

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.829 OF 2016

Shri Ganapati Shivaji Patil.] ... Petitioner

Versus

District Co-Operative Election Officer @]
District Deputy Registrar, Co-Operative]
Soc. and Ors.] ... Respondents

Mr. Prashant Bhavake for Petitioner.

Mrs. Vaishali Nimbalkar, A.G.P., for Respondent No.1.

Mr. Chetan G. Patil for Respondent No.2.

CORAM :- M. S. SONAK, J.
DATE :- JANUARY 25, 2016

P. C. :-

1. The challenge in this petition is to the order dated 11/01/2016 by which the Election Officer and District Deputy Registrar, Co-Operative Societies, Kolhapur, has rejected the petitioner's objection to the inclusion of several voters in the voters list for elections to the Managing Committee of the society.

2. The petitioner has basically raised three objections. The first was that some of the persons were dead and notwithstanding their demise, their names continued on the voters list; that some of

the members has defaulted in the payment of their dues to the society and therefore were ineligible to vote; and finally, some of the persons whose names were included in the voters list, were either not members of the society or in any case, not entitled to be the members of the society. The third objection is highlighted in the document at page 62 (Exh.H) to the petition. Mr. Bhavake, learned Counsel for petitioner, also made a submission that the third submission raised by the petitioner must be regarded as an objection in the context of provisions of Section 27 (1A) of the Maharashtra Co-Operative Societies Act, 1960 ('the said Act') inasmuch as, there is reference in the objection at page 62 to some of the members not using the services of the society.

3. Mr. Bhavake submitted that the first objection has been upheld and the names of the demised voters excluded. The second objection has been partially upheld. In this regard, Mr. Bhavake submitted that the records make it clear that even the balance voters had dues payable and therefore, the Election Officer was wrong in permitting such balance voters to continue on the list. Finally, Mr. Bhavake submitted that there is really no discussion on the third objection and the objection would never have been rejected in the manner in which it has been. For all these reasons, he submitted that the impugned order, to the extent it does not delete the names of all the persons in respect of whom, the petitioner had raised objections, is vulnerable and is required to be set aside.

4. Having heard the learned Counsel for parties and perused the record, in my judgment, there is no case made out to interfere with the impugned order. The Election Officer has scrutinized the records and thereafter removed from the list certain persons who are in default. However, insofar as others are concerned, the Election Officer, upon very same scrutiny, has recorded the finding that they are not in default and therefore, their names cannot be excluded from the voters list. The Election Officer has restricted himself to the jurisdictional parameter vested in him. There is no jurisdictional error in the exercise undertaken by the Election Officer.

5. Insofar as the third objection is concerned, at the outset, it must be noted that the objection cannot be said to be relating to the provisions contained in Section 27 (1A) of the said Act. On basis of certain vague allegations, it is not permissible for the petitioner to allege that the members have not used the services up to the minimum level as specified from time to time in the bye-laws and therefore, have ceased to be active members. The objections, if perused, basically relate to the very enrollment of such members as members. There is also an allegation that such persons are not at all the members of the society. The Election Officer has verified that such persons are indeed the members of the society. Further, the issue as to whether they could have been validly enrolled as members of the society or not, is normally not an issue which can be gone into by the Election Officer considering the limited jurisdiction vested in him. Therefore, there is no jurisdictional error in the impugned order.

6. This Court, in the case of ***Rajan Dinkarrao Pharate and others Vs. State of Maharashtra and others***¹, has held that the Collector cannot in the garb of enquiry under sub-rules (5), (6) and (7) of the Maharashtra Specified Co-operative Societies Elections to Committee Rules hold whether a person is entitled to be a member or not. If the Collector in such enquiry goes into entitlement to membership of person shown in the register of members, it would be without jurisdiction.

7. For all the aforesaid reasons, this petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

¹ 1997 (1) Mh.L.J. 543