

(2018) 01 BOM CK 0195
In the Bombay High Court
Case No : 10917 of 2017

Mr. Mulchandani Amar Sadhuram

APPELLANT

Vs

Mr.Haresh Shivaldas Bodani & Ors.

RESPONDENT

Date of Decision : 30-01-2018

Acts Referred:

Code of Civil Procedure, 1908, Order 7Rule 11(a) -
Representation of the People Act, 1951, Section 100, Section 80, Section 84, Section 83(1) - Grounds for declaring election to be void - Election petitions - Relief that may be claimed by the petitioner - Contents of petition
Maharashtra Co-operative Societies Act, 1960, Section 91 - Disputes

Citation : (2018) 01 BOM CK 0195

Hon'ble Judges : Dr.Shalini Phansalkar-Joshi

Bench : Single Bench

Advocate : P.S. Dani, ?S.R. Nargolkar, Swapnil S. Mohite, N.V. Walawalkar, ? Omkar Vasant Amberkar, Dhrupad Sopan Patil, Ketan Joshi

Final Decision : Dismissed

Judgement

1. Rule. Rule made returnable forthwith. Heard finally with consent of learned counsel for both the parties.
2. Both these Writ Petitions are arising between the same parties and involve a common question of fact and law, hence they are being decided by this common judgment.
3. By these Writ Petitions, the Petitioners are challenging the orders dated 23rd August 2017 passed by the Member, Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Pune in

Revision Application Nos.31 of 2017 and 32 of 2017, in which the orders dated 7th March 2017 passed by the Judge, Co-operative Court No.1, Pune, below Exhibit Nos.18, 41 and 111 in Dispute No. 39 of 2015 were challenged.

4. The applications at Exhibit Nos.18 and 41 were filed by the Petitioner-Bank herein and the application at Exhibit No.111 was filed by the Petitioner - Original Respondent No.17 for rejection of the plaint under Order-7 Rule 11(a) of the Code of Civil Procedure (for short, "C.P.C."), on the count that it does not disclose the entire cause of action.

5. The Petitioner, in WP No.10918 of 2017 is "The Seva Vikas Co-operative Bank Ltd" (for short, "the said Bank") and the Petitioner in WP No.10917 of 2017 is "Mr.Mulchandani Amar Sadharam", who is the elected Member and Chairman of the Board of Directors of the said Bank. Respondent No.3 is the Returning Officer. The Election for the Members of the said Bank for the period 2014-2019 was held on 14 th January 2015, in which, Petitioner-Mr.Mulchandani Amar Sadharam and other members were declared elected as unopposed. Respondent Nos.1 and 2 being aggrieved by the entire process of conduct of the said Election had challenged the results of the election by filing Dispute No.39 of 2015 before the Co-operative Court.

6. In the said Dispute, the Petitioners herein filed at Exhibit Nos.18, 41 and 111, contending inter-alia that, the Respondent Nos.1 and 2 are challenging the bye-laws of the said Bank, which have been amended from time to time to suit the functioning and requirements of the said Bank. The said bye-laws are already challenged by Respondent Nos.1 and 2 before the Competent Authorities and they were declared to be legal and valid. Respondent Nos.1 and 2 have, however, not mentioned the various orders in relation thereto. Therefore, for non disclosure of entire cause of action, the chain

comprising all the events which constitute the cause of action is incomplete. Hence, the petition was liable to be dismissed. It was submitted that, the orders which Respondent Nos.1 and 2 should have disclosed in the Dispute were dated 21st December 2010, 29th June 2011 and 6th March 2013. It is submitted that, it being an Election Dispute, sans the relevant averments made in the petition raising the Dispute, challenging the Election, the Dispute itself was not maintainable and hence, it was liable to be rejected for non disclosure of entire cause of action under Order-7 Rule-11(a) of C.P.C..

7. These applications at Exhibit Nos.18, 41 and 111 came to be resisted by Respondent Nos.1 and 2 contending inter-alia that elaborate and more than sufficient averments are made in the Dispute to show how the amendment in the bye-laws of the said Bank has resulted into depriving Respondent Nos.1 and 2 from contesting the Election and how the Nomination Form of Respondent No.2 came to be wrongly rejected by the Returning Officer. It was submitted that the averments in the petition, raising the Dispute are not only in detail but they also disclose the cause of action for filing the Dispute and hence, no case was made out to reject the petition, at-least under Order-7 Rule-11(a) of C.P.C..

8. The Co-operative Court, vide its impugned order found that the averments in the petition refer to various events which has resulted, according to Respondent Nos.1 and 2, in vitiating the Election process and hence, as there was sufficient cause of action disclosed in the petition, there was no reason to reject the same.

9. When this order was challenged by the Petitioners before the State Co-operative Appellate Court Mumbai vide Revision Nos.31 of 2017 and 32 to 2017, the Co-operative Appellate Court confirmed the orders of the Co-operative Court, by holding that the petition discloses sufficient cause of action and hence, it cannot be dismissed

or rejected under Order-7 Rule-11(a) of C.P.C..

