

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
: NAGPUR BENCH : NAGPUR.

WRIT PETITION NO. 5172 OF 2016
WITH
CIVIL APPLICATION (CAW) NO. 2118 OF 2016

Dr. Sugat S/o Manohar Chandrikapure and Anr. ...Petitioners

Versus

Election Officer, through Prakash W. Kadu
and Ors. ...Respondents

ALONG WITH
WRIT PETITION NO. 5516 OF 2016

Manju R. Jiddewar and Ors. ...Petitioners

Versus

The State of Maharashtra and Ors. ...Respondents

Mr. D V Chavan with Mr M D Lakhey, for the Petitioners.
Mrs A R Taywade, AGP for Respondent Nos. 1 A and 1 B.
Mr A A Mardikar, for Respondent No. 3.
Mr A M Ghare, for Respondents/Intervenors.

CORAM : PRASANNA B. VARALE, J.

DATE : SEPTEMBER 27, 2016

ORDER:

1. Heard learned Counsels appearing for the respective parties.
2. It would not be out of place to state here that in both these

petitions an identical/common issue is involved, and accordingly are taken up for hearing and disposal with consent of learned Counsel appearing for the respective parties. By consent of the parties Writ Petition No. 5172 of 2016 is taken up as lead petition.

3. These petitions challenges the order passed by the Respondent No. 1 whereby name of the petitioners and some other persons were deleted from voters list.

4. Mr. Chavan learned Counsel appearing for the petitioners submitted before this Court that the petitioners have become the members of the Respondent No. 3 Society, namely, Southern Nagpur Co-operative Housing Society Ltd., Nagpur (hereinafter referred to as the “**said Society**” for the sake of brevity) by following due procedure on 26.06.2015. It is then submitted that the petitioners have actively participated in the functioning of the said society and petitioners have paid the requisite amount towards the membership of the said society and a share certificate is also issued in their favour. The names of the petitioners were also enrolled in the i-book maintained by the said society. At the time of establishment of the said society, the society had its own bye-laws and was performing functions as per the said bye-laws.

In view of 97th amendment in the Maharashtra Co-operative Societies Act, 1960 (for short “**said Act**”), model bye-laws or new bye-laws came into operation in respect of all co-operative societies. The society resolved that the society would adopt model bye-laws in part. A decision was accordingly taken in the meeting of managing committee on 21.04.2013. The then secretary of the said society sent a letter dated 10.07.2013 to the Deputy Registrar Co-operative Society, Nagpur for confirmation. The copies of those communications exchanged between the petitioners and the respondent authorities are placed on record. It was submitted before this Court that as per the earlier bye-laws the power of the managing committee was of three years and the election of the managing committee was held on 27.03.2011. In view of the earlier bye-laws the term of the said managing committee i.e. of three years would have been over by 26.03.2014 but by the amendment in the act and corresponding amendment in other provisions came in force, the term of the managing committee stood extended upto 26.03.2016.

5. It is then submitted that the Deputy Registrar Co-operative Society, Nagpur by communication dated 09.03.2015 directed the said Society to hold election as the term of the earlier managing committee

was to expire on 26.03.2014 in view of the earlier bye-laws. The society being aggrieved by the communication dated 09.03.2015 preferred an revision before the Divisional Joint Registrar, Co-operative Society, Nagpur, contending that in view of the amendment the term of the managing committee would automatically stand extended upto 26.03.2016. The revision preferred by the society was allowed by the Divisional Joint Registrar, Co-operative Societies, Nagpur by an order dated 08.04.2015. It is then submitted that meantime out of 15 members of the managing committee, 6 members, namely, Shri Mukund Thete, Shri Pramod Fating, Shri Deepak Munje, Shri Narendra Palsokar, Shri Udy Kohad and Shri Ashok Sangitrao were remained absent without prior permission for three consecutive monthly meeting and in view of provisions of bye-laws no. 112(1)(b) the managing committee took a decision on 21.02.2015 to remove these six members. This decision of removal of six members was communicated to Respondent No. 2 – Deputy Registrar Co-operative Societies, Nagpur vide communication dated 02.03.2015.

