

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 1905 OF 2017

1. Sanjay s/o Bhaskar Potdar
age 45 years, occ. Service
r/o At Post Kusumba
Tq. & Dist. Dhule

2. Rajendra s/o Arvind Nandre
age 60 years, occ. Service
r/o At Post Jaitane
Tq. Sakri, Dist. Dhule

Petitioners

Versus

1. The State Co-operative Election Authority
Maharashtra State,
Pune.

2. The District Co-operative Election Authority
So also District Deputy Registrar
Co-operative Societies,
Dhule District

3. The Returning Officer of Election to be
Held of Dhule and Nandurbar Jilha
Prathmik Shikshakanchi Sahkari Patpedhi
Maryadit Dhule,
Office at The Deputy Registrar Co-operative
Societies, Dhule.

Respondents

Mr. V.B. Patil, advocate for the petitioners
Mr. S.K. Kadam, advocate for respondents.

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CORAM : S.B.SHUKRE, J.
DATE : 14th FEBRUARY, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.

2. Heard finally by consent of learned counsel for the respective parties.

3. The order dated 25th January, 2017, passed by respondent no. 2 is under challenge on the ground that the cut off date of 30th October, 2014, for the purpose of ascertaining the eligibility of members as voters has been wrongly fixed ignoring the mandatory provisions under Maharashtra Co-operative Societies election to Committee Rules, 2014, (hereinafter referred to as 'Rules of 2014') r/w section 27(3)(A) of Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as 'Act of 1960') and that, the ineligibility of 88 members, on facts, has been wrongly determined.

4. In the instant case, the term of the Managing Committee admittedly expired on 31st October, 2016 and, elections were not held for constitution of new committee within a period of six months before the expiry of the term of the Managing Committee. In such an eventuality, the State Co-operative Election Authority is required to fix the cut off date in terms of second proviso to Sub-Rule 2, Rule 6 of the Rules of 2014. This rule does not say that the cut off date should be fixed by the State Co-operative Election Authority on the basis of the date of the election and, it only grants discretion for fixing the date by considering the relevant factors including the factor of giving an opportunity to exercise franchise to maximum members to an extent possible.

5. Learned counsel for petitioners could not point out to me any provision of law requiring the State Co-operative Election Authority

to fix the cut off date on the basis of the date of election. Learned counsel for petitioners submits that third proviso to Sub-rule 2 Rule 6 should also be considered. But, as rightly pointed out by Mr. Kadam, learned counsel for respondents, this proviso is applicable to only provisional committees and, in this case, the elections are to be held for regular Managing Committee. Therefore, this proviso will not be applicable to the facts of the instant case. Thus, the first objection regarding violation of rules in fixing the cut off date has no substance and it is rejected accordingly.

6. As regards non-inclusion of 88 members in the voters list as they were found to have not paid the entire amount of their share, I find that the objection relates to the question of fact and it cannot be gone into in exercise of writ jurisdiction of this Court.

7. In the result, I find no merit in this petition. Petition stands dismissed with costs. In case any election dispute is raised under section 91, the authority shall not be influenced by the observations made in this petition. Rule discharged.

S.B.SHUKRE
JUDGE

dyb