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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.685 OF 2019

Pooja Vijay Rane

...Petitioner

vs.

Returning Officer (Dy. Registrar C.S),
R-S Ward Mumbai And 14 Ors.

...Respondents

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Mr. P.V. Satam, i/b. Mr. Vijay Gangan, for the Petitioner.

Mr. Mahesh Devlekar, for Respondent Nos. 2 to 14.

Mr. Manish Upadhye, AGP, for Respondent No.15.

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CORAM : S.C. GUPTE, J.

DATED: 21 FEBRUARY, 2020

P.C. :

. Heard learned Counsel for the parties.

2. This writ petition challenges an order passed by the District Co-operative Election Officer, Deputy Registrar of Co-operative Societies IV, Mumbai. The impugned order has been passed under Rule 66(b) of the Maharashtra Co-operative Societies (Election To Committee) Rules, 2014. Rule 66 provides for disqualification of an elected member of managing committee of a society on account of failure to lodge an account of election expenses. The rule provides that upon being satisfied, that any person – (a) has failed to lodge an account of election expenses within the time and in the manner provided by the last

preceding rule and (b) has no good reason or justification for such failure, the District Co-operative Election Officer shall, by order published in the Official Gazette, declare him to be disqualified for being elected as, or 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 this order.

3. In the present case, it is the case of the Petitioner herein, who is a member of Respondent No.2 Co-operative Housing Society, that the elections to the managing committee of the society for the years 2017-18 to 2021-22 were held and results were declared on 30 July 2017. It is submitted that Rule 65, i.e. preceding rule to Rule 66, provides for filing of an account of all expenditure in connection with the election incurred or authorised by the candidate within a period of thirty days from the date of declaration of the result. It is submitted that this period of thirty days expired on 29 August 2017. It is submitted that accounts were filed by the elected members of the managing committee of the Respondent society in the present case (Respondent Nos. 3 to 14) on 27 September 2017, i.e. after a delay of over 28 days. It is submitted that, in the premises, on the application of the Petitioner herein, the District Co-operative Election Officer was bound to disqualify the elected members under Rule 66 read with Rule 65. It is submitted that, in his impugned order, the Deputy Registrar, Co-operative Societies, who was the District Co-operative Election Officer, has instead dismissed the complaint application of the Petitioner, refusing to act under Rule 66 of Maharashtra Co-Operative Societies (Elections To Committee) Rules, 2014.

4. In the first place, it is not correct to say that failure to lodge an account of election expenses within a period of thirty days in accordance with Rule 65 straightway calls for disqualification of the concerned member. Under Rule 66, the District Co-operative Election Officer has not only to see that the person has failed to lodge an account of his election expenses within the time and in the manner required by the last preceding rule (Rule 65), but that such person has no good reason or justification for such failure. In other words, in any case of failure to lodge an account, the District Co-operative Election Officer has a discretion to order or not to order disqualification of the concerned person. In the present case, the Deputy Registrar has considered a circular issued by the State Co-operative Election Authority on 12 October 2015. By this circular, the election authority has *inter alia* observed that whereas Rule 65 required every candidate to submit an account in the manner provided under Rule 67, Rule 67 itself does not have any provision for a period within which such account has to be submitted. The election authority has *inter alia* observed that the requirement of the concerned rule, namely, Rule 65, for lodging of an account of election expenses within thirty days, was not in consonance with Rule 67 and, in the premises, a proposal was sent to the Government to make the necessary amendment. Incidentally, the Government has, in fact, modified the rule and deleted the requirement of lodging of the election account within thirty days. Based on this circular, and the circular of 20 January 2018, by which sub-rule 1(a) was added after Rule 67 requiring lodging of an election report within sixty days to the Election Officer and considering that Respondent Nos. 3

to 14 herein had indeed submitted their election expenditure report within sixty days, the complaint of the Petitioner herein was dismissed by the District Deputy Registrar.

5. This order cannot be termed as perverse or unreasonable. After all, the Deputy Registrar was bound to consider whether there was any justifiable reason for non-submission of the accounts. According to the State Election Authority itself, there was a justifiable reason for the State Government to make appropriate amendments in the rules providing for sixty days for lodging of election accounts. If, in the premises, the Deputy Registrar has excused the delay of 28 days on the part of the Respondents, the overall period within which the Respondents actually lodged their accounts being within sixty days, it cannot be said that the order is impossible or unreasonable. It does not, accordingly, merit any interference within the writ jurisdiction of this Court.

6. Accordingly, there is no merit in the writ petition. The writ petition is dismissed.

(S.C. GUPTE, J.)

**Smita
Gonsalves**

Digitally signed by
Smita Gonsalves
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