

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1958 OF 2015

SHARAD VINAYAKRAO BHISE

PETITIONER

VERSUS

STATE OF MAHARASHTRA AND OTHERS

RESPONDENTS

Mr.V.D.Salunke, Advocate for the petitioner.

Mr.R.V.Gore, Advocate for respondent No.5.

Mr.K.M.Suryawanshi, AGP for respondent/State.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 23/02/2015

PER COURT :

1. This matter was heard on 20/02/2015, pursuant to which I passed the following order :-

"1. This matter pertains to 'B' type society having a share capital of more than ten lakhs, under the Maharashtra Co-operative Societies Act, 1960 (M.C.S. Act)

2. When a motion for obtaining circulation was moved on 17-02-2015, this Court had directed the petitioner to serve all the respondents and subject to the said direction, urgent circulation was granted for hearing on admission, today. Learned A.G.P. has taken instructions for respondent Nos. 1, 2, 3 and 4. Petitioner has not served the 5th respondent society.

3. Issue is as regards 272 voters included in the preliminary voters list. Objections dated 30-01-2015 and 31-01-2015 have been raised by the petitioners indicating that these 272 voters are not

valid voters in the light of the bye-law No. 6 (3) applicable to the 5th respondent society. The election programme thereby indicating the date of nomination papers till the date of casting votes and declaration of results, has not been declared according to the petitioner. A communication to this effect is received by the petitioner dated 11-02-2015 and is placed on record.

4. Objections raised by the petitioners have been rejected by the impugned order dated 06-02-2015 by the District Returning officer (DRO) cum District Deputy Registrar, Cooperative Societies. It clearly appears that no reasons have been assigned for rejecting the objections of the petitioner.

5. I deem it proper to hear the 5th respondent before passing any orders since it is the society which has submitted the preliminary voters list to the DRO.

6. Due to paucity of time, liberty is granted to the petitioner to serve the 5th respondent along with a copy of this order through Advocate's notice. The 5th respondent shall keep record pertaining to its members available for the perusal of this Court.

7. Looking at the urgency involved, this matter is posted for hearing on 23-02-2015 Monday, in the urgent admission category. Learned A.G.P. who appears for respondent Nos. 1, 2 , 3 and 4 shall communicate this order to the concerned authorities. Parties to act on authenticated copy of this order."

2. Mr.Salunke, learned Advocate confirms that the petitioner does not intend to interrupt the election programme and would not be

contesting any election. Mr.Salunke, however, objects to the manner in which respondent No.1 has declared the election programme on 20/02/2015 despite being before this Court on the same day when this Court passed an order reproduced above. He further submits that the panchnama pursuant to the ante-dated declaration of the election programme dated 21/02/2015 indicates that the election programme is shown to have been published on 20/02/2015 and is affixed on the notice board on 21/02/2015 after 2 p.m., only with the intention of frustrating this petition and for ousting the jurisdiction of this Court.

3. Mr.Gore, learned Advocate for respondent No.5 has appeared in the matter and has kept the entire membership record available. He points out that the paragraph on page No.51 of the petition paper book, which is the second page of the impugned order dated 06/02/2015 indicates that the competent authority has considered the contentions of the petitioner and has accordingly passed the order.

4. On the one hand, he has supported the impugned order and on the other hand, in fairness, he submits that the entire record can be re-looked at by respondent No.2 for passing a fresh order. He insists

that the membership of those persons, objected to by the petitioner, are valid members of respondent No.5 Society and the said Society can place the entire record before respondent No.2.

5. Mr.Gore further submits that the election programme has been declared on 20/02/2015 and the nomination papers have to be filled in between 20/02/2015 upto 24/02/2015. He, therefore, submits that in this backdrop, the petitioner can neither contest the elections nor can he canvass that the members at issue should not contest the elections.

6. Learned AGP has supported the publication of the election programme. In light of the statements of the petitioner and respondent No.5, recorded above, he submits that respondent No.2 who is present in the Court, can rehear the petitioner and respondent No.5 on 24/02/2015 between 11.00 a.m.and 01.00 p.m. The hearing shall conclude at 1.00 p.m. and respondent No.2 will deliver his order on the objection of the petitioner by 5.00 p.m. on 24/02/2015.

7. In the light of the peculiar facts, as recorded hereinabove, the petitioner and respondent No.5 shall address respondent No.2 from

11.00 a.m. to 1.00 p.m. on 24/02/2015. Respondent No.2 shall then pass an appropriate and reasoned order on the objection of the petitioner raised vide applications dated 30/01/2015 and 31/01/2015 by 5.00 p.m. on 24/02/2015.

8. I am passing this order in the light of the statements recorded and to ensure that the election programme is not disturbed. However, I make it clear that in the event respondent No.2 rejects the objections filed by the petitioner, keeping in view that filing of the nomination papers is to end at 3.00 p.m. on 24/02/2015 and the election programme would reach its further stage, the petitioner will then have to exhaust the remedy available in Law in the light of Section 91 of The Maharashtra Co-operative Societies Act, 1960 and Rule 78 of 2014 Rules. Learned A.G.P. to communicate this order to all the concerned.

9. With these directions/observations, the impugned order dated 06/02/2015 is set aside and the petition is partly allowed.

(RAVINDRA V. GHUGE, J.)