

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1068 OF 2019

1. Mr. Prabhakar M. Naik,
Major in age, Indian National,
Resident of Flat No. A 1, Valley
Height Co. Op. HSG Sty. Ltd.
Chicalim- Goa.
2. Mr. Jayant K. Naroji,
Major in age, Indian National,
Resident of 174, Sai Kunj Sidharth
Colony, Zuarinagar,
Vasco Da Gama Goa.
3. Mrs. Suchita J. Naroji,
Major in age, Indian National,
Resident of 174, Sai Kunj Sidharth
Colony, Zuarinagar,
Vasco Da Gama Goa.
4. Mr. Shaba G. Naik,
Major in age, Indian National,
Resident of H. No. 132, Nr.
Laxminarayan Temple, Headland
Sada,Vasco Da Gama Goa.
5. Mr. Saroj S. Naik,
Major in age, Indian National,
Resident of H. No. 132, Nr.
Laxminarayan Temple, Headland
Sada,Vasco Da Gama Goa.
6. Mr. Uday B. Prabhu,
Major in age,

Indian National,
Resident of ground Floor, Sapana
Vihar, Vaddem, Vasco Goa

7. Mr. Umesh Sonurlekar,
Major in age, Indian National,
Resident of P-23/4, MES Colony,
Varnapuri, Vasco Goa.

8. Mr. Mahadev Gogle,
Major in age, Indian National,
Resident of H.No. 148, Kirtalim,
Baina,
Vasco Goa.

9. Mr. Santosh B. Prabhu,
Major in age, Indian National,
Resident of Janaki Apartments,
New Waddem, Vasco Goa.

.... Petitioners

Vs

1. The State of Goa
Represented through Chief Secretary
Porvorim, Bardez Goa.

2. The Registrar of Co-operative Societies
Sahakar Sankul, Patto,
Panaji Goa.

3. The Deputy Registrar of Coop. Societies
Sahakar Sankul, Patto,
Panaji Goa.

4. The Asst. Registrar (Election Cell)
Asst. Election Officer,

South Goa District,
Margao Goa.

5. The Sahakar Urban Credit Co-op.
Society Ltd.,
Through its General Manager
Vasco Da Gama- Goa.

6. Mr. H. S. Gawade
C/o Asst. Election Officer,
South District,
Margao Goa

..... Respondents

Mr. Vivek Rodrigues, Advocate for the Petitioners.

Ms. Ankita A. Kamat, Additional Government Advocate for
Respondents No.1,2,3 and 4.

Mr. Harischandra S. Gawde, Ass Registrar of Co-operative Societies,
South Goa District, Margao, Goa – Respondent No.6 in person.

***Coram : M.S. Sonak &
Smt. M.S. Jawalkar, JJ.***

Date : 10th December, 2019.

ORAL JUDGMENT : (Per M.S. Sonak, J.)

Heard Mr. Vivek Rodrigues for the Petitioners and Ms
Ankita Kamat, Additional Government Advocate for Respondents
No.1,2,3 and 4. Respondent No.6 - Asst. Election Officer, South
Goa District, Margao is present in person.

2. For the order which we propose to be made, Respondent No.5 is neither a necessary, nor a proper party. As such, there is no necessity to of serving notice upon the Respondent No.5.

3. Rule. Rule made returnable forthwith with the consent and at the request of the learned Counsel for the parties.

4. The Petitioners filled in their nomination papers for elections to the Board of Directors of Respondent No.5-Society, which was scheduled to be held on 30th June, 2019. In the course of scrutiny, however, Respondent No.6, who was the Returning Officer, rejected the nomination papers of the Petitioners on 13th June, 2019. The Petitioners have grievance regards the acceptance of nomination papers of some of their opponents. List of valid nominations was put up on 14th June, 2019, along with the list of rejected nominations, which included the names of the Petitioners herein.

5. The Petitioners, by application dated 19th June, 2019, applied for certified copies, *inter alia*, of the orders of rejection of their nominations papers. There is no dispute that such application was received by Respondent No.6 on 19th June, 2019 itself. Certified copy of this application is placed on record at page 49 of the Paper Book and the same bears endorsement of Respondent No.6. Respondent No.6, who is present in the Court in person, also admits

having received such application for the certified copy on 19th June, 2019.

6. Respondent No.6, however, issued the certified copy of the order of rejection of the nomination of the Petitioners only in the third week of October, 2019 by a covering letter dated 21st October, 2019. Such certified copies were sent to the Petitioners and the Petitioners claim that they were received only on 28th October, 2019.

