
(2003) 01 BOM CK 0061

In the Bombay High Court

Case No : Writ Petition No's. 4755, 4756, 4757, 4758, 4759 and 4760 of 2002

Jagdeo Ramchandra Raipure

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 10-01-2003

Acts Referred:

Citation : (2003) 2 ALLMR 569 : (2003) 4 BomCR 102 : (2003) 3 MhLj 273

Hon'ble Judges : R.G. Deshpande, J

Bench : Single Bench

Advocate : A.B. Choudhari, for the Appellant; N.S. Jog, A.G.P. for respondent Nos. 1 to 3 and P.B. Patil, for the Respondent

Final Decision : Dismissed

Judgement

R.G. Deshpande, J.—Heard the learned Counsel for the respective parties.

2. All these petitions raise a common question as regards presentation of a nomination paper to the election of the managing committee of the Respondent No. 4-society, i.e. Harsoda Gram Seva Co-operative Society, Harsoda, Tq. Malkapur, District Buldhana.

3. All the petitioners in these petitions, in order to contest the election for the membership of the Managing Committee of the respondent No. 4-society, submitted their nomination papers on 12-12-2002, strictly in accordance with the election programme. However, after the nomination papers were submitted, on the date of scrutiny, i.e. on 16-12-2002, the respondent No. 2 -- Returning Officer, rejected the nomination papers of all the petitioners in these petitions, precisely for the reason that the nomination papers were not submitted by the petitioners either personally or through their proposers. This rejection of the nomination papers came in pursuance of the objection raised by the respondent No. 5, who specifically raised an objection, stating that the nomination papers of Shri Jagdeo Ramchandra Raipure, i.e. the petitioner in Writ Petition No. 4755/2002; Smt. Alka Devidas Kahate, petitioner in Writ Petition No. 4756/2002;

Shri Mahadeo Ganpat Zalte, petitioner in Writ petition No. 4757/2002; Shri Shriram Rajaram Chouhan, i.e. the petitioner in Writ Petition No. 4758/2002; Shri Santosh Kisan Raipure, i.e. the petitioner in Writ Petition No. 4759/2002, and Dnayndeo Pandhari Aadokar, the petitioner in Writ Petition No. 4760/2002, were not submitted either by the petitioners themselves or their proposers, but the same were submitted by one Shri Haridas Shreeram Raipure.

4. The objection so raised was upheld by the respondent No. 2-Returning Officer by his order dated 16-12-2002, at the time of scrutiny and the nomination papers were rejected. This order dated 16-12-2002 happened to be the subject matter of an appeal at the instance of the present petitioners before the Assistant Registrar, Co-operative Societies, Malkapur, wherein, the petitioners contended that the nomination papers were submitted by the petitioners themselves personally and that they are holding proper receipts in proof thereof. However, the appeal which was filed u/s 152(A) of the Maharashtra Co-operative Societies Act, 1960 (hereinafter, for the sake of brevity as the "Act"), was dismissed and the tenor of the order dated December 24, 2002, indicates that the same were dismissed for want of prosecution. This is what has prompted the present petitioners to approach this Court through the aforesaid writ petitions.

5. Shri A. B. Choudhari, learned advocate appearing on behalf of all the petitioners in these petitions, scathingly assailed these orders dated 16-12-2002 passed by the Returning Officer-respondent No. 2 and 24-12-2002, passed by the Assistant Registrar of Co-operative Societies, respondent No. 3. While challenging the orders, Shri Choudhari, contended that the nomination papers were submitted by the petitioners themselves and even if assuming for the sake of argument that they were not so submitted by the petitioners, then there were no rules, and regulations making out compulsory for the presentation of the nomination papers either by a candidate himself or by his/her proposer. Shri Choudhari, contended that the provisions of the Rules, on which reliance is placed by the authorities below, i.e. Maharashtra Co-operative Societies Rules, 1961, and precisely Chapter V-A thereof has been wrongly relied upon by the authorities below. According to Shri Choudhari, Chapter V-A in its title clause specifically makes out clear that those rules are specifically meant for the election of the notified societies only. According to Shri Choudhari, Respondent No. 4-society is not a notified society and, therefore, Rules of Election framed under Chapter V-A of the Maharashtra Co-operative Societies Rules, 1961, by no stretch of imagination, could be made applicable and could not be implemented in the matters of elections of the present respondent No. 4-society. Shri Choudhari, further specifically invited the attention of this Court to Rule 56N, which deals with the presentation of the nomination papers and requirements for valid nominations. According to Shri Choudhari, reliance placed by the authorities below and that too heavily, on these provisions of Section 56N, is absolutely unwarranted, particularly, when the present society is not, according to the petitioners, a notified society.

