

(1993) 04 BOM CK 0004

In the Bombay High Court

Case No : Writ Petns. No's. 791 and 1333 of 1993

Ramkishan Bhanudas Shinde and others

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 28-04-1993

Acts Referred:

Constitution of India, 1950 — Article 227

Maharashtra Co-operative Societies Act, 1960 — Section 11, 154, 22, 73(i)(c), 91

Citation : (1993) 04 BOM CK 0004

Hon'ble Judges : N.P. Chapalgaonker, J

Bench : Single Bench

Advocate : R.N. Dhorde in W.P. No. 791 of 1993 and V.J. Dixit in W.P. No. 1333 of 1993, for the Appellant; P.B. Varale, Asst. Govt. Pleader for Respondents Nos. 1 to 4 and 7 V.J. Dixit to 11, M.Y. Deshmukh for Respondent No. 6 in W.P. No. 791 of 1993, M.Y. Deshmukh for Respondent Nos. 1 and 2 and P.B. Varale, Asst. Govt. Pleader for Respondent Nos. 3 to 6 in W.P. No. 1333 of 1993, for the Respondent

Final Decision : Allowed

Judgement

N.P. Chapalgaonker, J.—Since both these writ petitions pertain to the dispute about the election of Sonai Vividh Karyakari Seva Sahakari Sanstha Maryadit, Sonai and require identical questions to be decided, they are being disposed of by this common judgment.

2. Sonai Vividh Karyakari Seva Sahakari Sanstha Maryadit, Sonai is a notified Society within the meaning of section 73(i)(c) of the Maharashtra Co-operative Societies Act, 1960 (hereinafter called as "the Co-operative Societies Act") and the District Deputy Registrar, Co-operative Societies, Ahmednagar published a Notification on 13th November 1992 thereby publishing programme in respect of preparation of the list of voters of the election of the aforesaid Society. Provisional list was to be published on 23-11-1992. Objections and claims were filed before 7-12-1992 and those were required to be decided before 21-12-1992 and final list of voters was to be published on 30-12-1992. The date for the

publication of the final list of voters was later postponed to 10-1-1993.

3. On 5-12-1992, Shri Ramchandran Shete-Respondent No. 5 in the Writ Petition No. 791 of 1993, filed an application contending that members Appasaheb Shete, Mukunda Kulkarni and Sangeeta Darandale have been shown to be minors, but now they have attained majority and, therefore, their names should be shown as major in the voters" list. .This application was accompanied by the school leaving certificates mentioning dates of birth of these persons. Rambhau Ambadas Chandgode and others had also filled objections and all these objections were considered by the District Deputy Registrar who was also the Election Officer. He was pleased to direct Assistant Registrar to hold enquiry and after considering the inquiry report of the Assistant Registrar, was pleased to correct the voters" list. The final list of voters was accordingly published on 15-1-1993 and, thereafter, the election programme was published on 27-1-1993. The election programme published called the constituency to elect 10 members of the managing committee. Last date for filing the nomination papers was 8th February 1993 and list of nominations was to be published on the following day. Scrutiny was to take place on 13-2-1993. List of valid nominations was to be published immediately after the scrutiny. 28-2-1993 was the last date for withdrawal and the voting was to take place on 14-3-1993. It appears that after the publication of this programme, application was moved by Respondent No. 5- Shete to Assistant Registrar, Co-operative Societies, Newasa purporting to be u/s 11 of the Co-operative Societies Act alleging that the voters" list includes about 1154 voters, who are not qualified. It was alleged that residents of villages which are outside the area of operation of the Society are included in the voters" list. The Assistant Registrar, Co-operative Societies, Newasa was pleased to pass an order on 11-3-1993 allowing the said application (described in the order as Appeal) partly holding that 232 voters listed in Annexure A and also holding that 351 voters in Annexure B are not entitled to vote at the election of the managing committee of the Society for the year 1992-97. This order dated 11th March 1993 came to be challenged before the Divisional Joint Registrar. When the matter was pending before the Assistant Registrar, Co-operative Societies, Vishwasrao Gadakh, Chairman of the Society moved the Divisional Joint Registrar, Co-operative Societies, Nasik by way of revision application u/s 154 challenging the proceedings initiated by the Assistant Registrar u/s 11 of the Act. The Divisional Joint Registrar was pleased to pass an order of status quo on 1-3-1993 but, it appears that the Assistant Registrar"s order came to be passed thereafter on 11-3-1993.

