

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**APPELLATE SIDE CIVIL JURISDICTION****WRIT PETITION NO. 1513 OF 2015**

Sou. Kendale Ujjwala Ashok & Ors.

....Petitioners.

Vs.

The State of Maharashtra & Ors.

....Respondents.

Mr. Sanjeev P. Kadam for the Petitioners.

Ms. Vaishali Nimbalkar, AGP for Respondent Nos. 1 and 2.

Mr. Pradeep D. Dalvi for Respondent No.3.

CORAM:- ANOOP V. MOHTA, J.

DATE :- 27 FEBRUARY 2015.

ORAL JUDGMENT:-

Rule, made returnable forthwith.

Heard finally by consent of the parties.

2 The Petitioners, who are the members of Respondent No.3-
a “B” class Society since more than 2 years and some members
participated in earlier election also, have challenged the order of
deletion of their names from the final list, published by Respondent
No.2 by passing order dated 17/20 January 2015, thereby they are
deprived from their voting rights in ensuing election which is
scheduled and the voting date is 8 March 2015.

3 Normally, once the election programme is fixed and initiated and proceeded, the Court's interference is quite restricted. But, if the case is made out and the action/order so passed by the concerned Authority in breach of provisions so declared and announced in view of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (for short, the Election Rules) specifically Rules 6 to 11, which are the basic requirements, the concerned Authorities, Societies, the members and the objectors required to be followed in timely manner. The period so prescribed, just cannot be overlooked even by the concerned Authorities, apart from the members and/or the objectors. In the present case, as per the notice issued by Respondent No.2, objection to the provisional list, which was published on 5 January 2015, needed to be raised by 14 January 2015 before 3 p.m.. In the present case, in the provisional list so published by the Society, the members names were included, however, by order dated 17 January 2015, the Petitioners names were deleted without assigning any reason, but by just scoring it off against the name of respective members by putting the word "Deleted". There is no material and/or even submission made that the Petitioners were

heard and/or any opportunity whatsoever as required, was given to them before deleting their names, abruptly.

4 Strikingly, as rightly pointed out by the learned counsel appearing for the Petitioners that though the last date for making objection was 14 January 2015 at 3.00 p.m. , the stated objection was filed secretly by the Society on 15 January 2015, who authorized to file the same objection, is also issue raised by the learned counsel appearing for the Petitioners. However, without going to the said controversy, the undisputed position on record shows that the stated objection was filed beyond the prescribed period so announced. Therefore, the Authority ought not to have accepted the said objection dated 15 January 2015, therefore, there is no question in the eyes of law to accept the same, apart from no hearing so given to the concerned persons. Therefore, the deletion of names of the Petitioners in the present facts and circumstances of the case, in my view, is totally unjust, impermissible and contrary to the law. The impugned order passed by Respondent No.2 and so also the action, therefore, need to be interfered with and I am inclined to do so, in view of the undisputed position on record.

5 The submission made by the learned AGP that these Rules, basically Rules 3 and 8, not contemplate that the personal hearing should be given before passing the order, is unsustainable. We have to read the whole procedure and concept that the members' or the Society's objection should be considered to publish and get finalize the voters list, which are essential part for the Society's election, just cannot be overlooked and cannot be decided without giving opportunity to the concerned, before passing positive and/or negative order. The purpose of giving time and/or opportunity, if any, even to the Objectors, is to see that the clear final voters list is prepared in accordance with law, so that respective election can be proceeded accordingly. The concept of "the inquiry", so read and submitted, cannot be dealt with in isolation. There is no question of making just inquiry, if the case is made out by the Objector and the other side referring to and/or dealing with the final voters list, the basic inherent principle of natural justice, which definitely covered the aspect of equal opportunity to both the parties and hearing. All these elements are missing in the present case. Therefore, though the election programme is fixed, I am inclined to grant relief to the Petitioners only

to the extent with their entitlement to participate in the election as a voters. The statement is made by the learned counsel appearing for the Petitioners that they do not want to contest the election as a member of Managing Committee. This relief, in my view, cannot be denied to the Petitioners, merely because the election programme is proceeded. The illegality, if it goes to the root of the order so passed, is without jurisdiction and illegal, the relief so sought by the Petitioners cannot be denied in this writ jurisdiction.

6 I have already in Shri Pandurang Baburao Lhase & Ors. Vs. The Returning Officer & Ors. (Writ Petition No.1035 of 2015, dated 20 February 2015), as pointed out by the learned counsel appearing for the Petitioners, in similarly situation granted the relief and permitted the voters to participate in election as a voters, by referring to the other Judgments passed by this Court. This also supports the case of the Petitioners to grant the order, so prayed.

7 In the result, the following Order.

ORDER

a) Impugned order dated 17/20 January 2015 of

deletion of names of the Petitioners is quashed and set aside.

- b) Respondent No.2 is directed to issue final voters list by including the names of the Petitioners as voters and/or their names may be retained as per the original provisional list and permitted them to participate in the election as voters.
- c) The Respondents to proceed accordingly forthwith.
- d) The Writ Petition is allowed.
- e) Rule made absolute accordingly.
- f) There shall be no order as to costs.
- g) The parties to act on an authenticated copy of this order.

(ANOOP V. MOHTA, J.)