

(2015) 03 BOM CK 0425
In the Bombay High Court
Case No : Writ Petition No. 3454 Of 2015

Suresh

APPELLANT

Vs

District Co-operative Election Officer

RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

Citation : (2015) MCR 804

Hon'ble Judges : R.M. Borde and V.K. Jadhav, JJ.

Bench : Division Bench

Advocate : Mr. M.S. Deshmukh, Advocate, for the Petitioner; Mrs. A.V. Gondhalekar, AGP, for the State; Mr. V.D. Salunke, Advocate, for the Respondent no. 2; Mr. R.N. Dhorde, Senior Counsel instructed by Mr. Vishal Bagal, Advocate, for the Respondents 3 and 4

Final Decision : Partly Allowed

Judgement

R.M. Borde, J.—Heard.

2. Rule. Rule made returnable forthwith. With the consent of the parties, petition is taken up for final disposal at admission stage.

3. Petitioner is praying for quashment of the order dated 23.03.2015 passed by the District Co-operative Election Officer @ Divisional Joint Registrar, Co-operative Societies, Aurangabad, directing deletion of name of petitioner from the final list of voters prepared for the purpose of election to the Managing Committee of Parbhani District Central Co-operative Bank, Parbhani.

4. Petitioner claims that he is a member of Savta Mali Shetkari Dhanya Adhikosh Sahkari Sanstha Maryadit, Bhogaon Sable, Tq. & Dist. Parbhani. The society adopted a resolution seeking amendment to the bye-laws thereby extending the area of operation of the society including village Pedgaon as well as village Panhera. The resolution was adopted in the general body meeting of the society dated 05.02.2015. The proposal for amendment to the bye-laws was submitted to the Assistant Registrar, Cooperative Societies, Parbhani under section 13(1) of

the Maharashtra Cooperative Societies Act and the amendment was approved by the Assistant Registrar on 24.02.2015. The name of petitioner was forwarded by the society as a nominee for the purpose of election to the District Central Cooperative Bank. The name of the nominee i.e. petitioner appeared in the provisional voters list published on 02.03.2015. Respondents 3 and 4 raised objection for inclusion of name of petitioner as a nominee / delegate of the primary society on the ground that petitioner is not resident of village Bhogaon Sable and the place of residence of petitioner falls outside the area of operation of the society. Petitioner caused appearance before the District Co-operative Election Officer in pursuance to the notice as regards objection raised by respondents 2 and 3 and submitted his reply. Petitioner contends that he is resident of village Pedgaon and the said village falls within the area of operation of respondent no. 2 - primary society by virtue of amendment adopted by the society. It is contended that respondent no. 1 is expected to cause inquiry in respect of electoral rolls within the ambit of rule 11 of Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 and he cannot embark upon an inquiry concerning the matters beyond the scope of the rules.

5. The District Co-operative Election Officer after considering the contentions raised by both the parties reached conclusion that petitioner is resident of village Bhogaon Sable which area falls outside the area of operation of respondent no. 2 - society as on the date on which resolution for adopting name of petitioner as nominee of respondent no. 2 - society was passed by the primary society. Respondent no. 1, as such, directed deletion of name of petitioner from final list of voters prepared for the purpose of election to the District Central Co-operative Bank. Petitioner contends that the order passed by the District Co-operative Election Officer is illegal for the reason that he cannot embark an inquiry as to whether a nominee/delegate is resident of particular area or not or that whether said village falls within the area of operation of the primary society or not. The scope of inquiry to be conducted by respondent no. 1 is in respect of matters covered by Rule 11 of the Rules of 2014. It is also contended that even on consideration of the factual aspects, the order directing deletion of name of petitioner is unsustainable.

