

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION STAMP NO.14990 OF 2015

Sangli Urban Co-operative Bank Ltd.]
Head Office CTS No.404, Khanbhag,]
Through its Chairman]
Shri Ganesh Hari Gadgil, Adult]..... Petitioner.

Versus

1] The State of Maharashtra]
Through Principal Secretary]
Department of Cooperation]
Mantralaya, Mumbai]
2] The District Co-operative Election]
Officer and Divisional Joint]
Registrar, Co-operative Societies]
Mumbai Division, having its office]
at 6th floor, Malhotra House,]
Opp. G.P.O. Fort Mumbai.]
3] Maharashtra Urban Co-operative]
Bank Federation Ltd. Mumbai]
Bharatiya Krida Mandir, 4th floor,]
Wadala, Mumbai – 400 031]
4] Shri Bapurao Bhaurao Pujari]
Adult, residing at]
“Ashirwad”, Rajwada, Sangli]..... Respondents.

Mr. A M Kulkarni with Mr. S S Diwan for the Petitioner.
Mrs. V S Nimbalkar AGP for the Respondent No.1.
None for the Respondent No.3 though served.
Mr. N P Deshpande for the Respondent No.4.

CORAM : R. M. SAVANT, J.
DATE : 07th July 2015

ORAL JUDGMENT

1 Rule with the consent of the learned counsel for the parties made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the order dated 6/6/2015 bearing outward No.3199 of 2015 passed by the Respondent No.2 i.e. the District Co-operative Election Office and Divisional Joint Registrar, Co-operative Societies, Mumbai by which order the Petitioner Bank has been communicated that the change of delegate sought by it cannot be acceded to as the change has not been sought within the time stipulated in rule 10(4) of the Maharashtra Co-operative Societies Election to Committee Rules, 2013 (for short "the said Rules"). The Petitioner has also sought a direction to the Respondent No.2 to accept the nomination of the present chairman of the Petitioner-Bank as a delegate of the Petitioner-Bank. The controversy in the above Petition is therefore as regards the nomination of the delegate of the Petitioner Bank to participate in the elections to the Board of Directors of the Respondent No.3 herein which is a federation of the Urban Co-operative Banks.

3 The facts giving rise to the filing of the above Petition in a nutshell can be stated thus :-

The Respondent No.3 as indicated above is a federation of the Urban Co-operative Banks and the various Urban Co-operative Banks in the

State of Maharashtra are the members of the Respondent No.3 federation which can be said to be an Apex Body. The elections to the Respondent No.3 federation were announced and the election programme came to be issued on 8/5/2015. In terms of the said election programme the nomination forms were to be available between 8/5/2015 and 12/5/2015. The nominations were to be filed between the same period. The scrutiny of the nominations was to take place on 13/5/2015. The date of withdrawal of nominations was 14/5/2015 and the list of validly nominated candidates was to be published on 29/5/2015 and the elections were to take place on 12/6/2015. The above Petition had come up for admission before this Court on 11/6/2015 on which day this Court after issuing notice had stayed the elections only in so far as Kolhapur, Sangli and Satara constituency is concerned.

4 The elections to the Respondent No.3 federation as also the other specified societies are governed by the Maharashtra Co-operative Societies Election to Committee Rules, 2013. In the context of the present controversy rule 10(4) of the said Rules is material, the same is reproduced herein under :-

“Rule 10. Particulars to be included in the provisional list of voters for the societies having society or society and individuals as members :-

(1)

(2)

(3)

(4) A society which has communicated the name of its representative shall, by like resolution, be permitted to change the name of its delegate only in case of death of the representative or where there is newly elected committee of the member society not later than five days before the last date for making nominations.”

Hence the delegate of a society can be changed in two eventualities mentioned in rule 10(4) viz in case of death of the representative or in the event there is a newly elected managing committee of the member society which committee resolves to change the delegate. The said rule 10(4) postulates that the said change can be effected not later than five days before the last date for making nominations. A reference to the said rule 10(4) in the context of its interpretation would be made in the later part of this judgment.

