

(2017) 02 BOM CK 0059
In the Bombay High Court
Case No : Writ Petition No. 2170 of 2017

Uttamrao Kishanrao Jadhav

APPELLANT

Vs

State Co-operative Election Authority

RESPONDENT

Date of Decision : 28-02-2017

Acts Referred:

Maharashtra Cooperative Societies (Election to Committee) Rules, 2014 — Rule 3, Rule 75(2)(b)

Maharashtra Co-operative Societies Act, 1960 — Section 73

Citation : (2017) 3 AIRBomR 171

Hon'ble Judges : S.B. Shukre, J.

Bench : Single Bench

Advocate : Mr. Mahesh S. Deshmukh Advocate, for the Petitioner; Mr. S.R. Yadav, Assistant Government Pleader, for the Respondent No. 1; Mr. S.K. Kadam Advocate, for the Respondent Nos. 2 and 3; Mr. S.B. Ghatol Patil Advocate, for the Respondent No. 4; Mr. R.L. Kute Advocate, for the Intervenor Respondent No. 5

Final Decision : Disposed Off

Judgement

S.B. Shukre, J.(Oral)—Heard.

2. Rule. Rule made returnable forth with and heard finally by consent of the learned counsel for the parties.

3. The petitioners claim that they are the members of respondent No. 4 Society, which is admittedly a type "C" cooperative society. Elections to the Committee of Respondent No. 4 Society were due on 20.12.2016 and a provisional voters list, though as required by law should have been submitted at least 6 months prior to date on which the elections were due, was submitted on 13.12.2016, by the Respondent Society. Considering this delay, the Taluka Cooperative Election Authority fixed the date of 20.12.2014 as the relevant date for reckoning the period of two years of membership up to the due date of elections. The Election Programme was published on 2.2.2017 and the provisional voters list, as

submitted by respondent No. 4 society, which consisted of three separate parts, was published by the Returning Officer on 2.2.2017 and objections were invited. In one of the parts of the provisional list, it was indicated that 38 members of respondent No. 4 society which included the present petitioners did not possess adequate number of shares necessary to make up their minimum required contribution to the share capital of the society. This indication alarmed the petitioners making them apprehend that the petitioners' names may not be included in the final voters list. Petitioners appeared before the Returning Officer Respondent No. 3 and urged him that their names be included in the final voters list. After hearing the petitioners and considering the relevant documents, respondent No. 3 found that as they were removed from membership as per the Resolution passed in the Annual General Body meeting held on 8.12.2015, they were not eligible to be included in the final voters list and accordingly their claims were rejected by the order passed on 9.2.2017. On that very day, the final voters list was published. It is this order, which has been challenged for its legality and correctness in the present petition by the petitioners.

4. Shri M.S. Deshmukh learned counsel for the petitioners has taken several objections, some of them raising questions of law. Taking an exception to respondent No. 3, excluding their names from the final voters list, he submits that Rule 75(2)(b) of the Maharashtra Cooperative (Election to Committee) Rules (herein after referred to as the "Rules of 2014") mandates that, when the Taluka Cooperative Election Officer has to appoint a Returning Officer, he must choose for the job an officer who is from the office of the Cooperation Department. According to him the expression "from office of the Cooperation department" clearly indicates that, the officer to be appointed as a Returning Officer must be a serving officer and that this expression does not include a retired officer or otherwise, the words "from Office of the Cooperation Department" would not have been used. He submits that, in the instant case, admittedly, respondent No. 3 is a retired officer of the Cooperation Department and therefore, he should not have been appointed as Returning Officer. He submits that, if the appointment of the Returning Officer is in breach of mandate of Rule 75(2)(b), the whole election programme published by the Returning Officer and all steps taken by him in the course of election programme stand vitiated.

