

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 54 OF 2021**

Dadi Gangaram Naik Petitioner.

Vs.

The Returning Officer, Officer of
the Registrar of Co-op Societies

Govt. of Goa and 3 ors. Respondents.

Shri D. Naik, Advocate for the petitioner.

Ms. S. Mordekar, Addl. Govt. Advocate for the respondent nos. 1 and 2.

Shri P. Chaudikar and Shri Mandar Naik, Advocates for the respondent nos. 3 and 4.

WITH**WRIT PETITION NO. 53 OF 2021**

Ramchandra Govind N.

Mule, Rep. of Ravalnath

VKS Society Ltd. Petitioner.

Vs.

The Returning Officer, Officer of
the Registrar of Co-op Societies

Govt. of Goa and 5 ors. Respondents.

Shri D. Naik, Advocate for the petitioner.

Shri M. Salkar, Govt. Advocate for the respondent nos. 1 and 2.

Shri G. Panandikar, Advocate for the respondent nos. 3 and 6.

WITH

WRIT PETITION NO. 55 OF 2021

Rajkumar Shankar Desai

.... Petitioner.

Vs.

The Returning Officer, Officer of
the Registrar of Co-op Societies

Govt. of Goa and 3 ors.

.... Respondents.

Shri D. Naik, Advocate for the petitioner.

Shri M. Salkar, Govt. Advocate for the respondent nos. 1 and 2.

Shri R. G. Rivankar, Advocate for the respondent no. 3.

WITH

STAMP APPLICATION (MAIN) NO. 1564 OF 2020(FILING)

Jayant K. Naroji

.... Petitioner.

Vs.

The Returning Officer, Officer of
the Registrar of Co-op Societies

Govt. of Goa and 10 ors.

.... Respondents.

Shri V. Naik, Advocate for the petitioner.

Shri S. P. Munj, Addl. Govt. Advocate for the respondent nos. 1 and 2.

Shri P. Chaudikar and Shri Mandar Naik, Advocates for the
respondent nos. 3, 4, 6 to 10.

WITH

STAMP APPLICATION (MAIN) NO. 1571 OF 2020(FILING)

Shaba G. Naik

.... Petitioner.

Vs.

The Returning Officer, Officer of
the Registrar of Co-op Societies

Govt. of Goa and 10 ors.

.... Respondents.

Shri V. Naik, Advocate for the petitioner.

Shri G. Sheye,, Addl. Govt. Advocate for the respondent nos. 1 and 2.

Shri P. Chaudikar and Shri Mandar Naik, Advocates for the
respondent nos. 3, 4, 6 to 10.

WITH

STAMP APPLICATION (MAIN) NO. 1570 OF 2020(FILING)

Santosh B. Prabhu

.... Petitioner.

Vs.

The Returning Officer, Officer of
the Registrar of Co-op Societies

Govt. of Goa and 10 ors.

.... Respondents.

Shri V. Naik, Advocate for the petitioner.

Shri V. Sardessai, Addl. Govt. Advocate for the respondent nos. 1 and
2.

Shri P. Chaudikar and Shri Mandar Naik, Advocates for the
respondent nos. 3, 4, 6 to 10.

WITH

STAMP APPLICATION (MAIN) NO. 1568 OF 2020(FILING)

Suchita J. Naroji

.... Petitioner.

Vs.

The Returning Officer, Officer of
the Registrar of Co-op Societies

Govt. of Goa and 4 ors.

.... Respondents.

Shri V. Naik, Advocate for the petitioner.

Shri G. Shetye, Addl. Govt. Advocate for the respondent nos. 1 and 2.

Shri P. Chaudikar and Shri Mandar Naik, Advocates for the respondent nos. 3, 4 and 5.

WITH

STAMP APPLICATION (MAIN) NO. 1566 OF 2020(FILING)

Uday B. Prabhu

.... Petitioner.

Vs.

The Returning Officer, Officer of
the Registrar of Co-op Societies

Govt. of Goa and 10 ors.

.... Respondents.

Shri V. Naik, Advocate for the petitioner.

Shri V. Sardesai, Addl. Govt. Advocate for the respondent nos. 1 and 2.

Shri P. Chaudikar and Shri Mandar Naik, Advocates for the respondent nos. 3, 4, 6 to 10.

WITH

STAMP APPLICATION (MAIN) NO. 1567 OF 2020(FILING)

Prabhakar M. Naik

.... Petitioner.

Vs.

The Returning Officer, Officer of
the Registrar of Co-op Societies

Govt. of Goa and 10 ors.

.... Respondents.

Shri V. Naik, Advocate for the petitioner.

Shri T. Gawas, Addl. Govt. Advocate for the respondent nos. 1 and 2.