5 In so far as the Petitioner Bank is concerned, it had nominated the Respondent No.4 herein to be its delegate by the Resolution dated 27/2/2015 passed in the meeting of its then Board of Directors. The Respondent No.4 was nominated as at the said time he was the director of the Petitioner Bank. It is common ground that it is only the Directors who represent the member bank in the Respondent No.2 federation so that the member bank can participate in the affairs of the federation on behalf of the member bank. The elections to the Petitioner Bank were announced sometime in the beginning of May 2015 and the election programme up to some was were running parallel to the election

programme of the Respondent No.3 federation. The elections to the Petitioner Bank were completed and the results were declared on 12/5/2015. In the said elections the Respondent No.4 lost and was not elected as a director of the Petitioner Bank. The results of the elections of the Petitioner Bank coincided the last date for filing of the nominations i.e. 12/5/2015 . The newly elected Board of Directors of the Petitioner Bank held its first meeting on 20/5/2015 and in the said meeting it was resolved to call back the nomination of the Respondent No.4 as its delegate and nominate the newly elected Chairman as its delegate for participating in the affairs of the Respondent No.3 federation. The said Resolution passed on 20/5/2015 was informed to the Authority on 22/5/2015. This is about 7 days prior to the final list of contesting candidates was to be published, however, no cognizance was taken of the said communication on the ground that the same was not sought within the time stipulated in rule 10(4) of the said Rules and by the order dated 6/6/2015 the request for change in delegate was rejected. The final list of candidates was published with the name of the Respondent No.4 appearing as a delegate of the Petitioner Bank. It is thereafter that the instant Petition has been filed and an interim order has been passed therein. As indicated above it is the said order dated 6/6/2015 passed by the Respondent No.2 herein that is challenged in the above petition as also a direction is sought that the Respondent No.2 should be directed to accept the nomination of the Chairman of the Petitioner Bank as a delegate of the Petitioner Bank.

6 The learned counsel for the Petitioner Bank would contend that the instant case being peculiar in nature wherein the elections to the managing committee took place on 12/5/2015 which is the same date as the date for filing of nominations, that the said rule would have to be interpreted. The learned counsel for the Petitioner would contend that a strict interpretation of the said rule is not warranted in the facts and circumstances of the present case and if such a strict interpretation is given to the said rule, it would amount to negation of the democratic principles. The learned counsel for the Petitioner would contend that the change in delegate in the eventuality of the newly elected committee has been provided for so as to see to it that the representative of the Bank has the confidence of the managing committee. The learned counsel would contend that if the said rule is strictly construed it may result in an anomaly as in the event a death takes place of the representative and the change is sought which may not be within the time stipulated in rule 10(4), it would result in the member society being without its representative on the federation. The learned counsel would therefore contend that the Respondent No.2 has taken a hyper technical view of the matter and thereby rejected the request for change in delegate.

7 Per contra, the learned counsel appearing for the Respondent No.4 would seek to justify the order dated 6/6/2015 on the touchstone of rule 10(4)

of the said Rules. The learned counsel for the Respondent No.4 would contend that once the stage of scrutiny of nominations is over and the list of validly nominated candidates is put up then the Election Authority does not have the power to effect a change in the delegate. The learned counsel would further contend that in the instant case for the Kolhapur, Sangali and Satara Constituency after withdrawal of the nominations by the remaining candidates only two candidates have remained in the fray which included the Respondent No.4 and considering that two seats are available the Respondent No.4 is to be declared as elected unopposed with the other candidate. The learned counsel for the Petitioner lastly contended that the interference with the validly nominated list of candidates would amount to interference in the election process and that the Petitioner if so aggrieved can file election petition after the results are declared.

