

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 11416 OF 2015

Mr. Kirit B. Modi

...Petitioner

Versus

Mr. Pradhyuman M. Bhagat

And Ors

...Respondents

....

Mr.R.S. Deshpande, Advocate for the Petitioner.

Mr.Chetan Kapadia a/w. Abhishek Bhadang, Ashish Mehta i/b.
Ashish Mehta, Advocate for Respondent Nos.3 to 6, 8, 9, 12 and
14.

Ms. Vaishali Nimbalkar, A.G.P. for Respondent No.18.

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CORAM : R. G. KETKAR, J.

DATE : 30th MARCH, 2017

P.C.

1. Heard Mr.R.S. Deshpande, learned Counsel for the petitioner, Mr. Chetan Kapadia, learned Counsel for respondents No.3 to 6, 8, 9, 12 and 14 and Ms.Vaishali Nimbalkar, learned A.G.P. for respondent No.18, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 26.10.2015 passed by respondent No.18, District Co-operative Election Officer-cum-District Deputy Registrar of Co-

operative Societies, Mumbai City (IV) (for short, 'Registrar'). By that order, the Registrar dismissed the complaint made by the petitioner for disqualifying the respondents on the ground that they did not submit the expenses incurred during the election within the stipulated period under Rules 65 and 66 of the Maharashtra Co-operative Societies (Election of Committee) Rules, 2014 (for short, 'Rules').

3. In support of this Petition, Mr.Deshpande submitted that the results of the election of Raghuleela Mega Mall Kandivli (West) Premises Co-operative Society Ltd. (for short, 'society') were declared on 8.3.2015. In terms of Rule 65(1) of the Rules, the elected Directors were required to submit the election expenses on or before 7.4.2015. They submitted the account of expenses on 8.5.2015. Said expenses are also bogus and misleading. He submitted that as the election expenses were not submitted within 30 days in terms of Rule 65(1), the Registrar ought to have declared the elected Directors as disqualified. He has taken me through the Rules 65, 66 and 67 of the Rules. He submitted that Rule 65(1) requires every candidate at an election either by himself or by his Election Agent to keep a separate and correct account of all expenditure in connection

with the election incurred or authorized by him or by his Election Agent between the date of the order calling the election and the date of declaration of the result thereof, both dates inclusive, within the period of thirty days from the date of declaration of the result. Sub-rule (4) thereof requires every contesting candidate at an election to lodge with the District Co-operative Election Officer through the Returning Officer an amount of his Election expenses within the time and in the manner in Rule 67. Rule 66(a) lays down that if the District Co-operative Election Officer is satisfied that a person has failed to lodge an account of election expenses within the time and in the manner required by the last preceding Rule, he may declare him to be disqualified for being elected and for being a member of the Committee and that such person shall be disqualified for a period of three years from the date of the order. Rule 67, however, does not prescribe the time within which the election expenses are to be submitted by the elected director. He submitted that harmonious reading of Rules 65(1)(4), 66(a) and 67 will indicate that the account of election expenses have to be submitted within 30 days from the date of declaration of the election results.

4. Mr. Deshpande further submitted that in any case even if it is assumed that the elected candidates submitted the account of election expenses within the prescribed period, still the impugned order does not disclose consideration of submissions made by the petitioner that the expenses submitted by them are bogus and are misleading. He, therefore, submitted that the impugned order may be set aside and the matter may be remitted before the Registrar for deciding it afresh.

5. On the other hand Mr.Kapadia supported the impugned order. He has taken me through the reply filed on behalf of the respondents before the Registrar and in particular paragraph-12(f) wherein reference is made to covering letter dated 18.5.2015. He submitted that said communication was addressed by the Co-operative Officer, Class-1/Returning Officer to the Registrar. In this communication it is stated that the expenses incurred by the candidates were within the limits prescribed by the State Election Commission.

6. Ms. Nimbalkar invited my attention to paragraph-2 of the impugned order where the Registrar has recorded his

reasons/observations. She submitted that the Registrar has suggested to suitably amend the relevant rules.

7. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that the results of the election of the society were declared on 8.3.2015. The account of election expenses was submitted by the elected candidates on 8.5.2015. The question is whether the elected candidates are required to submit account of election expenses within 30 days from the date of declaration of the result as contended by Mr.Deshpande or not. Rules 65, 66 and 67 read thus :

65. Account of election expenses

(1) Every candidate at an election shall either by himself or by his Election Agent keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his Election Agent between the date of the order calling the election and the date of declaration of the result thereof, both dates inclusive within the period of thirty days from the date of declaration of the result.

(2) The account shall contain such particulars as are specified in rule 67.

(3) The total of the said expenditure shall not exceed such amount as may be notified by the SCEA.

(4) Every contesting candidate at an election shall, lodge with the District Co-operative Election Officer through the Returning Officer an account of his Election expenses within the time and in the manner in rule 67.

66. Disqualification for failure of lodge account of election expenses.

If the District Co-operative Election Officer is satisfied that a person,—

(a) has failed to lodge an account of election expenses within the time and in the manner required by the last preceding section, and

(b) has no good reason or justification for the failure, the District Co-operative Election Officer shall, by order published, in the Official Gazette, declare him to be disqualified for being elected as, and for being, a member of the committee of any society, and any such person shall be disqualified for a period of three years from the date of the order.

67. Particulars of account of election expenses.

(1) The account of election expenses to be kept by a candidate or his election Agent under rule 65 shall contain the following particulars in respect of each item of expenditure from day to day, namely :—

(a) The date on which the expenditure was incurred or authorized ;

(b) the nature of the expenditure (as for example, travelling, postage or Printing and the like) ;

(c) the amount of the expenditure :—

(i) the amount paid ;

(ii) the amount outstanding ;

(d) the date of payment;

(e) the name and address of the payee ;

(f) the serial number of voucher, in the case of amount paid ;

(g) the serial number of bills, if any, in case of amount outstanding ;

(h) the name and address of the person to whom the amount outstanding is payable.

(2) All vouchers shall be lodged alongwith the account of election expenses, arranged according to the date of payment and serially numbered by the candidate or his Election Agent and such serial numbers shall be entered in the account under item (f) of sub-rule (1).

(3) It shall not be necessary to give the particulars mentioned in item (c) of sub-rule (1)

in regard to items of expenditure for which vouchers have not been obtained.

8. A perusal of Rule 65(1) shows that every candidate is required to keep a separate and correct account of all expenditure in connection with the election between the date of the order calling the election and the date of declaration of the result thereof, it does not specifically lay down that said account of expenses has to be submitted within a period of 30 days from the date of declaration of the results. Rule 65(4), however, lays down that every contesting candidate at an election to lodge with the District Co-operative Election Officer through the Returning Officer an amount of his Election expenses within the time and in the manner in Rule 67. Rule 67, however, does not prescribe any time within which the account expenses of election have to be submitted. Rule 66(a) also lays down it has to be submitted within the time and in the manner required by the last preceding rule, namely, Rule 65. It is precisely for this reason, in paragraph-2 of the reasons/observations, the Registrar has suggested that to suitably amend Rules 65 to 67 of the Rules.

9. Having regard to the letter dated 18.5.2015 addressed

by the Co-operative Officer, Class-I/Returning Officer to the Registrar setting out therein that the expenses incurred by the candidates is within the prescribed limits of State Election Commission, I do not think that this is a fit case for exercising powers under Article 227 of the Constitution of India. However, the question whether elected candidates have to submit account of election expenses within 30 days based on Rules 65, 66 and 67 is expressly kept open for deciding the same in an appropriate case. Subject to this, the Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)