

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****Writ Petition NO. 4984 OF 2017**

Baburao Bhagoji Bhonkar ... Petitioner
Versus
The Manager, Raigad District
Co-operative Credit Society
Mahasangh Limited And Ors. ... Respondents

WITH**Writ Petition NO. 4985 OF 2017**

Ashok Shantaram Pradhan ... Petitioner
Versus
The Manager, Raigad District
Co-operative Credit Society
Mahasangh Limited And Ors. ... Respondents

WITH**Writ Petition NO. 4986 OF 2017**

Lalitkumar Ratanchand Jain ... Petitioner
Versus
The Manager, Raigad District
Co-operative Credit Society
Mahasangh Limited And Ors. ... Respondents

WITH**Writ Petition NO. 4987 OF 2017**

Sau. Nilima Dhairyashil Patil ... Petitioner
Versus
The Manager, Raigad District

Co-operative Credit Society
Mahasangh Limited And Ors. ... Respondents

WITH

Writ Petition NO. 4988 OF 2017

Uday Vishnu Karmarkar ... Petitioner
Versus
The Manager, Raigad District
Co-operative Credit Society
Mahasangh Limited And Ors. ... Respondents

WITH

Writ Petition NO. 4989 OF 2017

Kishor Otarmal Jain ... Petitioner
Versus
The Manager, Raigad
District Co-operative Credit Society
Mahasangh Limited And Ors. ... Respondents

WITH

Writ Petition NO. 4990 OF 2017

Vilas Maruti Choulkar ... Petitioner
Versus
The Manager, Raigad District
Co-operative Credit Society
Mahasangh Limited And Ors. ... Respondents

WITH

Writ Petition NO. 4991 OF 2017

Shrikant Bhikurao Chandorkar ... Petitioner
Versus
The Manager, Raigad District
Co-operative Credit Society

Mahasangh Limited And Ors. ... Respondents

WITH

Writ Petition NO. 4992 OF 2017

Dinkar Gangadhar Gite ... Petitioner

Versus

The Manager, Raigad District
Co-operative Credit Society

Mahasangh Limited And Ors. ... Respondents

WITH

Writ Petition NO. 4993 OF 2017

Vijay Vishnu Kunte ... Petitioner

Versus

The Manager, Raigad District
Co-operative Credit Society

Mahasangh Limited And Ors. ... Respondents

WITH

Writ Petition NO. 4994 OF 2017

Vijay Shankar Bhide ... Petitioner

Versus

The Manager, Raigad District
Co-operative Credit Society

Mahasangh Limited And Ors. ... Respondents

WITH

Writ Petition NO. 5003 OF 2017

Girish Vishnu Tulpule ... Petitioners

Versus

The Manager, Raigad District
Co-operative Credit Society
Mahasangh Limited And Ors. ... Respondents

WITH

Writ Petition NO. 5004 OF 2017

Neela Kumar Mehta ... Petitioner
Versus
The Manager, Raigad District
Co-operative Credit Society
Mahasangh Limited And Ors. ... Respondents

WITH

Writ Petition NO. 5005 OF 2017

Santosh Gulabrao Ichake ... Petitioner
Versus
The Manager, Raigad District
Co-operative Credit Society
Mahasangh Limited And Ors. ... Respondents

Mr. C.G.Gavnekar i/b Suhas S. Deokar, Advocate for Petitioner in all Petitions.

Mr Sachin Kankal, A.G.P for Respondents no. 2 and 3.

Mr.Sampatrao Pawar i/b Mugdha J. Patil, Advocate for Respondent no.4 in W.P.No.5003 of 2017.

CORAM : R.G.KETKAR,J.
DATE : 25/04/2017

PC:

1. Not on Board. At the request of Mr. Gavnekar, taken up for admission. Heard Mr.C.G.Gavnekar, learned counsel for the petitioner, Mr. Sachin Kankal, learned A.G.P, for Respondents no.2

and 3 in all Petitions, and Mr. Sampatrao Pawar, learned counsel for respondent no.4 in Writ Petition No. 5003 of 2017, at length.

