

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

WRIT PETITION NO.11476 OF 2014

Shri Shashikant V. Bugade

...Petitioner

V/s.

The Cosmos Co-operative Bank Ltd.
And Others

...Respondents

.....

Mr. Anil V. Anturkar, Senior Advocate a/w. Mr. Abhay Anturkar, i/b. Sugandh B. Deshmukh and Tanaji Mhatungade, for the Petitioner.

Mr. A.R. Kumbhakoni, Senior Advocate, for V.B. Chavan, Advocate, for the Respondents.

Ms. Varsha Palav a/w. Ms. Rekha Musale, for Respondent No.1.

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CORAM : S.C. GUPTE, J.

DECEMBER 22, 2014

P.C. :

. The Petition challenges an order passed by Respondent No.2, who is the Returning Officer appointed for conducting the elections to the Board of Directors of the Cosmos Co-operative Bank Ltd. The Cosmos Co-operative Bank Ltd. is a Multi State Co-operative Bank covered by the provisions of the Multi State Co-operative Societies Act, 2002. By the impugned order, Respondent No.2 rejected the Petitioner's nomination for elections to the Board of Directors of Respondent No.1 Bank.

2. The impugned order is challenged on several grounds. Mr. Anturkar, learned Senior Counsel appearing for the Petitioner, pressed two

submissions mainly, for challenging the impugned order. Firstly, it is submitted that the Returning Officer, namely, Respondent No.2 is appointed by the State Government. It is submitted that the provisions of Part IX B of the Constitution of India deal with Co-operative Societies. Article 243 ZK, which provides for election of members of a board of a Co-operative Society require the Superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to a Co-operative Society to be vested in an authority or body, as may be provided for the legislature of a State, by law. Article 243 ZR provides that the provisions of Part IX B shall apply to Multi State Co-operative Societies subject to the modification that any reference to “legislature of a State”, “State Act” or “State Government” shall be construed as a reference to “Parliament”, “Central Act” or “Central Government”, as the case may be. Article 243 ZT of Part IX B provides that notwithstanding anything in that part, any provision of law relating to co-operative societies in force in a State immediately before the commencement of the Constitution (97th Amendment) Act, 2011 (by which the provisions of Articles 243 ZH to 243 ZT were added to the Constitution of India), which is inconsistent with the provisos of Part IX B, shall continue to be in force until amended or repealed by a competent legislature or until the expiration of one year from such commencement, whichever is less. Admittedly, on the date when the Returning Officer passed the impugned order, one year had expired from the commencement of the Constitution (97th Amendment) Act, 2011. Accordingly, it is submitted that the State Government on the date the impugned order was passed, had no authority to appoint any authority or body to conduct the elections to co-operative societies including Multi State Co-operative Societies.

3. Mr. Kumbhakoni, learned Senior Counsel appearing for Respondent No.3, relies on the judgment of the Gujarat High Court in the case of **Rajendra N. Shah v/s Union of India**¹ and submits that the entire Constitutional Amendment Act of 2011 (97th Amendment) inserting Part IX B containing Articles 243 ZH to 243 ZT was held to be *ultra vires* the Constitution of India. Learned Counsel submits that the concerned provisions having been declared to be unconstitutional, no reliance can be placed on those provisions and no order sought from this Court on the basis of those provisions. In response it is submitted by Mr. Anturkar that the unconstitutionality of Part IX B containing Articles 243 ZH to 243 ZT, as determined by the Gujarat High Court, was on the basis of the federal principle; that the decision holding this Article to be *ultra vires* the Constitution of India was on the basis that the co-operative societies are a State subject and no law could be passed or enforced by the Central Legislature without seeking recourse to Article 368(2) of the Constitution of India for ratification by the majority of the State Legislatures; and that in the present case we are concerned with a Multi State Co-operative Society which admittedly falls within the province of the Union Legislature, and that the decision of the Gujarat High Court determining unconstitutionality of the provisions of Articles 243 ZH to 243 ZT would not apply to the provisions made by the parliament in respect of Multi State Co-operative Societies. Secondly, it is submitted that the judgment of the Gujarat High Court will not apply to the facts of our case, since a Division Bench of our Court has merely stayed the operation of the first proviso of Clause (1) of Articles 243 ZH of Part IX B, which prescribes that the maximum number of directors of Co-operative Society shall not exceed 21.