Shri P. Chaudikar and Shri Mandar Naik, Advocates for the respondent nos. 3, 4, 6 to 10.

WITH**STAMP APPLICATION (MAIN) NO. 1565 OF 2020(FILING)**

Umesh Sonurlekar

.... Petitioner.

Vs.

The Returning Officer, Officer of

the Registrar of Co-op Societies

Govt. of Goa and 10 ors.

.... Respondents.

Shri V. Naik, Advocate for the petitioner.

Ms. S. Kamat, Addl. Govt. Advocate for the respondent nos. 1 and 2.

Shri P. Chaudikar and Shri Mandar Naik, Advocates for the respondent nos. 3, 4, 6 to 10.

WITH**STAMP APPLICATION (MAIN) NO. 1569 OF 2020(FILING)**

Saroj S. Naik

.... Petitioner.

Vs.

The Returning Officer, Officer of

the Registrar of Co-op Societies

Govt. of Goa and 4 ors.

.... Respondents.

Shri V. Naik, Advocate for the petitioner.

Shri S. P. Munj, Addl. Govt. Advocate for the respondent nos. 1 and 2.

Shri P. Chaudikar and Shri Mandar Naik, Advocates for the respondent nos. 3, 4 and 5.

Coram: DAMA SESHADRI NAIDU, J.**Date : 16th March 2021**

ORAL ORDER:**WP Nos.53, 54, and 55 of 2021:**

The Goa State Co-operative Bank limited, the third respondent in this batch of Writ Petitions, is an Apex Co-operative Bank. It comprises seven constituencies: (A) to (G). In 2019, the authorities concerned notified the election for the Bank.

2. The petitioner in Writ Petition No.53 of 2021 filed his nomination for the constituency (A); the petitioner in Writ Petition No.54 of 2021, for constituency (F); and the petitioner in Writ Petition No. 55 of 2021, for constituency (G). In all these three constituencies, there are other contestants.

3. In course of time, the Returning Officer rejected the nominations of these three petitioners and allowed those of the others. From amongst the candidates whose nominations had been accepted, a few emerged successful and others lost. If we confine our discussion to constituency (A), with the petitioner's nomination rejected; the other three candidates—that is respondents 4, 5 and 6—were elected unopposed. Then, for constituency (F), the 4th respondent in WP No.54 of 2020 was elected. And for constituency (G), the 4th respondent in WP No.55 of 2020 was elected. The other contesting respondents lost.

4. Aggrieved, the petitioners filed the election petitions before the Co-operative Tribunal. Through its judgment dated 20.3.2020, the Tribunal dismissed all the three election petitions through

separate judgments. That dismissal was on the grounds that each petitioner had not impleaded all the other successful candidates from the other six constituencies. Therefore, it has refused to hear the application on merits; instead, it has dismissed the petitions on the grounds of non-joinder of necessary parties. Aggrieved, the petitioners have filed these Writ Petitions.

Other Cases:

5. These are the other writ petitions that have remained at the STM stage. Filed online as STMs, they have not yet been converted into Writ Petitions. Barring this technicality, they too raise the same issue, with an identical factual backdrop. Those STMs are these: Stamp Application (Main) Nos. 1564, 1566, 1567, 1568, 1569, 1570, and 1571 of 2020.

6. Heard Shri D. Naik, the learned counsel for the petitioners; Shri V. Naik, the learned counsel for the petitioner in STM, Shri V. Chaudikar and Shri G. Panandikar, the learned counsel for the respective respondents, Shri M. Salkar, the learned Government Advocate for the respondent nos. 1 and 2.

7. As these writ petitions and STMs raise a pure question of law, we need not focus much on the facts. Besides, for convenience's sake, I will treat the STMs too as the writ petitions. Out of seven constituencies, there arose election disputes in three constituencies. In each constituency, one candidate's nomination was rejected. And that candidate filed election petition. The common respondents in the three writ petitions are these: (1) the Registrar of Co-operative

Society (R1); (2) the Returning Officer (R2), and (3) Goa State Co-operative Bank Ltd. (R3).

8. That apart, each petitioner in his writ petition has arrayed all the other contesting respondents, successful or unsuccessful, from that constituency alone. But the Tribunal has held that the petitioners must have added all other contesting candidates from other constituencies as well.