6. The objector contends that in fact petitioner is not resident of village Bhogaon Sable and is a resident of Parbhani. Petitioner by making false representation has secured membership of respondent no. 2 - society. The area of operation of respondent no. 2 society is limited to the extent of village Bhogaon Sable and since the petitioner, even according to him, if considered to be resident of Pedgaon, said village was also not included in the area of operation of respondent no. 2 on the date of adoption of resolution resolving to forward name of petitioner as delegate of respondent no. 2 society. It is also pointed out that the Assistant Registrar has registered the bye-laws on 24.02.2015 and in view of provisions of Maharashtra Co-operative Societies Act, said bye-laws would be operative from the date of its registration. It is contended that since the petitioner is resident of an area beyond the jurisdiction of respondent no. 2

society, he cannot represent the said society as its delegate.

7. Rule 10(2) of the Election Rules of 2014 provide that where a society or firm is a member of society, the District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer shall publish a date for calling names of representatives, one hundred and fifty days prior to the date of expiry of the term of office of the committee and such society shall send the name of representative to the office of the District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer at least 120 days prior to the date of expiry of the term of office of the Committee. The representative authorised by a particular society shall be an active member of the society. Rule 11 of the rules reads thus :

11. Claims and objections to the provisional list of voters and the final list of voters for the societies having society or societies and individuals as members :

(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 District Co-operative Election Officer or Taluka or Ward co-operative Election Officer in writing by any member of the society concerned who is a voter or representative authorised to vote on behalf of such society during office hours within ten days from the date of publication of the provisional list of voters.

(2) Any member of the society concerned making a claim or raising objection shall do so by a separate petition, which shall be presented to the District cooperative election Officer or Taluka or Ward Cooperative Election Officer during office hours, before the late date published for inviting claims and objections. Such claims or objections shall be preferred in writing and state the grounds on which the claim is based or the objection is raised, as the case may be.

(3) The District Co-operative Election Officer or Taluka or Ward co-operative Election Officer shall, after making such enquiries as deemed necessary in this regard, consider each claim or objection, and give his decision thereon in writing to the persons concerned within ten days from the last date prescribed for receiving the claims and objections and final voters list should be published within the period fifteen days from the last date prescribed for receiving the claims and objections. The list as finalized by the District Co-operative Election Officer or Ward Co-operative Election Officer after deciding all claims and objection shall be final list of voters.

(4) The copies of the final list of voters shall be displayed on the notice board of the District Cooperative Election Officer and also on the notice board of the society at least ten days before the declaration of the election programme and in no case later than fifteen days from the finalization of claims and objections. The District Co-operative Election Officer may also cause it to be published on the official website of the SCEA, if any.

(5) If any change in the final voters list in accordance with sub-rule 4 of rule 10 is required, the District Co-operative Election Officer or the person authorised by him, after making such inquiry as he deems fit, make necessary changes in the final voter list.

8. In the instant matter, according to petitioner, his name has been forwarded by the primary society by adopting a resolution in that behalf to the District Election Officer within a time frame prescribed under rule 10(2) and that he is an active member of the member society. So far as the scope of inquiry by the District Co-operative Election Officer is concerned, it is contended that he is to inquire into the claims and objections which relate to any omission or error in respect of name or address or other particulars in the list which may be brought to his notice in writing by any member of the society concerned who is a voter or representative authorised to vote on behalf of said society during the office hours within 10 days from the date of publication of the provisional list of voters. It is contended that the scope of inquiry by the District Co-operative Election Officer is limited to the extent of objection which can be limited only to the omission or error in respect of name or address or other particulars in the list and nothing beyond this. Sub-rule 3 of rule 11 provides that the District Co-operative Election Officer after making such inquiry as deemed necessary in this regard, consider each claim and objection and give his decision thereon in writing. It is contended that the jurisdiction of the District Co-operative Election Officer to consider the claim and objections is restricted to the matters specified under sub-rule 1 of rule 11 and that the phraseology "such inquiry as deemed necessary in this regard" is referable to subject matter covered by sub-rule 1 of rule 11 alone. It is contended that provisions of rule 11 are pari materia to rule 6 of the Maharashtra Specified Co-operative Societies (Election to Committee) Rules, 1971. The scope of inquiry under Rule 6 of the Rules of 1971 was a matter of consideration in the matter of Dhondiba Parshuram Lokade and others v. Someshwar Sahakari Sakhar karkhana Ltd and others reported in 1979(0) BCI 43. The Division Bench of this Court has observed in paragraphs 40 to 44 of the judgment as quoted below :

