

(2017) 09 BOM CK 0042
In the Bombay High Court
Case No : 2071 of 2017

Shri Vijay S/o Deorao Parse, & Ors.

APPELLANT

Vs

The Assistant Registrar, Co-operative Societies (Dairy),
Nagpur, & Ors.

RESPONDENT

Date of Decision : 22-09-2017

Acts Referred:

Maharashtra Co-operative Societies Act, 1960, Section 165(2), Section 165(1) -
Maharashtra Government Society (Election to Committees) Rules, 2014, Rule 20, Rule 20(3)

Citation : (2017) 09 BOM CK 0042

Hon'ble Judges : S. C. Gupte

Bench : SINGLE BENCH

Advocate : A. M. Ghare, M. A. Barabde

Judgement

1. Heard learned counsel for the petitioners and learned Assistant Government Pleader for respondent No.1/State.
2. Rule. Rule made returnable forthwith and taken up for hearing with consent of counsel for the parties.
3. The subject matter of challenge in the present writ petition is an order passed by the Election Officer appointed to conduct elections to the Managing Committee of Ekattamik Matsyotpadan Vikas Sahakari Sanstha Maryadi (respondent No.3), which is confirmed in appeal by the Assistant Registrar, Cooperative Societies (Dairy), Nagpur.
4. The petitioners are members of respondent No.3 - society. The original executive committee of respondent No.3 - society was superseded by an order passed by Assistant Registrar, Cooperative Societies under Section 77A on 25th August, 2016. The Assistant Registrar subsequently appointed respondent No.2 as the Election Officer for conducting elections to the executive committee of the society. The election programme was published on 27th February, 2017.

According to the election programme, a total number of eight directors were to be elected from the general category constituency, whereas five directors were to be elected from reserve constituencies such as backward classes, women, etc.. The petitioners submitted their nomination forms for contesting the election from the general category constituency. The forms were rejected by respondent No.2 on the ground that the proposers and seconders of the forms in the case of the petitioners had proposed or seconded more than one candidate. The rejection was challenged by the petitioners before the Assistant Registrar, Co- operative Societies (respondent No.1 herein). By his impugned order dated 27th March, 2017, the Assistant Registrar rejected the petitioners' appeal on the ground that according to the rule for nomination of candidates contained in the Maharashtra Cooperative Society (Election to Committees) Rules, 2014, no proposer or seconder could propose or second more than one candidate from the same group. The rejection of their nomination forms by the Election Officer and repelling of their challenge to it in appeal by the Assistant Registrar are impugned by the petitioners in the present petition.

5. In exercise of powers conferred by Sub Sections (1) and (2) of Section 165 of the Maharashtra Cooperative Societies Act, 1960, the Government of Maharashtra has made Rules for conduct of elections to Committees of cooperative societies, called the Maharashtra Government Society (Election to Committees) Rules, 2014 (hereinafter called "the election rules"). Rule 20 provides for nomination of candidates. Any member, whose name appears in the final list of voters, may be nominated as a candidate for the election, if otherwise qualified to be chosen under the provisions of Maharashtra Cooperative Societies Act or Rules framed thereunder and the byelaws of the concerned society. Every nomination paper presented by a candidate has to be in Form E5 prescribed under the Rules. The nomination form inter alia contains the names of the proposer and the seconder. Sub Rule (3) of Rule 20 is in the following terms -

"Any person whose name is entered in the list of voters may be a proposer or seconder for nominating a candidate for election:

Provided that, in the case of election from constituency of societies, the proposer and the seconder shall be from the same constituency except reservation falling under section 73B and 73C."

6. Neither Sub Rule (3) nor Form E5 suggests that there is any restriction on the proposer or seconder to propose or second, as the case may be, not more than one candidate for the election to the committee. Learned A. G. P. for the State, relying on the language of the Sub Rule, particularly, article "a" appearing both before the words "proposer or seconder" and "candidate for election" in Sub Rule (3), submits that the inclusion of article "a" indicates that one proposer or seconder can nominate one candidate for election. Article "a" appearing in Sub Rule (3) does not suggest anything of the kind. It merely provides for eligibility of a person, whose name appears in the list of voters, to be a proposer or seconder for nominating a candidate to the election. It means nothing more and

nothing less. If there was to be any restriction on the person appearing in the list of voters to be a proposer or a seconder, as the case may be, for one candidate alone, the provisions should have contained a stipulation to that effect. Not only is there no such stipulation in Sub Rule (3) of Rule 20, even Form E5, which is a form of nomination paper and which contains particulars of the proposer and the seconder, does not contain any declaration on the part of the proposer or the seconder, as the case may be, to the effect that he proposes or seconds only the candidate appearing in the nomination paper and no one else. Reading of Sub Rule (3) of Rule 20 and Form E5 together makes it apparent that the Sub Rule merely provides for eligibility condition of a proposer or seconder, namely, existence of his name in the list of voters. If his name is entered in the list of voters, he could be a proposer or a seconder. There is no restriction in the Rules prohibiting him from proposing or seconding more than one candidate.

7. Quite apart the lexicological consideration for the interpretation of the subrule, even logically it makes scarce sense to restrict the number of candidates to be nominated or seconded by a single individual to one. After all, there are eight directors to be elected from the general category. If each voter would have to vote for eight candidates, there is no reason why a proposer or a seconder can propose or second only one candidate.

8. Accordingly, the impugned rejection of nomination forms by the Election Officer and its confirmation in appeal by the Assistant Registrar suffer from a grave legal infirmity and cannot be sustained. The mandate of the law is plain and clear. No nomination form can be rejected by the Election Officer under the election rules on the ground that the proposer or seconder of the form has proposed or seconded, as the case may be, more than one candidate.

9. Rule is, accordingly, made absolute and the impugned order of the Election Officer and the Assistant Registrar are quashed and set aside. The nomination forms of the petitioners stand unconditionally accepted.

10. During the pendency of the petition, this Court had, by an order dated 6th April, 2017, directed the Election Officer to permit the petitioners to contest the election by including their names provisionally in the list of final contesting candidates and allot symbols to them accordingly. The result of the election was, however, not to be declared without further orders of this Court. In pursuance of these directions, the petitioners have been provisionally included in the list of contesting candidates and the election programme was duly conducted by the Election Officer after allotting symbols to them. By a further order dated 6th September, 2017, the Election Officer was directed to count votes and submit the result of the elections in a sealed cover to this Court. The Election Officer has, accordingly, submitted the result of the election in sealed cover to this Court. The cover is opened with consent of all parties. Since the impugned rejection of the nomination papers is set aside, the names of the petitioners in the list of final contesting candidates are treated as final. The results be declared accordingly.