

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 543 OF 2012

Shri Ivo Coutinho,
son of Longinho Coutinho, aged 61
years, resident of House no. 19/B,
behind Dando Ground,
Adsulimo, Benaullim, Salcete,
Goa.

... Petitioner

V e r s u s

1. The Assistant Election Officer &
Returning Officer,
Co-operative Societies, Election Cell,
South Goa District,
Margao-Goa.
2. The Registrar of
Co-operative Societies,
Government of Goa, having
Office at Patto,
Panaji, Goa.
3. State of Goa, through its
Through its Chief Secretary,
having Office at Secretariat,
Porvorim, Bardez, Goa.
4. The Madgaum Urban,
Co-operative Bank Limited,
having office at "Varsha",
Alto Aquem, Margao, Goa,
represented through its
General Manager.
5. Shri Ramakant Soiru Angle,
son of Soitu Angle,
Indian National, residing
near Jeevattam Math, H. No. 109,
Jeevottam Nagar, Fatorda,
Margao, Salcete, Goa.
6. Shri Raghuvir Ghanshyam Desai,
son of Ghanshyam Desai,
Indian National,
resident of C/o. L.I.C.,
Ponda, Goa.

7. Shri Rupesh Rajanikant Mahatme,
son of Rajanikant Mahatme,
Indian National,
resident of 205, Sapana Arcade,
Malbhat, Margao, Goa.
8. Shri Amaresh Ramesh Naik,
son of Ramesh Naik,
Indian National, resident of 113,
Ward 2, Chandrawado,
Fatorda, Margao, Goa.
9. Shri Deelip Sonu Naik,
son of Sonu Naik, Indian National,
resident of Shirwado, Navelim,
Salcete, Goa.
10. Shri Gokuldas Krishna Naik,
son of Krishna Naik, Indian National,
resident of House no., 65,
Khammamal, Curchorem, Goa.
11. Shri Mhalu Gangaram Naik,
son of Gangharam Naik,
Indian National, resident of
House no. 1979,
Barbhat, Shiroda,
Ponda, Goa.
12. Shri Kishor Vithal Narvekar,
son of Shri Vithal Narvekar,
Indian National, resident of Carmi Bhat,
House no, 185, St. Cruz,
Merces, Goa.
13. Shri Atmanand Sadashiv Pednekar,
son of Sadashiv Pednekar,
Indian National,
resident of Veerabhat,
Curtorim, Salcete, Goa.
14. Shri Atul Krishna Verlekar,
son of Krishna Verlekar,
Indian National, resident of
C/o. Damodar Video Vision,
Pinpalkatta, Margao, Goa.

... Respondents

Mr. D. Pangam, Advocate for the Petitioner.

Mr. S. D. Lotlikar, Advocate General with Mr. Vivek Rodrigues, Government Advocate for the Respondent nos. 1 to 3.

Mr. A. D. Bhobe and Ms. S. Bhobe, Advocates for the Respondent no. 4.

Mr. Shivan Desai, Advocate for the Respondent no. 12.

Coram :- **F. M. REIS,**
 NUTAN D. SARDESSAI, JJ.

Date : **10th August, 2016**

JUDGMENT (Per F. M. Reis, J.)

Heard Shri Pangam, learned Counsel appearing for the Petitioner, Mr. Rodrigues, learned Government Advocate appearing for the Respondent nos. 1 to 3, Mr. A. D. Bhobe, learned Counsel appearing for the Respondent no. 4 and Mr. Shivan Desai, learned Counsel appearing for the Respondent no. 12.

2. The above Petition, inter alia, prays for a declaration that the nomination of the Petitioner was wrongly rejected by the Respondent no. 1 on 14.12.2011. It is further prayed that election of the Respondent nos. 5 to 10 and 13 to 14 be declared illegal, null and void and thereby direct holding of fresh elections.

3. Briefly, the facts of the case are that the Respondent no. 1 notified the elections on 05.02.2011 for the Madgaum Urban Co-operative Bank Limited and the Petitioner filed his nomination for the elections of the Board of Directors. It is further the contention of the Petitioner that on 16.12.2011, the Respondent no. 1 informed that his nomination is rejected though the Petitioner was not given any

opportunity to rebut any of the alleged contentions. The Petitioner thereafter on 24.12.2011 raised objections to the rejection of the nomination. But, however, the elections were held on 08.01.2012 and Respondent nos. 5 to 10 and 12 to 14 were declared elected. Aggrieved by the rejection of the nomination of the Petitioner, the above Petition came to be filed on the aforesaid grounds. It is the contention of the Petitioner that the rejection of the nomination of the Petitioner was as the Petitioner had not attended the last two General Body Meetings preceding the elections though, according to the Petitioner, he had in fact attended the last two General Body Meetings held on 17.07.2011 and 10.12.2011. It is further the contention of the Petitioner that he was not given an opportunity of being heard before the rejection of his nomination. It is further pointed out that the whole election process stands vitiated on account of the illegal rejection of the nomination of the Petitioner. It is further submitted that Rule 54(2) and (3) were not complied with in the case of around 800 members who are either companies, firms, etc.

