidade to prepare and publish the Voters list. He points out that in the present case, no such Voters list was ever published. Mr. Parab further submits that the list, which is appended to the affidavit-in-reply filed by respondent no.4 is not at all the Voters list but, it is a list known as “Matricula of Jonoeiros” which is prepared under Article 193 of the Code. Without prejudice, Mr. Parab submits that even this list indicates that the same was prepared either on 8.10.2018 or 21.11.2018. Therefore, the statement that the Voters list was prepared

on 2.9.2018 is *ex facie* false and cannot be accepted. Mr. Parab, in the course of his arguments, also handed in some photographs and on the basis of the same submitted that no voters list was ever prepared or published in the present case.

4. Mr. Parab, without prejudice, contends that Article 42 of the Code of Comunidade, prescribes the manner in which such Voters list is to be prepared. In short, he points out that the Voters list prepared based on account of the last three years and registered by members of *zonnkars* and shareholders, in accordance with the terms of the Code. He points out that Article 42 specifies the particulars of such Voters list is required to be reflected. He submits that the list now produced along with an affidavit-in-reply can never be regarded as Voters list as it does not comply with the requirements of Article 42 of the Code of Comunidade.

5. Mr. Parab also handed in three Death Certificates to contend that three of the persons, who are referred to in the so-called Voters list, have already expired. He submits that this is also an illegality in the preparation of the Voters list.

6. Mr. Parab also submitted that in case, there is failure on the part of clerk and attorney to prepare Voters list, in accordance with

Article 42 of the Code of Comunidade then, it is the responsibility of the Administrator to prepare such a Voters list. He submits that Administrator be therefore, directed to prepare proper Voters list so that the elections are held on the basis of proper voters list.

7. Mr. Parab finally states that in the absence of publication of the Voters list, the petitioners were deprived of an opportunity to object to the glaring illegalities in the same. He submits that preparation of the Voters list is the foundation of any fair election. He relies upon *Darbara Singh Vs. State of Punjab and others*¹ and *Umakant Singh and others Vs. Binda Choudhary and others*² in support of his submissions. Based upon all these contentions, Mr. Parab submits that Rule be made absolute in the present petition.

8. Mr. Sardesai and Mr. Patil, learned counsel appearing for the respective respondents, opposed to grant of any reliefs in the present petition. They point out that the Voters list was indeed prepared and published in the present case. They also point out that in terms of the Code, the parties have been afforded opportunities to lodge their objections or appeals against any illegalities in the Voters list within the prescribed period. Thereafter, the Administrator was

1. AIR 1973 Punjab & Haryana 295

2. AIR 1965 Patna 459

required to dispose of such appeals, again within a prescribed period. They point out that there are no discrepancies in the dates as contended. They point out that after publication of the Voters list and expiry of time limit for objections/appeals against the same, the Voters list was forwarded to the Administrator on 8.10.2018 and the same was certified by the Administrator on 21.11.2018. They submit that the petitioners are raising seriously disputed question of facts and this petition has been filed only because the petitioners failed to lodge their objections within the prescribed period. They submit that this petition is nothing but an attempt to stall the elections, which are scheduled on 20th January 2019 and, therefore, the same may be dismissed with costs.

9. The rival contentions now fall for our determination.

10. Article 42 of the Code of Comunidade provides that for the purpose of constituting the managing committee, two lists shall be prepared every three years, by 31st August, by the clerk and the attorney of the *comunidade*, based on the accounts of the last three years and of the registers of members by birth – (*zonnkars*) and shareholders, in accordance with the terms of this Code. One of the two lists shall be of all the qualified members and the other of twenty

major shareholders who are qualified members. Paragraphs 2 and 3 also deal with the manner for preparation of the list.

11. Article 43 of the Code, then provides that after the list have been publicly displayed for a period of eight days, from the 2nd September and the copies of the same affixed on the door of the committee meeting's hall and any of the temples of any religion, existing in the village, an appeal may be filed to the administrator, on a plain paper, within the same period.

