

(1977) 12 BOM CK 0019

In the Bombay High Court

Case No : Special Civil Application No. 2053 of 1977

Chandrakant Vishwanath Sawarkar

APPELLANT

Vs

District Deputy Registrar, Co-Operative Societies, Nagpur.

RESPONDENT

Date of Decision : 09-12-1977

Acts Referred:

Citation : (1978) 80 BOMLR 455 : (1978) MhLj 526

Hon'ble Judges : Kambli, J;Ginwala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Kambli, J.—Heard the counsel, Mr. Daga for the petitioner, Mr. Salve for respondent No. 1 and Mr. Fuladi for respondent No. 2.

2. By this writ petition, in substance, the petitioners seek to challenge and to get set aside the orders dated November 24, 1977 at Annexures D to G passed by respondent No. 3, rejecting the nomination papers of the petitioners. A notice before admission was issued. It is urged for the respondents that the matter constitutes a dispute u/s 91 of the Maharashtra Co-operative Societies Act, 1960, and the remedy of the petitioners is to file a dispute under that section after the elections of the Managing Committee are held. The question is whether the election of the members of the Managing Committee is covered by Section 91 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as the Act). Section 91(1) of the Act provides:

Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the office bearers, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the society, to the Registrar, if both the parties thereto are one or other of the following:

It is urged for the respondents, that the expression "election of the office

bearers" covers the elections to the members of the Managing Committee also. Now, the expression "office bearer" has not been defined in the Act. However, Section 2(20) defines the word "Officer". Under that provision the officer means:

...officer" means a person elected or appointed by a society to any office of such society according to its by-laws; and includes a chairman, vice-chairman, president, vice-president, managing director, manager, secretary, treasurer, member of the committee, and any other person elected or appointed under this Act, the rules or the bylaws, to give directions in regard to the business of such society.

It will be seen from the above definition that the term "officer" includes the members of the Managing Committee. Now, Chambers Twentieth Century Dictionary defines the term "office bearer" as:

one who holds office: one who is appointed to perform duty in connection with some company, society, church, etc.;

In view of the definition of the term "officer" in Section 2(20) of the Act and the connotations of the term "office bearer" it would not be proper to give a restricted meaning to the expression "office bearer". It appears to us that the term "office bearer" includes a member of the Managing Committee. If so, the dispute must be held to have been covered by Section 91 of the Act. If that be so, the petitioners would have to seek their remedy u/s 91 of the Act.

3. In *Madhukar Ganpatrao v. Sheshrao* (1970) 73 Bom. L.R. 720 the division Bench of this Court has held that wrong rejection or acceptance of nomination papers cannot form the subject-matter of a dispute contemplated by Section 91 of the Maharashtra Co-operative Societies Act, 1960, if such a dispute is raised before the declaration of result of the election. In this decision reliance was placed on two decisions of the Supreme Court (i) in *N.B. Khare v. Election Commission* (1957)13 E.L.R. 112 and (ii) *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, . It was held in the above case of the division Bench that in view of the two decisions of the Supreme Court referred to above, it was clear that the application of respondent No. 1 in effect contending that the nomination papers of the petitioner and respondent Nos. 2 to 5 were wrongly accepted could not be entertained before the declaration of the results of the election. The remedy of the petitioner, in our view, is u/s 91 of the Act, after the declaration of the results of the election of the Managing Committee.

4. Mr. Daga invited our attention to the decision of a division Bench of this Court in *Bhalchandra Daulatram v.K.R. Bobde* (1973) Special civil Application No. 686 of 1973. Relying on that decision, he submitted that "office bearers" are not the same as members of Committee. Now, the dispute involved in that case was regarding election of Chairman and Vice-Chairman of the Board of Directors of a specified Society. The question that arose for consideration then was whether such a dispute MI within the purview of Section 91 or Section 144-T of the Act. It was in this context that the division Bench, referring to Clause (2) of Section 2 of

the Act held that there was nothing in that definition to suggest that the office of officers, Chairman, or Vice-Chairman is the same as office of the membership of the Committee, There is nothing in this decision to indicate that the division Bench was of the view that members of Committee are not office bearers. On the contrary, the division Bench was of the view that except for the provisions for election contained in Section 73G and chap. XI-A of the Act, every election dispute concerning a society would be a dispute within the meaning of Section 91 of the Act. In our opinion, therefore, the decision does not support Mr. Daga.

4. Mr. Daga contends that bye-law I (1)(3)(b) and Election Rule 4(1) are invalid and inoperative being ultra vires of the powers of respondent No. 2, Bank for the reasons stated by him in the petition. It is possible to take a view that the dispute regarding the ultra vires character of the bye-laws and the Rules may fall within the expression "touching the constitution". However, when the petitioner would, if so advised, file a dispute u/s 91 after the elections to the Managing Committee are over, the question whether the bye-laws and the Rules were, valid, legal or operative, would have Incidentally to be considered while deciding the question of validity of the order of the Returning Officer in rejecting the nomination papers. It was contended by Mr. Daga that the impugned bye-laws and the Rules are approved by the Deputy Registrar. If a dispute is filed u/s 91 of the Act, the Registrar may not sit over his own Officer's judgment and it will not, therefore, be possible for the Registrar to hold that the impugned bye-laws and the Rules in question are invalid or illegal. Prima jade, it is not possible to accept that submission.

5. Section 93 of the Act in terms provides that the Registrar can sit in appeal over the acts and orders of the Deputy Registrar. Apart from this, if at all an election petition is ultimately filed and if the Registrar is satisfied that a dispute exists, he can decide the dispute himself or refer it for disposal to a Co-operative Court. The Co-operative Court would incidentally decide whether the impugned bye-laws and Rules are ultra vires or illegal if the decision of that question is necessary for deciding the issue before him.

6. In the result, this petition is summarily rejected. No orders as to costs.