

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST.) NO. 28323 OF 2017

Suresh Shivram Kanojia

.. Petitioner

v/s.

State of Maharashtra & Ors.

.. Respondents

Mr. Chetan G. Patil i/b Bhooshan R. Mandlik for the petitioner

Mr. S.D. Rayrikar, AGP for respondent no.1

Mr. Vijay D. Patil i/b Mr. Saurabh Kurade for respondent no.3

CORAM : M.S. SANKLECHA, J.

DATED : 10th OCTOBER, 2017

P.C.

1. This petition under Article 226 of the Constitution of India seeks to challenge the order dated 3rd October, 2017 passed by the respondent no.2 Returning Officer, while conducting elections of the Managing Committee of respondent no.3 Society under the Maharashtra Co-operative Societies Act, 1960. (the Act). The impugned order dated 3rd October, 2017 of respondent no.2 rejected the petitioner's objection to the names of 41 persons viz. respondent nos. 4 to 45 in the provisional list of voters' being defaulters, are not entitled to be on the final list of voters' at the ensuing election to respondent no.3 Society to be held on 4th November, 2017.

2. It is the petitioner's case that 41 members who are respondent nos. 4 to 45 herein are defaulters of respondent no.3 Society. The impugned order dated 3rd October, 2017 has overruled the objection of the petitioner while accepting the contention of respondent no.3 Society that it had not issued any notice or initiated any proceedings for recovery of the amount due from the members who are alleged to be defaulters. In the aforesaid context, the impugned order upholds the prayer of the respondent no.3 society that all members including the defaulters have the right to vote.

3. The above dispute as raised by the petitioner *ex facie* involves investigation into facts. It is not a pure question of law. Before a person can be held to be defaulter in respect of the payments due by him as a member to the society, it has to be established that the alleged defaulter had not paid the dues of the society. This investigation into facts, cannot be done in writ jurisdiction, particularly when an alternative remedy under the Act is available to raise a dispute under Section 91 of the Act as it touches elections to the Managing Committee of respondent no.3 Society. On the

aforesaid ground alone, I am not inclined to interfere with the impugned order in exercise of my jurisdiction under Articles 226 / 227 of the Constitution of India.

4. Moreover, in the present case, on 22nd September, 2017 the respondent no.2 - Returning Officer declared the election programme for election of members to the managing committee of respondent no.3 society. In terms of the above programme, admittedly, the process commenced on 25th September, 2017 with publication of provisional voters' list and inviting objections to the same for publication of the final voters' list after disposing of the objections. The last date for filing the nominations was 5th October, 2017 and publication of the list of nominations was on 10th October, 2017. The date of publication of final list of contesting candidates and allotment of symbols is scheduled on 28th October, 2017 while the date of polling is scheduled on 4th November, 2017 and the counting of votes is to take immediately thereafter, resulting in declaration of the successful candidates.

5. At the very outset, Mr. Vijay Patil, learned Counsel appearing for respondent no.3 society raised a preliminary objection to the

effect that the election process having already set in motion and the same should not now be disturbed by this Court in its extra-ordinary writ jurisdiction. This is particularly so as an alternative remedy of challenging the election results, post the conduct of the elections is available to the petitioner under the Act and the election rules made thereunder.

6. Mr. Chetan Patil, learned Counsel appearing for the petitioner in response, submitted that in identical fact situation, writ Court has interfered with orders passed during the conduct of election, without disturbing the election process. In support he relies upon the decisions of the Apex Court in the case of *Pundalik Vs. State of Maharashtra & Ors.* 2005 (7) SCC 181; the Division Bench decision of this Court in *Dalsing s/o Shamsing Rajput Vs. State of Maharashtra & Ors.* 2006 (3) Mh.L.J. 592 and *Vishwas Chandar Nejdar-Mane Vs. Shri Chhatrapati Rajaram Sahakari Sakhar Karkhana Ltd.,* 2015(3) Mh.L.J. 705.

7. The decision of the Apex court in the case of Pundalik (supra) relied upon by Mr. Chetan Patil was rendered in the context of the

facts that the election process was to commence only from 28th August, 2005. Therefore, the Apex Court passed the order dated 25th August, 2015 allowing substitution of name on the list of members entitled to vote before the election process was set in motion. This is not the case in the present case. The election process has admittedly been set in motion on 25th September, 2017.

8. The reliance placed upon decisions of the Division Bench of this Court in Dalsingh (supra) and of the single Judge in Vishwas Chandar Nejdar-Mane (supra) are rendered in the facts, where *ex-facie* the order of the Returning Officer were bad and no investigation on facts were required. In the case of Dalsingh (supra) a person who was not admittedly a member of the Society, was allowed to contest the elections on a reserved seat. While in the case of Vishwas Chandar Nejdar-Mane (supra), the order of the Returning Officer allowing a person to remain on voters' list even when his superior Officer viz. the Collector had directed their deletion from the list.

9. In any case, the petitioner is not remedy less. It would always

be open to him to challenge the elections by filing Election Petition post the elections.

10. In any event, the decision of the Supreme Court in ***Shaji K. Joseph Vs. V. Vishwanath and Ors. (2016) 4 SCC 429*** where the Supreme Court deprecated the practice of the High Court in interfering with the process of election once the process of election had been set in motion. In fact, the para 15 it observed as under :-

“In our opinion, the High Court was not right in interfering with the process of election especially when the process of election had started upon publication of the election programme on 27-1-2011 and more particularly when an alternative statutory remedy was available to Respondent 1 by way of referring the dispute to the Central Government as per the provisions of Section 5 of the Act read with Regulation 20 of the Regulations. So far as the issue with regard to eligibility of Respondent 1 for contesting the election is concerned, though prima facie it appears that Respondent 1 could contest the election, we do not propose to go into the said issue because, in our opinion, as per the settled law, the High court should not have interfered with the election after the process of election had commenced. The judgments referred to hereinabove clearly show the settled position of law to the effect that whenever the process of election starts, normally courts should not interfere with the process of election for the simple reason that if the process of election is interfered with by the courts, possibly no election would be completed without the court's order. Very often, for frivolous reasons, candidates or others approach the courts and by virtue of interim orders passed by courts, the election is delayed or cancelled and in such a case the basic purpose of having election and getting an elected body to run the administration is frustrated. For the aforesaid reasons, this

Court has taken a view that all disputes with regard to election should be dealt with only after completion of the election.”

11. In the present facts, no interference is warranted. Accordingly, the petition is dismissed.

12. Needless to state that, in case, the petitioner challenges the election to the Managing Committee of the respondent no.3 Society by filing an Election Petition, then the same would be considered on its own merits without being influenced by any observation made in this order.

13. The Petition is dismissed. No order as to costs.

(M.S. SANKLECHA, J.)