

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**APPELLATE SIDE CIVIL JURISDICTION****WRIT PETITION NO. 1035 OF 2015**

Shri Pandurang Baburao Lhase & Ors.

....Petitioners.

Vs.

The Returning Officer @ Co-operative
Officer & Ors.

....Respondents.

Mr. Prashant S. Bhavake for the Petitioners.

Mr. Pradeep D. Dalvi for Respondent Nos. 2 and 3.

Ms. Vaishali Nimbalkar, AGP for Respondent Nos. 1 and 4

CORAM:- ANOOP V. MOHTA, J.

DATE :- 20 FEBRUARY 2015.

PC:-

Rule, made returnable forthwith. Heard finally by consent
of the parties.

2 The Petitioners, being members of the Society, have
challenged endorsement dated 17 January 2015 passed by the
Returning Officer on the provisional list published by the Society as
per the election programme, that resulted into denial of voting rights
to them in the election of the Society.

3 Section 27(10) of the Maharashtra Co-operative Societies Act, 1960 (for short, “the MCS Act”) deals with the aspect of “Defaulters” and further that such defaulters cannot participate and/or vote in such election. In view of the endorsement, the Petitioners are defaulters according to the Society, as well as, the Returning Officer. Right of voting so far as the Petitioners are concerned, is concluded and therefore, there is no question to accept the case of the Petitioners at this stage of election programme, where the stage is of withdrawal of the nominations. These are the submissions of the Society and the Returning Officer.

4 The learned counsel appearing for the Petitioners, on instructions, makes statement that they are not interested in participating in any election of the Society and/or do not want to contest the election of Managing Committee. Therefore, at this stage, what remains to be adjudicated is to their rights to vote in the election. Therefore, in this restricted background, I am inclined to interfere with the order so passed by the Returning Officer for the basic reason that before passing order on 17 January 2015, declaring the Petitioners as defaulters unilaterally, without giving any

opportunity to them at the appropriate time, this itself in my view, is clearly in breach of provisions of law, apart from the basic principle of natural justice.

5 Section 27(10) and/or other provisions, which referred and dealt with the concept of “defaulters” is also mentioned in Section 73C of the Act, in my view, unless declared and/or decided and/or concluded by giving an opportunity and specifically when, at the time of publishing the provisional list as on 31 December 2014, now made endorsement of defaulters against the respective names of the Petitioners. 31 December 2014, which was the date of raising objection to the provisional list. No one had raised the objection, as there was no such endorsement. On 14 January 2015, there was no decision taken declaring the Petitioners as defaulters. No objection whatsoever was raised. On the date of provisional list, so published by the Society, the Petitioners could have raised the objection for declaring them as a defaulters. 17 January 2015 was the last date of putting the final list, as recorded. The Returning Officer, on that date just adding the remark against the respective Petitioners as defaulters in the same list, passed the endorsement deleting the names of the

Petitioners. All these procedures and proceedings so followed by the Petitioners accordingly, in my view, is without deciding whether the Petitioners are defaulters or not and/or whether they are really defaulters on the date of publication of the list.

6 As contended by the learned counsel appearing for the Society, based upon the affidavit, as well as, the documents placed on record showing the notices were issued on 5 October 2014 against the Petitioners for their defaults. I am not, at this stage, deciding the issue of default, even if any. The issue, at this stage, is that what procedure the Returning Officer to be followed and so also the Society, while publishing the first list as prescribed under the MCS Act and the Rules before declaring the Petitioners, as defaulters. Timely objection was not raised by anybody. No decision taken by giving an opportunity to the Petitioners and the inquiry so contemplates, at the appropriate stage. But, the basic hearing, which is necessary to be given before finalizing the said list and the procedure so followed, in my view, is in a breach of the provisions of the Act and Rules, apart from the principle of natural justice.

7 Therefore, I am inclined to interfere with the order so
passed by the Respondent-Returning Officer, deleting the names of the
Petitioners, specifically for the purposes of participating in the election
so declared. This, in no way, restrict and read to mean that the
Petitioners and/or Respondent-Society are prevented from dealing
with the same, in accordance with law.

8 The learned counsel appearing for the Petitioners read and
referred the Judgments of this Court and relied upon Wamanrao s/o.
Zolbaji Satpute Vs. Collector, Nagpur & Ors.¹ and Dattatraya Kachru
Chine & Ors. Vs. State of Maharashtra & Ors.²

9 The learned counsel appearing for the Respondents
submitted that, let the matter be remanded back for re-hearing, as the
opportunity was not given, as recorded above. I am not inclined to
accept this submission, at this stage, as the election programme is
already declared. The Petitioners are only claiming to participate in
the election of the Society as voters. They are not contesting for any
post of Managing Committee. Therefore, the submission to remand

1 1999(2) Bom. C.R. 47

2 2006(1) Bom. C.R. 875

the matter for re-hearing before the same officer, is unacceptable. That will create further complications and delay the proceedings. However, if the Petitioners are included and participated in the election as other persons, the election can proceed further. It is made clear that the Respondents are at liberty to take action, in accordance with law, if not already initiated, taking the Petitioners as defaulters and so also the Petitioners, to deal with the same, in accordance with law.

10 Resultantly, the following order:-

ORDER

- a) Endorsement/Order dated 17 January 2015, deleting the names of the Petitioners as defaulters, is quashed and set aside.
- b) The Petitioners are permitted to participate in the election, as voters.
- c) The Respondents to treat the same and proceed accordingly forthwith.
- d) The Respondents are at liberty to proceed against the Petitioners, in accordance with law, so far as the

aspect of default is concerned.

- e) The Petition is accordingly allowed in terms of prayer clause (b).
- f) There shall be no order as to costs.
- g) The parties to act on an authenticated copy of this order.

11 The learned counsel appearing for the Respondent-Society seeks to stay this order. For the reasons so recorded above, I see no case is made out to stay the proceedings further and the election programme so declared at the instance of the Society. The stay Application is accordingly rejected.

(ANOOP V. MOHTA, J.)