

A KARBHARI AND OTHERS

v.

DEEPAK V. CHENGEDE AND OTHERS

(Civil Appeal No.5936 of 2019)

B JULY 30, 2019

[UDAY UMESH LALIT AND VINEET SARAN, JJ.]

- Trade Unions Act, 1926 – Kopargaon Taluka Sakhar Kamgar Sabha was registered as Representative Union under the Act and C was governed by its Constitution and the provisions of the Act – Members of the Sabha come from seven Units – Matters concerning election to the General Council and the Managing Committee of the Sabha were pending in the High Court – High Court directed that the election be held as per the Constitution of the Sabha – Election Officer declared the election programme stipulating Unit D wise reservation to the posts of Vice-Presidents and Secretaries wherein all seven units would elect Vice-Presidents and Secretaries independently and the Electoral College in that behalf would be each of those units and not the General Body of members and further, 8 seats would be reserved for “women” while rest 43 seats of E Executive Members would be reserved for “men” – Industrial Court quashed the Election Programme – Appellants, members of the Sabha challenged the decision – Dismissed – Plea of appellants that the stipulations made by the Election Officer carving out Electoral Colleges and concept of reservation were though not consistent with the Constitution of the Sabha however, there was no F prohibition to adopt such ideas, which were completely laudable and reasonable – Held: However laudable may be the objectives, the Election Officer could not have gone beyond the confines of the Constitution of the Sabha and could not have imported ideas which were not rooted in the Constitution of the Sabha – As a matter G of practice, various panels contesting elections to the Sabha were ensuring that there be equitable distribution and every unit was adequately represented, but that idea cannot be implemented through Election Programme – Programme must be completely in accord with the governing Statute and the Constitution of the Sabha – In the absence of the idea of unit wise representation and H reservation emanating either from the governing Statute or the*

Constitution of the Sabha, the Election Programme cannot by itself, invent and implement such idea – Industrial Court as well as the High Court were completely justified in taking the view as aforesaid. A

Dismissing the appeal, the Court

HELD 1.1 The stipulations made by the Election Officer carving out Electoral Colleges and concept of reservation were not consistent with the Constitution of the Sabha. However laudable may be the objectives, the Election Officer could not have gone beyond the confines of the Constitution of the Sabha and could not have imported ideas which were not rooted in the Constitution of the Sabha. It may be that as a matter of practice, various panels which contested elections to the Sabha, were ensuring that there be equitable distribution and every unit was adequately represented. But that idea cannot be implemented through Election Programme. The Programme must be completely in accord with the governing Statute and the Constitution of the Sabha. In the absence of the idea of unit wise representation and reservation emanating either from the governing Statute or the Constitution of the Sabha, the Election Programme cannot by itself, invent and implement such idea. The Industrial Court as well as the High Court were completely justified in taking the view as aforesaid. [Paras 12, 14 and 15] E [930-B-C; 931-E-G]

Laxmidas Dayabhai Kabarwala v. Nanabhai Chunilal Kabarwala [1964] 2 SCR 567; National Textile Workers' Union and Others v. P.R. Ramakrishnan and Others (1983) 1 SCC 228 : [1983] 1 SCR 922 – distinguished. F

Case Law Reference

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| [1964] 2 SCR 567 | distinguished | Para 12 |
| [1983] 1 SCR 922 | distinguished | Para 13 |

CIVIL APPELLATE JURISDICTION: Civil Appeal No.5936 of 2019 G

From the Judgment and Order dated 12.09.2018 of the High Court of Judicature of Bombay Bench at Aurangabad in Writ Petition No. 5599 of 2018. H

A B. H. Marlapalle, Sr. Adv., Ms. Astha Prasad, Ajit Wagh, Apoorv Shukla, Ms. Astha Prasad, Advs. for the Appellants.

Vinay Navare, Sr. Adv, Ms. Gwen Karthika, Ms. Abha R. Sharma, Advs. for the Respondents.

B The Judgment of the Court was delivered by

UDAY UMESH LALIT, J.

1. Leave granted.

2. This appeal challenges the judgment and final order dated

C 12.09.2018 passed by the High Court¹ dismissing Writ Petition No.5599 of 2018 preferred by the appellants herein.

3. Kopargaon Taluka SakharKamgar Sabha (hereinafter referred to as ‘the Sabha’ for short) was registered on 30.06.1951 as a Representative Union under the provisions of the Act². The affairs of the Sabha are governed by its Constitution and by the provisions of the

D Act. Clauses 10 and 11 of the Constitution deal with the Managing Committee of the Sabha while clause 15 deals with the General Council of the Sabha. Said clauses are to the following effect:

E “**Clause 10** The Managing Committee of the Sabha shall consist of not more than 70 members, including one President, not more than Seven Vice-Presidents, one General Secretary and not more than Seven Secretaries, one Treasurer and Two Legal Advisers, elected at the Annual General Meeting.