1 2013 SCC OnLine Guj 2242 : (2013) 54 (2) GLR 1698

4. As held by the Supreme Court in the case of **Kusum Ingots & Alloys Ltd. v/s Union of India**² an order passed on a Writ Petition questioning the constitutionality of a Parliamentary Act, whether interim or final, keeping in view the provisions contained in Clause (2) of Article 226 of the Constitution of India, will have effect through the territory of India. Once the provisions of Articles 243 ZH to 243 ZT of Part IX B of the Constitution of India are declared unconstitutional by the Gujarat High Court under Article 226 of the Constitution of India, there is no question of any effect being given to those Articles anywhere in the country. Mr. Anturkar is also not right in his submission that the Gujarat High Court decision in the case of **Rajendra N. Shah** (supra) ought to be restricted to the unconstitutionality of Articles 243 ZH to 243 ZT in so far it applies to co-operative societies and not to Multi State Co-operative Societies. Whatever may be the rationale behind the Court arriving at the conclusion of unconstitutionality, what is declared unconstitutional is the whole of Part IX B containing Articles 243 ZH to 243 ZT. These Articles include Article 243 ZR which applies the provisions of the Articles contained in Part IX B to Multi State Co-operative Societies subject to the modifications referred to thereunder. It is not possible to accept the submission that this Court ought to restrict the declaration of unconstitutionality to the articles in so far as they apply to Co-operative Societies covered by the State List.

5. It is next contended by Mr. Anturkar that in the present case the disqualification of the Petitioner's nomination is on the basis of Section 43 (1)(g) of the Multi State Co-operative Societies Act, 2002. Section 43 (1)(g) provides for disqualification of the nomination of a member of the Society for being chosen on the board of a Multi State Co-operative Society

2 (2004) 6 Supreme Court Cases 254

on the ground of his indebtedness and refusal to pay despite receipt of a notice of default in discharge of such indebtedness. It is submitted that in the present case, there is no indebtedness so far as the petitioner is concerned and secondly, at any rate, even if it is assumed for the sake of argument that there was indebtedness on the part of the Petitioner, admittedly, there is no notice of default issued by the first Respondent Society to the Petitioner in respect of such default. On the other hand, it is submitted by Mr. Kumbhakoni that the Petitioner was aware of the default and the notice issued to the Petitioner on 27 September 2014 for repayment of the amount owed by the Petitioner, must be treated as a default notice. Secondly, it is submitted that this Court has consistently held that once an election process is set in motion, this Court does not ordinarily stay the continuation of the election process on account of any illegality or breach of rules whilst either preparing the electoral rolls or conducting the elections. It is submitted that under Section 84 of the Multi State Co-operative Societies Act, the rejection of the nomination and the result of the election based on such rejection, if any, can always be challenged by an aggrieved person by means of an Election Petition. To counter this argument, it is submitted by Mr. Anturkar that this Court in the case of **Pandurang Hindurao Patil v/s State of Maharashtra**³ has held that where the matter is brought before the High Court sufficiently in advance, the matter can be heard and disposed of before the polling is due to take place and where there is an error on the face of the record such as if a Returning Officer rejects a nomination paper on a wholly inadequate ground, it would save public time and money as well as expense, inconvenience and hardship to the parties if the Returning Officer's action is corrected before the election takes place.

3 1983 Mh.L.J. 1081

6. In the first place, one of the requirements of this exception carved out by this Court to the ordinary rule that once an election is set out in motion, this Court does not ordinarily interfere with it, is that the matter should be brought before the Court sufficiently in advance. Secondly, the infirmity pointed out must be such as would go to the root of the matter and can be conveniently decided without going into the disputed facts of the case. In our case, firstly, this Court is called upon to decide the question of granting of interim injunction just about less than a week prior to the date of the polling. The date of filing nominations is already over. The names of eligible candidates, whose nominations are accepted and who are in the fray for elections to the board of directors are already determined and the polling is to take place soon. Secondly, the questions, namely, whether or not the Petitioner is indebted to the first Respondent Bank and whether or not the notice issued on 29 September 2014 constitutes a default notice within the meaning of Section 43 (1)(g) of the Multi State Co-operative Societies Act, are matters of fact, requiring this Court to go into disputed questions, which may even require leading of evidence. Such matters are best left to the specialized bodies such as the authorities under the Act, which are called upon to decide an election petition challenging the conduct of any particular election. Thus, there is no reason to make an exception to the established practice of this Court not to interfere with an election process of a body, once the election process has been set in motion.

7. In that view of the matter, there is no merit in the writ petition. The petition is rejected. There shall be no order as to costs.

(S.C.GUPTE, J.)