6. It is then submitted that these six members incurred disqualifications in view of the provisions of the Act. As the society was

of the opinion that these members incurred disqualification the necessary entry was made and the same was informed to the Deputy Registrar Co-operative Societies alongwith the extract of the bye-laws. In view of these facts the managing committee passed resolution on 15.03.2015 for co-option of four members, namely, Shri Ranjit Choudhari, Pushpatai Chakole, Shri Vijay Wagh, Shri Prakash Titare. The said co-option was communicated to the Deputy Registrar Co-operative Societies, Nagpur vide letter dated 20.03.2015 along with copy of resolution dated 15.03.2015. It is thus the submission of Mr. Chavan that the society was having requisite majority of the members but the Deputy Registrar Co-operative Societies, Nagpur on 17.03.2015 issued a show cause notice under provisions of section 77(a) of the said Act for appointment of administrator on the society. The notice was duly replied by referring to the relevant provisions of the Act.

7. It is then submitted that the members who were removed on account of their failure to attend the meetings have submitted / tendered their resignation to Deputy Registrar, Co-operative Societies, Nagpur. It is then submitted by the learned Counsel, Mr. Chavan that those members ought to have submitted their resignation to the president of

society as required under bye-laws and if it would not have been accepted by the president for a period of 30 days from the receipt of such resignation, as per bye-laws there will be deemed acceptance of the resignation. Thus, the attempt of learned Counsel Mr. Chavan is to submit before this Court that there was requisite majority of the members in the society, the resignation tendered by the members were not in accordance with bye-laws and invocation of section 77(a) of the said Act by the Deputy Registrar, Co-operative Societies, Nagpur was not proper. It is then submitted that the Deputy Registrar, Co-operative Societies, Nagpur acted under certain political influence. The order dated 20.04.2015 was under challenge in an Appeal before the Divisional Joint Registrar bearing Appeal No. 10/2015. Initially an interim stay was granted in favour of the managing committee but subsequently, the Appeal was dismissed. A revision was preferred against the order of dismissal dated 21.05.2015 before Hon'ble Co-operative Minister. The Hon'ble Minister initially granted stay vide order dated 01.06.2015 and subsequently, on 13.10.2015 the Hon'ble Minister dismissed the revision.

Against the order of the Hon'ble Minister dated 13.10.2015 Writ Petition No. 5784/2015 was preferred at the instance of the

managing committee. At the same time members who were removed from the managing committee also filed the Writ Petition No. 5887/2015 challenging the order of their removal and seeking extension of the tenure. Those petitions were pending in this Court for sometime and when the petitions came up before this Court on 26.03.2016 the tenure of the managing committee was expired. Petitions only remained for the academic interests and both the petitions were disposed of with liberty to the petitioners to avail the remedy under law. Copies of the orders passed in both Writ Petitions are placed on record. There is also simultaneous proceedings referred to, namely, a dispute filed at the instance of some of the members before the learned Judge of Co-operative Court, Nagpur bearing Dispute No. 796/2015 under Section 91 of the said Act. It is submitted that the said dispute is pending before the learned Judge of the Co-operative Court.

8. It is then submitted that an annual general meeting was conducted on 25.09.2015 and the petitioners and the other members attended the said meeting. It is then submitted that the petitioners booked a flat in a scheme floated by the society and also paid an amount of Rs. 1,00,000/- as booking amount. As the tenure of the old body had

expired and the election was due, the administrator so appointed had commenced the election process. There were 432 members/voters including petitioners constituting the voting list on 15.04.2016. The Divisional Election Officer by order dated 26.05.2016 appointed Respondent No. 1 as election officer to conduct the election vide order dated 26.05.2016. The administrator of the society forwarded a letter to Divisional Election Officer, Co-operative Department, along with a cheque of Rs. 40,000/- as an amount for the purposes of conducting the elections. Copy of those documents i.e. 26.05.2016 and 27.05.2016 are placed on record.

9. By communication dated 07.07.2016, the Deputy Registrar, Co-operative Societies, Nagpur directed the Respondent No. 2 i.e. the Administrator to delete the name of the members who are made members by the then managing committee in the year 2015. Learned Counsel Mr. Chavan further submitted that the Respondent No. 2 without application of mind and by blindly following the directions changed / altered the voting list and submitted the voters list of 391 voters to the authorities. The said list was displayed in the society office and objections were called before by 31.08.2016. The petitioners and

other persons submitted their objections. Mr. Chavan further submitted that petitioners were expecting a due consideration by the authorities on their objections but they were surprised that their objections were rejected and their names were not included in the final voting list but the final voting list of 388 voters was confirmed by order dated 31.08.2016. Thus the order of authorities rejecting the objection is under challenge in the petition.