Clause 11. The Management of the Sabha shall be vested in the Managing Committee of the Sabha elected by the General Council.

F **Clause 15.(a)** The General Council of the Sabha shall consist of delegates elected in a meeting of members of each factory called for the purpose, on the basis of one delegate for every 30 members ordinary or honorary of the Sabha from each factory (or a part thereof above 20) provided that minimum representation shall be one.

G (b) The election of the delegates of the General Council of Sabha shall be held in March or April after every five years, provided that in case of a vacancy occurring during the years it shall be

H¹High Court of Judicature at Bombay, Bench at Aurangabad

²The Trade Unions Act, 1926

filled by a by-election from the constituency represented by A
vacating members.

(c) The delegates of the General Council elected by the members shall continue to be delegates until replaced by the members.”

4. Thus, the members of the Sabha would first elect the delegates to the General Council of the Sabha. In terms of Clause 15(a) the ratio prescribed is one delegate for every 30 members and the elections are to be held every five years. Further, in terms of Clauses 10 and 11, the General Council, in turn, would elect the Managing Committee of the Sabha consisting of not more than 70 members.

5. It is a matter of record that the members of the Sabha come from seven Units, namely, SanjivaniSahakariSakharKarkhana, Kale SahakariSakharKarkhana (Kolapewadi), Changdeonagar, Sakarwadi, Laxmiwadi, Ganeshnagar and Godavari Bio Refinaries and the strength of workers of each of these seven units is 1428, 1171, 627, 185, 247, 232 and 277 respectively. Though the Constitution of the Sabha does not strictly prescribe any Unit wise representation, it appears that by way of consistent practice out of 142 delegates to be elected to the General Council the unit wise composition of the delegates has been 48, 39, 21, 6, 9, 8 and 11 respectively insofar as all the aforesaid seven units are concerned. It also appears to be a matter of practice that seven Vice Presidents and seven Secretaries would be elected from and amongst the members of each of those seven units thereby giving equitable representation to individual units.

6. The matters concerning election to the General Council and the Managing Committee of the Sabha were pending in the High Court and by its order dated 23.04.2018 the High Court directed that the election be held as per the Constitution of the Sabha. The process was, therefore, undertaken and the Election Officer declared the election programme on 07.05.2018. Insofar as the elections to the posts of seven Vice Presidents and seven Secretaries are concerned, true translation of the election programme was as under:

“Vice -President Seat-7 1 for each branch

(A) Qualification for candidate: worker from concerned branch or honorary member of the union.

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A (B) Requirement of application of the candidate:

Any 1 member elected from concerned branch on general council as proposer and Any 1 member elected from concerned branch on general council as seconder.

B (C) Voters: members of general council from concerned branch.

Secretary **Seat – 7** **1 for each branch**

(A) Qualification for candidate: Worker member from concerned branch or honorary member of the union.

C (B) Requirement of application of the candidate: Any 1 member elected from concerned branch on general council as proposer and Any 1 member elected from concerned branch on general council as seconder.

(C) Voters: members of general council from concerned branch.”

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7. The Election Officer also declared that eight seats would be reserved for “women” while rest 43 seats of Executive Members would be reserved for “men”. The stipulation in that behalf was as under:

“A. **Women constituency:** **Seats- 8**

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A) Qualification for candidate: any women member or honorary woman member.

B) Requirement of application of the candidate: Any 1 woman member of general council as proposer and Any 1 woman member of general council as seconder.

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C) Voters: members of general council from concerned branch.

B. Male Executive members: Seats - 43

Distribution of 43 seats:

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| 1. Sanjivani branch | 15 |
| 2. Gaumtanaar branch | 12 |
| 3. Sakarwadi branch | 3 |
| 4. Changdevnagar branch | 6 |
| 5. Ganeshnagar branch | 2 |

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- | | | |
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| 6. Laxmiwadi branch | 2 | A |
| 7. Godavari bio refineries | 3 | |

Qualification for candidate: Any member from concerned branch and general council member of concerned branch.

Requirement for application of the candidate: 1 member elected from concerned branch on general council as proposer and 1 member as seconder. B

Voters: members of general council from concerned branch (only for same branch)."

