

R.P. No.866/2015

(Sanjay Ledwani vs. Gopal Das Kabra and others)

R.P. No.950/2015

(Cantonment Board vs. Gopal Das Kabra)

R.P. No.33/2016

(Sunil Kumar Kori vs. Gopal Das Kabra)

17.03.2016

Shri Prashant Singh, Advocate for the review petitioner in R.P. No.866/2015 and R.P. No.33/2016.

Shri R.N. Singh, Senior Advocate with Shri Rajas Pohankar, Advocate for the review petitioner in R.P. No.950/2015.

Shri Vivek Rusia, Advocate for the respondent No.1 in R.P. No.866/2015.

Shri R.N. Singh, Senior Advocate with Shri Rajas Pohankar, Advocate for the respondent No.4 in R.P. No.866/2015.

I.A. No.15012/2015 (R.P. No.866/2015), **I.A. No.666/2016** (R.P. No.950/2015) and **I.A. No1390/2016** (R.P. No.33/2016) – for condonation of delay.

For the reasons stated in the applications, being sufficient cause, in the interest of justice, applications are **allowed**. Delay is condoned.

Heard counsel for the parties on admission forthwith, by consent.

1. The Review Petition No.950/2015 is filed by the Cantonment Board. The other two review petitions are filed by the persons, who claim to have been declared elected as Corporators in the elections held on 17.05.2015, which, however, has been quashed and set aside by this Court.

2. The decision of the learned Single Judge, which was the subject matter of appeal, being Writ Appeal No.204/2015 and Writ Appeal No.288/2015, was confirmed and the appeals were disposed of with observations. The legal position regarding the governing statutory provisions has been interpreted by the Division Bench of this Court vide decision dated 21.07.2015.

3. It is not in dispute that against the said decision, Special Leave Petitions were filed before the Supreme Court, which have been dismissed on 05.10.2015, bearing S.L.P. (C) CC No(s).17256-17257/2015.

4. The principal question answered by the Division Bench was : whether a person occupying illegal/unauthorised structure in the Cantonment Area can claim to have any right to be enrolled in the electoral rolls

prepared for the concerned Municipal constituency. As aforesaid, that question has been answered after analyzing the relevant provisions of the Central enactment, which has been held to be a special law applicable to Cantonment Areas and including the mode of conducting elections in respect of those areas. The Court, in substance, has held that the right to vote in the Cantonment Area is linked to the occupation of a legal house/structure recognized by the Cantonment Area as such.

5. In the review petition filed by the Cantonment Board, three points have been raised. Firstly, the Division Bench has omitted to consider the efficacy of the stay order granted by the Supreme Court on 09.05.2014 and 11.06.2014. Another shade of the same grievance is, on account of the stay order granted by the Supreme Court, the Authorities have been restrained from removing the structures occupied by the concerned occupants and those persons would continue to reside in the Cantonment Area. The number of such persons is very large and cannot be ignored in the matter of efficient administration of municipal area.

6. The second contention, is that, the challenge in the writ petition was only limited to electoral rolls prepared for

Ward Nos.1 to 6. But, the effect of the decision under review would require the Authorities to conduct election of all the Ward Nos.1 to 7 respectively. This would result in incurring avoidable public expenditure, at least, in respect of Ward No.7, where no change in the electoral roll has been noticed by the Appropriate Authority. Further, the persons whose names have not been indicated in the voters list, as were found to be occupying unauthorized/illegal structures, their names would nevertheless continue to be in the voters list for the Assembly and Parliamentary Constituencies of the same areas. This would be an anomalous position, which cannot be countenanced and in larger public interest, the decision of setting aside the election deserves to be recalled and reviewed.

7. The last contention on behalf of the Cantonment Board is that Section 28 of the Cantonment Act and Rule 10(3) of the Rules predicates substantial compliance; and that position has been restated by the Division Bench of this Court in Writ Appeal No.798/2010 dated 24.09.2010. According to the Board, substantial compliance of these provisions would mean identifying and earmarking the structures, which are illegal and unauthorized.