40. Thus, under Rule 6(1), all that the Collector is entitled to, and permitted to, do is to ensure the identity of the voter concerned, and if per chance, the identity is not sufficiently established in the provisional voters' list to take steps within the ambit of Rule 6(1) to see that it is. There is nothing in Rule 6(1) which empowers the Collector to hold a detailed inquiry, as was done in the instant case, whether a person is qualified to be on the Register of Members, and if not to delete his name from the provisional list of voters. Under section 38(2) of the Societies Act, the Register of Members is prima facie evidence of membership. It is not open to the Collector to upset that Register by holding an inquiry under Rule 6(1), which contemplates a very summary inquiry, confined only to the aspects set out in that Rule and nothing else.

41. The combined effect of Rules 4, 5 and 6 is that the powers of the Collector

under Rule 6, though not without responsibility, are more in their nature, mechanical. He has to act as a guard or watch-dog and ensure that the identity of every person whose name appears in the provisional voters' list tallies with the person in the Register of Members. The intention behind, and the scope of these three Rules is to ensure that every person whose name appears in the Register of Members, should also appear in the voters' list, so that no person in the Register of Members is left out from the provisional voters' list by reason of some omission or error in respect of the particulars enumerated in Rules 5 and 6.

42. Furthermore, what cannot be lost sight of is that under Rule 4(2), it is an authenticated list that has to be sent by the Society to the Collector. In the Act or the Rules, there is no definition of the word "authenticated". However, the dictionary meaning of the word "authenticate" to be found in Random House Dictionary is : "To make authoritative or valid. To establish as genuine. To establish the authorship or origin conclusively or unquestionably." Thus it must be assumed that the authenticated list required to be sent to the Collector under Rule 4(2) is the correct list and correctly sets out the names of the person appearing in the Register of Members. Under Rule 6, there is no presumption or any scope for inference that the Collector is expected to go out of his way and to do detention work, in the face of the authenticated list furnished to him. In this case, we are informed that the authenticated list has in fact been authenticated by the Chartered Accountant of the Society. There is nothing even remotely to suggest that this list is an other than what is purports to be, namely a correct reproduction of the names of the persons appearing in the Register of Members.

43. It must also be remembered that the scope of the inquiry by the Collector under Rule 6 is not only limited in nature, but is also of an extremely summary nature. Under Rule 4(2), the voters' list must reach the Collector by 15th July and copies of the voters' list must be displayed by 20th July. Under Rule 6(2), the claimant or objector who makes a petition before the Collector must do so by 31st July and under Rule 6(4) the Collector must give his decision on such claim or objection within 10 days, namely by 10th August. These four dates, namely 15th July, 20th July, 31st July and 10th August emphasise the summary nature of the inquiry contemplated by Rule 6. There is nothing in this Rule from which it can ever remotely be inferred that the Collector is authorised or empowered to hold a detailed inquiry as done in the instant case, call for documents to establish eligibility to membership, examine or cross-examine witnesses or otherwise dwell on the question whether a member deserves to be included in the Membership Register or not. The fact that the inquiry under Rule 6, is of a summary nature is also reflected from the fact that against his decision, no appeal has been provided. This emphasises that the inquiry, such as it is, under Rule 6 is not only a very summary inquiry, but also mechanical (though not without responsibility), limited only to the aspects set out in the Rule itself and no more.