7. In the aforesaid background, the Petitioners seek the following reliefs :

“a) Issue an appropriate order extending the period of limitation for filing of the Cooperative Appeal/Dispute in terms of the Act before the Hon'ble Cooperative Tribunal and further issue appropriate direction to Ld. Administrative Tribunal to dispose of the said Appeals within 6 months.

b) Issue a Writ of Mandamus or in nature of Mandamus directing the Respondent No.2 to conduct inquiry and initiate appropriate Disciplinary action against the Respondent No.6 for acting in gross violation of the provisions of the Act concerning the conduct of election that clearly amounts to dereliction of duty.

c)Pass such other and further reliefs, as this Hon'ble Court deems fit and proper.”

8. So far as the first relief is concerned, reference is necessary to Section 83 of the Goa Cooperative Societies Act, 2001 (said Act)

which, *inter alia*, provides that notwithstanding anything contained in any other law for the time being in force, any dispute touching the election to the Board of Directors or the office bearers of society shall be referred by any of the parties to the dispute, to the Co-operative Tribunal within a period of 30 days from the date of declaration of the result of the election. The proviso to Section 83(1), however, provides that the Co-operative Tribunal may entertain such dispute after expiry of such period if the party aggrieved satisfies the Co-operative Tribunal that he had sufficient cause for not referring the dispute within aforesaid period.

9. From the aforesaid, it is quite clear that the dispute in terms of Section 83(1) of the said Act is required to be raised or referred to the Cooperative Tribunal within 30 days from the date of declaration of the result of the election which, in the present case, would be 1st July, 2019. However, the proviso enables the Tribunal to entertain such dispute after expiry of the said period if the party aggrieved satisfies the Tribunal that he had sufficient cause for not referring the dispute within the aforesaid period.

10. Therefore, prayer clause (a) of the Petition is quite misconceived inasmuch as it is not for this Court to order extension of the period of limitation. Rather, it is for the Petitioners to raise a dispute before the Cooperative Tribunal and seek extension of time

form the Tribunal by invoking the proviso to Section 83(1) of the said Act. It is for the Petitioners to make out a sufficient cause and on such basis, seek extension of time. In the present Petition, the Petitioners have not impleaded the elected candidates. Behind their back, it will really be not appropriate for this Court to extend the period of limitation. In the dispute which the Petitioners can raise before the Cooperative Tribunal in terms of Section 83 of the said Act, obviously the elected candidates will have to be impleaded as parties. Such elected candidates will have then opportunity to contest the sufficient cause if shown by the Petitioners. Accordingly, it is not possible for this Court to issue a writ or an order extending the period of limitation for raising the dispute in term of Section 83(1) of the said Act. However, it is made clear that it will be for the Tribunal to consider the application for extension of time or for condonation of delay, if such dispute is raised and therein condonation of delay is applied for.

11. However, in the peculiar facts and circumstances of the present case, to which we shall advert hereafter, we feel that the Cooperative Tribunal should decide the dispute, if raised by the Petitioners, expeditiously. Mr. Rodrigues, learned Counsel for the Petitioners states that necessary Petition will be filed before the Cooperative Tribunal within a period of 8 days from today, along with an application seeking extension of time or condonation of

delay. If the same is indeed filed within 8 days from today, the Cooperative Tribunal is directed to dispose of the application for condonation of delay or extension of time as expeditiously as possible and, in any case, within a period of one month from the date of first appearance of the Respondents. Notices, in such Petition/dispute will be issued immediately or in any case, within a period of 4 days from lodging of such Petition/dispute. Thereafter, if the delay is condoned or if the period is extended in exercise of the powers conferred under Section 83(1) of the said Act, the Cooperative Tribunal is directed to dispose of the dispute again, as expeditiously as possible and, in any case, within a period of 6 months from the date on which the delay is condoned, or the period of limitation is extended, if at all sufficient cause is indeed shown by the Petitioners.

12. In so far as the relief in terms of prayer clause (b) is concerned, it is necessary to note that Respondent No.6 was the Returning Officer, who conducted the elections to the Board of Directors of Respondent No.5-Society. Respondent No.6 was, in that sense, presiding over the solemn democratic process. Respondent No.6 was, no doubt, empowered to accept nomination papers or to reject nomination papers as per his understanding of the facts and law.

13. The issues, whether the Petitioners' nomination papers were validly rejected by Respondent No.6 or whether the nomination papers of some other candidates were validly accepted by him are, really not the issues which arise before us in this Petition. What we are really concerned with, is the delay with which Respondent No.6 has furnished to the Petitioners certified copies of the orders of rejection of their nomination papers. In the facts of the present case, we feel that the delay was totally unreasonable and unjustified.