5. Learned counsel for the petitioners' other objection is in respect of violation of the provisions of Rules 5, 6, and 8 contained in part III of Rules of 2014 in particular, to breach of the time frame to invite the claims and objections. He submits that, while publishing the provisional voters list, the Returning Officer used Form E-3 which is a prescribed form and this form refers to Rules 7 and 10 of Part III of Rules of 2014 and it also means that, it was necessary for the Returning Officer to comply with the mandate of relevant Rules contained in part III of the Rules of 2014.

6. Learned counsel for the petitioners further submits that, prior notice demanding making of minimum required contribution to the share capital of

society, as required in second proviso to Section 26(1) of Maharashtra Cooperative Societies Act, 1960 (herein after referred to as "the Act") was never sent in this case and therefore, the petitioners are entitled to be included in the final voters list. He also submits that, the notice of Annual General Body Meeting which the respondent No. 4 Society claims to have given to the petitioner, though it is a disputed fact, cannot be equated with the demand notice required under section 26(1) of the Act of 1960. According to him individual notice is necessary and since it was never given to the petitioners, petitioners could not have been termed as the persons not eligible to vote. He also submits that, provisions contained in part IX, though special in their nature applicable to type "C" society, are only in addition to the provisions applicable to the societies having individuals as their members as contained in Rules 6 to 9 of Part III of the Rules, 2014 and so compliance with general provisions also is necessary.

7. Shri S.K. Kadam learned counsel appearing for respondent Nos.1 to 3 submits, on instructions, that the expression "from office" in Rule 75(2)(b) would generally convey a meaning that, the officer should have a direct connection with the office and then it would also mean that the officer should be presently serving in the department. He further submits that since Rule 75(2)(b) does not prescribe any form for publication of voters list, for the sake of convenience, Form E-3 prescribed for publication of voters list under Rules 7 and 10 has been used, but that would not mean that even provisions of Rule 7 or 10 are applicable to type "C" society. He further submits that, this is a case which involves disputed questions of law and therefore, at this stage, they cannot be determined. According to him, these questions of facts relating to issuance of demand notice as required under section 26(II), non-removal of the petitioners from the membership of respondent No. 4 society, so on and so forth are in serious dispute and need evidence for their determination which is not possible in writ jurisdiction. Therefore, he submits that an appropriate order in the interests of justice be passed. He also submits that provisions of Rules 6 and 9 of the Rules, 2014 do not apply to type "C" societies.

8. Learned counsel for respondent No. 4 also submits that the provisions of Rules 6 and 9 of the Rules of 2014 are not applicable to a type "C" society and reiterates that, as this petition involves disputed question of facts, it need not be entertained. As regards the objection regarding appointment of a retired officer as Returning Officer, he submits that even a retired officer can be appointed in terms of Rule 75. He submits that writ petition be dismissed with costs.

9. Learned counsel for the intervenor supports the arguments of learned counsel for respondent No. 4.

10. In order to clarify the stand of the State Cooperative Election Authority (for short "the State Authority") on basic objection of the petitioners relating to invalidity of appointment of respondent No. 3 as Returning Officer, Shri S.K. Kadam learned counsel for respondent Nos.1 to 3, in the morning session today sought time to seek necessary instructions from the State Authority which he

indeed received by fax in the second half, vide communication dated 28.2.2017. This communication is now produced before the Court and is taken on record. It is marked "X" for identification. This communication has also been made available for perusal to learned counsel for the petitioners, learned counsel for respondent No. 4 and learned counsel for the intervenor. The communication "X" shows that the State Authority is also of the view that a retired officer cannot be appointed as a Returning Officer under Rule 75(2)(b) of the Rules, 2014 and so the stand of the State Authority by now is loud and clear .

11. Learned counsel for respondent No. 4 and learned counsel for the intervenor, however, do not agree with the stand so taken in the communication "X" by the State Authority, contending that whether an officer to be appointed as a Returning Officer should be a serving officer or a retired officer, is a matter of interpretation, which can be done only by a Court of law. According to them, it is not a correct interpretation of Rule 75(2) (b) and therefore, they submit that an appropriate decision in this regard may be taken by considering the argument already advanced on behalf of the respondent No. 4 and intervenor.