9. In this context the Tribunal has relied on *Augustino Mascarenhas v. State of Goa*¹. Let us examine this case. One of the respondents railed a plea that the petition suffered from non-joinder of necessary parties because the petitioner had not jointed “all the contesting candidates”. This Court, per U. V. Bakre J, upheld that objection. In that process, al learned Single Judge has observed that

“[T]here is no dispute that altogether there are 26 contesting candidates for election ‘to the Board’ of the said society. ... The petitioner has neither added the said 26 candidates nor the said society as parties to this petition. May be that the said society is only a proper party but as far as the said 26 candidates are concerned, in our considered opinion, they are all necessary parties. This is because, they are contesting the election under a belief that the competition is amongst 26 candidates and accordingly they must have planned their strategy of campaign. If the present petition is allowed or even if the interim reliefs as prayed for are granted, then there would naturally be one more candidate in the field and the other 26 candidates will suffer competition from him. ... The petition therefore suffers from non-joinder of necessary parties. The rights of those other candidates would be prejudiced, if order as prayed for is passed, without hearing them”.

¹ Writ Petition No. 2 of 2012, decided on 12.01.2012

10. True, this Court has held that “altogether there are 26 contesting candidates for election to the Board” and that their non-joinder vitiates the writ petition. But let us not forget the petitioner in *Augustino Mascarenhas* has filed the writ petition before the elections were over and without approaching the Tribunal. So, the respondents in *Augustino Mascarenhas* did take a plea that “the petitioner has an alternative efficacious remedy and hence the writ petition under Articles 226 and 227 of the Constitution of India may not be entertained”. The respondents have also contended that “the petition raises disputed questions of fact which cannot be gone into, in the present petition”. In that context, *Augustino Mascarenhas* has observed any relief granted to the petitioner would affect the prospects of all other candidates.

11. That apart, *Augustino Mascarenhas* has given reasons to why those 26 candidates are necessary. It has gone on to observe that “they are contesting the election under a belief that the competition is amongst 26 candidates, and accordingly they must have planned their strategy of campaign. If the present petition is allowed or even if the interim reliefs as prayed for are granted, then there would naturally be one more candidate in the field and the other 26 candidates will suffer competition from him”.

12. I am afraid *Augustino Mascarenhas*’s reasoning does not apply here. There, it was a writ petition before the elections; here, these are election petitions before the Tribunal after the election. Besides, what is unclear from *Augustino Mascarenhas* is whether there were different constituencies as are here. To my understanding, *Augustino*

Mascarenhas has in all 26 candidates and there has been competition amongst them. That presupposes that the candidates were in fray in one go—not constituency wise. As that aspect is unclear or not in Court’s contemplation, *Augustino Mascarenhas* cannot be treated as a precedent here.

13. The Tribunal has also relied on *Prabhakar M. Naik v. The State of Goa*.² In this case, the reliefs the petitioners sought were these:

“(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.”

14. After reading *Prabhakar M. Naik*, I see no reference in that judgment to the question of non-joinder of necessary parties. In fact, paragraph 10 the Tribunal extracted in its order concerns limitation; it does not pertain to the non-joinder of necessary parties.

15. In paragraph 13 of the judgment, as I see from WP No.54 of 2020 here, the Tribunal has held that all the elected members who are presently directors of the bank are necessary parties to the

² WRit petition No. 1068 of 2019.

present dispute. It has further held that “no relief can be granted against disputant without joining them as parties”.

16. As I have already noted, after hearing all the learned counsel for the petitioners and for the respective respondents, and after going through the judgments Tribunal relied on, I have not come across any material or proposition of law that once a challenge is mounted against election in one constituency, all other candidates, or at least the successful candidates, from all other constituencies across the board should also be made parties. It is impracticable. And with no purpose, too.

17. Cause of action in an election petition is constituency specific. From that constituency, those contesting candidates who would be affected by the outcome of the election petition must alone be made parties.

18. In this context, Shri Salkar, the learned Govt. Advocate, has hazarded a guess why the Tribunal has held so. According to him, in an election petition a successful candidate’s election may be set aside. By then, he may have been part of the administrative committee. That is, in his absence, the rest of the office bearers may lack the quorum to administer the affairs of the Bank. I am afraid from, the impugned judgment, I find no such reasoning—even if that were the motivating factor. Even otherwise, that view fails judicial scrutiny. It is akin to arguing that if a cabinet minister’s election as an MLA is challenged, the challenger must add all the successful MLAs in the State as parties. Nothing more need I say.

19. Under these circumstances, I hold that the judgment impugned suffers from incurable legal infirmities. So I set it aside. Consequently, I remand the matter to the Tribunal for fresh adjudication on the merits.

20. It goes without saying that as these are election petitions; they deserve expeditious disposal. And already considerable time has elapsed. Therefore, the Tribunal will dispose of these petitions, expeditiously, in six weeks.

With these observations, I dispose of this Writ Petition.

DAMA SESHADRI NAIDU, J.

vn*

VINITA VIKAS NAIK  Digitally signed by VINITA VIKAS NAIK
Date: 2021.03.18 13:30:29 +05'30'