10. While challenging these impugned orders, the submission of learned Senior Counsel for the Petitioners is that the Dispute itself was not maintainable under Section 91 of the Maharashtra Co-operative Societies Act, 1960. According to him, the law requires that this being a proceeding challenging the Election, strict compliance is necessary as regards the pleadings, which is conspicuously lacking in the instant case, as the Respondent Nos.1 and 2 have not disclosed the various orders passed by the Competent Authorities upholding the validity of amendments in bye-laws of the said Bank and thus, not disclosed the entire chain of events. Further, it is submitted that the basis of the Election Dispute raised by Respondent Nos.1 and 2 being the challenge to amendment in bye-laws and as that challenge, the Co-operative Court cannot decide in the Election Petition filed under Section 91 of the Maharashtra Co-operative Societies Act, this petition itself was not maintainable. However, neither the Co-operative Court nor the Revisional Court has considered this important aspect of the matter; therefore, according to learned counsel for the Petitioners, the impugned order passed by the Co-operative Court and confirmed by the Revisional Court needs to be set-aside.

11. In support of this submission, learned counsel for the Petitioners has relied upon the judgment of this Court in the case of Madhavrao Bhujangrao Kinhalkar vs. Ashok Shankarrao Chavan & Ors., 2013 (1) Mh.L.J. 958, wherein the Election Petition was filed under the Representation of the People Act, 1951, on the allegation of malfunctioning of the EVMs in the Election. As it was found that the petition did not contain proper pleadings with material particulars in respect of intentional tampering and malfunctioning of the EVMs and only a vague allegation was made, it was held that unless and until it was pleaded that someone had access to the EVMs and those

machines were tampered and it was at the instance of Respondent No.1, the vague allegations made in the petition, in that behalf cannot sustain. In the light of the decisions of the Apex Court in the case of Samant vs. George Fernandez, AIR 1969 SC 1201, Virendra Nath Goutam vs. Satpal Singh and others, (2007) 3 SCC 617 and Hari Shankar Jain vs. Sonia Gandhi, AIR 2001 SC 3689, it was further held that, in the Election Petition all material facts are required to be stated and if they are not stated, the petition is liable to be dismissed on the ground that the case would be covered by Clause (a) of Sub-Section (1) of Section 83 of the Representation of the People Act, 1951, read with Clause (a) of Rule 11 of Order-7 of C.P.C.. In paragraph No.24, therefore, it was further held that as the petition based on assumptions and presumptions, apprehensions, suspicions and innate desires sans reality cannot be tenable.

12. Learned counsel for the Petitioners has also placed reliance on another judgment of this Court in the case of Rashmi Digambar Bagal vs. The Maharashtra Election Commissioner & Ors., Application No .5 of 2016 in Election Petition No.4 of 2014 dated 21 st September 2016, wherein also, while considering the provisions of Section 83 of the Representation of the People Act, 1951, it was held that, "under Section 83(1) of the said Act, it is obligatory on the part of the election Petitioner to set forth full particulars of any corrupt practice alleged by him. In other words, the particulars relating to corrupt practice should not be lacking in any respect. One who reads the averments relating to corrupt practice should be in a position to gather every minute detail about the alleged corrupt practice such as the names of the persons, the nature of the alleged corrupt practice indulged in by such person or persons, the place, the date, the time and every other detail relating to the alleged corrupt practice".

13. It was further held that, "in the filing of an election petition

challenging the successful election of a candidate, the election petitioner should take extra care and leave no room for doubt, while making any allegation of corrupt practice indulged in by the successful candidate and that he cannot be later on heard to state that the allegations were generally spoken to or as discussed sporadically and on that basis the petition came to be filed".

14. Learned counsel for the Petitioner has then placed reliance on the judgment of the Madras High Court, in the case of K.R. Ramaswamy @ Traffic ... vs. The Chief Election Commissioner in Election Petition Diary No..22137 of 2014 dated 29 th April 2015, wherein also, the Election Petition was filed under Sections 80 to 84 and Section 100 of the Representation of the People Act, 1951, and in paragraph No.8 of the said order it was held that, " it is also essential for the election petitioner to aver by pleading material facts that the result of the election insofar as it concerned the returned candidate has been materially affected by such breach or non-observance". It was further held that, "such material facts need to be pleaded and pleading in Election Petition cannot be vague".

15. Thus, perusal of these authorities, on which the reliance is placed by learned counsel for the Petitioners, make it clear that these authorities pertain to the Election Petition filed under the Representation of the People Act, 1951. The said Act contains a specific provision in Section 83, which lays down as to what should be the contents of the petition. It reads as follows:

"83. Contents of petition.--

(1) An election petition--

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the

commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:..."

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16. Thus, the Election Petition filed under Representation of the People Act, 1951, has to comply with a mandatory provision relating to setting forth full particulars of any corrupt practice or the concise statement of the material facts on which the Petitioner relies and in view thereof in those authorities, it was held that, "if the allegations are vague, there is breach of mandatory provision of Section 83(1) of the said Act".