10. It is further submitted by learned Counsel Mr. Chavan that no opportunity of hearing was granted to the petitioners, as such the respondents failed to observe the principle of natural justice. In the connected Writ Petition No. 5516 of 2016, it is submitted that the names of the petitioners no. 32 to 37 were included in the provisional list and subsequently their names were deleted.

Mr Chavan in support of his submissions placed reliance on reported judgments of this Court bench at Aurangabad dated 06th May, 2015 (Coram : R.M. Borde & V.K. Jadhav, JJ) in the matter between Basawraj Vishwanath Sane Vs. State of Maharashtra and Ors¹ and judgment of the Division Bench at Principal seat of this Court (Coram :

1 Writ Petition No. 3551/2015

S.C. Dharmadhikar and G.S. Kulkarni, JJ) in the matter of Pandurang Laxman Kadam and Ors. Vs. State of Maharashtra and Anr².

Mr. Chavan, learned Counsel appearing for the petitioners by placing reliance on the judgment of this Court bench at Aurangabad submitted that even though the election program set in motion this Court on the ground of failure to observe the principle of nature justice may allow the petitions and issue necessary directions to the Respondent authorities.

11. As stated above, there is some history of the litigation in the matter, namely, certain orders passed by the officers of the Co-operative Department, petitions filed in this Court and dispute pending in the Co-operative Court, it may not be necessary to refer to these proceedings or the orders in detail.

12. The petitioners while filing the Writ Petition initially referred to the elections officer as respondent no. 1 and the administrator as respondent no. 2 as party to the petition in the title clause. Subsequently, State of Maharashtra through Secretary, Department of Cooperation Textile and District Deputy Registrar Co-operative Societies

² 2016 (4) All M.R. 629

were added as Respondent Nos. 1A and 1B seeking permission of this Court. An application was filed at the instance of three applications, namely, Deepak Devidas Munje, Nana Pundlik Tapre and Uday Bhaurao Kohad claiming members of the said society as well as members of the executive committee of the society. The application was allowed by order dated 22nd September, 2016 and these applicants were added as party respondents to the Writ Petition.

13. Learned Counsel Mr. Ghare appearing for the added respondents and Learned AGP appearing for the Respondent authorities vehemently opposed the petitions and submitted that the petitioners have not brought before the Court all the relevant facts. It is also submitted by the learned Counsel that the claim of the petitioners that they have become members of the society is not substantiated by any legally permissible material. It is also submitted by the learned Counsel that mere deposit of certain amount would not grant a right in the favour of the petitioners to claim membership. It is also submitted by the learned Counsel that the claim of the petitioners that the society was having requisite majority of members also unsustainable in view of the facts.

14. It is submitted by learned Counsel Mr. Ghare that it is an admitted position that the election process is already initiated and the elections are due on scheduled date, and any interference or indulgence in on going election process is to be avoided and prohibited by this Court. It is further submitted that the petitioners if having any grievance in respect of the elections the only legal remedy is to initiate an proper proceedings such as, an election petition before the competent forum. It is submitted by Mr. Ghare that the facts in the case before the Aurangabad bench and the facts in the present matter are distinct and different.

Mr Ghare then submitted that in the matter before Aurangabad bench no objection was raised to the provisional list, as such the division bench in its order was pleased to observe that without impeding the elections the illegality can be cured, whereas, in the present case the names of the petitioners are already deleted from the final voters list and only remedy can be availed by the petitioners is to challenge the election in a proper proceedings and the process of election already initiated cannot be stalled. Learned Counsel, Mr Ghare in support of his submissions placed reliance on the judgment of the Supreme Court

dated 22nd February, 2016 in the matter of Shaji K Joseph Vs. V. Vishwanath and Ors³.

15. With the able assistance of the learned Counsel appearing for the respective parties, I have gone through the entire record.