4. Writ Petition No. 791 of 1993 challenges this order of the Assistant Registrar, Newasa and prays that all the voters who are there in the final list of voters published on 15-3-1993 should be allowed to participate in the elections.

5. Writ Petition No. 1333 of 1993 challenges order of the Assistant Registrar but only so far as it rejects part of the request of the petitioner to disqualify about 600 disputed members of the Society and also prays for a direction that the

election process be quashed and fresh elections be ordered.

6. Writ Petition No. 791 of 1993 came up for hearing before this Court on 12-3-1993 and this Court (Coram : M. S. Vaidya, J.) was pleased to allow the continuance of the election process but merely directed that the ballot papers of the persons who have been held to be not entitled to vote by the Assistant Registrar shall be kept separately and the result of the counting should not be declared until further orders of this Court. In furtherance of this order, on 14-3-1993, voting has taken place and on 20-3-1993 this Court granted "Rule" in these petitions and fixed it for final hearing on 27-3-1993. It is being heard today.

7. I have heard Shri R. N. Dhorde, learned Counsel appearing for the petitioner in Writ Petition No. 791 of 1993 and Shri V. J. Dixit, learned Counsel appearing on behalf of the petitioner in Writ Petition No. 1333 of 1993.

8. Shri Dhorde submits that since election process is on, Assistant Registrar, Co-operative Societies had no jurisdiction, to alter the voters' list and direct that some of the voters whose names have been included in the list of final voters should not be allowed to vote. It was further contended by him that a proper remedy to decide such questions of fact would be a dispute u/s 91 and it would not be competent and proper for this Court to enquire into it in the exercise of its power of superintendence under Article 227 of the Constitution of India.

9. Shri V. J. Dixit, appearing for the petitioner in the second writ petition, submitted that the basis of valid election is the valid voters' list and if disqualified persons have been wrongly included in the voters' list, it can be corrected and the powers vested in the Registrar u/s 11 can be invoked by aggrieved party at any time. Shri Dixit further submitted that after giving due hearing, Assistant Registrar was pleased to disqualify such voters and that part of his judgment is perfectly justified. He further contended that rest of the allegations in respect of 600 disputed voters was not properly considered by Assistant Registrar and, therefore, the matter requires to be sent again to the Assistant Registrar for further enquiry in respect of 600 voters who are wrongly held to be qualified by him. Shri Dixit further contended that there is unusually large number of non-borrowers in the Society and Co-operative Societies Act would not permit management of a Co-operative Society by the non-borrower members.

10. Section 11 of the Maharashtra Co-operative Societies Act reads :

11. Power of Registrar to decide certain questions. - When, any question arises whether a person is an agriculturist or not, or whether any person resides in the area of operation of the society or not, or whether a person is or is not engaged in or carrying on any profession, business or employment, or whether a person belongs or does not belong to such class of persons as declared under sub-section (1A) of section 22 and has or has not incurred a disqualification under that sub-section, such question shall be decided by the Registrar and his decision

shall be final, but no decision adverse to any such person shall be given without giving him an opportunity of being heard.

If a Co-operative Society is established for the benefit of a particular class of individuals who are engaged in a specific profession, business or are in such employment, bye-laws normally provide that a member shall be engaged in the said profession, business or employment. If a Co-operative Society has got an area of operation under the bye-laws, then residential qualification is laid down in the bye-laws. A dispute may arise as to whether a person is engaged in a particular profession, business or employment or is normally resident of a particular area and Section 11 of the Act gives power to the Registrar to decide such question. If an objection is taken for inclusion of a member in the voters' list or a claim is made by a person who is not included in such list, aforesaid question may arise for the determination of the Registrar u/s 11 of the Act. Section 11 is an enabling provision and will have to be read along with other provisions of the laws. It cannot be read to mean that the power u/s 11 can be invoked any time and even after finalisation of the list of voters. Elections of the Co-operative Societies are to be conducted as per the scheme laid down by the Act, Rules and bye-laws. If the Rules provide for a specific machinery and a specific time limit for consideration of the objections and claims, power u/s 11 will have to be exercised during that period only, if the election process is in progress. Registrar has no power to alter final list of voters published under the rules and bye-laws.

