

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 736 OF 2019

Rajkumar Shankar Desai
and 6 ors.

... Petitioners.

Vs.

The Registrar of Co-op.
Socieities, Dept. of Co-operation
and 3 ors.

... Respondents

Mr. Vishnuprasad Lawande with Mr. Parimal Suresh Redkar,
Advocates for the Petitioners.

Mr. D.J.Pangam, Advocate General with Mr. Deep Shirodkar, Addl.
Government Advocate for Respondent Nos. 1& 2.

Mr. Prasanna Chandiker, Advocate for Respondent No. 4.

**Coram : M. S. Sonak &
Nutan D. Sardessai, JJ.**

Date : 20th August, 2019.

P.C.:

Heard Mr. Lawande, learned Counsel for the petitioners. Mr. D.
Pangam, learned Advocate General alongwith Mr. Deep Shirodkar,

Addl. Government Advocate for respondent Nos. 1 and 2, Mr. Prasanna Chandikar, learned Counsel for respondent No.4.

2. The challenge in this petition is to the list of valid nominations dated 09.08.2019 in relation to the elections of the Board of Directors of the Goa State Co-operative Bank Ltd.(GSCBL). In the alternate, the petitioners seek for appropriate writs, orders or directions to direct the respondent Nos. 1 and 2 to accept their nomination papers, which according to him have wrongfully been rejected and to further, reject the nomination paper of respondent no. 4 which, according to them has been wrongfully accepted.

3. Mr. Lawande, learned Counsel at the outset pointed out that part IXB of the Constitution which has made special provisions in relation to Co-operative Societies, does not have any provision akin to Article 243 (Z)(G) or Article 243 O, which relates to bar to interference by Courts in electoral matters concerning Municipalities and Panchayats. He points out that a provision like Article 329 A which relates to bar to interference by Courts in electoral matters in elections to the State Legislative Assembly or to parliament is also not found in part IXB of the Constitution which relates to Co-operative Societies. He therefore, submits that the principles governing

interference by Courts in electoral matters, particularly at the stage where the result of the election is yet to be declared, will not specifically apply to the present petition, which relates to elections to the co-operative society i.e. GSCBL

4. Mr Lawande, learned Counsel points out that the bye laws under which the nominations of the petitioners are purported to be rejected are themselves ultra vires and unconstitutional. He however, fairly points out that Writ Petition bearing Stamp (Main) No. 2347/2019 and Stamp Number (Appln) No. 2701/2019 was instituted by Shiroda Labour Contract Co-operative Society Ltd to challenge these bye laws. This petition has been admitted but no interim order was however made.

5. Therefore, Mr. Lawande, learned Counsel submits that his contentions in the present petition proceed without prejudice, on the basis that the bye laws in question are valid. He submits that even in terms of these amended bye laws, nomination of the petitioners could not be rejected nor the nomination of the respondent no. 4 could be accepted. He submits that the returning officer has not even passed a speaking order but states the nomination stands rejected for the alleged non compliance to the provisions of the bye laws of the society.

6. Mr. Lawande points out that in so far as the petitioner nos. 1, 3 and 5 are concerned, the alleged disqualification is in terms of the bye laws 30(A)(16). He submits that from the material placed on record, it is very apparent that there is compliance with the provisions of this particular bye law. He points out that the material, in the form of audit report or balance sheet, amply establishes that the category of the society for which these petitioners seek to represent have been in profit for three out of five years; they have been classified as Class B societies and further they have distributed dividends to its members of not less than 5%. He therefore, submits that there was absolutely no good ground to reject their nomination papers based perhaps, upon some interpretation of the bye laws which bye laws are totally unreasonable and unconstitutional.

7. Mr. Lawande submits that in so far as the petitioner No. 4 is concerned, the alleged disqualification is by reference to bye law No. 30(A) (14) (i) or (ii). He submits that such disqualification is founded on vague terms. He submits that otherwise, the material on record very clearly establishes that the petitioner No.2 fulfills the requirements of the concerned bye-laws. He submits that the society whom the petitioner No. 4 seeks to represent has made profits and has

also paid rich dividends to its members. He therefore, submits that the rejection of the nomination papers is therefore without jurisdiction and in fact null and void.