8. Counsel for the private petitioners - claiming to be

elected Corporators of the concerned Ward, additionally, submits that the Ward Members, who contested in the concluded election, were not made parties in the writ petition nor were afforded opportunity of being heard before passing of the decision under review. Besides these submissions, no other point has been argued by the counsel for the concerned review petitioners.

9. Having considered the rival submissions, we find that these review petitions are devoid of merits. In that, the legal question has already been answered in the decision dated 21.07.2015 in W.A. No.204/2015 and W.A. No.288/2015, which, indisputably has been affirmed by the Supreme Court after dismissal of S.L.P. (C) CC No(s).17256-17257/2015 on 05.10.2015.

10. Taking the first contention of the Board, it obviously overlooks the settled legal position. Right to vote or to be enrolled as a voter in the electoral roll prepared for the constituency, is not a fundamental right. It is a creature of the statute. The Cantonment Act being a special law, postulates that only occupants residing in houses approved or recognized by the Cantonment Board as legal are eligible to be voters. The fact that person is residing in Cantonment Area, by itself, would not become a voter

automatically. The law does not recognize that right. The stay granted by the Supreme Court to such persons restraining the Authority to forebear from demolishing their structures, does not create any right in their favour to be voters. It would, at best, protect his occupation of the concerned structure. No legal right enures in any of the occupant of unauthorized and illegal structures, to be a voter or eligible to be named as voter in the electoral roll. For the same reason, the argument of the Board that large number of persons residing in the Cantonment Area will be deprived from participating in the election process will be of no avail. That may be the sequel of the operation of law, as is in force at present. That being a special law and legislation made by the Parliament, must be given its due play and enforced strictly in respect of constitution of Local Authority.

11. In our opinion, therefore, neither the argument of stay granted by the Supreme Court or for that matter large number of persons would be affected or left out from the Municipal elections even though they would continue to remain in the voters list of Assembly and Parliamentary elections, will be of no avail. The election to Assembly and Parliament Assemblies are conducted in terms of the

provisions of the Representation of Peoples Act. The dispensation provided in the Representation of Peoples Act, cannot be the basis to interpret the provisions of the Cantonment Act, which is a special legislation for administration of the Cantonment Area. The two legislations are different and provide for different dispensation. We must readily agree and accept that the Parliament was conscious about the difference in the two provisions when the respective enactments have been enacted. As a result, even this argument cannot take the matter any further.

12. The next argument was about the confusion prevailing in the concerned quarters as to whether the election of all the Wards have been set aside by this Court or must be confined to Ward Nos.1 to 6 only, as the voters list, Annexure P-12, which was the subject matter of challenge in the writ petition, pertains only to Ward Nos.1 to 6. Further, no change has been noticed in the voters list of Ward No.7.

13. It is true that the relief claimed in the writ petition from which the appeal arose, is limited to challenge to the voters list, Annexure P-12, which pertains only to Ward Nos.1 to 6. It must be, therefore, assumed that only that

limited relief has been granted, in the first place, by the learned Single Judge and reiterated and confirmed by the Division Bench in the decision dated 21.07.2015, which has been upheld by the Supreme Court with rejection of Special Leave Petitions.

14. Learned counsel for the Cantonment Board may be justified in raising further doubt as to what would happen to the elections of Ward No.7 already conducted as per the earlier notification. That, in our opinion, is a matter to be examined by the Appropriate Authority, who is entrusted with the responsibility to conduct elections within specified time and to install the newly elected Board within such time. The Appropriate Authority may have two options before it. The first option would be to treat the elections pertaining to Ward No.7 as recalled; and, to conduct fresh election even for Ward No.7 along with the other six Wards. There are only seven Wards in the Pachmarhi Cantonment Board and as almost over 90% of the Constituencies (six out of seven), will go for fresh elections, even the election for Ward No.7 can be conducted together so that there will be common tenure of all the Ward Members from the respective Wards elected on the basis of fresh elections.