4. The Respondent no. 1 filed his affidavit in reply and, inter alia, contended that prior to the notification of the election program of the Respondent no. 4-Bank, a circular dated 10.11.2011 was issued by the Respondent no. 2 herein to certain Co-operative Banks including Respondent no. 4-Bank wherein the Banks were asked to strictly follow the code of conduct. It is further his case that the General Manager of the Respondent no. 4-Bank sought permission to hold a special General Meeting to place the Audited Financial Statements and the Statutory Auditors Report for the financial year which ended on 31.03.2011. It is further his contention that during the code of conduct, no General Body Meetings can be held. But, however, the Respondent no. 2 allowed the General Manager of

the Respondent no. 4-Bank to hold a Special General Meeting. Accordingly, the Special General Meeting was held by the Respondent no. 4-Bank only for the purpose of placing the Audited Financial Statement. It is further pointed out that the Special General Body Meeting under Section 58-A of the Goa Co-operative Societies Act, 2001, (herein after referred to as the said Act), is not akin to the General Body Meeting held under Section 58 of the said Act. It was further pointed out that records were sought from the General Body Meeting of the Respondent no. 4-Bank held immediately preceding the elections. The certified copy of the two General Body Meetings held on 26.09.2010 and 17.01.2011 were submitted. It is however pointed out that the Minutes of the Special General Body Meeting referred to herein above was not submitted to the Respondent no. 1. It is further his contention that as per the information provided by the Respondent no. 4, the Petitioner was found to have not attended the General Body Meeting held on 26.09.2010 and accordingly was disqualified and, consequently, in terms of Section 60(3)(b) of the said Act, the nominations were rejected. It is further pointed out that the Petitioner did not lodge any protest of rejection of nomination. It is further contended that the applications were filed to reconsider the rejection of nomination of the Petitioner. It is further submitted that the election process has to be in terms of Rule 61 of the Co-operative Societies Rules.

5. An affidavit in reply was also filed by Respondent no. 4 who is a General Manager of the said Bank. It is the contention of the said Respondent that in view of the circular issued by Respondent no. 2, which is also applicable to Respondent no. 4, permission was sought to hold a Special General Body Meeting only to place before the Members the Audited Financial Statement and,

consequently, considering that the Board of Director-Respondent no. 4 would stand disqualified for a period of five years, the Respondent no. 2 permitted the Respondent-Bank to hold a Special General Body Meeting only for such purpose. It is further pointed out that a Special General Meeting contemplated under Section 58A of the Goa Cooperative Societies Act, 2001 is not akin to a General Body Meeting which is required to be held annually. It is further pointed out that as such the minutes of the said meeting were not submitted to the Respondent no. 2 as being the two preceding annual General Body Meetings of the Respondent no. 4-Bank. It is further pointed out that in terms of Rule 2003, claims and objections to the provisional list of voters can be brought to the notice of the Respondent no. 2 and that the Petitioner has never raised such objections. The Petitioner has thereafter filed a rejoinder, inter alia, reiterating the stand taken in the Petition. It is further pointed out that distinction being made by the Respondent no. 1 between a Special General Body Meeting and a General Body Meeting is wholly incorrect. It is also disputed that a Special General Body Meeting is not akin to the General Body Meeting. All the contentions raised by the Respondent no. 4 in the affidavit have been duly disputed by the Petitioner. It is further reiterated that the whole election process is contrary to the Rules governing such elections. It is further pointed out that Respondent no. 1 never gave opportunity to the Petitioner to raise objections. Dealing with the contentions of the Respondent no. 4, it is contended by the Petitioner, that the Respondent no. 1 has been instrumental in illegally contesting the elections of the Bank. It is further pointed out that the Respondent no. 4 also confirmed that the provisions of Rule 54 were not complied with and, as such, it is not open to the said Respondent to now contend that objections were not raised thereon.

6. Shri Pangam, learned Counsel appearing for the Petitioner, has reiterated the contentions raised in the Petition and stressed that there is no difference between a Special General Body Meeting and the General Body Meeting as sought to be differentiated by the Respondent to disqualify the Petitioner from contesting the elections. Learned Counsel has pointed out that the whole game plan is to illegally deprive the Petitioner from contesting the elections. It is further submitted that on one hand the Respondent no. 2 contends that permission was granted to hold a meeting to avoid disqualification by the Board of Directors and on the other hand, the Petitioner is sought to be disqualified though he had attended such meeting and met the requisite requirements. It is further submitted that the election process itself stands vitiated and, consequently, the Petitioner is entitled for the reliefs in the Petition.

