

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

WRIT PETITION NO.2353 OF 2015

Shri. Subhash Shripatrao Ghorpade

.. Petitioner

Versus

State of Maharashtra and others

.. Respondents

Shri. Chetan G. Patil, for the Petitioner.

Shri. Amit B. Borkar, for the Respondent No.5.

Shri. S. D. Rayrikar, AGP for the Respondent Nos.1 to 4.

CORAM : R.M. SAVANT, J.

DATE : 17th MARCH, 2015

PC.

1. The communication dated 18.02.2015 addressed by the Returning Officer of the Co-operative Society known as Annabhau Ajara Taluka Shetkari Sutgirani Limited, Ajara to the Petitioner informing him that he does not have the jurisdiction to entertain the complaint/objection raised by him is taken exception to by way of the above Petition filed under Article 226 and 227 of the Constitution of India.

2. The dispute that is sought to be raised is in respect of the elections to the Respondent No.5 society which is undisputedly a Class-A society as categorized under the Maharashtra Co-operative Societies Act

and Rules (For brevities sake referred to as the Act and the Rules). In the context of the elections to the Respondent No.5 society the facts which are germane can be stated thus. The provisional voters list was published on 08.01.2015 comprising the names of the members who are qualified to vote as per the existing bye laws. The finalization of the voters list ran through the gamut of the process contemplated by the bye laws and ultimately the voters list came to be finalized on 31.01.2015. In so far as the bye laws which were prevailing at the relevant time, the relevant bye law was bye law-'D' governing membership. It seems that pursuant to the 97th constitutional amendment the provisions of the said Act came to be amended which included the provisions relating to the conduct of the elections to the societies. To bring the rules which were in force in consonance with the provisions of the amended provisions of the Act, the rules also came to be amended and now there are rules which are applicable to the societies all across without any distinction between ordinary societies and specified societies in respect of their elections. By virtue of Section 73CB an Election Authority is appointed by the State for conducting the elections to the Co-operative Societies. It is under Rule 12 of the society Rules that a Returning Officer can be appointed by the Election Authority.

3. It seems that to bring the bye laws in sync with the amended

provisions of the Act and the Rules the bye laws of the Respondent No.5 society came to be amended and in so far as the membership is concerned, the said members were categorized into two categories i.e. cotton grower members and non-cotton grower members, as per old bye laws the categories were individual member and society member. It is in terms of the bye laws which have come in force on or about 11.02.2015 that the election programme for the second phase was announced from 13.02.2015 i.e. from the stage of filing of the nomination till voting and declaration of results. It is an undisputed position that in terms of the said programme the voting is to take place on 23.03.2015.

4. Under the said bye laws the composition of the Board of Directors is stipulated amongst the Directors one Director is to be elected from the non-active cotton grower members. The Petitioner above named raised about five objections before the Returning Officer after the election programme for the said second phase was published on 13.02.2015. The first objection was that out of 11929 members whose names appeared in the final voters list none of them was a non-cotton producer member as per the record, the full addresses of the members have not been disclosed, no Voters list of non-cotton grower members is published, the period prescribed between different stages of election process is adversely affected by government holidays, the election programme is published on

08.01.2015, however, bye laws of the society have been sanctioned by the competent authority on 11.02.2015. Therefore, the election is not in terms of the sanctioned bye laws. Hence, before the Returning Officer what was sought to be contended was that the Voters List has been finalized not as per the bye laws which have come into force on 11.02.2015. The said objection of the Petitioner was considered by the Returning Officer who addressed the impugned communication dated 18.02.2015 to the Petitioner that he does not have the jurisdiction to go into the said objections and that the Petitioner may approach the competent authority and accordingly rejected the said objection.

5. As indicated above, it is the said communication dated 18.02.2015 addressed by the Returning Officer to the Petitioner which is taken exception to by way of the above Petition.

6. The proposed elections of which only voting remains is sought to be questioned principally on the ground that the Voters List has been finalized as per the old bye laws existing prior to 11.02.2015, whereas the election programme is as per the new bye laws which have come into force on 11.02.2015. The Learned Counsel for the Petitioner Shri. Chetan G. Patil would by referring to Sections 26(2)(b), 27 and 73CA of the Said Act would contend that the Voters List is not in consonance with the said provisions and therefore, the election cannot be held in terms of the Voters

List which has been finalized on 31.01.2015. The Learned Counsel would contend that the Voters List being finalized in terms of the non-existing bye laws, the same is illegal and in support of the said contention sought to place reliance on the judgment of the Apex Court reported in (2004) 1 SCC 133 in the matter of Ahmednagar Zilla S. D. V. & P. Sangh Ltd. and another Vs. State of Maharashtra and others, the Learned Counsel was at pains to point out that since the new bye laws which have come into force, the Voters List would have to be prepared as per the new bye laws and thereafter the election process may be directed to be proceeded with.

