

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 30 OF 2021

The Goa Kshatriya Maratha Samaj
Thr. Its President, Manguesh Shabi
Chodankar & Anr.

...Petitioners

Vs.

Pallavi Gajanand Bhosale & Ors.

...Respondents

WITH

WRIT PETITION STAMP NO.1846 OF 2020

Gajanand Balchandra Bhosale & Ors.

...Petitioners

Vs.

Mangesh Shabi Chodankar & Ors.

...Respondents

Mr.R. Menezes a/w Mr.Nigel Fernandes, Mr.Gina Almeda for the
Petitioners in WP No.30 of 2021 and for Respondent No.1 and 2
in WP Stamp No.1846 of 2021.

Mr.S.M. Walvaikar for Respondent Nos.1 to 6 in WP No.30 of
2021 and for the Petitioners in WPST No.1846 of 2020.

Mr.S.D. Padiyar a/w Mr.Prayash Shirodkar for Respondent No.10
in WP No.30 of 2021.

CORAM : C.V. BHADANG, J.

RESERVED ON : 21 APRIL 2022

PRONOUNCED ON : 17 OCTOBER 2022

(Through Video Conferencing)

JUDGMENT :

. Heard finally by consent of parties.

NILAM
SANTOSH
KAMBLE

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2. Both these Petitions arise out of Judgment and order dated 9 December 2020 in Miscellaneous Civil Appeal No.87 of 2019 on the file of the learned Principal District Judge, North Goa at Panaji. As such they are being disposed of by this common judgment.

3. The brief facts necessary for the disposal of the Petitions may be stated thus:-

That Goa Kshtriya Maratha Samaj (said Society) is a Society registered under the Societies Registration Act 1860.

4. The present dispute pertains to the General Elections of the said Society in the year 2018 for Election of the Executive Committee with a tenure of five years. The Respondent Nos.1 to 6 (Original Plaintiffs) had filed nomination papers for contesting the said Election, scheduled to be held on 3 June 2018. The Respondent Nos.7 to 9 (Original Defendant Nos.1 to 3) were the Returning Officers for the said Election. The nomination filed by Respondent Nos.1 to 6 came to be rejected on the ground that they were not members of the said society. The Respondent Nos.1 to 6 (Plaintiffs) along with one Smt.Archana Naik filed Regular Civil Suit No.151/2018/B before the Civil Judge Senior Division, Mapusa, Goa against the Returning Officers challenging the rejection of the nomination. The Plaintiffs sought a declaration that the ground assigned for rejection of

their nomination is invalid and sought a direction for permitting them to contest the Election. An Application for interim relief in similar terms was filed.

5. It appears that the parties arrived at a settlement and Consent Terms were filed, governing the issue at the interim stage. On the basis of the said Consent Terms the Respondents-Plaintiffs contested the Election and were declared successful along with 12 others, comprising of a Managing Committee of 18 Members. The result of the Election was declared on 6 June 2018. The members of the Managing Committee met on 7 June 2018 and the Officer bearers were elected in which Mr.Gajanand Halarnkar was elected as a President.

6. However, the Returning Officers disapproved the said Election and called a meeting on 13 June 2018 for Election of the Officer bearers amongst the members elected of the Managing Committee.

7. According to Plaintiffs the Returning Officers, in collusion with the earlier members of the Managing Committee, had rejected their nomination papers.

8. The Returning Officers who were the only Defendants in the suit contested the same by filing reply to the

Application for interim injunction, refuting the allegations of collusion. It is submitted that the Plaintiffs apart from acting to the detriment of the interest of the said society, were also not shown to be members,

9. The learned Trial Court by an order dated 30 September 2019 dismissed the Application (below Exhibit-3) seeking temporary injunction. As per the consent terms, this had the effect of the Respondents-Plaintiffs vacating their office.

10. The Respondents-Plaintiffs challenged the order dated 30 September 2019 before the learned Principal District Judge at Panaji in Miscellaneous Civil Appeal No.87 of 2019.