15. We were informed that although the review petitioners have been declared elected in the elections conducted on the basis of earlier notification, however, the Board has not been constituted so far, because of the confusion prevailing in the Administration. In that sense, elections of Ward No.7 can also be held afresh. The other option for the Pachmarhi Cantonment Board is to segregate Ward No.7 and notify elections only for Ward Nos.1 to 6 on the basis of fresh electoral roll prepared by the Board for those wards, which, we are informed, is now in conformity with the directions and pronouncements of this Court in writ appeal as confirmed by the Supreme Court. There can be no manner of doubt that – be it fresh election of Ward Nos.1 to 6 or of Ward Nos.1 to 7 – will have to be considered as general election with tenure of five years as provided in the Statute. That tenure cannot be limited to the remainder period, not being a case of biennial elections because of any vacancy created against the concerned seat.

16. Be that as it may, we may not be understood to have expressed any opinion either way on the aforesaid options. These are only possibilities, which can be explored by the Appropriate Authority of the Cantonment Board, as per law. While taking decision, the observations made in this

regard may not be considered as any binding effect, but, only of having indicated the possibilities available to the Appropriate Authority. There may be other options available to the Appropriate Authority, in law, which can be resorted to.

17. Suffice it to observe that it would be the prerogative of the Appropriate Authority to take decision to go ahead with the general elections only for Ward Nos.1 to 6 or for all the seven Wards, as may be advised. If any person is aggrieved by that decision, will be free to challenge the same, which challenge can be considered on its own merits.

18. That takes us to the last contention canvassed on behalf of the Cantonment Board. It was submitted that the voters list prepared on the earlier occasion was in substantial compliance of Section 28 read with Rule 10(3) of the Rules. That aspect has already been considered in the decision under review and we find no reason to take a different view. Once it is held that only occupants or residents in authorized or legal houses/structures, which are recognized by the Cantonment Board alone are eligible to become voters and included in the voters list, there is no necessity of preparing the voters list of occupants of

unauthorized houses. The fact that such voters list was prepared by the Cantonment Board, cannot be cited as a case of substantial compliance as such. Assuming it is a case of substantial compliance, of preparing the voters list of occupants/residents residing in authorized and recognized houses, the other voters list of unauthorized houses cannot be reckoned for the purposes of conducting elections to the Board. Hence, even this argument does not commend to us.

19. That leaves us with the additional argument canvassed by the learned counsel for the private review petitioners. Even this argument deserves to be stated to be rejected. The fact that the candidates, who had participated in the concluded election, which, later on, has been set aside by this Court, were not party to the writ petition nor heard by the Court, cannot be the basis to doubt the correctness of the legal position stated in the decision under review, which has been affirmed by the Supreme Court by dismissal of Special Leave Petitions. That decision is *in rem* and concerning the subject election process. Moreover, the Court during the pendency of appeal had made it amply clear that any action taken by the Board on the basis of the impugned voters list would be

subject to the outcome of the appeal; and the appeal having succeeded for the reasons recorded in the decision under review, the said election has been found to be vitiated and treated as *non est* in the eye of law. In such a situation, giving personal hearing to all candidates or making them party, was not necessary.

20. The fact that the elections were proceeding on the basis of conditional order passed by this Court, was in public domain and review petitioners, who were participating in the elections cannot be heard to say that they were not aware of that position. In any case, when the entire election process is vitiated, not hearing persons, who are affected by the decision, by itself, cannot be the basis to review the decision, which, otherwise, is unexceptionable. Hence, even this objection does not commend to us.

21. Accordingly, we **dispose of** these review petitions with the above observations and liberty to the Appropriate Authority of the Pachmarhi Cantonment Board to proceed in the matter, in accordance with law, expeditiously.

(A. M. Khanwilkar)
Chief Justice

(Sanjay Yadav)
Judge