

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1618 OF 2022

Shri Hemraj s/o Atmaram Kapse,
Aged about 46 years,
Occupation – Agriculturist,
R/o Palandur, Tahsil – Lakhani,
District – Bhandara.

.... **PETITIONER**

VERSUS

- 1) The Assistant Registrar, Co-operative Societies-cum-Appellate Authority
U/s. 152A of Maharashtra Co-operative Societies Act, 1960, Lakhani, Tahsil -
Lakhani, District – Bhandara.
- 2) The Returning Officer for conducting elections of Vividh Karyakari Seva Sahakari Sanstha Maryadit, Palandur,
Tahsil – Lakhni, District – Bhandara.
- 3) The Vividh Karyakari Seva Sahakari Sanstha Maryadit, Palandur,
Registration No.500, through its Secretary, Palandur, Tahsil – Lakhani,
District – Bhandara.

.... **RESPONDENTS**

Mr. A.M. Ghare, Counsel for the petitioner,
Mr. M.A. Barabde, AGP for respondent 1,
Mr. P.V. Ghare, Counsel for respondent 3.

CORAM : ROHIT B. DEO, J.
DATED : 25th MARCH, 2022

ORAL JUDGMENT :

Heard. **Rule.** Rule made returnable forthwith. With consent, the petition is heard finally.

2. The challenge in the petition is to the rejection of the nomination form on the premise that either the proposer or the seconder is not from the same constituency as the aspiring candidate as is the mandate, *inter alia* of the proviso to sub-rule (3) of Rule 20 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (Rules). The provision which is involved by the Returning Officer to reject the nomination forms of the petitioners reads thus :

“20. Nomination of candidates

(1) Any member whose name appears in the final list of voters may be nominated as the candidate for the election to fill a seat, if he is qualified to be chosen under the provision of the Act, rules and the bye-laws of concerned society:

Provided that, where the seats are reserved on the committee of any society as provided under section 73B and 73C of the Act, any individual member of the society, or any member of the committee of a member society, whether elected, co-opted or nominated shall be eligible for being nominated as candidate.

Provided further that, in case of associate members of co-operative housing society and co-operative premises society, the member whose name stands first in the share certificate shall be eligible to be nominated as candidate for the election. In absence of such person whose name stands second as associate member and in the absence of both, the person whose name stands next and likewise in the absence of the preceding persons the person whose name is next on the share certificate, who is not a minor shall be eligible to be

nominated as candidate for the election.

(2) Every nomination paper presented under rule 21 shall be completed in Form “E-5”:

***Provided** that, a failure to complete or defect in completing the declaration as to symbols in a nomination paper, shall not be deemed to be a defect of a substantial character within the meaning of these rules.*

(3) Any person whose name is entered in the final list of voters may be a proposer or seconder for nominating a candidate for election:

***Provided** that, in the case of election from constituency of societies, the proposer and the seconder shall be from the same constituency except reservation falling under section 73B and 73C.*

***Provided further** that, in the case of election from a constituency of societies where only up to 5 eligible members are available in the final list of voters, any person whose name is entered in the final list of voters of any other constituencies may be the proposer or seconder:*

(4) A nomination paper shall be supplied by the Returning Officer to any voter on demand and on payment of such fees as mentioned in rule 23 and subject to change by the SCEA.”

3. Facts are broadly undisputed and to the extent relevant are noted infra :

Petitioner is a member of the Vividh Karyakari Seva Sahakari Sanstha Maryadit, Palandur (Society). The term of the executive committee expired in the year 2020 and election programme was published on 14-2-2022 for holding elections to the thirteen seats of the executive committee. The election programme reveals that eight seats are from the General borrower constituency and the remaining five are

seats reserved for various categories and castes. The petitioner submitted nomination form to which no objection was received. However, vide order dated 08-3-2022 the Returning Officer rejected the nomination form on the premise that the names of the proposer and the seconder are included in the non borrowers voters list. More specifically, the rejection is premised on the inclusion of the name of the seconder Mr. Sachin Shamrao Hatwar in the non-borrower voters list. The petitioner preferred appeal under Section 152-A of the Maharashtra Co-operative Societies Act (Act) which is rejected by the first respondent-appellate authority vide order dated 17-3-2022.