11. During the pendency of the Appeal the learned Principal District Judge passed two orders:-

(i) Dated 9 December 2020 (below Exhibit-9) allowing an Application by the Appellants-Plaintiffs for production of the following documents:-

(a) Membership Certificate No.98/628 dt. 12/12/1998 of the Appellant No.1, Mrs.Pallavi G. Bhosle with Goa Kshatriya Maratha Samaj.

(b) Membership Certificate No.N-977 dt. 09/02/1998 of the Appellant No.2 Mr.Gajanand B. Bhosle with Goa Kshtriya Maratha Samaj.

(c) Membership Certificate No.98/200 dt. 11/06/1998 of the Appellant No.3, Mr.Santosh E. Ekhadkar with Goa Kshtriya Maratha Samaj.

(d) Membership Certificate No.98/095 dt. 04/04/1998 of the Appellant No.4, Mr.Amar P. Halarnkar with Goa Kshtriya Maratha Samaj.”

(ii) Order dated 14 January 2020 (below Exhibit-18) allowing an Application for intervention filed by Mr.Mangesh Chodankar claiming to be the President of the said Society.

12. The learned Principal District Judge by a judgment and order dated 9 December 2020 allowed the Appeal directing the parties to maintain status-quo “as on the date of the passing of the impugned order”. The net result is that the parties are required to maintain status-quo, as obtaining on 30 September 2019.

The learned Principal District Judge by a separate order of even date had stayed the effect of the judgment for a period of four weeks.

13. The judgment and order dated 9 December 2020 and the order of even date allowing the Application Exhibit-9 for production of additional documents, are subject matter of challenge in WP No.30 of 2021 at the instance of the Society claiming to be represented through its President Mr.Mangesh Chodankar and one Mr.Chandrakant Chodankar.

14. The order dated 9 December 2020 (Staying the effect of the judgment of the Appellate Court for a period of four weeks) and the order dated 14 January 2020 impleading the Society claiming to be represented by Mr.Mangesh Chodankar, are subject matter of challenge in WP Stamp No.1746 of 2020, at the instance of the original Plaintiffs.

15. I have heard the learned counsel for the parties.

WRIT PETITION STAMP NO.1846 OF 2020

16. Mr.Volovekar, the learned counsel for the Petitioner-Plaintiffs has submitted that the challenge to the order dated 9 December 2020 by which the Appellate Court had stayed the effect of its own judgment, has become infructuous, inasmuch as the said stay was operating only for four weeks which period has expired.

17. Insofar as the order dated 14 January 2020 (below Exhibit-18) is concerned, it is submitted that Mr.Gajanan Halarnkar is elected as a President of the Society and therefore the learned Principal District Judge was in error in allowing impleadment of the Society through its purported President Mr.Mangesh Chodankar.

18. The learned counsel for Respondent Nos.1 and 2 has submitted that impleadment has rightly been allowed.

19. I have considered the submissions made.

20. I find that the order dated 14 January 2020 (below Exhibit-18) needs no interference, in as much as Miscellaneous Civil Appeal has already been disposed of. Essentially, the dispute is between the members of the GKMS inasmuch as the Respondent No.1 Mangesh Chodankar as well as one Mr.Gajajan Halarnkar are claiming to be elected as President of the Society. It is necessary to note that the suit was filed only against the Defendants who were the Returning Officers. Thus if the Society represented through Mr.Gajajan Halarnkar was made a party, because the Appellate Court, order directing impleadment of Mr.Mangesh Chodankar and Mr.Chandrakant Chodankar as Respondent Nos.5 and 6 before the learned Principal District Judge calls for no interference. Thus Writ Petition Stamp No.1846 of 2020 is without any merit.

WP NO.-30/2021

21. Mr.Menezes, the learned counsel for the Petitioners submitted that the reliefs claimed in the Application for temporary injunction had become infructuous, on account of the fact that the Elections were already held and the Original Plaintiffs were declared elected. It is submitted that the Elections

were held on the basis of the Consent Terms which have to be read as a whole. It is submitted that it is not open for the Plaintiffs to partly rely on the same and to discard the other part. It is submitted that the Consent Terms clearly contemplated that in the event the Plaintiffs are elected, the same shall be subject to the outcome of the Application for temporary injunction. It is submitted that thus the Application for temporary injunction ought to have been decided on its own merits, which the learned Trial Court had rightly rejected. It is submitted that the learned Principal District Judge without considering the three predicates and without coming into close proximity/quarters of the order passed by the Trial Court, had granted status-quo. It is submitted that the relief of status-quo was not prayed for by any of the parties and is beyond the prayers. It is submitted that the learned Principal District Judge, therefore was not justified in directing the parties to maintain status-quo, as on the date of the order passed by the learned Trial Court.