6. So far as regards this provision of Section 56N (1) is concerned, it reads as under :

"56N. Presentation of nomination paper and requirements for valid nominations, -- (1) On or before the date appointed under Rule 56J, each candidate shall either in person or by his proposer, deliver to the Returning Officer during the time and at the place specified in the programme declared under the said rule, a nomination paper completed as provided by Rule 56M and signed by the candidate and by two voters of his constituency one of whom shall be a proposer and the other seconder."

7. From this provision it is absolutely clear that on the date appointed or before that, as is prescribed under Rule 56J, the candidates contesting the elections, are supposed to present their nomination papers, either in person or through their proposer, which are to be delivered to the Returning Officer by any of them, and well within the time as prescribed in the election programme. Other necessary compliances which are required to be made, are supposed to be made before the presentation of the nomination papers to the Returning Officer.

8. Shri Choudhari, learned advocate, while assailing the orders passed by the authorities below, further contended that since there are no separate rules made for the election of the co-operative societies, which are other than the specified co-operative societies or notified societies, then in that case, in ordinary course, the matter will have to be read and decided on the basis of the provisions of bye-laws of the society. In all curiosity, this Court asked Shri Choudhari to produce before the Court the bye laws of the society, which he readily produced for the perusal of this Court. With the help of learned advocates of the respective parties, I have gone through the bye-laws of the society. However, no one of them could point out any specific provision as regards the election and the procedure to be adopted therein in the bye-laws. This clearly means if the Rules made in Chapter V-A are not to be made applicable to the present election and if there is no provision in the bye-laws, then in that case it would be virtually elections to be conducted without any rules and regulations and in the opinion of this Court, such a situation is bound to create chaos in every respect pertaining to the election matter of the society.

9. Shri Choudhari, further contended that the petitioners had themselves personally submitted their nomination papers on 12-12-2002, and according to Shri Choudhari, the acknowledgments issued to all these petitioners are produced on record, which indicate that the petitioners have submitted their nomination papers on the date and as per the time as shown in those acknowledgments. Shri Choudhari, is trying to make a feeble attempt to make the capital of the position, particularly because in these acknowledgments, which are in the nature of proforma, after the name of the person submitting the nomination paper the words ";kapsdMwu@lqpdkdMwu?" are left as they were and the relevant or irrelevant is either not tick marked or scratched or erased. Therefore, Shri Choudhari, wants this Court to hold that it will have to be

presumed that the petitioners themselves have submitted their nomination papers. This argument of Shri Choudhari, *prima facie*, no doubt, appeared to be appealing, however, what weightage should be given to this argument will have to be decided after considering other facts and also relevant provisions in that respect.

10. Mrs. Jog, learned A.G.P. appearing on behalf of the Respondent Nos. 1 to 3, countered the arguments of Shri Choudhari, contending that the nomination papers of the petitioners in all these petitions, were not submitted or presented by the contesting candidates/petitioners themselves or by their proposers. According to learned AGP, the nomination papers of all the petitioners were submitted before the Returning Officer-Respondent No. 2, by one Shri Haridas Shreeram Raipure and in proof of this contention, the Respondent Nos. 2 to 4 have produced on the record in tabular form, a list of the persons, submitting the nomination papers, the time, the date, security deposit and the signatures of the persons who have presented their nomination papers. From this document, it is clear that this Haridas Shreeram Raipure appeared to have presented the nomination papers of all these petitioners and in token thereof, he appeared to have signed these papers, which clearly indicates that these nomination papers were presented by this Haridas Shreeram Raipure. Shri Choudhari, while arguing, has also made a passing reference to the fact that this Haridas Shreeram Raipure himself is also one of the contesting candidates. However, in the opinion of this Court, it won't make any difference as said Haridas Raipure is not the petitioner in any of the writ petitions. It is necessary to clear at this stage itself that this Haridas Shreeram Raipure also does not happen to be the proposer to any of these petitioners, who have approached this Court for the relief. Therefore, for all practical purposes, it will have to be presumed and treated that this Haridas Shreeram Raipure happened to be absolutely a third person, who submitted the nomination papers. But, whether such nomination papers could be accepted or not, will all depend on the interpretation of provisions of Rule 56N in Chapter VA of the Rules mentioned above.

11. I have in the previous paragraph already reproduced the Rule 56N. However, while deciding this case, I have to again revert back to certain other rules under the said Chapter V-A. Chapter V-A, as mentioned above, in its title clause refers as under :--

"Elections to Notified societies, etc."

In the opinion of this Court this election to Notified societies gathers importance. No doubt, these rules govern the election process of the notified societies. However, the title clause itself makes out further clear that other than notified societies, if there are other societies, those also can be said to have been governed by the provisions of these rules, else the legislature would not have unnecessarily added the word "etc." in the very title clause of the rules itself. In the opinion of this Court, this etc., no doubt, includes other societies like notified societies and others, which are otherwise not governed by specific any other

rules, as is the case in the matter of specified co-operative societies. It is clear from the reading of this provision of the very title clause that notified societies are governed by these rules. For specified co-operative societies for their elections purpose there are different rules, but there could be some other societies, which might have been contemplated by the legislature in their wisdom to include such societies, the word "etc." appeared to have been intentionally introduced in these rules.