7. Mr. Shivan Desai, learned Counsel appearing for the Respondent no. 12, has pointed out that the Petitioner has an alternate relief and, as such, the Petition deserves to be rejected. It is further pointed out that the Petition involves disputed questions of facts and, as such, no relief should be granted in the above Writ Petition.

8. We have considered the submissions of the learned Counsel and we have also gone through the records. The basic point for consideration in the above Petition is whether the General Body Meeting held immediately preceding the elections, may include a special General Body Meeting and, as such, meet the requirements of being eligible to contest the subject elections.

9. It is the case of the Petitioners that the two General Body Meetings preceding the elections were held on 17.07.2011 and 10.12.2011 which were duly attended by the Petitioner. Section 60(3)(b) of the said Co-operative Societies Act 2001 reads thus :

“60(3) In order to be eligible for being chose as director of the board of directors of a society which has been in existence for more than two years, a member-

(b) shall have attended two general meetings of the society held immediately preceding the elections.”

10. On bare perusal of the said provisions, it clearly provides that to become eligible to be chosen as a Director, he has to attend two General Body Meetings of the Society held immediately preceding the elections. Section 2(22) defines General Body Meeting thus :

“2. Definitions.— In this Act, unless the context otherwise requires,—

(22) “general meeting” means a meeting of the general body of a society;

11. Hence, any meeting of the General Body is a general meeting as provided in Section 60(3)(b) of the Co-operative Societies Act. As such, we find that there is no distinction as claimed by the Respondents with a Special General Body Meeting. A Special General Body Meeting is held in terms of Section 58 A of the said Act of 2001. Looking into the said provisions they clearly specify the word “general meeting” and, as such, we find that the petitioner who had admittedly

attended the General Body Meeting held on 17.07.2011 and 10.12.2011 had duly met the requirements of Section 60(3)(b) of the said Act of 2001.

12. The refusal to permit the Petitioner to file his nomination to the subject elections as such is not at all justified. Admittedly, the elections took place in the year 2012. The Petition was filed on 19.04.2012 and no interim relief was sought with regard to the subject election process. The substantial term of the Board of Directors has as such been completed. With this background, we find interfering in the elections which has taken place way back in the year 2011 would not at all be justified in the peculiar facts and circumstances of the case. Apart from that, Shri S. D. Lotlikar, learned Advocate General appearing for the Respondent nos. 1 to 3, has brought to our notice the amendment to the provisions of Section 60 sub-section (3)(b) of the said Act which came to be published in the Official Gazette dated 30.09.2014. The anomaly about attending General Meetings of the Society have now been corrected and the mischief, if any, removed as it states that person who wishes to file nomination for the post of Director shall have to attend three Annual General Meetings of the Society during the period of five years preceding the elections. In such circumstances, any discrepancy stands now been corrected and, as such, we find that interfering in the election process which took place in the year 2011 at this stage, would not at all be justified.

13. It is also pointed out that the voters list which was prepared did not disclose the names of the authorized representatives of a specific category of Members which was in gross violation of the provisions of Rule 54(2)(3) of the Goa Co-operative Societies Rules of 2003 (herein after referred to as the *said Rules of*

2003).

14. Rule 54(2) and (3) of the *said Rules of 2003*, reads thus :

“54. Particulars to be included in the provisional list of voters.-

(1) ...

(2) Where as member of the society concerned is of any one of the categories mentioned in clauses (b), (c) and (d) of sub-section (2) of Section 21 of the Act, the society concerned shall call for the names of the representatives of such category of members duly authorised to vote at the election on behalf of the said category of members so as to reach it 150 days prior to the date of expiry of the term of office of the board of directors.

(3) While communicating the names of the representatives, the said category of members shall enclose a copy of the resolution of the Firm, managing committee or board of directors of such member wherein the representative is so authorised. The list of voters shall include the names of all such representatives as have been communicated to the society concerned before the date fixed for publication of the provisional list together with the names of the company, firm, body corporate, Co-operative Society, public trust, etc. the registration number and address with name of the constituency, if any, to which they belong.”

15. The above provisions clearly discloses that the resolution appointing authorised representatives has to be submitted in order that their names can be reflected in the voters list as representative of such institutions. In the present

case, the predicates of such Rules have not been followed, the voters list was not prepared in terms thereof. Election is a democratic process wherein members who are eligible have to be given an opportunity to cast vote to elect the Board of Directors. The exercise of excluding the Petitioner as such was not at all justified for the reasons stated herein above.

16. In view of the above and for the aforesaid reasons, we find the question of granting any relief to the Petitioner to quash and set aside the rejection of the nomination of the Petitioner on 08.01.2012 would not at all be justifiable as the term is due to expire within a few months. As such, the Petition stands disposed of accordingly with no Orders as to costs.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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