8. Mr. Lawande, submits that the rejection of the nomination paper of petitioner No. 1 is on the grounds of alleged disqualification in terms of the bye-law No. 30(A)(ii). He submits that this bye-law contemplates that in case of dividend amount, a nominee must have attended of atleast three annual general body meetings of the bank during the period of five years preceeding the elections.

9. Mr. Lawande points out that the GSCBL was earlier a multi state Co-operative Society. In terms of the bye-law,s there was provision to nominate only few members to attend to the general body meetings, taking into consideration that the position that membership of a multi state co-operative society substantially large. He therefore, submits that the attendance by such representative was required to be regarded as an attendance by the petitioner no. 1. He submits that the petitioner no. 1 had clearly fulfilled the requirements of Bye-laws 30(A) (ii) and therefore his nomination paper could not have been rejected.

10. In contrast, Mr. Lawande points out that the respondent no. 4 seeks to represent a society which has admittedly not paid any dividend to its members. He therefore, submits that the nomination of respondent No.4 was required to be rejected by resorting to by-law No. 30(A)(16) in the manner in which it is interpreted by the returning officer. Mr. Lawande submits that the returning officer has adopted an unequal approach when it comes to application of the bye-laws and disqualification of the petitioners. He submits that as a result of this unequal approach and disqualification, there is virtually no contest for most of the posts and the nominees will be declared elected, unopposed, thereby defeating the democratic process.

11. Mr. Lawande relies upon the decision of the Division Bench of this Court in the case of **Pandurang Hindurao Patil Vs. State of Maharashtra and other**, [1983 MhLJ 1081], to submit that a petition under Article 226 of the Constitution of India is always maintainable to question of wrongful rejection by returning officer and it is not in every case that such petitioners have to be relegated to avail alternate decision of instituting election petition or raising a dispute once the election process is concluded .

12. Mr. Lawande points out that the ratio of this decision coupled

with the absence of provisions similar to Article 329 and 243 (G) in the Constitution in Part IXB of the Constitution, clearly suggests that the present petition is not only maintainable but should be entertained, considering the gross facts which emanate from the record.

13. Mr. D. Pangam, learned Advocate General for the State of Goa at the outset points out that this petition is not maintainable for want of joinder of necessary parties, for suppressing of material facts and in any case, may not be entertained on account of availability of alternate and efficacious remedy available to the petitioners once the election process is concluded.

14. He points out that the elections to the Board of Directors of the GSCBL are required to be concluded latest by 02.09.2019 on account of the directions issued by this Court in the context of non holding of elections despite there being the requirement to do so, under the Co-operative Societies Act.

15. The learned Advocate General points out that this petition involves disputed questions of facts. For instance, all that the material placed by the petitioner on record in the context of declaration of

dividend not only has serious discrepancies but further the material relates to only one year and not three years as required under the relevant bye-law. He points out that the issue of the manner in which the bye-laws to be clearly interpreted also involves reference to factual basis and the material on record is woefully inadequate in that regard. He points out that the co-operative Housing Society which is sought to be represented by respondent No. 4 may not be required to pay dividends in terms of its bye laws and therefore, there cannot be any serious error in accepting the nomination of respondent No. 4.

16. Learned Advocate General points out that this Court, in Writ Petition No. 722/2019 decided just yesterday, in a very similar circumstances declined to entertain the writ petition by relegating the parties to alternate remedy of raising a dispute in terms of Section 83 of the said Act. He submits that the provisions of Section 83 of the said Act are extremely wide and all disputes relating to elections and all disputes relating to acceptance or rejection of nomination papers can always be raised in a dispute under Section 83 of the said Act. He relies upon the decision of the Hon'ble Apex Court in the case of **Shaji K. Joseph Vs. Viswanath and others** [(2016) 4 SCC 429], in support of his contention that in the election matters, the courts, must normally not interfere where the parties have alternate

and efficacious remedy of instituting election petitions available to them.

17. Mr. Prasanna Chawdikar, learned counsel for respondent No.4, while substantially adopting the contentions of the learned Advocate General, maintained that there is no requirement that a housing co-operative society pays any dividend and therefore, there is absolutely no illegality in the acceptance of nomination papers of respondent no. 4 whom he represents.

