

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

WRIT PETITION NO.6164 OF 2023

Vividh Karyakari Seva Sahakari
Society Ltd., Nipani Pimpalgaon,
Tq.Ghansawangi, Dist. Jalna,
Through its, Chairman,
Dadabhau s/o Babasaheb Dhembre,
Age; 44 years Occ; Agril and Chairman
of VKSS Society of Nipani Pimpalgaon,
R/o; Nipani Pimpalgaon, Tq.
Ghansawangi, Dist; Jalna.

..PETITIONER

V E R S U S

1. The State of Maharashtra,
Through the Secretary, Department of
Co-Operative and Textile Mantralaya
Mumbai- 32.
2. The Commissioner,
State Co-Operative Election Authority,
Maharashtra State, Pune,
Old Central Building, Ground Floor,
Pune - 411001.
3. The District Co-Operative Election
Officer, Jalna & Divisional Joint
Registrar Co-Operative Societies,
Aurangabad.
4. The Jalna District Central Co-Operative
Bank Ltd.,Through its Managing
Director,Santoshi Mata Road, Jalna, Tq.

and Dist.Jalna.

...RESPONDENTS

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Advocate for the petitioner : Mr.Tope Sambhaji Subhashrao
AGP for the Respondent No. 1/State : Mr.K.N.Lokhande
Advocate for Respondent Nos. 2 & 3 : Mr. S.K. Kadam
Advocate for Respondent No. 4 : Yogesh K.Bobade
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CORAM : KISHORE C. SANT, J.

DATE : 19.06.2023

JUDGMENT : [PER : KISHORE C. SANT, J.]

1. Rule. Rule made returnable forthwith. With consent of the learned Advocates for the respective parties, heard finally at the state of admission.

2 By way of this writ petition, a challenge is raised by the Vivid Karyakari Seva Sahakari Society Ltd., Aawalgaon, District Jalna, established under the Co-Operative Societies Act, 1960 (hereinafter referred to as "the Act"), to the order dated 01.06.2023 passed by the District Co-Operative Election Officer, Jalna (Respondent No. 3), thereby, rejecting the objection raised by the petitioner Society and its claim to include the name of the petitioner

Society in the voters list to the election of the District Central Co-Operative Bank Ltd., Jalna (hereinafter referred to as "DCCB, Jalna").

3. The facts in short are that the petitioner is a Society established under the Co-Operative Societies Act for the benefits of its members. The Society is entitled to vote in the election of the District Central Co-Operative Bank, Jalna through its representative. The term of the earlier body expired on 22.04.2022, however, the authorities appointed an administrator on the petitioner society. The election to the Society thereafter, were held only on 29.04.2023. The Chairman was elected in the first meeting which was held on 18.05.2023. The Society needs to nominate a person for a specific purpose to cast vote as representative of the Society in the election of the DCCB, Jalna.

4. In the meantime, respondent No. 3 published a programme of election to the DCCB, Jalna for total 13 posts. The nomination was to be communicated from 03.04.2023 to 02.05.2023 i.e. for the election for a period of 2023-24 to 2028-29. The programme of preparation of voters provisional list was

published on 12.03.2023. The objections were called from 03.04.2023 to 02.05.2023. The decision was to be taken on the said objections before 01.06.2023 and thereafter on 05.06.2023 the final voters list was to be published.

5. The case of the petitioner is that the Chairman came to be elected on 18.05.2023, but they could not send E-mail immediately to respondent No. 3 of the Chairman. The Society therefore, send communication on 22.05.2023 that since the election were not held to the Society, the representative could not be nominated for the purpose of casting vote in the election of DCCB, Jalna. Since the names of representatives could not be sent in the voters list the petitioner Society's name did not appear in it.

6. Respondent No. 3, on 01.07.2023 passed an order after hearing the parties and rejected the objection. It is held that it was necessary to send the names of representatives from 03.04.2023 to 02.05.2023. In the objection, the Bank had filed it's say stating therein that it has no objection to include the name of petitioner Society in the voters list.