2. By these Petitions under Article 227 of the Constitution of India, the petitioner in each of the petitions has challenged the Judgment and order dated the order dated 11.4.2017 passed by the Returning Officer & Assistant Registrar, Co-operative Societies, Alibag, Raigad District as also the Judgment and order dated 20.4.2017 passed by the District Election Officer & District Deputy Registrar, Cooperative Societies, Raigad, Alibag. By these orders, the authorities below have rejected the nominations of the petitioners.

3. As the common questions of law and facts arise in these Petitions, the same can conveniently be disposed of by this common order. For appreciating the controversy raised in these Petitions, facts from Writ Petition No. 5003 of 2017 are taken into consideration.

4. In support of this Petition, Mr. Gavnekar submitted that respondent no.1 -Raigad District Co-operative Credit Society Mahasangh Limited (for short, 'Federal Society') has framed Bye laws. By law no. F.1.1 deals with Managing Committee. He submitted that the Credit Cooperative Societies are categorized depending upon their capital and deposits. These Credit Cooperative societies have to elect in all 21 members for formation of the Managing Committee. He submitted that for

electing Directors, all the eligible voters are entitled to cast their votes for electing 21 members. He submitted that the petitioner-Girish Vishnu Tulpule is representative of Kamal Nagrik Co-op Pat Sanstha Limited, Alibag which is having share capital and deposits exceeding Rs.60 crores. The petitioner has submitted nomination paper for election of the Board of Directors for the years 2016-2021. Proposer and Secunder of the petitioner are from other category, i.e. category other than credit cooperative societies having share capital and deposits less than Rs.60 crores. By order dated 11.4.2017, the Returning Officer rejected the nomination on the ground that the proposer and secunder of the petitioner are from different categories and not from the category of the petitioner. Aggrieved by this decision, the petitioner preferred Appeal before the District Cooperative Election Officer. By order dated 20.4.2017, Appeal was dismissed relying upon Rule 20(3) of the Maharashtra State Cooperative Societies (Election to Committee) Rules 2014, (for short,'Rules') as also Section 73B and 73C of the Maharashtra Co-operative Societies Act, 1960 (for short, 'Act') which requires that in the case of election from constituencies of the societies, the proposer and secunder has to be from the same constituency except Reservation falling under section 73B and 73C. He submitted that the authorities below have committed serious error in equating categorization made by the first respondent-federal society under

Bye Law F.1.1 with constituency. Rule 2(6) defines 'constituency' to mean an electoral division as specified in the bye-laws of the society. He submitted that Bye law F.1.1. does not specify electoral division and consequently is not a constituency within the meaning of Rule 2(6) of the Rules.

5. Mr. Gavnekar also relied upon the decision of this Court in Dadarao s/o Apparao Khatke Vs State of Maharashtra, 2002 (3) Mh. L.J. 863 and in particular paragraph 8 thereof. The learned Single Judge of this Court after referring to various decisions, observed in paragraph 8 thus:

“8. Reading the said two judgments, it leaves no room of doubt that the election for the Managing Committee of the Society, be it from borrower category or from non-borrower category, the electoral college is the same and, as such, every voter has a right to vote for each of the post for the Managing Committee member and the right to vote is in regard to all the categories. In this view of the matter, it is obvious that the nomination paper filed by a person from borrower category may have as his proposer or seconder, a person from non-borrower category. So also, the nomination paper filed by a person from non-borrower category may have as his proposer or seconder, a person from borrower category. Even the Returning Officer held this view when he published the election programme. Note No. 3 down below the election programme categorically states that all eligible voters shall have equal number of voting rights.”

6. He submitted that for the election of the Managing Committee of the first respondent-Federal society, every voter has a right to vote for each of the posts for the Managing Committee member and the right to vote is in regard to all the categories. The electoral College is the same. He submitted that

the learned Single Judge held that the nomination paper filed by a person from borrower category may have as his proposer and seconder, a person from non-borrower category. So also, the nomination paper filed by a person from non-borrower category may have as his proposer or seconder, a person from borrower category. He submitted that the said judgment applies in all fours to the facts of the present case. The authorities, therefore, are not justified in rejecting the nomination of the petitioner. He submitted that 26.4.2017 is the last date for withdrawal of nomination and he, therefore, got papers produced for obtaining urgent interim order.

