

**THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 22.08.2013

+ **LPA 523/2013**

**THE YACHTING ASSOCIATION OF INDIA** ..... Appellant

versus

**BOARDSAILING ASSOCIATION OF INDIA AND ORS.**

..... Respondents

**Advocates who appeared in this case:**

For the Appellant : Mr Sandeep Sethi, Sr. Advocate with Mr Amit Sinha, Mr Ajit Warriar, Mr Aman Gandhi, Ms Tarunima Vijra & Ms Salmoli Choudhuri.  
For the Respondent : Mr Rahul Mehra for R-1 to 12.  
Mr Amrit Pal Singh, CGSC for R-13.

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED, ACTING  
CHIEF JUSTICE  
HON'BLE MR JUSTICE VIBHU BAKHRU**

**JUDGMENT**

**VIBHU BAKHRU, J**

1. The appellant has preferred the present appeal challenging the interim order dated 15.07.2013 passed by a learned Single Judge in CM No. 5409/2013 in W.P.(C) No. 2062/2013. The appellant is aggrieved by the impugned order as the learned Single Judge has stayed the process for the election of Council members of the appellant association and has directed that the ballot box be preserved without opening the same or processing the ballots. The counting of the votes already cast and declaration of the consequent election result have been interdicted till further orders.

2. The writ petition was filed by the respondent nos. 1 to 12, who are all members of the appellant association, *inter-alia*, challenging the functioning of the appellant association including extension of the term of the Council Members beyond the maximum as specified under the Constitution of the Association. One of the principal concerns expressed in the writ petition by the writ petitioners is for conduct of elections for appointment of the Council members and office bearers of various committees of the appellant association in accordance with the model election guidelines stipulated in the Government Sports Code.

3. While the writ petition was pending consideration, the appellant announced the holding of election of its Council members/office bearers. The procedure for holding of elections disclosed that the same were to be held by postal ballots. Aggrieved by the holding of the elections in the manner as sought to be done by the appellant association, the writ petitioners filed an application being CM No. 5409/2013 in the pending writ petition, *inter-alia*, praying for an order restraining the appellant from holding fresh election of its office bearers, Councils and Committees. It was alleged that the elections being conducted were in violation of the model election guidelines contained in the Government Sports Code. Several other prayers were also made in the said application and the said application is pending consideration.

4. The controversy before us is limited to the question whether the learned Single Judge ought to have stayed the election process once the same had commenced. The brief facts relevant for considering the controversy before us are as under.

5. The appellant is a society registered under the West Bengal Societies Registration Act, 1961 and is one of the 52 National Sports Federations in India who are recognized by the Ministry of Youth Affairs and Sports, Government of India. The appellant association is the recognized body in relation to the sport of sailing in India and is affiliated with International Sailing Federation. The appellant is also affiliated to Asian Sailing Federation which is recognized by the Olympic Council of Asia as the apex body for conducting the sport of sailing in Asia. The affairs of the appellant are to be conducted in accordance with the provisions of its Constitution. The appellant has 69 clubs as members who are involved in the sport of sailing and other related sports. It is asserted that out of 69 member clubs, 44 member clubs have voting rights and other 25 member clubs are only provisional members who do not have any voting rights. Further, out of the 44 voting member clubs, 34 member clubs are formed/incorporated and/or are supported by the Indian Armed Forces.

6. As per the Constitution of the appellant, election to the appellant's council are to be held every four years and the last such elections were held in 2008 by way of postal ballots which, it is contended, is permissible under the constitution of the appellant.

