

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4286 OF 2021

Puran Samadhan Shirsat & ors.

.Petitioners

Vs.

The District Deputy Registrar, Co-operative
Societies (4), Mumbai & ors.

.Respondents

Mr. Aseem Naphade a/w. Mr. Saurabh Utangale, Mr. Sarthak
Utangale & Mr. Vedant Joshi i/b. M/s. Utangale & Co., Advocate,
for the Petitioners

Mr. C. D. Mali, AGP, Advocate, for Respondent Nos. 1, 2, 4, 6 & 7 -
State

Dr. Uday P. Warunjikar a/w. Mr. Sumit Kate, Advocate, for
Respondent No. 3

Mr. R. R. Sharma, Advocate, for Respondent Nos. 8 to 13

CORAM : MADHAV J. JAMDAR, J.

DATE : 10.10.2023

ORAL JUDGMENT

1. Heard Mr. Naphade, learned counsel appearing for the Petitioners, Mr. Mali, learned AGP appearing for Respondent Nos. 1, 2, 4, 6 & 7 - State, Dr. Warunjikar, learned counsel appearing for Respondent No. 3 & Mr. Sharma, learned counsel appearing for Respondent Nos. 8 to 13.

2. At the outset, Mr. Naphade, learned counsel appearing for the Petitioners states that Respondent No. 3 is the

Complainant and therefore, he is the contesting party and Respondent No. 5 – Society has been served. He states that all the Respondents are served and affidavit of service is already filed and if it is not filed, same will be filed within one week.

3. The Petitioners are challenging the legality and validity of the order dated 09.08.2021 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai, by which the order dated 19.08.2019 passed by the Deputy Registrar, C. S., (4) Mumbai under Section 66(1)(b) of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 is confirmed (hereinafter referred to as **‘Election Rules’**).

4. By the said order dated 19.08.2019, the District Co-operative Election Officer alias District Deputy Registrar by exercising powers conferred under Rule 66(1)(b) held the 19 members of the Society who were elected as Members for the period between 2017-2018 to 2021-2022, as disqualified from, being the Committee Members and further disqualified to contest election for a period of three years from the date of the order.

5. Before considering the rival submissions, it is necessary to set out certain factual aspects :-

(i) The election of Respondent No. 5 was held on 17.09.2017 as per unamended rules. Unamended rules 65, 66 and 67 are as follows :-

“65. Account of election expenses

(1) Every candidate at an election shall either by himself or by his Election Agent keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his Election Agent between the date of the order calling the election and the date of declaration of the result thereof, both dates inclusive within the period of thirty days from the date of declaration of the result.

(2) The account shall contain such particulars as are specified in rule 67.

(3) The total of the said expenditure shall not exceed such amount as may be notified by the SCEA.

(4) Every contesting candidate at an election shall, lodge with the District Co-operative Election Officer through the Returning Officer an account of his Election expenses within the time and in the manner in rule 67.

66. Disqualification for failure of lodge account of election expenses.

If the District Cooperative Election Officer is satisfied that a person,—

- (a) has failed to lodge an account of election expenses within the time and in the manner required by the last preceding section, and
- (b) has no good reason or justification for

the failure, the District Cooperative Election Officer shall, by order published, in the Official Gazette, declare him to be disqualified for being elected as, and for being, a member of the committee of any society, and any such person shall be disqualified for a period of three years from the date of the order.

67. Particulars of account of election expenses.

(1) The account of election expenses to be kept by a candidate or his election Agent under rule 65 shall contain the following particulars in respect of each item of expenditure from day to day, namely :—

- (a) The date on which the expenditure was incurred or authorized;
- (b) the nature of the expenditure (as for example, travelling, postage or Printing and the like) ;
- (c) the amount of the expenditure :—
 - (i) the amount paid ;
 - (ii) the amount outstanding ;
- (d) the date of payment;
- (e) the name and address of the payee ;
- (f) the serial number of voucher, in the case of amount paid ;
- (g) the serial number of bills, if any, in case of amount outstanding ;
- (h) the name and address of the person to whom the amount outstanding is payable.

(2) All vouchers shall be lodged along with the account of election expenses, arranged according to the date of payment and serially numbered by the candidate or his Election Agent and such serial numbers shall be entered in the account under item (f) of subrule (1).

(3) It shall not be necessary to give the particulars mentioned in item (c) of subrule (1) in regard to items of expenditure for which vouchers have not been obtained.”