22. Insofar as production of documents is concerned it is submitted that the learned Principal District Judge was in error in allowing the production of the said documents.

23. On behalf of the Petitioners reliance is placed on the following decisions :-

- (i) *Shipping Corporation of India Ltd V/s. Machado Brothers & Others*¹
- (ii) *Bachhaj Nahar V/s. Nilima Mandal & Another*²
- (iii) *Wander Ltd V/s. Antox India Ltd. 1990*³
- (iv) *Dorab Cawasji Warden V/s. Coomi Sorab Warden*⁴
- (v) *State of Bihar V/s. Radha Krishna Singh & Ors.*⁵
- (vi) *Pratapari N. Kothari V/s. John Braganza*⁶

24. The learned counsel for Respondent-Plaintiffs submitted that the learned Principal District Judge has rightly come to the conclusion that the Plaintiffs were the members and therefore were allowed to contest the Election on the basis of the Consent Terms and were declared elected. It is submitted that the reason shown for rejection of the nomination papers of the Respondents-Plaintiffs by the Returning Officer was that Plaintiffs were not the members of the Society. It is submitted that quite to the contrary it was subsequently claimed that the Plaintiffs were acting against the interest of the Society as they had filed complaints against the then Officer bearers. It is submitted that mere filing of the complaints against the Office bearers cannot tantamount to the Plaintiffs acting against the interest of the Society. It is submitted that the interest of the Society is not same as that of the interest of the members of the

1 (2004) 11 SCC 168
 2 (2008) 17 SCC 491
 3 (Supp) SCC 727
 4 (1990) 2 SCC 177
 5 (1983) 3 SCC 118
 6 (1994) 4 SCCC 403

Managing Committee who are distinct. It is submitted that in any event at this stage it is not shown that the complaints were unwarranted. It is submitted that once the learned Principal District Judge had come to the conclusion that the Plaintiffs were members of the Society, the Plaintiffs were entitled to the order of interim injunction.

25. It is submitted that in the given circumstances the learned Principal District Judge has rightly moulded the relief by directing the parties to maintain status-quo as on the date of the order of the Trial Court inasmuch as the learned Principal District Judge has found, on facts, that immediately prior to the passing of the order by the Trial Court, the Plaintiffs were “occupying the official seat”.

26. Even sofar as the order dated 9 December 2020 about production of the Additional documents is concerned, the Appeal already stands disposed of and therefore does not call for any interference.

27. Mr.Padiyar, the learned counsel for the Respondent No.10 has again supported the Respondents-Plaintiffs.

28. I have considered the submissions made.

29. The record discloses that the Society was registered in the year 1965 under the Societies Registration Act 1960. Somewhere in the year 1983 Mr.Chandrakant Chodankar, an Advocate by Profession, was elected as a President along with others Office bearers. He continued to be the President of the Society till 2017. According to the Plaintiffs Mr.Chandrakant Chodankar was holding the post of the President without holding election. They have also made certain allegations about the manner in which, the Society was administered.

30. On 26 February 2017 a General Body Meeting of the Society was held in which it was decided to hold General Elections within a period of one year. Three Returning Officers were appointed somewhere in February 2018 and the Election process was to start on 11 May 2018. It is further a matter of record that the Plaintiffs sought nomination at the Election which came to be rejected on the ground that the Plaintiffs were not the members of the society.

31. The Plaintiffs filed the suit and sought interim injunction including mandatory injunction to permit them to take part in the Election, in which the Consent Terms were recorded as under :-

(1) The Defendants shall proceed with the scheduled Election of Kshtriya Maratha Samaj dated 03.06.2018 on the premise that the nomination forms

of each of the Plaintiffs shall be accepted and they will be allowed to contest the said election.

(2) The above understanding between the parties is subject to the following term.