7. The petitioner has thus, assailed the order of respondent No. 3, mainly on the ground that though the nomination was to be sent before 02.05.2023, however, at the relevant time the elected body was not functioning and it is only on 09.04.2023, a new body came to be elected and since the first meeting could be held only on 07.05.2023. Immediately thereafter the name was sent after nomination. There is no fault of the petitioner in not sending the names of the nominated candidates prior to 02.05.2023. If no right to vote is given to the nominated candidate, the Society would be deprived of its representation in the election of the DCCB, Jalna. He submits that in view of the Rule 10.4 of the Election Rules, the change in the name of the voter is permissible even prior to 5 days before the last date of making nomination of the election. In this case since the election to the DCCB, Jalna is yet to be held the names ought to have been included of their representatives in the voters list.

8. The learned Advocate for respondent No. 3 vehemently opposes the petition. He produced on record a proclamation dated 31.01.2023, published by respondent No. 3 in the election to the DCCB, Jalna. He points out that as per Rule 10 (2) of the Rules the

Society has to send a resolution nominating their representatives to cast the votes in the election of the DCCB, Jalna from 03.04.2023 to 02.05.2023. In the said proclamation it has come that it is expected of the Societies to send a resolution as per Section 27 (c) (a)(1) and (f) (i). He further submits that if elected body was not there then it was for the society to nominate a person by holding general body meeting. He further invited the attention to Section 26 and 27 of the Co-Operative Societies Act. He further submits that in the said proclamation it was made clear that it is mandatory to give nomination between 03.04.2023 to 02.05.2023. It is also made clear if in a case under Rule 10 (4) the name of the new person can be sent only in case where there is death, resignation or a new body is elected. In this case he submits that no such exigency was there and therefore, he submits that Rule 10.4 prescribing only that as already nomination is sent by the Society such change can be made to Rule 10.4 and since in this Court there was no resolution at all sent by the petitioner Society, there was no question of making change in the nominated person. He submits that the name of the nominees are to be filled from 03.04.2023 to 02.05.2023 and now the election process has already commenced. The nominations are to be finalized on 18.05.2023

and now the election programme is already set in motion. He submits that now in view of the settled position of law no election procedure keeping programme once set in motion can be need to be disturbed.

9. The learned Advocate for the petitioner in support of his submissions relied upon the following judgments reported in

a) Sangali Urban Co-Operative Bank Limited v. State of Maharashtra and Others **2015 (5) Mh. L.J.242 (Bombay High Court).**

b) In Satish Ramchandra Rajput and Ors. v. The District Deputy Registrar and Ors. - **Writ Petition No. 10493 of 2016 decided on 20.10.2026 (Bombay High Court, Aurangabad Bench).**

c) In Subhash s/o Rabhaji Barde and Ors. v. The State of Maharashtra and Ors. - **Writ Petition No. 9197 of 2015 decided on 20.08.2016 (Bombay High Court, Aurangabad Bench).**

d) In Pundlik v. State of Maharashtra **2005 AIR (SC) 3746.**

e) In Poonam w/o Rajesh Pawar v. Returning Officer

for the elections of 2017 of Zilla Parishad, Naigaon and Others - 2017 (4) Mh.L.J. 85 (Bombay High Court, Aurangabad Bench).

f) Chandrashekhar Shivram Mudkanna v. State of Maharashtra and Others - 2016 (2) Bom. C.R. 291 (Bombay High Court, Aurangabad Bench).

g) Shriram Sahakari Dudh Utpadak Sanstha and Anr. Vs. State of Maharashtra and Others - Writ Petition (Stamp) No. 8218 of 2021 decided on 16.07.2021 (Bom.).

10. In the judgment of **Pundlik** (supra) the Hon'ble Apex Court has considered Rule 5 (2) of the Rules of The Maharashtra Specified Co-Operative Societies (Election to Committee), Rules 2014. In that case the name of delegate by the Doodh Mahasangh for casting the vote in election of Doodh Mahasangh was sought to be changed. The Collector had refused to effect the change in the voters list. The Hon'ble Apex Court held that the Collector was under obligation to effect the change under Rule 5 (2) of the said rules holding that there was a right conferred upon the Doodh Santh to change the name of the delegate and that cannot be taken

away or interference with. In that view of the matter, the Collector's order was quashed and set aside. Rule 5 (2) specifically provided for the change of the name of its delegate not than 7 days before the date appointed by the Collector under Rule 16 of the said Rules for making nominations. Thus, it was the case where the change was permitted after the name of the delegate was sent. In Rule 10 (4) of the present Rules also a change is permissible, provided already the name of the delegate is sent by the Society coupled with the resolution. There is no dispute about the proposition and only thing needs to be considered is petitioner's case that there was no communication of the name of the delegate and therefore, the said judgment is not applicable to the present case in hand. Rule 10 (4) of the Rules is reproduced herein below :

"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 and later than five days before the last date for

making nominations."