12. As stated earlier, the communication dated 28.2.2017, makes no bones about the stand of the State Authority. It has taken a firm view that Rule 75(2) (b) read with Rules 3 and 2(16) of the Rules of 2014 does not permit District or Taluka Election Authority to appoint a Retired Officer as a Returning Officer. But this is only an opinion of an authority having defining and final control over the conduct of elections in cooperative field in the State and not the least over the law and its interpretation. For the law in action, it is for the Courts to say what is it and how far is it. This has been the job of Courts since the beginning of federal democracies, like the USA and even like ours own ? a quasi ? federal democracy. Honourable Chief Justice John Marshall of Supreme Court of the United States, delivering opinion of the Supreme Court in early 19th century case of Marbury v. Madison (1803 U.S. 2 LEXIS 352) most impactfully summed up the role of the Courts in these words:

" It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the Rule to particular cases, must, of necessity expound and interpret that rule."

So, the learned counsel for the respondent No. 4 and intervenor are right, when they say that a Court shall have a final word in interpretation of law and not a party or even a statutory Authority, not having an authority to interpret the law. But their further argument, the view or the stand of the State Authority reproduced earlier is incorrect, does not appear to be sound in law, for, a closer examination of the relevant provisions Viz. Rules 2(16), 3 and 75(2)(b) of the Rules 2014 shows that the truth disowns them while it toes the line of the State Authority. Let us have a look at the relevant provisions.

13. Rule 2(16) of the Rules of 2014 defines the term "Returning Officer". It reads thus:

"2(16) - "Returning Officer" means any person appointed by the SCEA or by an officer authorised by SCEA in this behalf for the conduct of the election of Societies. "

It is clear that a returning officer can be any person who is appointed by the State Authority or by an officer authorised in this behalf by the State Authority and he is a person who is appointed for the conduct of elections to societies. This definition of the term "Returning Officer" clarifies that any person appointed by the competent authority for the conduct of election of societies is the one who should be called "Returning Officer". The thrust of the definition is upon the purpose for which a person is appointed i.e. conduct of elections and not upon the qualifications of the person so appointed. That is the reason why it does not indicate as to who could be appointed as a Returning Officer or in other words, it does not provide for any qualification for a person to be appointed as a Returning Officer. It would then follow, much to the dis-satisfaction of learned counsel for respondent No. 4 and the intervenor, that "any person", referred to in this Rule does not by itself justify appointment of a even a retired officer as Returning Officer. This Rule, as a matter of fact, does not lay down any criteria for appointing a person as a Returning Officer. We would, therefore, have to look elsewhere for the criteria, if any, to be applied for making an appointment of a Returning Officer. Rule 3 contained in part-I of Rules 2014 dealing with preliminaries, such as application of the rules, definitions and powers of the State Election Authority and Rule 75(2)(b) contained in Part-IX dealing with the special provisions in respect of election of the committee to the type "C" societies, in so far as they are relevant for determining controversy involved in this case, would certainly enlighten us in this regard and so let us consider them:

PART-I

PRELIMINARIES

"3. Power of State Co-operative Election Authority (SCEA)

In order to conduct the elections of the cooperative societies, the SCEA shall have the following powers, namely :-

(i) to appoint any officer or employee of the State Government, or any Co-operative Society, or any Local Body on any post with such designation and duties for the purpose of conducting the elections; and it shall be obligatory on every officer or employee, so appointed to perform the duties assigned to him, failing which, he shall be liable for prosecution for having committed contempt of the lawful authority of the public servant within the meaning of Chapter "X" of Indian Penal Code, 1960.

Provided that, the State Co-operative Election Authority may by general or special order direct any officer or employee of the State Government not below the rank of District Deputy Registrar to exercise the powers under this clause:

Provided further that, such officer or employee shall work under the general

superintendence control of the State Co-operative Election Authority;

(ii)

(iii)

(iv)

(v)"

Part IX

Special Provisions In Respect Of Election Of The Committee To The Type "C" Societies.

