

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7497 OF 2021

Sachin C. Bait .. Petitioner.
v/s.
The Dy. Registrar Co-operative
Societies, Ratnagiri & Others .. Respondents.

Mr. Saurabh Pakale i/b. Mr. S.M. Katkar, for the Petitioner.
Mr. A. P. Vanarse, AGP for Respondent-State.
Mr. Suhas S.Deokar, for Respondent No.2.
Mr. Sanjiv Dehspande, for Respondent No.3.

CORAM: G.S. KULKARNI,J.
DATED : 16th NOVEMBER, 2021.

PC:-

Not on board. Taken on board on a praecipe as moved on behalf of the Petitioner.

2 Heard learned Counsel for the parties.

3 The challenge in this Petition is to an order dated 2nd November, 2021 passed by the Divisional Joint Registrar, Co-operative Societies, Konkan Bhavan, Navi Mumbai rejecting his Revision Application filed under Section 154 of the Maharashtra Co-operative Societies Act, 1960 (for short 'the MCS Act') against an order passed by the Election Officer, rejecting the Petitioner's objection to the acceptance of Respondent No.2's nomination in the ensuing election of the Managing Committee of Respondent No.3 – Ratnagiri Zilla Madhyawarti Sahakari Bank Ltd., (for short 'the Bank') to be held after two days (19th November, 2021). The Petitioner's objection to the Respondent No.2's nomination was, *inter alia*, under Section 73CA of the Act read with the Bye Laws of the bank to the effect that Respondent No.2 was a defaulter.

4 Before the Election Officer, the Petitioner contended that the certificate dated 16th October, 2021 obtained by Respondent No.2 from the Bank did not comply with Bye-law 8(4)(B) as the certificate did not categorically state that Respondent No.2 was not a defaulter as on 31st March of the year immediately preceding the election. The Petitioner pointed out before the Election Officer as to how Respondent No.2 was a defaulter having not paid installments of the loan obtained by him.

5 The Election Officer considered the objections to the nomination papers submitted by Respondent No.2 as raised by the Petitioner and rejected such objections. It is significant that the Election Officer considered the Petitioner's case, also by calling for a report from the Bank so as to ascertain whether Respondent No.2 was a defaulter as on 31st March, 2021. The Bank by its letter dated 25th October, 2021, informed the Election Officer that as on 31st March, 2021, Respondent No.2 was not a defaulter, for the detailed reasons as set out in the said letter.

6 The rejection of the Petitioner's objection by the Election Officer was assailed by the Petitioner by invoking the Revisionary powers of the Divisional Joint Registrar under Section 154 of the MCS Act. The Divisional Joint Registrar by the impugned order has held that rejection of the Petitioner's objection to the nomination of Respondent No.2 cannot be assailed by the Petitioner by invoking the Revisionary powers under Section 154 of the Act. It was held that the revision was not maintainable and an appeal under Section 152 of the MCS Act would lie.

7 Mr. Pakale, learned Counsel for the Petitioner in assailing the impugned order has more than one grievance. His first contention is that the impugned order rejecting the Petitioner's revision application is passed

without a hearing being granted to the Petitioner. It is next submitted that an Appeal under Section 152 of the MCS Act would certainly be not maintainable against the rejection of the Petitioner's objection to the nomination of Respondent No.2.

8 Mr. Pakale's next contention is on merits, to submit that this is a case wherein the Election Officer had grossly erred in accepting the certificates which were obtained by Respondent No.2 in support of his nomination and more particularly certificate dated 16th October, 2021 issued by the Bank, which merely certified that Respondent No.2 was not a defaulter as on 16th October, 2021 which according to him could not have been the relevant date for such certificate under the Bye-laws of the Bank, as the relevant date as prescribed ought to have been 31st March, 2021. Mr. Pakale, would next submit that in the fact situation the Petitioner could not have been rendered remediless by the Divisional Joint Registrar by holding that a revision was not maintainable against rejection of the Petitioner's objection to the nomination papers submitted by Respondent No.2. He hence submits that a remedy of revision was certainly available in law to the Petitioner.

9 It is Mr. Pakale's submission that, although elections are to be held in two days from today (i.e. on 19th November, 2021) it would be appropriate that the matter be remanded to the Revisional Authority with directions to the Revisional Authority would hear the Petitioner and decide the revision on merits by tomorrow. In support of his contention that such action cannot be permissible, Mr. Pakale has relied on the decision of the Single Judge of this Court in the case of ***Umesh Mukundrao Apte v/s. State of Maharashtra & Others*** (Writ Petition No. 5374 of 2018) dated 7th August, 2018.

10 On the other hand, learned Counsel for Respondent Nos. 2 & 3 have supported the impugned order passed by the Revisional Authority, to submit that a revision was not maintainable against the order passed by the Election Officer, rejecting Petitioner's objection to the nomination papers submitted by Respondent No.2. It is a common submission that the Election Officer in his detailed order has rightly rejected the Petitioner's contentions after a proper enquiry, under which he has come to the conclusion that Respondent No.2 was not a defaulter as on 31st March, 2021. It is also their submission that any interference if granted by the Court, at this stage of election proceedings would amount to interference in the election process, and on this ground alone, the Petition deserves to be dismissed. It is next submitted that the proper remedy for the Petitioner would be to file an election petition as provided under Rule 78 of the Maharashtra Co-operative Societies Act, 1960 (Election Committee Rules 2014 (for short 'the 2014 Rules') as and when the need so arises.