14. Mr. Rodrigues has invited our attention to Rule 69 of the Goa Cooperative Societies Rule, 2003 (said Rules) which provide for a detailed procedure for scrutiny of nomination papers, which reads as follows :

“69. Scrutiny of nomination papers.— (1) On the date fixed for the scrutiny of nomination papers of the candidates, under rule 61, one person proposed by each candidate, duly authorised in writing by the candidate, may attend at the time and place appointed in this behalf and the Returning Officer shall give or cause to give them all reasonable facilities for examining the nomination papers of all candidates, which have been delivered as required by rule 65. No other person shall be allowed to attend scrutiny of nominations.

(2) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nominations and may, either on such objections or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds, this is to say:—

(i) that the candidate is disqualified for being chosen to fill the seat by or under the Act, these rules and the bye-laws;

(ii) that there has been a failure to comply with any of the provisions of rule 65 or 67;

(iii) that the signature of the candidate or the proposer or the seconder on the nomination paper is not genuine.

(3) Nothing contained in clauses (ii) or (iii) of sub-rule (2) shall be deemed to authorise the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of substantial character.

(5) The Returning Officer shall hold the scrutiny on the date appointed in this behalf under rule 61 and shall not allow any adjournment of the proceedings, except when such proceedings are interrupted or obstructed by riot or open violence or causes beyond his control:

Provided that, in case any objection is raised by the Returning Officer or is made by any other person, the candidate concerned may be allowed time to rebut it, not later than two days (excluding holiday), and the Returning Officer shall record his decision on the date to which the proceedings have been adjourned.

(6) The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, he shall record in writing a brief statement of his reason for such rejection, and copy of such statement shall be immediately supplied on demand to the candidate or to the proposer concerned. The copy of such statement shall be sent invariably to the Chief Election Officer or

to the Assistant Election Officer, as the case may be.”
[emphasis supplied]

15. Sub-rule (6) of Rule 69, clearly provides that the Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, he shall record in writing a brief statement of his reason for such rejection, and copy of statement shall be immediately supplied on demand to the candidate or to the proposer concerned. A copy of such statement shall be sent invariably to the Chief Election Officer or to the Assistant Election Officer, as the case may be.

16. Therefore, the mandate of the Rules is that whilst rejecting any nomination papers, the Returning Officer is obliged to record in writing, brief statement of his reasons for such rejection. Sub-rule (6) of Rule 69 further provides that copy of such statement shall be immediately supplied on demand to the candidate or to the proposer concern.

17. In the present case, taking into consideration the fact that the Petitioners applied for certified copy on 19th June, 2019 when, in fact, Respondent No.6 had rejected their nomination papers on 13th June, 2019 and notified them about such rejection on 14th June, 2019, it cannot be said that there was any obligation upon the Returning Officer to furnish copy of the statement containing

reasons for rejection of the nomination papers upto 19th June, 2019. However, considering the manner in which sub-rule (6) of Rule 69 of the said Rules is couched and more particularly the use of the expression "*immediately*", Respondent No.6-Returning Officer was obliged to furnish brief statement of his reasons either on 19th June, 2019 or at least within a period of maximum 2 to 3 days thereafter. In the present case, unfortunately, Respondent No.6 has chosen to furnish the brief statement of reasons after almost 4 months i.e. on 21st October, 2019 which, according to us, is completely unacceptable.

18. Respondent No.6, who appears in person, submitted that the Petitioner along with their application, had sought for certified copies of orders, Roznamas and other documents, in terms of which the nomination of the Petitioners came to be rejected and the nomination of some other persons, came to be accepted. It is the case of Respondent No. that four months' time was required because all these documents had to be furnished.

19. We have perused the application dated 19th June, 2019 which is placed on record at Exhibit K (at page 49). The application seeks certified copies of orders and Roznama sheet in respect of nomination papers filed by the 8 Petitioners. Apart from the same, the Petitioners have applied for documents and the decision taken

by Respondent No.6 in respect of nomination papers of the four candidates.

20. In the first place, the reasons now cited by Respondent No.6 can never be accepted as valid reasons for failure to discharge the duty conferred upon Respondent No.6 by sub-rule (6) of Rule 69 of the said Rules. There is a duty to supply immediately, on demand, the brief statement of reasons for rejection of nomination papers. Therefore, merely because the Petitioners applied for certified copies of the additional documents, the same did not entitle the Respondent No.6 to take 4 months to supply brief statement of reasons for rejection of the Petitioners' nomination papers.

21. Secondly, even, otherwise, the delay of 4 months in furnishing copies of the Roznama sheet or copies of orders accepting the nomination papers of some other candidates is totally unreasonable. The Roznama sheets must have been available on record and copies of the same could have been issued within a reasonable time. The same is the position with regard to the decision accepting nomination papers of other candidates. In any case, since the law requires Respondent No.6 to record, in writing, brief statement of his reasons for rejection of nomination papers, such brief statement must have been thereon record and Respondent No.6 was duty bound to immediately supply the same on demand to

the candidates, in the present case, the Petitioners herein.