75. Election of the Committee to the Type "C" societies.

(1) The provisions of this part shall apply in respect of Type "C" Societies, specified in rule 4(III)

(2) The Election of the Committee of this type of societies shall be conducted as mentioned below:-

(a) These societies shall inform before one hundred eighty days about expiry of term of committee to the Taluka or Ward Co-operative Election Officer with four copies of list of active members

(b) The Taluka or Ward Co-operative Election Officer shall appoint a Returning Officer from office of the Co-operation Department and the Returning Officer shall prepare a election programme with the approval of taluka or Ward Co-operative Election Officer, at the earliest.

(c)"

The above provisions would show that, it is not the case, as contended by the learned counsel for respondent No. 4 and intervenor that, just any person, irrespective of his present connection with his office, field expertise in conduct of elections and knowledge of cooperation department, can be appointed as a Returning Officer.

14. Rule 3(i) confers power to appoint Returning Officer upon the State Authority and while conferring the power, the rule restricts exercise of the power to "any officer or employee" of the State Government or any cooperative society or any local body. Restricting exercise of such power to "any officer or employee" is indicative of the fact that only a serving officer or employee has been contemplated and nobody else. If it were not so, the legislature would have specifically expanded the reach of the power so as to include a retired officer or retired employee by expressly incorporating the category of "retired officer or retired employee" in the rule. When reference is made to "officer" or "employee", such a reference would have to be understood by its" plain and grammatical meaning. The terms "officer" and "employee" in their plain and ordinary sense

would only connote the serving members. These expressions are used unequivocally and admit of no other meaning.

15. Under the first proviso to Rule 3(i) delegation of the power generally conferred by rule 3 upon the State Authority has been permitted. The State Authority can delegate its authority to any person or employee of the State Government not below the rank of District Deputy Registrar to exercise its powers regarding appointment of Returning Officer. Exercise of this power by the State Authority or any other delegated authority is further regulated by the special provisions made in respect of election of the committee to type "C" societies contained in part IX of the Rules of 2014. For the present purpose, Rule 75(2)(b) is relevant which is reproduced earlier. This rule makes it clear that the choice of the Authority having power to appoint Returning Officer is further reduced from the officer or employee of the State Government, Cooperative Society and Local bodies to only officer or employee from office of the Cooperation Department. In other words, the wider choice hitherto available under Rule 3(i) to choose from the vast body of officers and employees of the State Government, local bodies and cooperative societies is now reduced to a small puddle of those from office of the Cooperation Department by these special provisions. When special provisions are made applicable to particular situation or classes, they would have limiting effect upon the scope and ambit of the general provisions, just as a proviso would have on the general provisions. So, what would be relevant for considering the eligibility of a person to be appointed as a Returning Officer would be the provisions of Rule 75(2)(b). This provision, as can be seen from its reading, specifically lays down that only a person "from office of the Cooperation Department" can be appointed as a Returning Officer. When the expression "from Office" is used, it would only mean a presently serving person. After all only a person serving in the office can be said to be a person from the office, as he is the one who is having clear and present connection with the office. A retired person is not the one who "is" from the office and he is the one who is "out of the office" on account of his superannuation having no clear and present connection with the office. To understand the meaning of the words "from the Office", the test is of clear and present connection as only a serving one can be a member of office and a retired one can never be. Besides, if the legislature had intended to also include a retired person, it would have expressly said so, but that is not the case.

16. It is well settled law that the language of a provision must be understood in its plain and grammatical sense and when the provision is unambiguous and unequivocal in its literary sense, there is nothing at all to be interpreted about. Useful reference in this regard may be had to the cases of Patangrao Kadam v. Prithviraj Sayajirao Yadav Deshmukh and others (AIR 2001 SC 1121) and Pandian Chemicals Limited v. Commissioner of Income Tax, Madurai (2003 (5) SCC 590). As already stated, the language of Rule 75(2)(b) and even of Rule 3(i) is clear and unambiguous admitting of no other meaning as so, it would have to be said, these rules read together, contemplate only the person presently serving

with the Cooperation department and never a retired person.