(a) That any of the Plaintiffs loses the Election that(sic) the present suit shall be deemed to be unconditionally withdrawn by all Plaintiffs.

(b) In case any of the Plaintiffs succeeded in the said elections than such result shall be subject to the result of the order of the temporary injunction application.

(c) In the event this Hon'ble Court pleased to dismiss the application for temporary injunction than the elected Plaintiffs shall be deemed to have vacated his seat and the candidate having secure second highest number of votes shall be considered to have elected to the said seat.

The Plaintiffs and the Defendants pray that Hon'ble Court to accept these terms as interim arrangement and the scheduled Election be proceeded with."

32. It can thus be seen that under the Consent Terms, the Plaintiffs were permitted to contest the Election which would pre-suppose that the Defendants who were the Returning Officers had acknowledged that the Plaintiffs were members of the Society. This was subject to the condition that in the event if the Plaintiffs are unable to get elected, the suit shall stand withdrawn unconditionally and if the Plaintiffs are elected their Election shall be subject to the outcome of the Application for temporary injunction. Thus, the contention on behalf of the Respondents that the Interim Application had become

infractuous, to my mind cannot be accepted, inasmuch as, as per the Consent Terms, the Election of the Plaintiffs was subject to the outcome of the Application for temporary injunction.

33. The learned Trial Court came to the conclusion that the Plaintiffs were not shown to be members and rejected the Application for temporary injunction. The learned Principal District Judge has held that the Consent Terms were entered into by parties and would be binding. The learned Principal District Judge has come to the conclusion that the finalization of the membership list or voters list would not come within the domain of the Returning Officers. The learned Principal District Judge has also noted that the Election of the Plaintiffs has not been challenged anywhere and it was not possible for the Returning Officers to revise the voters list within the short span from February 2018 to May 2018 as the members of the Society were spread over the entire State. The learned Principal District Judge has thereafter found that the reason given for rejection of nomination initially was that the Plaintiffs were not the members of the Society which was discrepant to the reason given during the hearing before the Trial Court in which it was said that the members were acting against the interest of the Society. The same has not been accepted on facts. It was next found that the Plaintiffs have alleged that the Returning Officers were acting in an arbitrary and *mala fide* manner at the behest of the Petitioners

and more particularly Mr.Chandrakant Chodankar. It was found that the question whether the nomination papers were rejected in a vindictive manner will have to be decided on merits.

34. Lastly, the learned District Judge has relied upon the resolution dated 2 October 2018 and 7 October 2018 and had found that there was no challenge to the election of the Plaintiffs . The learned District Judge has finally found that immediately prior to the passing of the impugned order of the Trial Court the Plaintiffs were “occupying the official seat” and in that view of the matter, has directed the parties to maintain status-quo as on the date of the passing of the impugned order by the Trial Court.

35. I have already found that the relief in the Application for temporary injunction cannot be held to have become infructuous as the Consent Terms themselves contemplated that the Election of the Plaintiffs, shall be subject to the outcome of the Application for temporary injunction. The Plaintiffs were indeed elected and therefore the Trial Court was required to decide the Application for temporary injunction. It is true that the Consent Terms have to be read as a whole and cannot be partly accepted or relied upon.

36. I do not find, that there is any attempt, on the part of the Plaintiffs to place selective reliance on the consent terms. It

can be seen that essentially the dispute arose on account of the fact that the nomination papers filed by the Plaintiffss were rejected by the Returning Officers.

37. It can be seen that initially, it was claimed that the Plaintiffs were not members of the Society and subsequently it was claimed that they were acting against the interest of the Society. Apart from the fact that the reasons are discrepant the learned Principal District Judge has found and to my mind rightly so that the Plaintiffs were shown to be members of the Society and there was no occasion for them to have applied for membership prior to seeking their nomination for the Election. That apart the fact that the Consent Terms permitted the Plaintiffs to take part in the Election would itself indicate that it was acknowledged that they are members. It is trite that a person without being a member of the Association/Society cannot contest the Election for Managing Committee of such Association/Society.