17. As against it, there is no such provision in Maharashtra Co-operative Societies Act, 1960. Under this Act, the disputes relating to Election are covered under Section 91 and it provides that, any dispute touching the Constitution, elections of the committee or its officers, conduct of general meetings, management or business of society shall be referred by any of the parties to the dispute to the Co-operative Court. This provision nowhere states that the dispute referred to Co-operative Court should contain the particular details or the material facts. The Maharashtra Co-operative Societies Act, 1960, thus is conspicuously silent about similar such provision like Section 83 of the Representation of the People Act, 1951.

18. It is true that the absence of such provision does not absolve the Respondent Nos.1 and 2, who had filed the Dispute, from stating all the material facts on which they are challenging the Election of the successful candidates and hence it has to be considered whether such material facts are pleaded in the Dispute filed by them before the Co-operative Court.

19. The perusal of the averments made in the said Dispute

goes to show that the Respondent Nos.1 and 2 have challenged the "Results of Election" on two grounds. First ground, they have stated in paragraph No.3 of the Dispute as follows:

"The Disputants filled in the nomination for contesting the said elections from the Open category and the Opponent no.2 also filed in the form for contesting the election from the qualified professional and experts" viz. chartered accountant or law graduate seat. However the Opponent no.1 rejected the nominations of the Disputants on the ground that the Disputant no.1 did not hold a valid graduate certificate from the U.G.C. approved University and that the Disputants did not possess the requisite number of shares for contesting the said elections."

20. Thus, as regards the first ground, it has to be held that there are sufficient pleadings.

21. The second ground, on which the Respondent Nos.1 and 2 have challenged the Election is the amendments made in the bye-laws of the Society, as a result of which, their right to contest the Election was taken away.

22. In respect of this ground also there are detail averments in paragraph No.4 to 24. Respondent Nos.1 and 2 have stated therein that the present Petitioner-Bank through its Chairman and Director viz. The other Petitioner Mr.Mulchandani Amar Sadharam had in the last year amended the bye-laws of the Society, at-least three times, for their own interests and the same were, time to time, challenged by the Respondent Nos.1 and 2 before the Divisional Joint Registrar, as also before the Co-operative Court; the said disputes are still pending. In the meantime, Divisional Joint Registrar has passed the order thereby rejecting the appeals of the Respondent Nos.1 and 2 and therefore, they have approached the Minister and the said Revisions against the orders are pending.

23. In paragraph No.5, of the Dispute, Respondent Nos.1 and 2 have specifically stated that, during the pendency of this litigation in respect of the amendment of the bye-laws of the Society, Respondent Nos.1 and 2 have applied for Additional Shares and for Transfer of

Shares. However, the Petitioner- Mr.Mulchandani Amar Sadhuram, who was the Chairman, with the help of the Board of Directors, was pleased to refuse the same on some pretext and another. Whereas, such allotment of Additional Shares was made in respect of other persons, namely, Respondent Nos.8, 9 and 15. It was further stated in paragraph No.8 that the Election was materially affected due to the act of the Petitioner-Bank and the Petitioner- Mr.Mulchandani Amar Sadhuram, thereby not granting additional shares to the Disputants to contest the Election and thereby acting in indiscriminately manner, restrained the Disputants from contesting the Election.

24. In paragraph No.9 of the petition, Disputants have given all the details as to how an application was made for additional shares and how it came to be refused, whereas such Additional Shares were allotted to other members. The Disputants have also quoted the relevant bye-laws, the breach of which is committed and also how the transfer of shares by amending Bye-laws No.13 was itself illegal.

25. In paragraph Nos.20 and 21 of the Dispute, Respondent Nos.1 and 2 have further stated how their nomination came to be rejected illegally and incorrectly; only on the ground of non holding of shares of Rs.25,000/- relying on the provision No.31 (v) of the bye-laws, even though the said bye-laws was under challenge and hence not final and applicable. In paragraph No.23, they have further stated, how the Election was vitiated by taking away their right to contest the Election. In paragraph No.22 and 23, the Disputants have stated how in this manner Respondent Nos.1, 2 and 17 were declared elected as unopposed.

26. Thus, it can be seen that the Respondent Nos.1 and 2 have stated in the Dispute sufficient material facts and the details on account of which according to them, the Election was not conducted in a just and fair manner. Therefore, this is not the case, where it can be

said that no cause of action is disclosed or the entire chain of events, which constitute the cause of action is incomplete, so as to cause any material irregularity or illegality in the petition or to cause any prejudice to the Petitioners, so as to reject the Dispute under Order-7 Rule-11(a) of C.P.C..

27. As both the Courts below have rightly considered all these aspects of the case and then rejected the Petitioners' application filed under Order-7 Rule-11(a) of C.P.C., the impugned order passed by the Co-operative Court and confirmed by the Revisional Court being just, legal and correct; no interference is warranted therein.

28. Both the Writ Petitions, therefore, stand dismissed.