16. Though the submissions of Mr. Chavan looks attractive at the first blush, but in view of the facts of matter I am unable to accept the submissions of Mr. Chavan. On the contrary, I find considerable merit in the submissions of learned Counsel Mr. Ghare appearing for the Respondents as well as learned AGP appearing for the Respondent authorities.

It may be necessary to refer to certain facts which are brought on record by the respondents by filing an application and seeking intervention in the matter which as follows:

17. The society was consisting of 15 elected executive committee members. As per bye-laws of the society minimum 8 members should remain present for holding legal and valid meeting. As the then president of the society, namely, Shri Manohar Gangadhar Muddeshwar was managing the affairs of the Society in extremely illegal manner and for

³ Civil Appeal No. 1629 of 2016.

his personal gain the 9 executive committee members including the respondents resigned from the post of executive committee members of the society. As only 6 executive committee members were left in the office of society, the Assistant Registrar, Co-operative Societies, Nagpur on 20.04.2015 under Section 77-A of the said act appointed administrator to manage affairs of the said society. The said order dated 20.04.2015 was challenged by the president of the said society and other before the Divisional Joint Registrar, Co-operative Societies, Nagpur and the said Authority by order dated 21.05.2015 dismissed the appeal filed by the president and others and maintained the order dated 20.04.2015. The aggrieved persons preferred revision before the State Government. The respondent state vide its order dated 13.10.2015 was pleased to dismiss the revision filed by the president of the society and others and the order passed by the lower authorities were maintained. Being aggrieved by the said order, president and others persons preferred Writ Petition before this Court bearing WP no. 5784/2015 and the same was disposed of by order dated 27.04.2016.

18. The orders passed by the Assistant Registrar, Divisional Joint Registrar and State Government shall reveal that after resignation of 9

elected executive committee members only six elected executive committee members were left in the office as quorum required under the bye-laws for holding meeting of executive committee is eight. The affairs of the society could not have be carried out, hence, it was necessary to exercise powers under Section 77A and to appoint administrator over the society. The defence raised by the president and other members that they have co-opted four other persons as Executive committee members and hence the executive committee was legal and valid was rejected by the authorities on the ground that amendment to Maharashtra Co-operative Societies Act, the executive committee is not having power to co-opt any person in the event of vacancy and all such vacancies can only be filled in by election as contemplated under the provisions of the Act. Thus the alleged co-option done by the remaining six members on vacancies created was held to be bad and illegal and the said orders have reached finality.

19. There is also merit in the submissions of learned Counsel Mr Ghare that the petitioners failed to place on record any substantial material as to when these petitioners were enrolled as members of the society and the petitioners were enrolled as members by an executive

committee having no legal force and legal sanctity to conduct the affairs of the society. In view of these facts the administrator was appointed on the society by order dated 20.04.2015.

The co-operative authorities have already directed the respondent society that they cannot enroll illegal members by showing allotment of shares. In other words, the membership of the petitioners was illegal and no right whatsoever flows in favour of petitioners. In view of the above legal position, the co-operative authorities were right in directing the society to remove the names of the petitioners from the voters list, if any.

20. There is also considerable merit in the submissions of Mr. Ghare that as the election process is already initiated. In view of the judgment of the Apex Court this Court shall be very slow in executing any indulgence or interference in the election process and the present case is not of nature of rarest or extraordinary case so as to cause interference in the election process.

There is also considerable merit in the submissions of Mr. Ghare the learned Counsel that the petitioners if aggrieved in respect of conduct elections, petitioners are at liberty to avail the appropriate and

substantial legal remedy such as an election petition before the competent forum. Mr. Ghare was also justified in making submissions before this Court that in view of the provisions, more particularly, rule 78 of the Co-operative Societies Rules, 1961, as the rule 78 operates as bar in causing interference in the process of election. It may be useful for our purposes to refer to Rule 78 of the Maharashtra Co-operative Societies Rules, 1961 which read as under:

78. *Election disputes*

No election shall be called in question, except by an election petition presented to the Co-operative Court as laid down in section 91.

21. Considering all these facts, I am of the opinion that the Writ Petitions are devoid of any merits and deserves to be dismissed. Accordingly, Writ Petitions stands dismissed.

22. In view of dismissal of Writ Petition, nothing survives in the pending Civil Application(s), if any, and same is also disposed of accordingly.

(PRASANNA B. VARALE, J.)