7. The respondent nos. 1 to 12 were aggrieved by the functioning of appellant association and, thus, filed a writ petition being W.P.(C) 2062/2013, *inter-alia*, seeking the following prayers:

“(a) Issue suitable writs in the nature of Mandamus and any other appropriate writ, order or direction directing / Respondent No. 1 MYAS to withdraw the recognition granted

to Respondent No. 2 YAI forthwith for failing to hold fresh elections; which have been overdue since November 2012, for its various post of Office Bearers and the Council in accordance with the “Model Election Guidelines” stipulated in the Government Sports Code as also its own Constitution and further to implement / enforce all the “*consequence of such derecognition*” as mandated in ANNEXURE – III (pages 38-39) and clause 3.6 (Pages 5 to 7) read with paragraph 9 of May 1, 2010 letter (Page 72) of the Sports Code so as to ensure that the Respondent No. 2 YAI ceases to exercise the functions of an NSF for the discipline of “Sailing” in India, forgoes its right to regulate & control Sailing in India, forgoes the right to select the national teams & represent India in international sports events & forums, ceases to be eligible to use "India" in its name or to receive any financial aid, funds, grants, largesse or other forms of assistance from the Respondent No. 1 MYAS or ceases to make use of any benefit or concession including but not limited to usage of various infrastructure facilities / SAI Centre's meant for training, preparation & other purposes, etc;

- (b) Issue suitable writs in the nature of Mandamus/ Certiorari and any other appropriate writ, order or direction staying / quashing / setting aside the decision dated January 1, 2013 taken by the Respondent No. 2 YAI to unilaterally extend the tenure of its Office Bearers and the Council being illegal, null & void, non est, and unconstitutional;
- (c) Issue suitable writs in the nature of Mandamus / Certiorari and any other appropriate writ, order or direction setting aside any and all decisions and actions taken jointly or severally by the Council of the Respondent No. 2 YAI since the expiry of its term;
- (d) Issue suitable writs in the nature of Mandamus and any other appropriate writ, order or direction to Respondent No. 1 MYAS to appoint an ad-interim adhoc Committee of five or more Arjuna Awardees to run and manage the day-to-day affairs of the Respondent No. 2 YAI till the conclusion of latter's fresh elections;

- (e) Issue suitable writs in the nature of Mandamus and any other appropriate writ, order or direction directing Respondent No. 1 MYAS to ensure that the Office Bearers, Council Members, subordinate officers, servants and agents of Respondent No. 2 YAI do not, in any way, alter the list of provisional and/or regular Member Clubs of Respondent No. 2 YAI;
- (f) Pass such other and further orders as this Hon'ble Court may deem fit in the facts and circumstances of the case and in the interest of justice.”

8. While the said petition was pending, the appellant association decided on 18.04.2013 that elections be held by postal ballots. Prior to the decision to hold elections, the appellant had issued a notice dated 10.04.2013 to its various members, *inter-alia*, seeking the names of the authorized signatories for the purposes of elections.

9. The time period for submission of the authorized signatories by its member clubs was extended by the appellant till 30.04.2013 and, subsequently, again extended till 15.05.2013. The same was also published on its website. In the meantime, it is stated, that the Asian Sailing Federation was informed about the decision to hold elections through postal ballot. Further, on the suggestion of the Asian Sailing Federation, that an independent election commissioner be appointed, the appellant association had confirmed to the Asian Sailing Federation that a former Supreme Court/High Court Judge would be appointed for the purpose of conducting the proposed elections. Pursuant to the decision, the appellant association approached Ms. Usha Mehra, a former Judge of this Court for overseeing the conduct of the ensuing elections. On 25.04.2013, the

appellant notified the proposed schedule of elections to respondent no.13 and sought its approval for conduct of the elections.

10. On 30.04.2013, the appellant notified its members that the election would be held to the posts mentioned in the notice. The notice further prescribed the procedure for conducting of the election by postal ballot. The election schedule was also published on the website of the appellant association on 30.04.2013.

11. The notice dated 30.04.2013 is quoted below for ready reference:-

**“NOTICE FOR ELECTION — YAI COUNCIL**

1. Consequent to expiry of the term of the present YAI Council, the elections will now be conducted to the under-listed positions on the YAI Council:-

- (a) President
- (b) Vice President
- (c) Treasurer
- (d) Chairman Sailing and Club Development Committee.
- (e) Chairman Youth Classes Committee.
- (f) Chairman National (Asian Games and Olympic) Classes Committee.
- (g) Chairman National Classes Committee.
- (h) Chairman Offshore and Motor Boating Committee.
- (i) Chairman Sailing Performance Development Committee.
- (j) Chairman Events Committee.
- (j) Chairman Fund Raising and Publicity Committee.
- (k) Chairperson Women Sailing Committee.