12. To substantiate this observation of the Court, this Court has gone through the other relevant rules in Chapter V-A of the Rules. A specific observation is made by the Court that wheresoever the legislature wanted from the rule-making authority to make a reference for the purposes of notified societies only, a special and specific reference is made in each and one rule relating to them specifically observing notified co-operative societies or notified society. This clearly means the argument of Shri Choudhari, that these rules won't govern the elections of the present co-operative society, which, in the opinion of Shri Choudhari, is not a notified co-operative society, cannot be accepted, else as observed earlier in this Order, it is likely to create chaos in the process of elections.

13. It is also necessary, at this stage to find out as to whether the present society is a notified society or not. Shri Choudhari, learned advocate, invited my attention to the provisions of Section 73IC. Marginal head of this section is

"Election to Notified societies". Sub-section (1) of Section 73IC, reads as under :

"(1) Where the State Government is satisfied that, having regard to the objects of the society or class of societies (other than the societies specified by or u/s 73G), or composition of membership thereof, or proper management and the interest of the members, it is necessary in the public interest to hold elections to any society or class of societies, the State Government may, notwithstanding anything contained in this Act, or in any rules, or bye-laws made thereunder, or in any other law for the time being in force, by general or special order, notify in the Official Gazette, such society or class of societies and the election to such society or class of societies shall be held by the Registrar in the prescribed manner."

From this provision, it is clear that it is the discretion of the Government and it is the satisfaction of the Government, having regard to the objects of the society or class of societies or composition of membership thereof, or proper management and interest of the members, and taking into consideration the public interest, the State Government has to or may notify, in the Official Gazette, such a society or class of societies, and the elections of such society or class of societies are to be held by the Registrar in the prescribed manner. According to Shri Choudhari, the present respondent No. 4-society is in no manner notified in the official Gazette by the respondent-State. This factual position also appeared to have not been disputed by any of the respondents, and there is no such Gazette

notification as regards the society in question. It is also pertinent to note that where a society is a notified society or not, is required to be found out and if the status of such cooperative society is required to be decided, then while determination of this point or the status of the society, the share capital of the same gathers relevant consideration to find out as to whether such a society could be characterized as notified society. Needless it is further to point out that the share capital to which the reference is made, will have to be considered of the previous financial year and not the financial year in which the elections are being held. Shri Choudhari, in this respect, and in the opinion of this Court rightly, relied on the decision of this Court reported in 2002 (4) Mah.L.R., 219 in the matter of Balasaheb Narayan Ingale and Ors. v. Aran Bruhat Vividh Karyakari Sahakari Sanstha and Anr. So far as regards the official notification u/s 73IC is concerned, since it is not disputed by any of the contesting parties to these petitions, it has to be, no doubt, held that this society is not shown to be a notified society in the Official Gazette.

14. The above argument of Shri Choudhari, needs being placed in a different type of scale. Question is if these rules are not to be made applicable as are given in Chapter V-A, and if there are no other rules specifically governing the present type of society, and further that there is no provision, whatsoever, made in the bye-laws of the society, then it is bound to create not only complications, but it is likely to breed multifariousness of the proceedings. As I have observed above, I have even no slightest hesitation in observing that these rules under Chapter V-A, do definitely apply and govern the elections of such societies, for which there are no rules and regulations for the conduct of the election.

15. On this ground, therefore, these petitions can be disposed of dismissing the same at the stage of motion hearing itself.

16. Apart from what I have observed above, there are certain other points, which definitely need consideration, while deciding the present petitions. In the present matter, since the nomination papers of the petitioners are rejected, the petitioners did prefer the Appeals before the respondent No. 3. However, in spite of having given ample opportunities to the petitioners to represent their case before the respondent No. 3, the petitioners failed to make the most of the opportunities and the matter was ultimately required to be dismissed by the appellate authority, which can be termed as "in default". This shows the negligent attitude of the petitioners. Even otherwise, in the opinion of this Court, a dispute u/s 91 of the Maharashtra Co-operative Societies Act, 1960, also could be said to be an alternate remedy available to the petitioners, and approaching this Court at the last stage when the elections are scheduled to be held on 12th of January, 2003, is nothing but a dishonest attempt on the part of the petitioners, anyhow to prolong the elections. The Courts cannot succumb to such type of tactics of the petitioners and such a tactic is to be definitely nipped in the bud itself. It is also necessary to note that even after elections, the petitioners could be said to be having an alternate remedy of an Election Petition before the

competent authority. However, petitioners thought it not proper to avail the same and approached this Court for the reliefs as prayed for. In the circumstances, this Court feel it not appropriate to entertain all these petitions and the same stand dismissed with no order as to costs.