

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 2 OF 2022**

Kedariling Vividh Karyakari
Sahakari (Vikas) Seva Sanstha
Maryadit thru Chairman & Anr .. Petitioners
Versus
The Maharashtra State Co-op
Election Authority thru
Commissioner and ors .. Respondents

WITH**WRIT PETITION NO. 3 OF 2022**

Hanuman Vividh Karyakari
Sahakari (Vikas) Seva Sanstha
Maryadit thru Chairman & Anr .. Petitioners
Versus
The Maharashtra State Co-op
Election Authority thru
Commissioner and ors .. Respondents

WITH**WRIT PETITION NO. 4 OF 2022**

Shri Achanak Vividh Karyakari
Sahakari (Vikas) Seva Sanstha
Maryadit thru Chairman & Anr .. Petitioners
Versus
The Maharashtra State Co-op
Election Authority thru
Commissioner and ors .. Respondents

...

Mr. Prashant Bhavake i/b Utkarsh S. Desai for the petitioners in all petitions.

Mr. Dilip Bodake for the respondents in all the petitions.

CORAM: RAVINDRA V. GHUGE, J.

DATED : 3rd JANUARY, 2022

P.C:-

1 In all these three petitions, as they were not listed in the daily cause list for the day, the learned counsel for the petitioners moved an urgent circulation motion at 10.30 a.m. Considering the urgency, these matters are taken on the Production Board, subject to the intimation to the respondent counsel.

2 Heard the learned counsel for the respective sides. A short issue is raised for adjudication concerning the interpretation of Rule 10(4) of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014.

3 It is not in dispute that the nominated candidates to represent these three petitioner societies in the polling to be held on 5th January 2022, have passed away on 15th December 2021, 27th November 2021 and 15th December 2021, respectively. Consequent to the demise of these three representatives, three new names were forwarded by each of these petitioners as their representatives, so as to enable them to vote in the Elections

scheduled on 5th January 2022. It is equally undisputed that the final voters list concerning the elections at issue, were published on 27th September 2021. The election program was declared on 26th November 2021 and the period for filing the nomination forms was in between 29/11/2021 and 3/12/2021, both days inclusive.

4 The controversy before the Court is as regards, whether Rule 10(4) imposes a limitation on substituting the deceased representative with a new representative pursuant to the resolution being passed by the said Society.

5 Having considered the submissions of the learned counsel for the respective sides, it is apparent that the English version of Rule 10(4), as found in the private publication, carries a different meaning in comparison to the Marathi version published by the Maharashtra State Co-operative Department in the State Gazette. For the sake of clarity, the English version of amended Rule 10(4) as well as it's Marathi version, is reproduced hereunder :-

Rule 10 (4) : 'A Society which has communicated the name of its representative shall, by like resolution, be permitted to change the name of its representative only in case of death of the representative or resignation by the representative or if such representative is found to be disqualified on adjudication by the competent authority

under any of the provisions of the Act, rules, by-laws or where there is newly elected committee of the member society not later than five days before the last date for making nominations.'

(४) ज्या संस्थेने तिच्या अधिकृत प्रतिनिधीचे नाव कळविलेले असेल त्या संस्थेत केवळ प्रतिनिधीचा मृत्यू झाला असेल किंवा प्रतिनिधीने राजीनामा दिलेला असेल किंवा अधिनियमाच्या नियमांच्या, उपविधीच्या कोणत्याही तरतूदीअन्वये सक्षम प्राधिकरणाच्या अभिनिर्णयावरून असा प्रतिनिधी अपात्र असल्याचे आढळून आले असेल, किंवा जेथे नामनिर्देशन करण्याच्या शेवटच्या दिनांकापूर्वी पाच दिवसांच्या आत सभासद संस्थेची समिती नव्याने निवडून आली असेल त्याबाबतीत, ठरावाद्वारे, पाठविलेल्या प्रतिनिधीचे नाव बदलण्याची परवानगी असेल.

6 It is thus obvious from the language used in the official Marathi version that a Society is permitted to substitute/change the name of it's deceased member with a new name, after passing a resolution to that effect, or a Committee which is newly elected not later than five days before the last day for making nominations, can also recommend it's representative, as a voter. Per contra, the English version, to some extent, creates an impression that the change in the representative on account of the death of a representative or on resignation of the representative, or if such representative is found to be disqualified after adjudication by a competent authority, under any provision of the Maharashtra Co-operative Societies Act and the Rules thereunder, could be possible only if such incident has occurred

within five days before the last day for making the nominations. Normally, the period for filing nomination is five days, as also in this case.

7 The English version could be read in a different context as well, that such a time frame would not apply in the cases of death or resignation or disqualification and the same would apply only in the case of a newly elected committee being brought into existence, not later than five days before the last date for filing nominations, for the purposes of nominating a representative.

8 The Marathi version reproduced above is from the official gazette and there ought not to be any controversy amongst the parties with regard to its authenticity. The Marathi version makes it absolutely clear that the five days period would apply only in the case of the election of a new committee.

9 In Sangli Urban Co-operative Bank Ltd. vs. State of Maharashtra and ors, 2016 (1) Bom.C.R. 725, this Court has interpreted Rule 10(4) and has concluded that the said Rule has to be given a broader meaning and the endeavour of law is always to see that a change of the representative or the delegate is in keeping with the democratic principles and that, on technicalities, it should not so happen that the democratic process is thwarted.

10 I do not find that the scheduled elections as per the election programme or the scheduled polling date would be jeopardized while entertaining these petitions. It is only a matter of 'change in the representative' which would enable these three petitioner Societies to cast their vote through their representatives. The election programme can, therefore, proceed unhindered.

11 In view of the above, these petitions are allowed. The impugned orders, all dated 7th December 2021, passed by the respondent no.2 authority, are quashed and set aside and the said authority is directed to carry out the change in the name of the representatives of these petitioner Societies, forthwith.

12 Considering that the date of polling is 05/01/2022 and this order has been dictated in the open Court, the parties need not wait till the order is signed and uploaded and all shall proceed to act on the basis of this order.

RAVINDRA V. GHUGE, J