44. It was urged on behalf of the Collector that in Rule 6(1) the word,

"omission", must not be read in conjunction with the words immediately following, but must be read only with the words "may be brought to the notice of the Collector". This contention is not borne out by the plain reading of this Rule and merits rejection.

It would be clear on consideration of the observations referred to above that while considering the limits of exercise of powers of the Collector while preparing a list of voters the Division Bench of this Court has held that the rules do not even remotely authorise the Collector to hold a detailed inquiry by requiring production of document to establish eligibility to membership, examine or cross-examine witnesses or otherwise dwell on the question whether a member deserves to be included in the Membership Register or not. The Court ruled that inquiry under section 6 is of summary nature and is reflected from the fact that against said decision no appeal has been provided.

9. Similar view has been expressed by learned Single Judge of this Court while dealing with the matter of Rajan Dinkarrao Pharate and others v. State of Maharashtra and others reported in 1997(Supp.) Bom.C.R.203 : 1997(1) Mh.L.J. 543. The court has observed in paragraph no. 21 of the judgment that "It is true that the Collector cannot under the garb of inquiry under sub-rules 5, 6 and 7 hold the exercise whether such person is entitled to be a member or not. If the Collector in such enquiry goes into entitlement to membership of person shown in the register of members, it would be without jurisdiction.

10. Division Bench of this Court in the matter of Karbhari Maruti Agawan and others v. State of Maharashtra and others reported in 1994 Mh.L.J. 1527 observed while interpreting the provisions of Specified Cooperative societies Election Rules, 1971, that if the Collector being responsible to hold election, meaning thereby valid elections, comes across certain objections and forwards those objections to the Registrar, this by itself will not be assailable. If some irregularity is pointed out to the Collector, he would always be free to bring it to the notice of the Registrar who would be competent to go into the question. It is further observed that the Registrar has all the powers to go into the question of qualification or dis-qualification of the member even when provisional list of voters was published. Since the Registrar can exercise his powers suo motu also these provisions in the statute are not merely enabling but they speak about the duty cast on the Registrar. While exercising his powers, the Registrar will not allow the parties to have fishing enquiries and will not allow withholding of the elections. He has power to seize the record if it is not produced before him by the Society, he has to hear claimants, objectors and affected persons expeditiously and give his orders directing the necessary corrections. But he should do so before the list is finalized and is declared the final list of voters for that election. In view of the law laid down by the Division Bench of this court in the matter referred to above, we are of the view that it would be appropriate to refer the objection to the Registrar who is authorised in law to consider the objections raised in the instant matter.

11. It is to be noted that section 11 of the Rules of 2014 deals with the power of the Registrar to decide certain question. It is provided thereunder that when any question arises whether a person is an agriculturist or not whether any person resides in the area of operation of the society or not or whether the person is or is not engaged in or carrying on any professional business or employment or whether a person belongs or does not belong to such class of persons as declared under sub-section 1(a) of section 22 and has or has not incurred disqualification under, the same 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. On reading aforesaid provisions, it is thus clear that it is within the scope and ambit of the power of the Registrar to decide the question as to whether a person resides in the area of operation of the society or not. In the instant matter, provisionally, said question has been dealt with by the District Co-operative Election Officer which falls within the jurisdiction of the Registrar.

12. In view of law laid down by this Court in the judgments referred to above, we are of the considered opinion that the inquiry to be conducted by the District Co-operative Election Officer under section 11 of the act is circumscribed in relation to the matters referred therein and any other question which falls within the jurisdiction of the Registrar shall have to be dealt with by the said authority and not by the District Co-operative Election Officer.

13. That so far as the amendment to the bye-laws is concerned, the respondents are justified in contending that in view of section 13 of the Act no amendment to the bye-laws of the society shall be valid until registered in the Act. In the instant matter, the amendment has been registered by the Assistant Registrar on 24-2-2015 and as such, it will not have any effect before such date. It is also worth noting that as long as petitioner's name appear in the membership register, he is entitled to exercise his right as a member. It is not a case that petitioner has been expelled by the society taking recourse to section 35 of the Act. It is to be noted that as long as petitioner is a member of society, he is entitled to exercise his right as a member.