18. We have carefully considered the rival contentions. According to us, the petitioners will have to be relegated to avail alternate remedy available under Section 83 of the said Act. We agree with the learned Advocate General that the provisions of Section 83 of the said Act are quite wide and would encompass all disputes relating to election to a co-operative society, which will obviously include disputes relating to improper acceptance or rejection of the nomination papers or for that matters improper preparation of final nomination list. Therefore, all the disputes which have now been raised in this petition can be fully and effectively adjudicated by raising a dispute in terms of Section 83 of the said Act.

19. Since, we are relegating the petitioners to avail the alternate remedy of raising a dispute under Section 83 of the said Act, we refrain from expressing any opinion on the merits of the petition or on the merits of the action of the returning officer either rejecting the petitioners nomination papers or accepting the nomination papers of respondent No.4. These are matters which will have to be decided by the Tribunal in terms of Section 83 of said Act.

20. The issue as to whether payment of dividend corresponds to the predicates the concerned bye-laws, the issue as to whether such dividends can be paid in lump sum for past years for which the same were never paid; the issue as to whether such dividend corresponds to the rates prescribed in the bye-laws are all issues, which will involve factual determination. In short these are seriously disputed questions of facts. All these issues cannot be effectively adjudicated in the exercise of extraordinary jurisdiction under Article 226 of the Constitution particularly when the elections are scheduled to take place on 25.08.2019 and that too under the directions of this Court for completion of the election process before 02.09.2019.

21. The petitioners have placed on record audit report/balance sheets. This however, pertains only to the year 2018-2019. This

cannot be considered as some unimpeachable material to hold that there is ex-facie compliance with the requirements of the concerned bye-laws. However, this does not mean that the petitioners should be deprived of opportunity to establish before the Tribunal, that there is in fact compliance of the requirement of these bye-laws. All that we wish to state is that on the basis of the material on record and without adjudication of factual issues, it will not be possible for us to decide whether the nomination papers of the petitioners were validly rejected or whether the nomination papers of respondent No. 4 were validly accepted. We again emphasize that all these matters can always be raised by resorting to the remedy provided in Section 83 of the said Act and the Tribunal constituted to hear such disputes, would be best poised to adjudicate such issues.

22. In similar circumstances, we declined to entertain the Writ Petition No. 772/2019 by our order dated 19.08.2019. The reasoning given in the said order will fully apply to the present order as well. We also referred to decision of the Hon'ble Apex Court in the case of **Shaji K Joseph** (supra) including in particular, the observations in para 14, 15, 16 which read thus:-

“14. 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 program on 27th January, 2011 and more particularly when an alternative statutory remedy was available to Respondent No. 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 No. 1 for contesting the election is concerned, though prima facie it appears that Respondent No. 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 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.

*15. This Court, in **Ponnuswami v. Returning Officer** (supra) has held that once the election process starts, it would not be proper for the courts to interfere with the election process. Similar view was taken by this Court in **Shri Sant Sadguru Janardan Swami (Moingiri***

Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra (supra).

16. Thus, in view of the aforestated settled legal position, the High Court should not have interfered with the process of election. We, therefore, set aside the impugned judgment and direct that the result of the election should be published. We are sure that due to interim relief granted by this Court, Respondent No. 1 must not have been permitted to contest the election. It would be open to Respondent No. 1 to approach the Central Government for referring the dispute, if he thinks it proper to do so. No issue with regard to limitation will be raised if Respondent No. 1 initiates an action under Section 5 of the Act within four weeks from today.”

23. According to us the aforesaid observations will clearly apply to the present case as well. It is true that there is no provision parallel to Article 243 O, 329 and 243 Z and Part IXB of the Constitution which relates to Co-operative Societies. However, according to us, this may not make a significant difference to the principles in matters of interference by Courts in electoral matters particularly at the stage when the result of the elections is yet to be declared.