38. It is true that the Appellate Court has to come in close proximity/quarters of the order passed by the Trial Court and the findings recorded. A perusal of the impugned judgment passed by the learned Principal District Judge would show that the learned Principal District Judge has indeed considered the findings recorded by the Trial Court on various aspects including

on the effect of the Consent Terms and the issue of membership which is pivotal in deciding the rights of the Petitioners to contest the Election.

39. Coming to the grant of the relief of status-quo, it is necessary to note that the Application for injunction was filed at a stage where there was a refusal by the Returning Officers to permit the Plaintiffs to take part in the Election. Subsequent to this the Consent Terms permitting the Plaintiffs to take part in the Elections were entered into, albeit making it conditional on the outcome of the Application for temporary injunction. Thus in the given circumstances of the case it was inevitable to mould the relief to a certain extent as the original relief for mandatory injunction directing the Returning Officers to permit the Plaintiffs to take part in the Election, was already, taken care of, by the Consent Terms. Thus in my considered view, there is nothing unusual for the learned Principal District Judge to have moulded the relief. I find that the necessary ingredients for grant of interim relief, stand satisfied in this case.

40. It is a matter of record that as per the Constitution of the Society it is for the members of the Managing Committee to elect the Office bearers amongst themselves. It is further a matter of record that after the Plaintiffs were elected as members of the Managing Committee, the 18 members had met on 7 June 2018

in which Mr.Gajanand Halarnkar is alleged to have been elected as a President.

41. The Returning Officer again stepped in, disapproving the said Election on 13 June 2018. The record discloses that the Returning Officer filed an Application dated 10 January 2019 before the Trial Court for appointment of a Commissioner to hold Election of the Officer bearers which Application was allowed by the Trial Court on 21 June 2019. That was challenged by Mr.Gajanan Halarnkar claiming to be elected as a President, before this Court in WP No.663 of 2019. However, during the hearing of the said Petition, a statement was made on behalf of the Returning Officer that he will not press for the Application for appointment of the Receiver. In that view of the matter, the order passed by the Trial Court on 21 June 2019 appointing the Commissioner was set aside.

42. The record further discloses that the learned Principal District Judge by an order dated 4 December 2019 had allowed the Application for impleadment of the Society through President Mr.Gajanan Halarnkar which order was challenged by the Returning Officer before this Court in WP No.1078 of 2019. That Petition was dismissed by this Court on 12 December 2019 with costs of Rs.10,000/- depreciating the conduct of the

Returning Officer holding that the Returning Officer as umpire had no reason to challenge the order after the Election was over.

43. In this case there are circumstances to say that conduct of the Returning Officers has not at all been satisfactory.

44. Once the Plaintiffs have been found to be members of the Trust and allowed to take part in the Election on the basis of the Consent Terms and have been declared elected, I do not find any reason to interfere with the order passed by the learned Principal District Judge. The learned Principal District Judge while doing so though it fit to expedite the suit. It is necessary to note that the Society is an old institution having sizable membership spread across the State and it is in nobody's interest that the Management of the Society is embroiled in such controversy. A specific query was made to the learned counsel for the parties as to who is presently in the Management of the Society to which the answer is that the Managing Committee presided over by Mr.Gajanan Halarnkar is in the Management. In that view of the matter, I do not find it appropriate to interfere with the impugned order.

45. Insofar as the challenge to the order dated 9 December 2020 allowing the production of the documents I do find that the documents being the membership certificates were

relevant documents and the Appeal has also been disposed of. Thus there is no case for interference with the said order.

46. In my considered view, in the interest of the Society and its members and the beneficiaries, it is necessary that a quietus is given to the dispute emanating from the General Elections for the year 2018 pending the disposal of the suit.

47. The principles apart, which are well settled, the decisions on which reliance is placed on behalf of the Petitioners, turned on their own facts.

48. It is well settled that the jurisdiction under Article 227 of the Constitution of India, is essentially supervisory in nature aimed at ensuring that the Courts and Tribunals subordinate to this Court, act within the bounds of their authority and the orders so passed, do not result into manifest injustice. (See decision of the Supreme Court in the case of *Shalini Shyam Shetty V/s. Rajendra Shankar Patil*⁷). Applying these principles, I do not find that any case for interference is made out. In the result, both the Petitions are hereby dismissed. The parties to bear their own costs.

C.V. BHADANG, J.