

**IN THE HIGH COURT OF BOMBAY AT GOA**

**LD-VC-CW-56-2020**

**And**

**LD-VC-OCW-58-2020**

Gurudas Sawal & Anr. ... Petitioners

Versus

Jaiwant Nayak & Ors. ... Respondents

Shri Parag Rao, Advocate for the Petitioners.

Shri A.D. Bhobe, Advocate for Respondent No.1.

**Coram:- DAMA SESHADRI NAIDU, J.**

**Date:- 10<sup>th</sup> July 2020**

**P.C. :**

The second petitioner is a co-operative society, and the first respondent was its chairman. On 22.02.2017, the Directors/Promoters of the respondent Society expressed their lack of confidence on the Chairman and voted him out of the Chairmanship. Out of 14 Directors, 13 voted against the Chairman.

2. Later, on 09.11.2017 the first respondent was expelled from the Society. Of the 170 members attended, 157 voted against him, 12 supported, and 2 were absent. Aggrieved, the first respondent approached the second respondent, that is the Registrar of Co-operative Societies. Under the statute, the Registrar is the appellate authority.

3. Eventually, the appellate authority set aside the Society's resolution, through which the first respondent was expelled. Then, the

Society and the other Directors approached the Tribunal, but the Tribunal, on some technical grounds, sent the matter to the District Court.

4. As the record reveals, on 05.03.2020 the District Court set aside the impugned order and remanded the matter to the appellate authority. That means, the first respondent's expulsion stood restored.

5. The matter remanded, the appellate authority, 29.05.2020, notified the parties to appeal that the matter would be taken up for hearing on 16.06.2020. At any rate, the moment the matter was remanded to the appellate authority, according to the petitioners' counsel Shri Parag Rao, the Society and the other office-bearers apprehended that the first respondent might secure an ex parte order. And that would result in the first respondent's membership restoration. So they filed a caveat before the appellate authority. The caveat, dated 23.05.2020, is said to have been received by the appellate authority's office on 26.05.2020.

6. In the meanwhile, as the first respondent's counsel Shri Bhobe contends, the first respondent moved an application on 02.06.2020. He sought an ex parte interim suspension of the Society's resolution that had expelled him from the primary membership.

7. Shri Bhobe, in this context, explains that as the term of the previous Managing Committee came to an end in 2020, the election process has begun. That means, unless the first respondent's membership was restored, he could not participate in that process. Thus moved by the first respondent, the appellate authority advanced the hearing to 2<sup>nd</sup> June 2020 and passed an ex parte ad interim order, again, suspending the

Society's impugned resolution. The interim suspension should last not until the respondents are heard but until the appeal is disposed of. And that was in the face of the caveat the Society and the office bearers had filed.

8. True, Shri Bhohe does contend before this Court that the first respondent has not received any copy of the caveat. That said, the fact remains that the notice has been on the appellate authority's file.

9. What disturbs this Court is the approach the second respondent has adopted as a quasi-judicial authority. First, the appellate authority fixed the date of hearing as 16.06.2020. On 29.05.2020, the appellate authority issued a notice to the parties concerned to that effect. In the meanwhile, on 02.06.2020, the first respondent is said to have moved an interim application, as I have already noted. Then, the appellate authority advanced the date of hearing and, on the very same day, granted an ex parte order. The respondents in the appeal were notified about neither the advancing of hearing nor the ex parte order.

10. On 16.06.2020, the original date the appellate authority had fixed for hearing the matter, the respondents are said to have objected to the ex parte interim order, especially, in the face of caveat. But the appellate authority adjourned the matter to 20.08.2020. According to Shri Parag Rao, the petitioners' counsel, the ex parte order remaining undisturbed till then, the first respondent's membership stands restored and that gives him licence to participate in the election process. Then, in the course of time, if the first respondent were to lose the appeal, the election process would get nullified. And that would require fresh

elections—again. On the converse, if that drastic consequence were to be avoided, the very appeal should render itself infructuous. Conjectural though.

11. So, faced with the ex parte order in a pending appeal, the petitioners have filed this Writ Petition.

12. Usually, when a matter is remanded, the forum that is asked to decide the remanded matter afresh treats that matter as a pending one. Usually, it does not pass ex parte orders for, by then, the respondents too had entered their appearance. I hasten to add, though, that it is not an iron-clad practice. There could be exceptional circumstances requiring the adjudicatory forum to pass ex parte interim orders. But, as I said, that is exceptional, and the burden is heavy on the party seeking that ex parte order to impress the forum about the urgency.

13. Here, let us see whether such an exigency existed. The appellate authority on its own fixed 16.06.2020 as the date of hearing. In the meanwhile, the first respondent applied for an ex parte interim order. Then, certainly, the appellate authority could advance the date of hearing. But that must be after notice to the other party. Codes of Practice may not, in their entirety, apply to the tribunals and quasi-judicial authorities; but the principles of natural justice do. The procedural propriety of any forum demands adherence to justice, equity, and good conscience.

14. So, the first flaw, as I see, in the appellate authority's approach is not notifying the respondents in the appeal about advancing the date of hearing from 16.06.2020 to 02.06.2020. The second and more fatal flaw is the appellate authority's utter disregard for the caveat. Precedents are a

legion to stress that an ex parte interim order in the face of caveat is a nullity.

15. This Court, after noticing these developments, on 23.06.2020 suspended appellate authority's ex parte interim order, dt.02.06.2020, its nullity notwithstanding.

16. Under these circumstances, I do not intend to disturb this Court's order, dated 23.06.2020, despite Shri Bhobe's fervent plea to that effect. When I have expressed my disquiet about the procedural propriety of the appellate authority's approach in this matter, Shri Bhobe has submitted that this Court may direct the appellate authority to decide the matter expeditiously without reference to any interim protection. According to him, if the first respondent could secure the expeditious disposal of the appeal and if he emerges successful, he may as well participate in the election process.

17. In this regard, I would like to hear the appellate authority on, among other things, how much it requires for the disposal of appeal if such a course of action is advised.

18. First, in this matter, the first respondent contended that the writ petition is not maintainable; the petitioners have an efficacious alternative remedy. But here the petitioners' grievance centres on the violation of principles of natural justice. So that preliminary objection shall perish. Second, the whole issue concerns procedural shortcomings. In this context, indeed, I underline the independence of any adjudicatory authority, be it judicial or quasi-judicial, on how to decide a matter before it on the merits. No Court of whatever strength would interfere with the

decisional freedom of authority once the statute is conferred with power. Therefore, I do not intend to comment on the approach the Tribunal may adopt while deciding the matter on merits. But I certainly feel disturbed on the procedural lapses that are evident in this case.

So list the matter on 17.07.2020. This Court's Order, dated 23.06.2020, suspending the appellate authority's interim ex parte order dated 02.06.2020, continues until further orders. The petitioners may serve notice on the second respondent through the office of the learned Advocate General. Once the notice is served, the second respondent ought to enter his appearance either in person (online) or through a learned Government pleader as the practice dictates.

**DAMA SESHADRI NAIDU, J.**

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