2. **Eligibility Conditions:-** In order to be eligible as a candidate for the above elected posts, a candidate must be nominated by minimum one member club / class association in terms of Article 8 (e) of the YAI Constitution. There is no requirement that the candidate is nominated by his own club /

class association. In accordance with Article 9(c) of the YAI Constitution, only Life Associate Members of the YAI shall be eligible for election to or to serve on, the Council and/or on any of the Committees approved by the Council (a copy of Life Membership card issued by the YAI is required to be attached.)

3. **Balloting Committee**:- Since Lt. Gen Vijai Sharma, PVSM, AVSM, Vice President YAI is also officiating as the President YAI, he has appointed Justice (Retd) Ms Usha Mehra, Delhi High Court as the Chairperson of the Balloting Committee for conduct of the elections to ensure transparency in conduct of elections. The Committee will comprise of following:-

- (a) Justice (Retd) Ms Usha Mehra, Delhi High Court - Chairperson.
- (b) Cmde Dhiren Vig, HSG YAI - Member
- (c) Cdr KD Singh, HJSG YAI - Member
- (d) Lt Col Milind Desai - Member

4. The Committee will be responsible for:-

- (a) Determining that the election process is conducted in accordance with the YAI Constitution.
- (b) Determining that the procedure on postal ballot is conducted in accordance with the regulation on postal balloting as approved by the YAI Council during its meeting No 02 / 2004 held on 16 Nov 2004. Copy placed at Annexure I alongwith sample ballot paper and envelopes A and B.
- (c) Determining whether or not the nominated candidate is eligible for election.
- (d) Publishing a list of eligible candidates together with the names of nominating members for distribution.
- (e) Conduct of the elections and counting of votes taken for the candidates through the postal balloting system.

(f) Announcement of results.

5. **Schedule**:- The schedule for election process is as follows:-

- |     |                  |  |
|-----|------------------|--|
| (a) | 01-30 May 2013   | Nominations for various posts.   |
| (b) | 15 May 2013      | Last Date of receiving names of authorized signatories of affiliated "member clubs". |
| (c) | 31 May 2013      | Preparation of Nominations & Publication of list of nominees.                        |
| (d) | 01 – 04 Jun 2013 | Withdrawal of Nominations.   |
| (e) | 05 Jun 2013      | Scrutiny of Nomination forms.  |
| (f) | 06 Jun 2013      | Final Publication of Nominations for Various Posts.                                  |
| (g) | 17 Jun 2013      | Dispatch of postal ballot forms to all 'Member Clubs'.                               |
| (h) | 16 Jun 2013      | Last date for receipt of postal ballot forms.  |
| (i) | 17 Jun 2013      | Declaration of Results.  |

6. **Nomination Form**:- A form to be used for nomination of candidates is placed at **Annexure II**. Additional copies may be made and distributed amongst candidates. The nomination letter must be signed by the Authorised signatory of the nominating member club.

7. In accordance with Deptt of Sports, Ministry of Youth Affairs & Sports letter No. 14-82/2009-SP.IV dated 04 February, 2010 all personnel belonging to Central Govt., State Govt., Armed Forces or any other statutory body are required to obtain prior approval of the Government for seeking elective positions in National / State / District sports bodies. **Copy placed at Annexure III**. Accordingly, all such personnel seeking elective positions on the YAI Council are required to attach a copy of the letter issued by respective competent authority permitting them to seek elective positions on the YAI Council with their nomination forms.

8. In the past, a large number of serving defence officers had been elected to the YAI Council. A copy of the Ministry of Defence, Government of India letter No. 19(11)/2013-D (MS) dated 14 Mar 2013 is placed at **Annexure IV**.