11A. Rule 56-D of the Maharashtra Co-operative Societies Rules, 1961, deals with the claims and objections to the provisional list of voters and the publication of final list of voters. It reads :

56-D. Claims and objections to the provisional list of voters, and the final list of voters, -

(1) When any provisional list of voters is published for inviting claims and objections, any omission or error in respect of name or address or other particulars in the list may be - brought to the notice of the Registrar in writing by any member of the Society concerned, who is a voter or any representative authorised to vote on behalf of such society during office hours within 15 days from the date of publication of the provisional list of voters.

(2) The Registrar shall, after making such enquiry as deemed necessary in this behalf, consider each claim or objection, and give his decision thereon in writing to the persons concerned within 10 days from the last date prescribed for receiving the claims and objections and the list shall be conclusively final voters' list.

Therefore, in the case of notified Societies to which Chapter V-A of the Maharashtra Co-operative Societies Rules, 1961 applies, any claim or objection can be filed within 15 days of the publication of the provisional list of voters and Registrar is required to give decision in respect of the said claim or objection

within 10 days from the last day prescribed for receiving the claims and objections. While exercising his jurisdiction under this rule, Registrar invokes power u/s 11 but he cannot entertain any claim or objection after prescribed date and alter the final list of voters already published.

12. Process of election is required to be completed within a stipulated period and elections are to take place periodically as provided by the statute. Therefore, time limit set out for each stage by the Statute and the rules governing that election carries paramount importance, and they should be adhered strictly. To hold that power u/s 11 can be exercised by the Registrar to alter the final list of voters at any time would be in derogation of the principles of election law. Finality attached to the voters' list should remain intact till the election results are declared. If the final list of voters is also altered, it may result in many anomalies. It is likely that name of candidate whose nomination paper is held valid may also be struck out from the list of voters by any subsequent order. This is not permissible in election law as the question whether a particular candidate is qualified or not will have to be determined on the basis of the facts relating to this as they are on the last day of the filing of the nomination paper. Whether a person is qualified to be a voter or not will have to be determined on the date of the publication of the list of voters. Once the list is published finally, it cannot be altered by any authority and even by the Registrar acting u/s 11 of the Act.

13. If the election process is over, validity of the election can be challenged and if the validity of the list of voters is also permissible ground for such challenge, it can be considered in election petition. But till then, voters' list cannot be altered by the exercise of the powers u/s 11 of the Maharashtra Co-operative Societies Act. Therefore, Order dated 11-3-1993 passed by the Assistant Registrar, Co-operative Societies, Newasa in Appeal No. 41 of 1993 will have to be set aside.

14. A grievance was made by the petitioner in Writ Petition No. 1333 of 1993 that he was not given inspection of some of the relevant record of the Society. The record of the Co-operative Society must be accessible to all the members and they should be allowed to inspect it at reasonable hours. Petitioner is at liberty to approach the Registrar to take necessary action to enable the petitioner to inspect the record and take necessary copies.

15. Writ Petition No. 791 of 1993 is, therefore, allowed. The order of the Assistant Registrar, Co-operative Societies, Newasa - Respondent No. 4 - dated 11-3-1993 in Appeal No. 41 of 1993 is quashed and set aside. Writ Petition No. 1333 of 1993 is dismissed. However, it is made clear that this Court has not expressed any opinion whether the persons held to be disentitled for voting at the election are valid members of Sonai Vividh Karyakari Seva Sahakari Society Limited and whether 600 more members who are disqualified have been included in the final list of voters. These questions have not been considered by this Court on its merit and the petition is being disposed of only on the ground that after the election process is over and voters' list is finalised, the nominations have been filed and the scrutiny is over, any change in the voters' list is not permissible in

election process. Interim relief restraining declaration of result stands vacated. Rest of the process of the election to continue. Rule made absolute in Writ Petition No. 791 of 1993 and Rule is discharged in Writ Petition No. 1333 of 1993. In the circumstances of the case, there be no order as to the costs.