4. The learned Counsel for the petitioner Mr. A.M. Ghare submits that the by-laws of the Society are approved on 22-8-2013. The by-laws which were in existence earlier envisaged that seven seats shall be reserved for borrower member representatives and one seat shall be reserved for non-borrower/depositor or financial advisor members. The remaining five seats were reserved for various categories and castes. Mr. A.M. Ghare emphasizes that the earlier by-laws defined a non-borrower member to mean such member who has not availed loan from the Society since the last election. It is further emphasized that the earlier by-laws did envisage two separate constituencies to-wit borrower constituency and non-borrower constituency. Mr. A.M. Ghare

would submit that in view of the 97 Constitutional Amendment, the by-laws were amended and approval accorded to the amended by-laws on 22-8-2013. The provisions of the Act were also amended and the concept of active and non-active member was introduced in Section 26 of the Act, which made the distinction between borrower and non-borrower member redundant. It is further submitted that a procedure is prescribed under Section 26 of the Act to declare a member as non-active member and if such a declared non-active member takes no steps to convert the status as active member, then he is vulnerable for removal of the membership. Mr. A.M. Ghare would submit that Rule 2(6) of the Rules defines 'constituency' as electoral division as specified in the by-laws of the Society. Clause 9 of the by-laws contemplates only one constituency to-wit general member (account holder) borrower representative constituency. Sub-clause 9(2)(a) makes it clear that there is no requirement of preparing separate voters list for non-borrower members. Mr. A.M. Ghare would further submit that only single list of voters is contemplated with the rider that members who have not availed loan from the Society are not eligible to contest from the said constituency although they are permitted to contest for the remaining five reserved seats. Mr. A.M. Ghare would emphasize that such non-borrower member is entitled to vote in the elections to the general borrower constituency and reserved constituency.

It is then submitted that contrary to the statutory scheme, two separate voters lists of borrower and non-borrower voters are published. Mr. A.M. Ghare would submit that in any event, the constituency is one and the fact that two separate voters lists were erroneously published make no difference. That there is a single constituency is also manifest from the election programme, is the submission.

Mr. A.M. Ghare would submit that the rejection of the nomination form falls foul of the statutory scheme and there is a glaring non-application of mind. The Returning Officer clearly failed to notice that the rule which he invoked has no relevance since in view of the amended by-laws, there is a single constituency and both borrower and non-borrower members vote in the election to the said constituency. Mr. A.M. Ghare would submit that since the rejection of the nomination form is patently illegal and contrary to the statutory scheme, it is imperative that this Court intervenes. It is submitted that there is no absolute bar to interference in the election programme and in such glaring facts, it would be grave injustice if the petitioner is driven to the remedy of election petition.

5. In all fairness to the learned Assistant Government Pleader Mrs. M.A. Barabde, no dispute is raised on facts. It is not disputed that there

is a single constituency to which both the borrower and non-borrower members are entitled to vote. As a fact, the learned Assistant Government Pleader Mrs. M.A. Barabde herself invited my attention to the clarification Circular dated 17-4-2020 issued by the Commissioner of Cooperation and Registrar, Co-operative Societies, Government of Maharashtra, which clarifies that both borrower and non-borrower members are entitled to vote in the constituency of general borrower constituency and reserved constituency although non-borrower members shall not be entitled to contest.

6. I am satisfied that the rejection of the nomination form is patently illegal. The Returning Officer failed to appreciate that there were not two constituencies as would bring into play the rule invoked. The petitioner is entitled to succeed.

7. The petition is allowed in terms of prayer clause (A), which reads thus :

“A. Quash and set aside the order dated 17-3-2022 (Annexure-H) passed by Respondent No.1-Assistant Registrar, Lakhani, passed in Appeal No.3/2022 rejecting appeal filed by Petitioner and order dated 08-3-2022 (Annexure-F) passed by Respondent No.2 rejecting the nomination paper of the Petitioner from the

General Member Borrower representative category and be further pleased to allow the nomination paper of the Petitioner”.

JUDGE

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