17. We have seen that the provision of Rule 75(2)(b) is so clear and unequivocal that it requires no interpretation at all. However, even if it is assumed, just for the sake of argument, a retired person is contemplated for being appointed as a Returning Officer, under this Rule, still, going by the process of interpretation normally adopted, it cannot be said that, this rule admits of a Retired Person for the purpose of appointment as Returning Officer. If such an interpretation is adopted, it would go against the legislative intent behind the Rule and defeat the purpose of the Rule. The interpretative process is a combination of literal and purposive approaches. In the case of District Mining Officer and Others v. Tata Iron and Steel Co. and another (2001) 7 SCC 358), the Honourable Apex Court observed thus:-

" The process of construction combines both literal and purposive approaches. In other words, the legislative intention i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed."

Thus, in order to find out the legislative intention, not only the ordinary and plain meaning of the words, but also its" context in the light of any discernible purpose or object, for achieving of which the enactment is made must be considered. In the afore stated case, Honourable Apex Court has also reproduced observations of the Honourable Supreme Court in the case of Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd (1987 Vol I, SCC 424) providing deep insights into the nature of interpretative process. It would be useful to reproduce these observations appearing in para No. 33 thus:-

"33. Interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. "

18. The State Authority is the supreme authority in the State, which has the final control and superintendence over the conduct of elections to the committees of cooperative societies and it is under a duty to ensure fairness in conduct of elections. It performs its functions and duties through various officers and employees drawn from the State Government, Cooperative Societies and local bodies. But in case of elections to committees of type "C" societies, the State Authority preforms its function of conduct of elections through persons drawn from the office of the Cooperation Department, as laid down in Rule 75(2)(b) of the Rules, 2014. This rule, as stated earlier, restricts the choice of the State Authority or the delegated authority to only the officers from the cooperation department, in the matter of appointment of Returning Officer. This is for the

reason as is discernible from the text and context of the provision of Rule 75(2) (b), that, the State Authority must have, at its disposal, persons having expertise and experience in the cooperation department on the one hand and must also be in a position to exercise effective control over such persons on the other, in order to ensure free and fair conduct of the elections. Such dual purpose can be achieved when a serving officer or employee from the cooperation department is appointed as a Returning Officer, but it may be defeated if a Retired Officer is so appointed. Achieving of such dual purpose is ultimately in consonance with the legislative intent of conduct of free and fair elections through the State Authority. Therefore, from this perspective also, the category of a Retired Person or employee could not be read into Rule 75(2)(b) read with Rule 3 of the Rules, of 2014.

19. In view of above, one can see that, if any retired person is appointed as Returning Officer, such appointment would exceed the brief of Rule 75(2)(b) read with Rule 3 of the Rules of 2014 and so would be null and void in law. Such Returning Officer, it would have to be said, would have no authority in law to conduct the election to the committee of a cooperative Society.

20. In the instant case, affidavits filed on behalf of respondent Nos.2 and 3 show that, a retired officer from the Cooperation department was appointed as Returning Officer by respondent No. 2, with approval from District Deputy Registrar. But such an approval would not validate otherwise illegal appointment of an ineligible person. Admittedly, the Returning Officer appointed in this case is a retired officer and he has published the election programme. But his appointment being null and void, whatever he has done towards conduct of the election, starting from the first step towards the election i.e. publication of the election programme till further steps, would also be invalid, rather non-est in the eye of law. Thus, the entire election programme and all the steps taken so far, by the Returning Officer, in the instant case have stood vitiated and on this sole ground, this writ petition deserves to be allowed.

21. There are other submissions made on behalf of the petitioners. But having decided the fate of this petition, as above, these submissions do not survive for any consideration.

22. In the result, this writ petition is allowed. No costs.

23. Election programme published on 2.2.2017 is hereby quashed and set aside. Fresh election programme, in accordance with law, may be published.

24. Rule is made absolute in the above terms.