22. Ms. Kamat, learned Additional Govt. Advocate pointed out that Memorandum dated 20th February, 2019 has already been issued to Respondent No.6, requiring him to show cause as to why disciplinary action should not be taken against him for failure to conduct the elections, in time.

23. On perusal of the Memorandum dated 20th February, 2019 it is clear that this memorandum does not relate to the events which are subject-matter of the present Petition. Rather, the said memorandum relates to Respondent No.6 not holding elections to the Board of Directors of Respondent No.5- Society even for a considerable amount of time after the same were due. The record indicates that the elections were due sometime in February, 2018 and Respondent No.6 was already appointed as Returning Officer on 15th December, 2017. Despite this, Respondent No.6 failed to initiate the election process upto 24th April, 2019 by which time, the term of the previous Board had already expired. It is in this context that the Memorandum dated 20th February, 2019 came to be issued. No doubt, even this Memorandum relates to *prima facie* disregard to the democratic processes by the Respondent No.6 .

24. However, we agree with Mr. Rodrigues that some orders are necessary in the context of the conduct of Respondent No.6 in

furnishing the certified copies of orders on rejection of the Petitioners nomination papers after 4 months from the date of receipt of application for certified copy. As noted earlier, the parties whose nomination papers are rejected have a remedy before the Cooperative Tribunal by way of raising a dispute. Such dispute is required to be ordinarily raised within 30 days from the date of declaration of the election. Proviso to Section 83(1) of the said Act no doubt empowers the Cooperative Tribunal to extent or condone the delay.

25. In the present case, however, the conduct of Respondent No.6 at least, *prima facie*, rendered extremely difficult for the Petitioners to effectively exercise their right to raise their dispute under Section 83 of the said Act. In order to effectively exercise such right, the Petitioners were entitled to know the reasons for which their nomination papers came to be rejected. Apart from all this, Rule 69 of the said Rules is quite clear, in that where the Returning Officer rejects the nomination papers, he is obliged to record, in writing, brief statement of his reasons for such rejection and further copy of such statement has to be immediately supplied on demand to the candidate or to the proposer concerned.

26. In the present case, the supply of copies four months after demand, does not amount to complying with the provisions of sub-Rule (6) of Rule 69 of the said Rules. Respondent No.6 may have his own justification. However, it will not be appropriate for us

to go into such justification, at this stage since we propose to direct Respondent No.2 who, we are informed, is the Disciplinary Authority *qua* respondent No.6 to initiate disciplinary proceedings against Respondent No.6, within a period of two months from the date of this order. We make it clear that full and reasonable opportunity should be afforded to Respondent No.6 in the course of these disciplinary proceedings. The observations made by us in this Judgment are only *prima facie* and the same need not influence the Disciplinary Authority. Such observations are made only in the context of prayer clause (b) of this Petition in which the Petitioners have applied for a writ of mandamus to Respondent No.2 to conduct an inquiry and initiate appropriate disciplinary proceedings against Respondent No.6 herein. The disciplinary proceedings should be concluded within six months from the date of initiation thereof.

27. This Petition is, accordingly, disposed of by making the following order :

(A) If the Petitioners file a Petition/dispute in terms of Section 83 of the said Act within 8 days from today, along with the application for condonation of delay or extension of time, then, the Cooperative Tribunal to dispose of the application for condonation of delay/extension of time within a period of one month from the date of appearance of the Respondents in such petition. Notices in such Petition should be issued within one week from the date such

Petition is lodged;

(B) If, ultimately, delay is condoned, or period of limitation is extended in exercise of the powers conferred by proviso to Section 83(1) of the said Act, the Petition/disputes to be disposed of within 6 months from the date of order condoning the delay or extending the time, as aforesaid.

(C) The Petition/dispute to be decided by the Cooperative Tribunal on its own merits and, in accordance with law, after due compliance with the principles of natural justice and fair play.

(D) All contentions of all parties on merits are expressly kept open.

(E) Respondent No.2 is directed to initiate disciplinary proceedings against Respondent No.6 within two months from today and to conclude the same within a period of six months thereafter. Respondent No.6 is to be offered just and reasonable opportunity for his defence in the course of such disciplinary proceedings.

(F) All observations in this Judgment and Order are only *prima facie* and the same must not be taken into consideration in the disciplinary proceedings against Respondent No.6.

28. Rule is made absolute in the aforesaid terms.
29. There shall be no order as to costs.
30. All concerned to act on the basis of an authenticated copy of this judgment and order.

Smt. M.S. Jawalkar, J.

M.S. Sonak, J.