24. Mr. Lawande has placed reliance on the decision of the Hon’ble apex Court in ***Election Commission of India Vs. Ashok Kumar [(2000) 8 SCC 216]*** in which the principles relating to interference

by Courts in electoral matters, particularly at a stage anterior to declaration of results have been set out. Mr. Lawande stressed upon the observations in paras 53(4) and 53(5) which according to us are quite relevant and read as follows:-

“(4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.

(5) The court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilize the court's indulgence by filing petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.”

25. The aforesaid observations are quite clear that if without interrupting, obstructing or delaying the progress of election process, the judicial intervention is available if assistance of the Court has been sought merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein or to preserve a vital piece of evidence where the same could be lost or destroyed or rendered irretrievable by the time the result is declared and the stage is set for invoking the jurisdiction of the Courts.

26. According to us, these circumstances, really do not arise in the present case. Any interference at this stage is bound to obstruct, interrupt or delay the progress of election proceedings. This is not a case where some corrections will smoothen the process of election proceedings. This is not a case where some vital piece of evidence could be lost or destroyed or irretrievably by the time the results are declared. Therefore, the aforesaid observations can be of no assistance to petitioner.

27. In fact in para 53(5) the Hon'ble Apex Court has observed that the Courts must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of the election

proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilize the Court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. These observations even answer Mr. Lawande's contention based upon absence of a provision like Article 329 in Part IXB of the Constitution.

28. We must at this stage say that from the reading of the petition, we did not find that the petition was any subterfuge for achieving of any ulterior or hidden end. The petitioners herein simply seek to assert their rights and to seek a redressal for what they regard, constitutes wrongful rejection of their nomination papers or wrongful acceptance of the nomination papers of the respondent No.4. However, the Apex Court has held that it is needless to say that in the very nature of the things, the Court would act with reluctance and shall not act, except on a clear and strong case for interference is made out by raising the pleas with particulars and precision and supporting the same with necessary material. Taking into consideration, these observations, we cannot say that the petitioners have raised pleas, with particulars and precision and supported them by necessary material. The petitioners will, no doubt, have the opportunity to do so, if they

chose to raise dispute under Section 83 of the Said Act, once the elections, conclude.

29. Therefore, according to us, the observations in both paras 53(4) and 53(5) of the decision of the Hon'ble Apex Court in the case of **Election Commission of India Vs Ashok Kumar** (supra) are of no assistance to the petitioners but the observations, in fact assist our conclusion that this is a fit case to relegate the petitioners to avail of the alternate remedy under Section 83 of the said Act.

30. For all the aforesaid reasons and without expressing any opinion on the factual issues, as to whether the rejection of petitioners' nomination papers was invalid or whether the acceptance of the nomination papers of the respondent No. 4 was valid, we decline to entertain the present petition.

31. However, we make it clear that the petitioners, if they so choose, will be at liberty not only to avail the alternate remedy available to them under section 83 of the said Act, but further to raise all the contentions as raised in the present petition, in such a dispute. We have no doubt that the authority which is enjoined to entertain and decide the dispute under Section 83 of the said Act, will decide

such dispute as expeditiously as possible, if and at all, such disputes are ultimately raised by the petitioner. Such expeditious resolution is necessary because the matters pertain to elections and it is the complaint of Mr. Lawande that on the basis of the rejection of the nomination papers, certain positions are going to be filled in without any contest. The learned Advocate General has disputed this position by pointing out that the election will be held in respect of several of the posts. Nonetheless, we feel that such dispute should be expeditiously resolved in the interest of effective progress of the co-operation movement in the State of Goa.

32. With the aforesaid observations and liberty we dismiss this petition.

33. In the facts and circumstances of this case, there shall be no orders as to cost.

34. At this stage, Mr. Lawande on the basis of instructions from the petitioners, states that the petitioners will raise a dispute and institute proceedings as contemplated under Section 83 of the said Act within the period of limitation prescribed under the said Act. He requests that some directions be issued to the Co-operative Tribunal,

which, according to both Mr. Lawande as well as the Advocate General is the correct authority to dispose such dispute as expeditiously as possible and in time bound manner. In the peculiar circumstances of the case, we find this request reasonable. Accordingly, we direct the Co-operative Tribunal to dispose of the dispute as expeditiously as possible, and in any case within six months from the date it is presented.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

MF/-