9. It is requested that wide publicity be accorded to this notice.”

12. In the meantime, prior to issue of the notice dated 30.04.2013, the respondent filed an application bearing CM No. 5409/2013 in W.P.(C) 2062/2013, on 26.04.2013. The matter was considered by a learned Single Judge on 03.05.2013 and the learned Single Judge passed an order, *inter-alia*, directing that certain concerns of respondent nos. 1 to 12 which were expressed before the Court be placed before the Balloting Committee and further, permitted respondent nos. 1 to 12 (writ petitioners) to appear before the Balloting Committee on 08.05.2013.

13. Pursuant to the directions given by the learned Single Judge, the representatives of the respondent nos. 1 to 12 appeared before the Balloting Committee and articulated their concerns. On 15.05.2013, the learned Single Judge passed another order requesting the Chairperson of the Balloting Committee to place the minutes of the said meeting on record. It was further directed that the stand of the Union of India be placed before the Chairperson, Balloting Committee who would take an appropriate decision having regard to the opinion of the other members of the Balloting Committee and the matter was posted to 01.07.2013.

14. On 30.05.2013, the Balloting Committee submitted a report wherein the Committee concluded as under:-

“For these reasons stated above, the Balloting Committee is of the considered view that election schedule fixed by the YAI is neither against the Model Election guidelines nor against the association’s constitution.”

15. On 05.06.2013, the scrutiny of nominations was completed under the supervision of the Chairperson of the Balloting Committee and on 19.06.2013, the keys of the ballot box were also handed over to the Chairperson of the Balloting Committee. It is stated that the ballots have since been received from various member clubs.

16. The principal controversy pending consideration by the learned Single Judge is whether the election should be held by postal ballots or whether the ballots should be cast in person. Whilst it is contended on behalf of the appellant that casting of ballots is permissible under its constitution and that elections have been held by postal ballots in the past, the respondent nos. 1 to 12 have contended that elections by postal ballots is not permissible under the sports code. It is further contended by respondent nos. 1 to 12 that it is also mandatory to hold an Annual General Meeting and that election by casting votes in person by members could be held simultaneously with the Annual General Meeting since all members who have the right to vote are obliged to attend the meeting. Pending consideration of the rival contentions, the learned Single Judge has passed the impugned order, *inter-alia*, directing as under:-

“Under these circumstances, the Balloting Committee and Chairman are directed not to proceed further in the matter and to preserve the ballot box intact without opening the same or processing the ballot cast. It shall not commence counting of the votes cast or declared the result of the elections till further orders from this court.

List on 26.09.2013 for further consideration.”

17. It has been stated before us that there were only single nominations to 10 out of 12 posts and, thus, there is no opposition to the election of 10 office bearers out of 12 posts for which elections are being held. It is further contended that there are only 44 club members who constitute the Electoral College and majority of these club members are supported or incorporated by Indian Army/Navy. Most of the members of such member clubs are Armed Forces Personnel who are posted at various locations in India. It is, thus, contended by the appellant that it is not expedient for these member clubs to cast their ballot in person. It is only to accommodate its constituent members that election is being held by postal ballots. It is further contended that the constitution of the appellant association permits casting of postal ballots and that has been the practice in the past since the inception of the appellant association in 1960. It is, thus, contended that the election process ought not to be interdicted.

18. The learned counsel appearing for the appellant has also contended that it is well settled that once an election process has started, it should be conducted as scheduled and any challenge to the election should be considered only after the election process is over. In support of his contention, the learned counsel for the appellant had placed reliance on the decision of the Supreme Court in the case of *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Another v. State of Maharashtra and Others*: (2001) 8 SCC 509.

19. We have heard the learned counsel for the parties at length.

20. The only question before us is whether the election process ought to have been interdicted once it has commenced. It is not necessary for us to examine the merits of the dispute between the parties. It is also not essential for us consider whether the Government Sports Code is mandatory or whether the elections being conducted conform to the sports code or not since those issues are pending consideration before the learned Single Judge.