6. Thus, as per the said rules, account of all expenditure incurred in connection with the election shall be prepared within the period of thirty days from the date of election of the result. However, there is no time limit fixed for submission of the same to the District Co-operative Election officer. A learned Single Judge of this Court in the matter of ***Mr. Kirit B. Modi v. Mr. Pradhyuman M. Bhagat And Ors***, reported in ***2017 SCC OnLine Bom 3455***, in paragraph 8 of the order held that Rule 65(1) shows that every candidate is required to keep a separate and correct account of all expenditure in connection with the election between the date of the order calling the election and the date of declaration of the result thereof. However, it does not specifically lay down that said account of expenses has to be submitted within a period of 30 days from the date of declaration of the results. Mr. Naphade, learned counsel appearing for the Petitioners relied on the decision of a learned Single Judge of this Court in the case of ***Pooja Vijay Rane Versus Returning Officer (Dy. Registrar C. S), R-S Ward Mumbai and others***, reported in ***2020 SCC OnLine Bom 4983***. In any case, the said period of 30 days expired on 16.10.2017 and undisputedly, in the present case, accounts were submitted on 30.01.2018. Both the

authorities while dis-qualifying the Petitioners had also held that they will not be eligible to contest election for a further period of three years relying upon amended provisions of Rules 65, 66 & 67. These rules are amended on 06.08.2018 and by amendment in Rule 67, it has been provided that every candidate shall give an account of election expenses within a period of 60 days from the date of election with the returning officer.

7. It is significant to note that election in the present case took place on 17.09.2017 and account of election expenses was submitted to the Election officer on 30.01.2018. On 06.08.2018 by amendment, 60 days period was prescribed for submitting account of election expenses with the returning officer. Thus, it is clear that the said amended rule will not apply to the present case. However, both the authorities by applying amended rules, passed the order dis-qualifying the Petitioners as Committee members of the elected committee and also directed that they will not be eligible to contest the election for a further period of three years.

8. It is the contention of Dr. Warunjikar, Advocate that the provision regarding submission of expenditure details is

made to ensure transparency in the election process and same is for ensuing fair election. He states that it is an admitted position that the election was held on 17.09.2017 and the accounts were submitted on 30.01.2018. It is his submission that even assuming that there is no time limit, the account will have to be submitted within a reasonable period and such reasonable period can only be of 90 days and not more than that. However, it is to be seen that admittedly, account of the expenses is submitted to the returning officer within a period of less than five months.

9. The Petitioners have given explanation in their reply dated 14.02.2019 for delay in submitting accounts which read thus :-

“5. I say and submit that election program was conducted till 17.09.2017 (on the date, result of election was declared) and since Returning officer, Mr. S. B. Rokade was busy due to departmental work, sometime remained absent at stage of election program therefore he deputed Mr. K. D. Patil to assist him to conduct election of Society. I say and submit that neither Returning Officer, Mr. S. B. Rokade nor Mr. K. D. Patil have informed or intimated about requirement of expenses of election however Mr. K. D. Patil informed us that since our society comes in “C” Category, no Account of expenses in connection of election is required.

6. It is submitted that on 30.01.2018, 18 elected candidates of Aawaz Panel plus 1 supported Candidates, have submitted Account of Expenses along with bills and vouchers through president/Secretary of Aawaz panel to the Returning officer, Mr. S. B. Rokade and same was confirmed by Dy. Registrar, C. S. "P" Ward, Mumbai vide letter dated 26.10.2018 addressed to this Hon'ble Authority. Hereto enclosed a copy of letter dated 26.10.2018 issued by Dy. Registrar, C. S. "P" Ward, Mumbai to this Hon'ble Authority."

10. It is significant to note that the unamended rules apply to the present case and explanation given by the Petitioners is not taken into consideration by both the authorities.

11. A perusal of Rule 66 clearly shows that it is the duty of the District Co-operative Election Officer to verify whether there are good reasons or justification for failure to submit account. Thus, although there is no time limit fixed at the relevant time and assuming that there is time limit, it is the duty of the District Co-operative Election Officer to see that there are good reasons for justification for failure.

12. Accordingly, the impugned order is totally illegal and

perverse, as the same has been passed on the basis of amended provisions which are not applicable to the present case as also explanation given by the Petitioners has not been taken into consideration at all.

13. Accordingly, the Writ Petition is allowed.

14. The order dated 19.08.2019 passed by the Deputy Registrar, C. S., (4) Mumbai as well as the order dated 09.08.2021 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai are quashed and set aside.

15. Earlier, the Writ Petition was filed by 15 Petitioners. However, thereafter, the Petitioner Nos. 3, 4, 10 & 12 got themselves transposed as Respondent Nos. 10 to 13. Therefore, in fact, there is no challenge on their behalf to the impugned order. However, liberty is granted to Respondent Nos. 10 to 13 to challenge the impugned orders, if they are so advised. However, all the contentions of all the parties including delay and latches, if any, are expressly kept open.

16. The Writ Petition is disposed of in above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)