8 Having heard the learned counsel for the parties, I have considered the rival contentions. As indicated above, the issue that arises for consideration viz. whether the Petitioner Bank is entitled to have a change in its delegate, revolves around the answer to the question as to whether there has to be a strict application of the time frame stipulated in the said rule 10(4). Before advertng to the interpretation of the said rule it would be necessary to re-visit a few facts. As mentioned in the earlier part of this order a Director of the member society is to be nominated as a delegate to participate in the

elections of the Respondent No.3 federation. In so far as the Petitioner Bank which is a member society is concerned, the elections to its Board of Directors were concluded on 12/5/2015 which as indicated above was the last date for filing of nominations in so far as the elections to the Respondent No.3 federation is concerned. It is required to be noted that the list of validly nominated candidates was put up on 29/5/2015. It is prior thereto i.e. on 22/5/2015 that the authorities were informed that the Petitioner Bank desired a change in its delegate in view of the fact that the elections to its Board of Directors had taken place and the newly constituted board has resolved on 20/5/2015 to nominate the present Chairman as its delegate to participate in the elections of the Respondent No.3 federation. It is on the touchstone of the aforesaid facts that the matter would therefore have to be considered.

9 In so far as rule 10(4) of the said Rules is concerned, as indicated above, it is in two eventualities that the change in delegate is permitted i.e. the death of the representative or a newly elected committee comes into being. The said rule postulates the time frame within which the application is to be made. The underlying principle of the said rule is therefore to see to it that the member society does not go unrepresented. Hence in case of the death of the representative, there can be a change in the delegate as also when a newly elected committee takes office, the underlying principle behind the second circumstance seems to be that the management of the member society

nominates a delegate of its choice. The time frame that is stipulated in the said rule has to be considered in the said context. If the time frame is to be construed strictly and there is no flexibility in it then it may happen that the society may go unrepresented in the case of death if the change is not sought within the time stipulated in rule 10(4) or in the event the newly committee comes into being and the request is not sought within the time frame, the member society may then be foisted or saddled with a delegate who is not of its choice and in respect of whom it does not have confidence. Hence a purposive interpretation would have to be given to the said rule. In my view, therefore in the facts of the instant case, which can be said to be peculiar in nature on account of the fact that the results of the elections of the Petitioner Bank were declared on the last date of filing of the nominations, for the Respondent No.3 federation, the said rule 10(4) of the Rules in so far as the time period mentioned therein cannot be strictly applied. Ultimately the endeavour is always to see that the change of the representative or delegate is in keeping with the democratic principles and that on technicalities it should not happen that the democratic process is thwarted. There can be no gainsaying of the fact that the Respondent No.4 herein is not a person of the choice of the present Board of Directors of the Petitioner Bank which has been elected on 12/5/2015. He is no more the Director of the Petitioner Bank having lost in the elections and therefore also not entitled to represent the Petitioner Bank. Hence the possibility of a constant acrimony between the

Board of Directors and the Respondent No.4 cannot be ruled out. The Respondent No.4 also would not be in position to put across the view point of the Board of Directors of the Petitioner Bank as he has failed to get elected in the elections which took place on 12/5/2015 and is therefore not a part of the Board of the Petitioner Bank. For the aforesaid reasons and in the peculiar facts of the present case, the strict application of rule 10(4) in so far as the time frame is concerned, is not warranted. Hence in appropriate cases the delegate can be allowed to be changed and the time frame mentioned in the said rule 10(4) cannot be construed as a fetter to permit such change.

The fact that there is no contest for the Kolhapur, Sangli and Satara Constituency would not make any difference as the entitlement of the Petitioner to change its delegate cannot be adjudicated on the said basis.

10 Since the District Co-operative Election Officer has failed to exercise jurisdiction in the matter of permitting the Petitioner Bank to change its delegate, this Court in its writ jurisdiction would have to step in. In that view of the matter, the impugned order dated 6/6/2015 would have to be quashed and set aside and is accordingly quashed and set aside. The above Petition would have to be allowed in terms of prayer clauses (c) and (C-1). The District Election Officer to proceed with the elections for the Kolhapur, Sangli, Satara Constituency after accepting the nomination of the Petitioner. This order is only restricted to the change in the name of delegate in so far as

the Petitioner Bank is concerned and would not affect the nomination of Shri Damodar Krushnaji Majgaonkar. The above Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

11 At this stage the learned counsel for the Respondent No.4 Shri N P Deshpande seeks stay of the instant order. In the facts and circumstances of the case where election to the said Kolhapur, Sangli, Satara Constituency of the Respondent No.3 federation would take some time to be completed, the said request is rejected.

[R.M.SAVANT, J]