

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

WRIT PETITION NO. 4972 OF 2019

Swami Vivekanand Nagari Sahakri
Pat Sanstha Maryadit, Pune & Ors. ... Petitioners.

V/s.

Ramesh Shankar Wani & Ors. ... Respondents.

**WITH
CIVIL APPLICATION NO.1534 OF 2019
IN
WRIT PETITION NO. 4972 OF 2019**

Ramesh Shankar Wani & Ors. ... Applicant.

V/s.

Swami Vivekanand Nagari Sahakri
Pat Sanstha Maryadit, Pune & Ors. ... Respondents.

Mr. Milind M. Sathaye, Advocate for the Petitioners.
Mr. Shailendra S. Kanetkar, Advocate for Respondent
No. 1.
Mr. Rajendra M. Haridas, Advocate for Respondent No.2.

CORAM : UJJAL BHUYAN, J.

DATE : DECEMBER 05, 2019.

PC :

1 Heard Mr. Milind Sathaye, learned counsel for
the Petitioners; Mr. Shailendra S.Kanetkar, learned
counsel for Respondent No.1 and Mr. Rajendra Haridas,
learned counsel for Respondent No. 2.

2 Eight Petitioners have joined together and have instituted the present common proceeding under Article 227 of the Constitution of India, assailing the legality and correctness of the order dated 22.01.2019 passed by the learned Member, Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Pune, allowing the appeal of Respondent No.1 being Appeal No. 38 of 2018.

3 Matter relates to election to the seven open category seats of the Managing Committee of the Co-operative Society viz. Swami Vivekanand Nagari Sahakari Pat Sanstha Maryadit/Petitioner No.1, which is registered under the provisions of Maharashtra Co-operative Societies Act, 1960 (briefly, the Act, hereinafter).

4 Election to the Managing Committee for the period 2015 to 2020 was declared on 27.02.2015. Prior to that, a set of new bye-laws of the Society was adopted in the Special General Body Meeting of the Society held on 05.01.2014. It was submitted to the Commissioner for Co-operation Department on 28.01.2015 and received approval of the Commissioner on 05.03.2015. It is stated that on the same day i.e. on

05.03.2015 the new amended bye-laws came into effect.

5 As noticed above, election programme of Petitioner No. 1 was declared on 27.02.2015. Scrutiny of nomination papers took place on 09.03.2015. Nomination papers of Respondent No.1 and another were rejected by the Election Officer on 10.03.2015, on the basis of the amended bye-laws. It was held that as per requirement of the amended bye-laws, Respondent No. 1 and the other rejected candidate did not have the requisite deposit of Rs. 1.50 lakhs.

6 Respondent No. 1 challenged rejection of his nomination paper before the Deputy Registrar of Co-operative Societies, Pune under section 152-A of the Act, by filing Appeal No. 06 of 2015.

7 After hearing the matter, the Deputy Registrar dismissed the appeal of Respondent No.1 on 23.03.2015. It is stated that Respondent No. 1 did not challenge the aforesaid appellate order and therefore, rejection of his nomination paper attained finality.

8 Election results were declared on 25.03.2015. Petitioner Nos. 2 to 8 were elected. Respondent No.1

alongwith Bharati Milind Wani filed the related dispute before the Co-operative Court No.1 at Pune, contending that they had filed nomination papers in respect of general category seats but their nomination papers were rejected on the ground that they did not have fixed deposit of Rs. 1.50 lakhs with the Society which was a requirement under the amended bye-laws. While it was contended that as a matter of fact, such deposit was there, it was additionally contended that the amended bye-laws having been approved on 05.03.2015, the same could not have been made applicable in respect of the election of which programme was declared prior to 05.03.2015 on 27.02.2015.

