

IN THE HIGH COURT OF BOMBAY AT GOA**LD-VC-CW-363-2020 (PIL WP)**

Kewal Gurudas Mayekar & Another Petitioners
Versus
State of Goa and Others Respondents

Mr. D. Lawande with Mr. G. Nadkarni, Advocates for the Petitioners.

Mr. Devidas Pangam, Advocate General with Mr. Deep Shirodkar, Additional Government Advocate for Respondent Nos. 1, 3 and 4.

Mr. S.N. Joshi with Ms. S. Joshi, Advocates for Respondent No. 2.

**Coram:- M.S. SONAK &
M.S. JAWALKAR, JJ.**

Date:- 8th December, 2020

P.C.

Heard Mr. Lawande, the learned Counsel for the petitioners, Mr. Devidas Pangam, the learned Advocate General for respondent nos. 1, 3 and 4 and Mr. Joshi, the learned Counsel for respondent no. 2.

2. Considering the issue raised in this Petition, we issue Rule.

3. Mr. Deep Shirodkar, the learned Additional Government Advocate waives service on behalf of respondent nos. 1, 3 and 4 and Mr. Joshi, the learned Counsel waives service on behalf of respondent no. 2.

4. Insofar as the prayer for interim relief is concerned, we are unable to persuade ourselves to grant interim relief as prayed for, particularly because the elections to the Zilla Panchayats are now scheduled to take place on 12.12.2020. There is, in fact, no challenge in this Petition to the notification dated 05.12.2020, by which, the elections are now scheduled to be held on 12.12.2020.

5. The challenge in this Petition is mainly to the order dated 20.03.2020, by which, the elections to the Zilla Panchayats, which were earlier scheduled to be held on 22.03.2020, were postponed on account of COVID-19 pandemic situation. The order dated 20.03.2020 had also stated that the election process upto the stage of campaigning was to be made valid and in fact, this portion of the impugned order dated 20.03.2020, which is mainly challenged by instituting the present Petition.

6. At this stage, we are not quite satisfied as to what prevented the petitioners from instituting this Petition earlier, since, the main challenge in this Petition was to the portion of the order issued on 20.03.2020. As noted earlier, there is no challenge in this Petition to the notification dated 05.12.2020, now scheduling the elections to 12.12.2020.

7. Mr. Lawande, however, pointed out that the Election Commissioner, without any application of mind has imposed the Model Code of Conduct, which had been lifted by order dated 20.03.2020, only for the period between 05.12.2020 to 12.12.2020. He submits that this will affect the free and fair conduct of the election process and this is a good ground and if this Court ought not to hold the elections scheduled on 12.12.2020, at least, postpone the elections, so that, there is Model Code of Conduct in operation for a period of atleast four weeks. Mr. Lawande submits that this is not at all free and fair conduct of the election process.

8. Mr. Lawande relied quite heavily on the decision of the Hon'ble Apex Court in the case of **Dravida Munnetra Kazhagam (DMK) Vs. Secretary, Governor's Secretariat**

& Others, (2020) 6 SCC 548 to submit that the bar to interference of the Court in election matters as contained in Article 243G will not apply, since, what the petitioners seek is smoothing the electoral process, so that, the elections are held in free and fair manner. He also relied on the order made by the Hon'ble Supreme Court in Writ Petition (Civil) No. 437/2020 in the case of State of **Andhra Pradesh Vs. Andhra Pradesh State Election Commission** made on 18.03.2020 to submit that this Order directs the Election Commissioner to impose the Model Code of Conduct for four weeks before notifying the date of Code of Conduct.

9. Mr. Lawande also submits that there was no prior consultation with the Election Commissioner before the polls were notified on 12.12.2020. He submits that there was no application of mind by the State Election Commissioner in imposing such a short period for operation of Model Code of Conduct. He submits that there was no application of mind before notifying the date of polls on 12.12.2020 and by this process, the said Election Commissioner has even frustrated the principles of judicial ruling, which is to be made available to the period in such matters.

10. Mr. Joshi, the learned Counsel for the State Election Commissioner and Mr. Pangam, the learned Advocate General for the State have submitted that there is no prescribed period under any statute during which the Model Code of Conduct is to operate. He pointed out that there is consultation between the two Authorities and in any case, there is not even a ground raised in the Petition and particularly, there is no challenge to the notification dated 05.12.2020 notifying the fresh date of polling. They submit that in fact, this Petition is barred by laches and as such, ought not to be entertained. They submit that in any case, this Petition is filed when the elections were eminent. For all these reasons, they submit that this Petition be dismissed and in any case, interim relief be denied.

11. The ruling in **Dravida Munnetra Kazhagam (DMK)** (supra) was made upon initiating the breach of statutory provisions relating to delimitation of constituencies. The Hon'ble Apex Court has noted that there was no identified data elucidating population proportions and therefore, the requisite reservation for SC's and ST's could also not be provided for. The required legal formalities on the aspect of delimitation was also not complied with by the

concerned State Government. It is in this context that the elections to nine Districts were postponed, though, the rest of the elections were permitted to be conducted. In para 16, the Hon'ble Apex Court also noted that the learned Advocate General of Tamil Nadu also agreed to proceed with the election process in respect of all the Districts except the nine reconstituted Districts as per the details given in para 15.1. of the order.

12. The Hon'ble Apex Court in the context of constitutional embargos contained in Article 243O and 243ZG referred to its earlier decision in **Election Commission of India Vs. Ashok Kumar and Others 2000 (8) SCC 216**. This decision lays down that where without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available, if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence, if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and the stage is set to invoke the jurisdiction of the Court. Though, the constitutional provisions may not come in the way of this

Court intervening for such limited purpose. In the present case, the petitioners by way of interim relief seek to interrupt, in any case, in delaying the election process, which are now scheduled on 12.12.2020. According to us, no case for grant of such interim relief is said to have been made out, in the present case and therefore, it will not be possible to consider the petitioners' plea of interim relief, which will have the effect of postponing or delaying the entire election process.

13. The Order in Writ Petition (Civil) No. 437/2020 made by the Hon'ble Apex Court was in the context of peculiar facts of the situation before it. Such order, according to us, can be of no assistance to the petitioners in seeking the interim relief, which they now seek in this matter.

14. The learned Advocate General has submitted that it will always be open to any aggrieved candidate to question the entire election process by initiating Election Petition, if, any case is made out for violation of provisions of the statute or the constitution.

15. Accordingly, though, we are admitting this Petition, in order to examine the matter in further details, we are not

persuaded to grant any interim relief as sought for by the petitioners in this matter.

16. The parties to complete their pleadings within two months and thereafter, we grant liberty to the petitioners to apply for interim relief in this matter.

17. At this stage, Mr. Lawande seeks liberty to amend the Petition *inter alia* by challenging the notification dated 05.12.2020. Liberty as prayed for is granted. Necessary amendment to be carried out within two weeks. Amended copies to be served upon the learned Counsel for the respondents. The respondents to file response to the amended Petition, if they so choose.

M.S. JAWALKAR, J.

M.S. SONAK, J.