21. The law in regard to interference by Courts with an election process is now well settled. Once an election process has commenced it must be concluded expeditiously as per its schedule and any legal challenge to the election must await the conclusion of the election. The courts would normally pass orders only to assist completion of the elections and not to interdict the same. In the case of *Election Commission of India through Secretary v. Ashok Kumar & Ors*: (2000) 8 SCC 216, the Supreme Court, *inter-alia*, held as under:-

“32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows there from in view of the analysis made by us hereinabove:-

1) If an election, (the term ‘election’ being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

2). Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

3). Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

4). 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 stage is set for invoking the jurisdiction of the Court.

5). The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at regarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act except on a clear and strong case for its intervention having been made out by raising the pleas

with particulars and precision and supporting the same by necessary material.”

22. In the case of *N.P. Punnuswami v. Returning Officer, Namakkal Constituency, Namakkal, Salem Dist. And Others*: AIR 1952 SC 64, the Supreme Court, *inter-alia*, considered the meaning of the word ‘election’ as used in Article 329(b) of the Constitution of India which provided that no election to the Parliament would be called in question except by a election petition. The Supreme Court observed that the word ‘election’ had acquired a wide and a narrow meaning. While in the narrow sense it could mean the election of a candidate. In the wider sense, the word ‘election’ could encompass the entire electoral process culminating in declaring the election of a candidate. The Court summed up its conclusions as under:-

“16. The conclusions which I have arrived at may be summed up briefly as follows:

(1). Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time-schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(2). In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to "anything which does not affect the election; "and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the "election" and enable the person affected to call it in question, they should be brought up before

a special tribunal by means of an election petition and not be made the subject of a dispute before any Court while the election is in progress.”

In the case of *Supreme Court Bar Association and Ors. v. B.D. Kaushik:* (2011) 13 SCC 774, the Supreme Court has expressed a similar view as under:

"43. It hardly needs to be emphasized that in any Body governed by democratic principles, no member has a right to claim an injunction so as to stall the formation of the governing body of the Association. No such right exists in election matters since exercise of a right conferred by a rule is always subject to the qualifications prescribed and limitations imposed thereunder. ....

XXXX XXXX XXXX XXXX

"60. Further, the appellants had rightly pointed out to the learned Judge that election process had already started and, therefore, injunction, as claimed, should not be granted. Since 1952 this Court has authoritatively laid down that once election process has started the courts should not ordinarily interfere with the said process by way of granting injunction. The argument advanced by the appellants that election process having started, the injunction should not be granted is dealt with by the learned Judge by holding that in the present case the plaintiffs have not prayed for injunction against the election process."

23. The principles of law relating to election of candidates under the Representation of People Act, 1951 have been extended to elections in general also. In the case of *Shri Sant Sadguru (supra)*, the Supreme Court while considering a case of elections to the Managing Committee of a

society registered under the Maharashtra Cooperative Societies Act, 1960 reiterated the settled law as under:-

“12. In view of our finding that preparation of the electoral roll being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellants to challenge the election of the returned candidate, if aggrieved, by means of an election petition before the Election Tribunal.”

24. In light of the aforesaid judgments, we are inclined to accept the contention urged on behalf of the appellant that the election process having commenced, the same ought not to have been interdicted and any challenge to the election could be pursued only after the elections are over. We further do not find that any irreparable loss or prejudice would be caused to respondents Nos. 1 to 12, if the election process as commenced is concluded. Accordingly, the directions contained in the impugned order restraining the opening of the ballot boxes and counting of the votes are set aside. The appellant would be at liberty to complete the election process and declare the results.

25. We further clarify that we have not expressed any opinion as to the merits of the disputes between the parties and it shall be open for the



respondent nos. 1 to 12 to pursue their challenge to the elections in the pending writ petition.

26. The parties are left to bear their own costs.

**VIBHU BAKHRU, J**

**BADAR DURREZ AHMED, ACJ**

**AUGUST 22, 2013**  
**RK**