8.1 Upon receipt of notice, Petitioners contested the dispute by filing written statement and by leading evidence.

9 Co-operative Court No. 1, Pune, after hearing the matter and on due consideration, partly allowed the dispute by holding that election of Petitioner No. 7 i.e. Vijaykumar Sadashiv Malpure (who was elected unopposed) was illegal, null and void. By order dated 20.02.2018 his election was set aside and directions were issued to hold re-election against the said

consequential vacancy. Election of the other petitioners were not interfered with.

10 Out of the two disputants, only Respondent No. 1 preferred appeal before the Co-operative Appellate Court, Mumbai Bench at Pune (Appellate Court) against the order dated 20.02.2018. The appeal was registered as Appeal No.38 of 2018. Petitioners appeared before the Appellate Court and contested the appeal. After hearing the matter, the Appellate Court partly allowed the appeal vide order dated 22.01.2019 by declaring the election to the Managing Committee of the Society for the period 2015-2020 in the open category as null and void and set aside the same, further directing the State Co-operative Election Authority to hold fresh elections for constitution of the Board of Directors of the Society for the period 2015-2020 in the open category.

10.1 Though by the above order dated 22.01.2019, the Appellate Court partly allowed the appeal but to enable the parties to challenge said order it was kept in abeyance till 25.02.2019.

11 Aggrieved, present Writ Petition has been filed.

12 This court by order dated 26.02.2019 directed that the interim protection granted by the Appellate Court would continue.

13 Respondent No. 2 has filed affidavit-in-reply. Respondent No. 2 is an Election Officer of the Society. She has stated that as per the amended bye-laws, the contesting candidates should have requisite deposit in their individual names with the Society. Original disputant (Respondent No.1) was not having requisite deposit in his individual name with the Society. Amended bye-laws became applicable from the date of its approval. At the time of scrutiny of nomination papers, copy of the amended bye-laws was available with the Society. The scrutiny was conducted as per the amended bye-laws. Original disputant (Respondent No.1) was given time till 3 p.m. on the date of the scrutiny to deposit the requisite amount with the society, which he failed to do.

13.1 She has also stated that original disputant i.e. Respondent No. 1 had preferred appeal against rejection of his nomination paper, which was dismissed by the Additional Commissioner. Dismissal order was not challenged further.

14 Submissions made by learned counsel for the parties are on pleaded lines. However, those have been duly considered.

15 At the outset, order passed by the Co-operative Court No. 1 at Pune in Dispute No. 41 of 2015 may be adverted to. The Co-operative Court recorded the undisputed facts as under :

- “1) Opponent No. 2 is Co-operative Credit Society registered under the M.C.S. Act, 1960.
- 2) Election of managing committee of opponent No. 1 society for the period 2015-2020 was held for 13 seats.
- 3) Opponent No. 1 was Returning Officer of the said election.
- 4) On 09.03.2015, opponent No. 1 rejected the nomination forms of the disputants on the ground that Fixed Deposit of Rs. 1,50,000/- has not been kept by them with opponent No. 2 society in individual name.
- 5) The orders of opponent No. 1 rejecting the nomination forms of the disputants were challenged before Additional Commissioner, C.S.M.S.,Pune under Section 152A of the M.C.S. Act and the same was dismissed.

6) On 25.03.2015, opponent Nos.3 to 14 have been declared to be elected unopposed as managing committee members of opponent No. 2 society.”

16 The main ground of challenge was recorded by the Co-operative Court in paragraph 31 of the order, which was noted as the main ground of challenge - that the amended bye-laws of the Society were not in existence at the time of publication of the election programme and therefore, rejection of the nomination of the disputants on the basis of the amended bye-laws was not justified. Co-operative Court recorded the findings as under :

“32. It is no doubt true that election programme was published on 27.02.2015 and the nomination forms of disputants were rejected on 09.03.2015. It is also no doubt true that the nomination forms of disputants were rejected on the count that they were not having fixed deposit of Rs.1,50,000/- with opponent No. 2 by individual name. Bye-law No. 44 (13) deals with such condition. The said condition is incorporated in new/amended bye-laws produced below Exh. 44. As per Bye-

law No. 44(13), there is necessity to keep fixed deposit of Rs.1,50,000/- by the candidate to contest the election.”