11 Having heard learned Counsel for the parties and having perused the detailed order passed by the Election Officer and the impugned order passed by the Revisional Authority, at the outset, it may be observed that, although Mr. Pakale would be correct in his contention that the impugned order ought to have been passed after an opportunity of a hearing having been granted to the Petitioner, and for such reason, the matter be remanded to the Appellate Authority, however, in the facts of this case, this submission cannot be accepted for the reason that it would be an exercise in futility, as the following discussion would reveal that the Petitioner's revision itself was not maintainable.

12 The election to the Managing Committee of the Co-operative Societies are governed by the Rules 2014. These rules provide for a complete code in matters of election which also include a provision in relation to election disputes namely Rule 72. Under such Rule, election of a candidate can be challenged by filing of an election petition presented before the Co-operative Courts as laid down in Section 91 of the MCS Act. Rule 78 reads as under:-

“78:- Election disputes – No election shall be called in question, except by an election petition presented to the Co-operative Court as laid down in Section 91.”

13 Mr. Pakale’s contention that although such rule is available to question the election under the 2014 Rules, however, a remedy of a revision under Section 154 should be held to be available to an aggrieved person to challenge the rejection of nomination or rejecting an objection to nomination, cannot be accepted, considering the election rules, which provide for a complete machinery qua elections to the Committees of Co-operative Society including for determination of election disputes.

14 If Mr. Pakale’s contention is accepted, it would amount to opening of a new forum for adjudication of the election disputes and more particularly in regard to disputes where objections to nomination or the nomination itself is rejected. This would also have a far reaching consequence as it would open floodgates of proceedings for parties to raise interim election disputes before the revisional authority. The law as it stands has categorically avoided to make any such provision to recognize availability of such remedy, for determination of disputes in relation to the election and too even prior to the election being held under Section 154 of the MCS Act. An interpretation which would

forward and sub-serve the object of the legislation would be required to be considered and applied to hold that a remedy of revision against the rejection of nomination papers by the election officer is not an appropriate remedy. To this extent, the revisional authority is correct in observing that the revision was not maintainable. As noted above, Mr. Pakale's grievance although is correct that before the impugned decision was rendered by the revisional authority without an opportunity of a hearing to the petitioner, however, a perusal of the impugned order clearly shows that the revisional authority, at the very presentation of the proceedings, was of the clear opinion that the revision itself was not maintainable and in my opinion rightly so.

15 In so far as the observations as made in the impugned order that an appeal would be maintainable, however, cannot be sustained. Section 152 provides for an appeal against the orders or decisions which are rendered under specific provisions as set out in sub-section (1) of Section 152. Sub-section (1) of Section 152 is conspicuously silent in regard to inclusion of Section 77CA and the order passed thereunder which provides for disqualification of committee and its members.

16 Now coming to the contentions of Mr. Pakale on merits of the matter, it appears to be quite clear that there was sufficient material before the Election Officer and more particularly, a response which the Election Officer had called from the Bank to ascertain so as to whether Respondent No.2 was a defaulter as on 31st March, 2021. The Bank had replied to the said query of the Election Officer by its letter dated 26th October, 2021, setting out that considering the RBI directives, Respondent No.2 was not a defaulter as on 31st March, 2021.

17 The obligation of the Election Officer is limited with regard to the examination of the nomination papers and come to a *prima facie*, conclusion that basic requirements to accept the nomination paper are satisfied. Certainly, there was sufficient material before the Election Officer to reach to a conclusion that Respondent No.2 was not a defaulter as on 31st March, 2021. It cannot be expected that Election Officer would hold a mini trial and adjudicate the rival contentions as to whether the reasons as assigned in the certificate which was issued by the Bank to the effect that Respondent No.2 was not a defaulter as on 31st March, 2021 were justified. Thus, on merits, no fault can be found on the reasons which are set out in the order passed by Election Officer, accepting nomination of Respondent No.2.

18 Now coming to the decision in the case of Umesh M. Apte (Supra) as relied upon by Mr. Pakale, in my opinion, this decision would not assist the Petitioner. This is not a case which had arisen from the rejection of an objection of a nomination application, by the Election Officer. The election in the said case were held in the month of May, 2016 for a period of five years i.e. from 2016 to 2021. Much after the elections were held on 18th December, 2016, the complainant therein (Respondent No.2) had filed a complaint against the Petitioner under Section 73CA of the Act before the Revisional Joint Director (Sugar), alleging that Petitioner was not eligible to contest the election or continue as a director of the Sugar Factory. The proceedings were decided in a manner as prescribed by the Act and they finally reached the revisional authority, It is thus clear that the facts are clearly different from the case in hand, as it was a case which had arisen post election.

19 In the above circumstances, the Writ Petition is wholly without merit and is accordingly rejected.

20 However, the dismissal of the Petition would not come in the way of the Petitioner in the event, Petitioner in future is required to initiate any proceedings assailing the election of Respondent No.2.

21 All contentions to parties in that regard are expressly kept open.

22 Accordingly, Petition disposed of. No order as to costs.

(G.S. KULKARNI,J.)

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