8. The challenge to the Election Programme was raised C immediately before the Industrial Court at Ahmednagar by certain members of the Sabha submitting, *inter alia*, that the Election Programme and the stipulation therein were contrary to the provisions of the Constitution of the Sabha and as such the Programme deserved to be quashed. The Industrial Court, Ahmednagar by its order dated 05.06.2018 accepted the challenge and while quashing the Election Programme, it directed as under:

"The Election Officer shall conduct the election as per constitution without insisting for undertaking-wise election for the post of Vice-President and Secretary. There shall be no reservation for women." E

9. The appellants who are also members of the Sabha, challenged the decision of the Industrial Court, Ahmednagar by filing Writ Petition No.5599 of 2018 in the High Court which by its judgment and order presently under appeal found that no interference was called for and dismissed the writ petition. F

10. In this appeal challenging the correctness of the decision of the High Court, we heard Mr. B.H. Marlapalle, learned Senior Counsel for the appellants and Mr. Vinay Navare, learned Senior Counsel for the respondents. G

11. The order of the Election Officer contemplated following stipulations which were not part of the Constitution of the Sabha:

(a) Unit wise reservation to the posts of Vice-Presidents and Secretaries whereunder all seven units would elect Vice-Presidents and H

- A Secretaries independently and the Electoral College in that behalf would be each of those units and not the General Body of members.

(b) Certain reservation was stipulated for women, namely, eight seats were reserved for women. Though the Electoral College was supposed to be members from the concerned unit or branch, it was not clear how seven units could be electing eight women executive members.

- C 12. Mr. Marlapalle, learned Senior Counsel fairly accepted that the stipulations made by the Election Officer carving out Electoral Colleges and concept of reservation as mentioned above were not consistent with the Constitution of the Sabha. He however submitted that the idea of having separate Electoral Colleges for each of those seven units would give adequate representation to every unit. According to him, though the Constitution of the Sabha may be completely silent insofar as those issues are concerned, there was no prohibition to adopt such ideas, which in any case, were completely laudable and reasonable.
- D It was submitted by him that in certain cases what is not prohibited can certainly be permitted. He relied upon the decision of this Court reported in **Laxmidas Dayabhai Kabarwala v. Nanabhai Chunilal Kabarwala**³, the relevant portion being:-

- E “**11.** The question has therefore to be considered on principle as to whether there is anything in law — statutory or otherwise — which precludes a court from treating a counter-claim as a plaint in a cross-suit. We are unable to see any. No doubt, the Civil Procedure Code prescribes the contents of a plaint and it might very well be that a counter-claim which is to be treated as a cross-suit might not conform to all these requirements but this by itself is not sufficient to deny to the Court the power and the jurisdiction to read and construe the pleadings in a reasonable manner.”

- F 13. Referring to the decision of this Court reported in **National Textile Workers’ Union and others v. P.R. Ramakrishnan and others**⁴ where the workers were given a right to be heard in winding up petition, Mr. Marlapalle, learned Senior Counsel relied upon the following observations:

³ (1964) 2 SCR 567 at 578

⁴ (1983) 1 SCC 228

“7. The right to apply for winding up of a company being a creature of statute, none other than those on whom the right to present a winding up petition is conferred by the statute can make an application for winding up a company and no such right having been conferred on the workers, they cannot prefer a winding up petition against a company. But from this exclusion of the workers from the right to present a winding up petition, it does not follow as a necessary consequence that the workers have no right to appear and be heard in a winding up petition filed by one or more of the persons specified in Section 439.”

14. The facts and the circumstances in which the above-mentioned observations were made by this Court were completely distinct and different. The first case concerned the power of the Court to grant adequate relief while in the second case the issue was if in the ultimate analysis the company was to be wound up, the workers would be adversely affected and as such whether they should be given a right of hearing in winding up proceedings or not. Those cases were of completely different dimension, whereas we are presently concerned with the issue whether an election to a union of workers has to be in accordance with its constitution or otherwise. However laudable may be the objectives, the Election Officer could not have gone beyond the confines of the Constitution of the Sabha and could not have imported ideas which were not rooted in the Constitution of the Sabha. It may be that as a matter of practice, various panels which contested elections to the Sabha, were ensuring that there be equitable distribution and every unit was adequately represented. But that idea cannot be implemented through Election Programme. The Programme must be completely in accord with the governing Statute and the Constitution of the Sabha. In the absence of the idea of unit wise representation and reservation emanating either from the governing Statute or the Constitution of the Sabha, the Election Programme cannot by itself, invent and implement such idea.

15. The Industrial Court as well as the High Court were completely justified in taking the view as aforesaid. We, therefore, find no merit in the submissions advanced by the learned Senior Counsel for the appellants. This appeal is consequently dismissed. No costs.