7. On the other hand, Mr. Pawar supported the impugned orders. He invited my attention to Bye law F.1.1 which deals with Managing Committee. Items 1 to 11 deal with societies having share capital and deposits exceeding (1) Rs.60 crores, (2) exceeding Rs.35 crores, (3) exceeding Rs.15 crores, (4) exceeding Rs.5 crores (5) exceeding Rs.1 crore, (6) exceeding Rs.10 lakhs, (7) Representative of all Rural Cooperative Credit society, (8) representative of Women; (9) representative from Schedule Caste and Scheduled Tribe Community (10) Other Backward Class and (11) VJNT and Special Backward Class category.

8. He also invited my attention to the Voters List which is prepared as per the constituencies. He submitted that

constituencies are prepared on the basis of share capital and deposits exceeding Rs.60 crores, Rs.35 crores but less than Rs.60 crores etc. He submitted that the election programme also discloses the constituencies 1 to 11 which are consistent with Bye Law F.1.1. The petitioner has also submitted nomination form from the constituency (General - share capital and deposits exceeding Rs.60 crores Credit Cooperative Society). He also relied upon Rule 20(3) of the Rules to contend that the proposer and seconder has to be from the same constituency, except reservation falling under Section 73B and 73C.

9. Mr. Pawar further submitted that the decision rendered in the case of Dadarao Apparao Khatke (supra) is not applicable to the present case as at that time provision like Rule 20 was not there.

10. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. The moot question is whether the categorization made by Bye law F.1.1 is a constituency within the meaning of Rule 2(6) of the Rules.

Rule 2(6) reads thus:

“In these Rules, unless the context requires otherwise,
(6) 'constituency' means an electoral division as specified in
the bye-laws of the society.”

11. A perusal of Bye-law F.1.1 together with Voters List at Page

45 of the Writ Petition and the Election programme at page 51 coupled with nomination of the petitioner, leaves no room for doubt that Bye law F.1.1. deals with constituency as defined in Rule 2(6) of the Rules. A perusal of the impugned orders also shows that the authorities below rejected the nomination on the ground that the proposer and seconder of the petitioner are from other constituency.

12. Mr. Govnekar relied upon the decision of this Court in Dadarao Apparao Khatke (supra). I have already extracted paragraph 8 of the decision. In the present case, the Government of Maharashtra, in exercise of the powers conferred by sub-section (1) and (2) of Section 165 of the Act, and of all other powers enabling it in that behalf, and supersession of all existing rules relating to elections, after considering objections and suggestions, received pursuant to the Government Notification, dated 19.8.2013, published in the Maharashtra Government Gazette, Extraordinary, Part IV-B, dated 20th August, 2013, made the Rules.

Rule 20(3) reads thus:

“20. Nomination of candidates

- (1) xxx xxx
- (2) xxx xxx
- (3) Any person whose name is entered in the list of voters may be a proposer or seconder for nominating a candidate for election:

Provided that, in the case of election from

constituency of societies, the proposer and the seconder shall be from the same constituency except reservation falling under section 73B and 73C.”

13. As the Rules are framed as per Notification dated 11.9.2014 laying down that the proposer and secondary has to be from the same constituency except reservation falling under section 73B and 73C, the said decision will not be applicable to the present case as the said decision was rendered on 8.6.2001, i.e. Prior to framing of the Rules. In view thereof, I do not find that the authorities below committed any error in rejecting the nomination of the petitioner. Hence, these Petitions fail and the same are dismissed. Dismissal of the Petitions will not come in the way of the petitioner in instituting Election Petition before appropriate forum, in case so desired. It is made clear that all contentions in that regard are expressly kept open.

(R.G.KETKAR, J.)