

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

917 WRIT PETITION NO.4512 OF 2023

**GUDHE VIVIDH KARYAKARI SEVA SAHAKARI SOCIETY
LIMITED AND ANOTHER**

VERSUS

**DISTRICT COOPERATIVE ELECTION OFFICER / DISTRICT
DEPUTY REGISTRAR AND OTHERS**

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Advocate for Petitioners:

Mr. Bagul Dnyaneshwar Suresh

Advocate for Respondents No.1&2: Mr. S. K. Kadam

Advocate for Respondent No.4: Mr. Bhushan Mahajan

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CORAM: ARUN R. PEDNEKER, J.

DATE: 20th APRIL, 2023

PER COURT:

1. Heard.

2. The petitioners are challenging the order dated 11.04.2023, rejecting the application submitted by petitioner no.1 society for the replacement of the name of it's representative for election of respondent no.3 federal society.

3. The election to respondent no.3 - federal society is due. The petitioner is one of the member of the federal society. The petitioner is

entitled to give name of it's representative for the purpose of voting on behalf of the petitioner society. The petitioner gave name of one Mr. Govinda Eknath Mali - respondent no.4, as it's representative to vote in the ensuing federal society election. Thereafter, the elections for the petitioner society were held on 19.02.2023.

4. The newly elected committee of the petitioner no.1 decided to change the name of it's representative to the ensuing election of respondent no.3 federal society and by resolution dated 31.03.2023, petitioner no.1 society send the name of petitioner no.2 as its representative by replacing the earlier representative, the respondent no.4. The said request was forwarded to the Taluka Co-operative Election Officer. The Taluka Co-operative Election Officer made endorsement on the resolution, that it can be accepted and forwarded it to the District Deputy Registrar. However, the District Deputy Registrar by order dated 11.04.2023, refused to change the name of the representative on the ground of

violation of Rule 10(4) of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014, which provides that the name of representative can be changed in the event of death of the representative or the resignation of the representative or that the representative is found to be disqualified on adjudication by the competent authority under any of the provisions of law.

5. The petitioners have challenged the order passed by the District Deputy Registrar before this court in the present writ petition. The learned counsel has taken me through Rule 10(4) which reads as under:-

"10. Particulars to be included in the provisional list of voters for the societies having society or society and individuals as members

(1) ...

(2) ...

(3) ...

(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."

6. The learned counsel submits that the newly elected committee members in terms of Rule 10(4) can substitute it's representative before 5 days of the last date of nomination in terms of Rule 10(4) and that interpretation placed on Rule 10(4) by the District Deputy Registrar is patently illegal and hence prays for interference in the matter.

7. The learned counsel also submits that undisputedly the application was filed within time and even the order passed by the District Deputy Registrar is on 11.04.2023 i.e. much before the time stipulated under Rule 10(4) since the last date of nomination is 25.04.2023.

8. Per contra, the learned counsel appearing for respondent no.4 submits that there is an alternate remedy of election petition under Rule

78 of the Election Rules 2014. He also relies upon the Judgment of this court at paragraph no.18 in Writ Petition No.5760 of 2022 decided on 08.03.2023 which reads as under:-

"18) This Court in the case of Prerana Nagari Sahakari Bank Ltd. and Anr. Vs. Divisional Joint Registrar and others in Writ Petition No. 2872/2022 decided on 17.11.2022 has held that the remedy of challenging the issue of eligibility of the membership and validity of the resolution adopted can be challenged before the Cooperative Court. On the complaint made by the petitioner the respondent No. 2 has called for the report from respondent No. 4 in which it was noted that 144 members have not submitted KYC documents along with application. The respondent No. 2 thereafter has verified the record and found that out of 1405 newly added members, the membership of 1392 members is legal and valid."

9. He also submits that an order passed by the District Deputy Registrar can be challenged before the Divisional Joint Registrar and that alternate remedy is available to the petitioner.

10. The law on interference in election matters is well settled in catena of Judgments and this court has held that in the exceptional case,

this court can interfere in the election matters, if the order passed by the authority is patently illegal and if the interference would not adversely affect the election process.

11. The learned counsel appearing for the election authority has fairly submitted that he would not be able to defend the order passed by the election authority.

12. Having perused the order passed by the District Deputy Registrar the election authority, the said order is patently illegal, as it is contra to the Rule 10(4). Rule 10(4) provides that an application for change of representative can be made 5 days prior to the last date of nomination. In the instant case, the application is well within time. The petitioner society was well within it's right to change its representative. It would in fact sub-serve in the interest of justice that the petitioner is allowed to change his representative that an alternate remedy is not a bar to entertain the writ petition and

interference will sub-serve the election process. This will not affect the on going election in any manner.

13. In view of the same, the order passed by the election authority dated 11.04.2023 is set aside. It is hereby directed that the representative – petitioner no.2's name be included in the final voters list in respondent no.3 – federal society, as a representative of petitioner no.1 society.

14. The writ petition is disposed of with above direction.

15. Parties to act on the authenticated copy. In addition, the lawyer appearing for the election authority to communicate this order to the concerned authority.

[ARUN R. PEDNEKER, J.]

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