

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5857 OF 2017
(Ramchandra Vitthal Shinde Vs. The State of Maharashtra and
others)

Mrs.M.D.Thube-Mhast, learned counsel for the petitioner.
Mr.P.B.Vikhe-Patil, learned counsel for respondent Nos. 1 and 2.
Mrs.V.N.Jadhav, learned AGP for the State.

(CORAM : M.S.Sanklecha, J.)

DATE : 28/04/2017

PER COURT :

1. This petition challenges the order dated 25/04/2017 passed by the District Co-operative Election Officer-District Sub Registrar, Co-operative Societies, Ahmednagar-respondent No.3 herein. The impugned order rejects the petitioner's objection dated 13/04/2017 to the extent of 150 names in provisional list of voters to elect the Managing Committee of the Takali (Khatgaon) Vividh Karyakari Sahakari Sanstha Maryadit-respondent No.4 (society).

2. On 06/04/2017, a program for finalization of voters' list was published. In terms thereof, respondent No.3-Election Officer published a provisional list of members, who would be entitled to vote at the election of the Managing Committee of respondent No.4-Society. The objection to the above published list of members, if any,

could be made upto 15/04/2017 to the Election Officer. The objections, if any filed, was to be decided on or before 25/04/2017 by the respondent No.3-Election Officer.

3. On 13/04/2017, the petitioner objected to the names of 150 persons shown as members in the provisional voters' list. This on the ground that they were ineligible to be admitted as members for they did not have a requisite area of land which would entitle them to the membership of respondent No.4-Society. The impugned order dated 25/04/2017 rejected the objections on the ground that the persons whose names were published in the provisional list of voters are objected to, are the persons whose names appear in the society's record as members. Further, it also records that the persons whose names are objected to by the petitioner, in fact appear in the audit report for the year 2014-2015 and 2015-2016. Moreover, the impugned order holds that the non- eligibility of a person to be a member of respondent No.4-Co-operative Society would be an objection which would be appropriately decided by the Registrar in terms of Section 11 of The Maharashtra State Co-operative Societies Act, 1960 (Act).

4. The learned counsel for the petitioner states that the objection

dated 13/04/2017 to the provisional list of voters published on 06/04/2017 was made in terms of Rule 8(1) of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (Rules) and decided in terms of Rule 8(3) of the Rules. Rule 8(1) and (3) of the said Rules reads as under :-

“(1) When any provisional list of voters is published for inviting claims and objections, any omission or error in respect of name or address or other particulars in the list may be brought to the notice of the concerned District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer in writing by any member of the society during office hours within ten days from the date of publication of the provisional list of voters.

(2)

(3) The District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer shall, or as directed by the SCEA, after making such enquireis as deem necessary in this behal, consider each claim or objection, and give his decision thereon in writing to the persons concerned within ten days from the last date prescribed for receiving the claims and objections. Thereafter final voters list should be published within the period of fifteen days from the last date prescribed for receiving the claims and objections. The list finalized by the election officer after deciding all claims and objection shall be final list of voters.”

5. Mrs.Thube-Mhase, learned counsel appearing for the petitioner submits that in terms of Rule 8 of the Election Rules, the Returning Officer is obliged to consider all objections including the objection with regard to the eligibility of the person to be a member of the Co-operative Society. Thus, he was obliged to carry out the necessary inquiry of the eligibility of a person to be member of the respondent No.4-society before passing the impugned order

6. On a plain reading of Rule 8(1) of the Election Rules, it is clear that the only scope of inquiry thereunder when a claim or objection is filed, is to determine whether or not there has been an omission to enter the name of a member whose name is found in the register of shareholders of the Co-operative Society or an error in entering a name which is not found in the register of shareholders of Co-operative society. Further the enquiry under Rule 8(3) of the Election Rules is a summary proceeding to decide all objections within 10 days from the last date to file objections. In the light of the above, the impugned order holds that the application to decide the eligibility of a person to be a member cannot be determined under Rule 8 of the Election Rules, but to be determined in an application filed u/s 11 of the Act.

7. The interpretation put on behalf of the petitioner to Rule 8(1) of the Rules cannot be sustained for the reason that when the provisional list is published, claims and objections are invited with regard to any error or omission in respect of the name or address or other particulars in the provisional list, which can be corrected by the Returning Officer. It does not empower the Returning Officer to determine the eligibility of the person concerned to the status of a membership of the Co-operative Society. The determination of eligibility to be a member, if challenged has necessarily be done u/s 11 of the Act. The inquiry u/s 11 of the Act would not be a summary inquiry but a full length inquiry. This is so as the persons against whose membership, grievance is made, would be entitled to be heard before an order adverse to the concerned member/person is passed.

8. Thus on these facts, the view taken by respondent No.3 is not such as would warrant interference in my supervisory jurisdiction under Article 227 of the Constitution of India.

9. Accordingly, petition is dismissed. No order as to costs.

(M.S.Sanklecha, J.)