14. Respondents have objected to entertainment of the petition on the ground that the process of election has commenced and that in view of the law laid down by the Supreme Court in the matter of *Shri Sant Sant Sadguru Janardan Swami v. State of Maharashtra and others* reported in 2001(8) SCC 509, it would be impermissible for the court to go into the question raised in the matter. The judgment cited above has been considered in the subsequent judgment of the Supreme Court in the matter of *Ahmednagar Zilla S.D.V. & P. Sangh Ltd. v. State of Maharashtra* reported in (2004) 1 SCC 133 : 2004(5) ALL M.R. (SC) 236. In that case challenge was to the electoral roll prepared on the basis of bye-laws which were held to be illegal. The Apex Court repelled the argument that the preparation of electoral roll being intermediary stage of the election process, challenge to the electoral roll cannot be entertained in exercise of writ

jurisdiction. The Apex Court further held that where the voters' list had been prepared on the basis of non-existent rules, it would be illegal and the Court could interfere under Article 226 of the Constitution. In the matter of *Pundlik v. State of Maharashtra and others* reported in (2005) 7 SCC 181 the view expressed in *Ahmednagar Zilla S.D.V. & P. Sangh Ltd.* (cited supra) has been reiterated. The Division Bench of this Court in the matter of *Chandrakant Mahadev Patole and others v. State of Maharashtra and others* reported in 2010 ALL.M.R (Supp) 457 referring to the aforesaid judgment of the Supreme Court has taken a view that interference with election process is permissible if the same was not in conformity with the relevant statutory provisions. In the instant matter, by directing the Registrar to look into the objections raised by objector and tendering a report to the Collector so as to enable him to take appropriate decision in the matter would not amount to interference in the process of election so as to stall the process. Adoption of such course is necessary for bringing the process in conformity with the provisions of law and rules.

15. For the reasons recorded above, writ petition deserves to be allowed partly and the same is accordingly allowed. Hence the following order :

1. Writ petition is allowed. The order impugned in the petition passed by the District Co-operative Election Officer and the Divisional Joint Registrar, Co-operative Societies, Aurangabad on 23.03.2015 is quashed and set aside.

2. With consent of the parties i.e. objector as well as the petitioner, the matter stands remitted for consideration to the District Deputy Registrar, Co-operative Societies, Parbhani. The District Deputy Registrar, Co-operative societies, Parbhani shall consider the objection raised by the respondent/objector as regards entitlement of the petitioner to represent the society in his capacity as delegate and all other relevant objections raised before the District Co-operative Election Officer by the objector and after extending opportunity of hearing to the petitioner as well as objector and the primary co-operative society, shall proceed to tender report on the objection, as expeditiously as possible, preferably within a period of seven (07) days from today. Such report shall be communicated to the District Co-operative Election Officer and the Divisional Joint Registrar, Co-operative Societies, Aurangabad, immediately.

3. The District Co-operative Election Officer shall take further steps in conformity with the report tendered by the District Deputy Registrar, Co-operative Societies, Parbhani as regards objection raised by the objector in the matter.

4. The parties agree to cause appearance before the District Deputy Registrar, Co-operative Societies, Parbhani on 30.03.2015 at 11.00 a.m.

5. it is clarified that the District Deputy Registrar, Co-operative Societies, Parbhani shall proceed in the matter and conclude enquiry and present report as directed above on considering merits of case and in accordance with law without being influenced by the observations made by the District Co-operative Election Officer and Divisional Joint Registrar, Co-operative Societies, Aurangabad, and

previous reports already placed on record during enquiry by District Co-operative Election Officer.

6. Rule is accordingly made absolute. There shall be no order as to costs.

7. Parties to act on authenticated copy of this order.