7. Per contra, Shri. Amit B. Borkar the Learned Counsel appearing for the Respondent No.5 would contend that the objections which are now sought to be raised, at least the first two objections having not been raised prior to the finalization of the Voters List by the Petitioner, the Petitioner is now dis-entitled to raise the same. The Learned Counsel would contend that the Voters List was required to be finalized in terms of the bye laws as were existing at the relevant time and the said Voters List having been finalized cannot be called in question on the ground that new bye laws are now in force. In support of the said contention the Learned Counsel sought to place reliance on the judgment of a Division Bench of this Court reported in (2013) 3 Bom. C. R. 620 in the matter of Arun Ganpatrao Dongle & Ors Vs. State of Maharashtra & Ors.. The Learned

Counsel would contend that the provisions of Section 26(2)(b) in so far as the classification of the members into active and non-active members and consequent disqualification as contemplated therein are prospective in nature and would come into operation after a period of five years. The Learned Counsel would contend that the last proviso of Section 26 makes it clear that the members who are eligible to vote would be entitled to unless otherwise ineligible under the Rules. The Learned Counsel would contend that it is out of more than 11929 members that the Petitioner is the lone member who has sought to question the holding of elections. The Learned Counsel would contend that the Petitioner has not been able to show what prejudice is being caused to him. In support of the said contention the Learned Counsel sought to place reliance on the judgment of a Learned Single Judge of this Court reported in 2010(3) Mh.L.J. 273 in the matter of Tarasingh Gopalsingh Jadhav Vs. District Deputy Registrar, Co-operative Societies, Chikhali and others. The Learned Counsel would contend that in so far as the objections are concerned, the Returning Officer was right in holding that he does not have the jurisdiction to deal with the same as the same would ultimately impinge upon the legality and validity of the elections which the Petitioner can question by way of appropriate proceedings after the elections are over.

8. Having heard the Learned Counsel for the parties and

considered the rival contentions. There is no dispute about the fact that the Voters List has been finalized as per the extant bye laws as were in force on 31.01.2015. The said Voters List classified members into two categories i.e. individual cotton grower member and society cotton grower member. It is after the finalization of the Voters List that the new bye laws have come into force on 11.02.2015 and the election programme has thereafter been published on 13.02.2015. In so far as the Respondent No.5 society is concerned, as indicated herein above what remains now is only voting as otherwise all steps prior of voting are already over. In so far as the contention urged by the Learned Counsel for the Petitioner based on Sections 26, 27 and 73CA are concerned, in my view the said submission would amount to misconstruing the provisions of Section 26(2)(b) of the said Act. A reading of the said sub Section 2(b) makes it abundantly clear that the same can be applied after the lapse of a period of five years and cannot be made applicable straightway on the amended provisions of the said Act coming into force. The last proviso of the said Section 26(2)(b) is also indicative of the fact that the said provision is to take effect after a period of five years as otherwise there was no necessity that all the members would be entitled to vote save and except who are ineligible. In my view, Section 27(3) or Section 73CA cannot further the case of the Petitioner once Section 26(2)(b) is required to be interpreted as above. In

so far as the objections are concerned, as indicated above the first two objections relate to the stage prior to finalization of the Voters List since the Voters List is now finalized the Petitioner is dis-entitled to raise the said objection. In so far as the other three objections are concerned, they also do not have substance in them. As obviously the Voters List was required to be finalized in terms of the extant bye laws. A reference could be made to the Division bench judgment of this Court in *Arun Ganpatrao Dongle's case (supra)*, where the fact situation was that the amended bye laws were on the anvil and the elections were sought to be postponed on the said basis. A Division Bench of this Court held that the elections would have to be held as per the bye laws existing and could not be postponed on the ground that the amended bye laws were on the anvil. There is also merit in the submission of the Learned Counsel Shri. Amit B. Borkar for the Respondent No.5. In as much as the Petitioner has failed to show as to what prejudice is likely to be caused to him, if the elections proceed on the basis of the Voters List which has been finalized under the old bye laws. The Petitioner does not claim to be a member belonging to the last category i.e. non-cotton grower individual member, hence, by applying the test laid down by the Learned Single Judge of this Court in *Tarasingh Gopalsingh Jadhav's case (supra)*, the objection of the Petitioner cannot be countenanced. In my view, for the reasons aforestated there is no warrant

to interdict with the election process which is at the last stage where only voting remains. Hence, no case for exercise of the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]