12. Article 44 of the Code then provides that the administrator shall give its decision, within the fixed period of five days, without fail, and the said decision shall be made public in the entry book of the administration office, against which an appeal may be filed, also on plain paper, to the Administrative Tribunal, within the period of eight days. This appeal shall also be decided within eight days.

13. Article 45 of the Code even provides that the clerk of the *comunidade*, after making the rectification, as required by the higher authorities, shall affix again, in the presence of two witnesses, the rectified lists, by the 15th November, after being countersigned by the president of the committee, who shall verify, under his responsibility, if

the said decision has been duly complied with. The two copies of the finalized list of members shall be forwarded by the clerk to the administration office by the 20th November.

14. In the present case, respondent no.4 on an affidavit has stated that the Voters list were prepared and published on 2.9.2018. There is also a statement that such Voters list were fixed on the door of the Comunidade and at Devasthan in the area.

15. The discrepancy, as regards the dates, has been satisfactorily explained. On perusal of the list, it is not as if the same is dated 8.10.2018 or 21.11.2018 and as suggested by Mr. Parab. The certifications on said dates relate to the further process, which is contemplated under the Code of Comunidade.

16. In exercise of our extraordinary jurisdiction under Article 226 of the Constitution of India, it is neither possible nor advisable to go into the disputed question of facts as regards the publication. Such issue, obviously cannot be decided on the basis of photographs. Therefore, it is not possible to hold that in this case there has been no publication of Voters list at all so as to deprive the petitioners opportunity to institute the appeals in terms of Article 43 of the Code of Comunidade.

17. The issue as to whether the list of Voters has been prepared in accordance with Article 42 of the Code or not is really not the issue, which can be gone into in the present petition. Similarly, merely because names of some expired voters find place in the list, that is not a ground to either doubt or invalidate the Voters list. At the highest, there could have been some objections to the preparation of the Voters list on these grounds. However, in all such matters, it is imperative that such objections are lodged and pursued within the prescribed period provided under the Code. Just as there is public interest involved in the preparation of correct Voters list, so also there is public interest involved in adhering to the time schedule relating to the challenges to such Voters list. If such time schedule is not adhered to, then it will be extremely difficult to hold elections as per the election schedule which may be announced.

18. The petitioners had instituted this petition by alleging that no Voters list was at all prepared or published. Now, that this contention has not been substantiated, it is not possible to entertain further contentions that the list, which is produced on record is erroneous or not validly prepared. For such grievances, the petitioners had to resort to procedures prescribed in Articles 43 and 44 of the Code of Comunidade.

19. In the two decisions referred to by Mr. Parab, it is held that, it is of the essence of these elections that proper electoral rolls should be maintained and in order that a proper electoral roll should be maintained it is necessary that after the preparation of the electoral roll opportunity should be given to the parties concerned to scrutinize whether the persons enrolled as electors possessed the requisite qualifications. Opportunity should also be given for the revision of the electoral roll and for the adjudication of claims to be enrolled therein and entertaining objections to such enrolment. Unless this is done, the entire obligation cast upon the authorities holding the elections is not discharged and the elections held on such imperfect and would be liable to be challenged at the instance of the parties concerned.

20. In the present case, not only were the electoral rolls published but, further the Code itself provides for an opportunity to object the entries in such electoral rolls. Merely because, the petitioners have failed to avail such opportunities, it cannot be said that no opportunities were ever offered. Besides, this does not appear to be a case where the preparation of entire electoral roll was under challenge. The petitioners grievance appears to be against some specified entries. Accordingly, though there can be no dispute about

the propositions laid down in the two decisions, the ratio of the said decisions is inapplicable to the facts of the present case.

21. Upon cumulative consideration of all the facts, circumstances and the law on the subject, we see no ground to entertain the present petition. The petition is, therefore, liable to be dismissed and it is hereby dismissed.

22. In the facts of the present case, there shall be no order as to costs.

Prithviraj K. Chavan, J.

M.S.Sonak, J.