17 After considering the evidence on record and provisions of the bye-laws, the Co-operative Court came to the clear finding that the amended bye-laws came into force w.e.f. 05.03.2015 i.e. from the date of approval by the Additional Commissioner. Thereafter, it was held that if the amended bye-laws came into force from 05.03.2015, Election Officer was duty bound to follow the same. Election Officer had followed the amended bye-laws and since the original disputants did not comply with the relevant provisions of the bye-laws which stipulated deposit of Rs.1.50 lakhs with the Society, nomination papers were rejected. Therefore, no fault was found with the rejection of the nomination papers of the original disputants including Respondent No. 1. However, insofar opponent no. 8 i.e. Petitioner No.7- Vijaykumar Sadashiv Malpure, was concerned, it was held that a definite finding was recorded by the Co-operative Court that he was not eligible for being elected as he was a defaulter. Accordingly, election of Petitioner No. 7 was declared illegal, null and void and consequently, set aside. Petitioner No. 7 had not challenged this

finding of the Co-operative Court in appeal. Disputant No. 2 – Bharati Milind Wani also did not prefer any appeal. Only original Disputant No.1 (Respondent No. 1) preferred appeal before the Appellate Court by filing Appeal No. 38 of 2018. Surprisingly, the Appellate Court went on a tangent after correctly summing up the controversy in paragraph 32 of the order. The Appellate Court did not accept the proposition that election should be held in accordance with the amended bye-laws because on the date of the declaration of the election programme amended bye-laws were not in existence. Therefore, the Appellate Court after setting aside the order dated 20.02.2018 passed by the Co-operative Court, partly allowed the Dispute No. 41 of 2015. Since the contesting parties belong to open category, election to the Managing Committee of the Society for the period 2015-2020 in the open category was declared null and void and further directed holding of fresh election.

18 I am afraid the view taken by the Appellate Court is not correct. While it is true that in the absence of any retrospective clause amendment to the bye-laws would be prospective, in my view, prospectivity of the amended bye-laws would not in any manner materially affect the decision taken by the Co-

operative Court. Though the election programme was notified on 27.02.2015, in the midst of the election programme amendment of the bye-laws was approved and registered on 05.03.2015. On the date of registration i.e. 05.03.2015, the amended bye-laws would be deemed to have come into force. If the amended bye-laws had come into force on 05.03.2015 then the scrutiny of nomination papers that took place thereafter on 09.04.2015 was required to be carried out in terms of the amended bye-laws. Election Officer carried out the scrutiny as per the amended bye-laws and following scrutiny, nomination paper of Respondent No. 1 was rejected as it was found to be not in conformity with the requirement of the amended bye-laws.

19 Therefore, such decision of the Election Officer cannot be faulted.

20 That apart, if view of the Appellate Court is taken to its logical conclusion then the entire election ought to have been set aside and not confined to only the open category. Otherwise also, there was only one disputant before the Appellate Court. For one disputant, it was not necessary for the Appellate Court to have set aside the entire election covering the open category.

21 Even if the contention of Respondent No. 1 was accepted, it would have resulted in his entitlement to contest afresh. The Appellate Court had already declared election of Petitioner No. 7 as null and void and directed election afresh to fill up the said vacancy. Therefore, Appellate Court could have confined its interference to the resultant vacancy following declaration of the election of Petitioner No.7 as null and void. Instead of doing that the Appellate Court completely misdirected itself and set aside the entire election in the open category.

22 In view of the above, Court is of the view that the impugned order of the Appellate Court dated 22.01.2019 cannot be sustained. The same is, accordingly, set aside and quashed.

23 In view of the above order, Civil Application does not survive and stands disposed of.

24 Writ Petition is allowed but with no order as to costs.

(UJJAL BHUYAN, J.)

.....