

AHMEDNAGAR ZILLA S.D.V. AND P. SANGH LTD. AND ANR.

v.

STATE OF MAHARASHTRA AND ORS.

NOVEMBER 5, 2003

[V.N. KHARE, CJ., S.B. SINHA AND, DR. AR. LAKSHMANAN, JJ.]

Maharashtra Specified Cooperative Societies Elections to Committee Rules, 1971:

R. 81—Election—Amendment of bye-laws categorizing specified Cooperative Societies into different classes—Preparation of voters list accordingly—Amendment held illegal—Writ petition for inclusion in electoral roll of those who, by virtue of amendment, were not so included—Direction by High Court to include their names in electoral roll—Plea that preparation of electoral roll being an intermediary stage of the process of election, High Court in giving the direction committed error of jurisdiction—Held, r.81 shows that validity of the bye-laws cannot be gone into by the Tribunal—Respondents had no other remedy except to file an appeal before the appellate authority—Amendment of bye-laws having been held by co-operative authorities, not in conformity with the law, the electoral roll prepared on the basis of such amendment would fall down—Such a finding on jurisdictional fact has been rightly held by High Court as not perverse warranting interference under Article 227 of the Constitution of India—Constitution of India—Article 227.

Shri Sant Sadguru Janardan Swami v. State of Maharashtra and Ors., [2001] 8 SCC 509, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2553-2554 of 2002.

From the Judgment and Order dated 15.6.2001 of the Bombay High Court Bench at Aurangabad in W.P. No. 1319 and 618 of 1999.

A.V. Savant, Arun Pednekar and V.N. Raghupathy for the Appellants.

Uday U. Lalit, Sanjay V. Kharde, Naresh Kumar and Mukesh K. Giri for the Respondents.

A The following Order of the Court was delivered by

B The appellant herein is a specified society. On August 31, 1997, the
C general body meeting was held wherein it has proposed to amend the bye-
laws. It was resolved in the said general body meeting that the milk supply
societies to the extent of 200 litres per day in 300 days for last three years
will be categorized as class 'A' societies. It was also resolved that the milk
supplying societies more than 50 litres of milk daily in 300 days will be
categorized as Class 'B' societies for last three years and the societies supplying
less than 50 litres of milk daily for 300 days for last three years will be
categorized as Class 'C' grade societies and which would be called as nominal
members. On October 24, 1997, the Divisional Deputy Registrar Cooperative
Societies, Nashik Division, Nashik accorded his approval to the amendment
of the aforesaid bye-laws. It is not disputed that consequent upon the
amendment in the bye-laws the voters' list was prepared for holding election
for constituting the Managing Committee of the society. In the meanwhile
the respondents herein filed an appeal against the amendment of bye-laws to
D the Joint Registrar Cooperative Societies (Dairy), Worli, Mumbai who allowed
the appeal, holding the amendment of bye-laws to be illegal and inasmuch as
the same was issued without giving notice to the members. A revision petition
was filed against the appellate order which was also dismissed. Subsequently,
the appellant took the matter to the Aurangabad Bench of the Bombay High
Court by way of a writ petition under Article 226 of the Constitution of India.
E The Writ Petition has also been dismissed.

It is relevant to mention here that respondents also filed a petition
under Article 226 for direction to the Returning Officer for inclusion of their
names in the electoral roll in view of the fact that the amendment in the bye-
F laws was struck down by the appellate authority. Both the writ petitions filed
by the appellant and respondents were heard together. The appeal filed by the
appellant was dismissed whereas the appeal preferred by the respondents
herein was allowed and a direction was issued to the authority for inclusion
of their names in the electoral roll. It is against the said judgment of the High
Court the appellant is before us.

G Learned counsel urged that the High Court ought not to have issued a
direction for inclusion of the name of the respondents in electoral roll in view
of the fact that the preparation of the electoral roll is an intermediary stage
of the process of the election and as such the High Court committed an error
of the jurisdiction. Learned counsel relied upon in support of the decision of
H

this Court in *Shri Sant Sadguru Janardan Swami v. State of Maharashtra and Ors.*, [2001] 8 SCC 509. In the said case it was held that the preparation of the voter list is intermediary stage in the process of election of the Managing Committee and if there was breach of the Rule in the preparation of the voter list, it can be called in question in an election petition after the election is over and the High Court is not required to interfere in the matter at this stage. A B

In *Sant Sadguru Janardan Swami* (supra) this Court made the aforementioned observations keeping in view the fact therein the voters' list was prepared in terms of the extant rules but certain irregularities were committed therein, but where voters list has been irregularities were committed therein, but where voters list has been prepared, on the basis of non-existent rules the same would be illegal. C

In the present case, what we find is that illegal amendment of the bye-laws was challenged on the basis of which the electoral roll prepared. Under Section 165 of the Act, the State Government has framed Rules under the provisions of Maharashtra Cooperative Societies Act and the Maharashtra Specified Cooperative Societies Elections to Committee Rules, 1971. Rule 81 provides for ground for declaring the elections to be void. A perusal of Rule 81 shows that the validity of the bye-law cannot be gone into by the Tribunal. In view of the fact that the respondents had no other remedy except to file an appeal before the appellate authority and once it is held that the amendment of the bye-laws are not in conformity with the law and the electoral roll prepared on the basis would fall down. D E

The question as to whether the High Court ought to have entertained the writ petition filed by the Respondent or not takes a back seat in the instant case as it was for the appellants herein to show that the amendments in the bye-laws have been carried out in accordance with law. Both the appellate authority as also the revisional authority have pointed out that conditions precedent for amending the by-laws were not been complied with. Such a finding on jurisdictional fact has been held by the High Court as not 'per verse' warranting interference under Articles 227 of the Constitution of India. Before us also the learned counsel appearing on behalf of the appellant has failed to show as to why this Court should take a different view. We, therefore, do not find any merit in these appeals. The appeals are dismissed accordingly. F G

We, however, direct the Collector, Ahmednagar, forthwith to conduct H

A fresh election of the Board of Directors to the appellant Society and complete the same as expeditiously as possible but not later than by four months from today on the basis of unamended bye-laws.

No costs.

B R.P.

Appeals dismissed.