11. Thus, considering the above Rule 10 (4) also it is clear that if already a name is sent as delegate then same can be changed not later than 5 days before the last date for making nomination.

12. In the judgment of **Sangali Urban** (supra) the Hon'ble Court had considered Rule 10 (4) of the Rules, it was held that if there is no flexibility under the Rules in case no change to the representative/delegate is permitted then the Society may go unrepresented and purposive interpretation needs to be given to the said Rules. However, in the said case already the name of the delegate was sent. What was sought was only a change in the name of the delegate. As the Rule 10 (4) permits change in the name of the delegate in two contingencies as per rule there was viz. the death of the representative or newly elected Committee comes into being. In the present case, admittedly there is no such situation and hence this judgment is not applicable to the case in hand.

13. So far as, the judgment in the case of **Satish** (supra) and **Subhash** (supra) in aforestated Writ Petitions, this Court had considered the rules under the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules 1967. In some what similar circumstances, this Court looking to the purpose behind the creation of A.P.M.C. to provide sufficient representation needs to be given to all Villages. In those rules, Rule 15 provides that no person whose name is not entered in the final list of voters may at any time but not later on 3 days before the last date for filing of the nomination applied to the Collector or the District Deputy Registrar for inclusion of his name in the voters list. Therefore, this Court, finds that both the judgments are not applicable to the present facts of the case.

14. In the judgment of **Poonam Pawar** (supra), while considering the judgment in the case of Shri Sant Sadguru Janardan Swami (Moungiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Another v. State of Maharashtra and Others - **2001 AIR (SC) 3982**, this Court had held that the inclusion of the name in the voters list would not materially affect the election programme and the said petition was allowed. In exceptional cases it was the

case under the Maharashtra Zilla Parishad and Panchyat Samitis Rules.

15. In the case of **Chandrashekhhar** (supra) Rule 15, 16 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967 were considered.

16. In the case of **Shriram** (supra) the Division Bench of this Court at Mumbai (Bombay) had considered the Rule 9 of the Maharashtra Co-Operative Societies (Election to Committee) Rule, 2014. In that case, as the date of declaration of election to the Federal Society the term of Managiang Committee was over.

17. The judgment in **Sant Sadguru** (supra) the Division Bench on noticing the distinctive factors had entertained the Writ Petition. However, this Court finds that none of the judgments are applicable to the facts of this case.

18. Coming to the judgments cited by the learned Advocate for respondent No. 3. The learned Advocate for respondent No. 3 relied upon the judgment delivered by the Division Bench at

Principal seat at Mumbai in the case of Dattatraya Genba Lole and Ors. v. The Divisional Registrar Co-Operative Societies, Pune Division Pune and District Coop. Election Officer, Pune and Ors. - **Writ Petition No. 5878 of 2021 decided on 26.11.2021 (Bom.)**. In the said judgment specifically a question was considered as to whether the petition ought not to have been entertained under Article 226 of the Constitution of India as the petitioner has an alternative remedy available to challenge the election under the provisions of Act and Rules. The Court considered in paragraph No. 8.41 of the judgment in the case of **Sant Sadguru** (supra) the question that was to be considered was the officer holding that the petitioners have efficacious remedy available by challenging the election petition under Section 91 read with Rule 17 (a), after the election result has been declared and rejected the petition. The Court has also considered that though in the case of **Pundlik** (supra) and on considering both the judgments it is held that the normal rule is that no election process is entered with.

19. Considering the above submissions and judgments, this Court finds substance in the submissions of the learned Advocate for the respondent No. 3 that the petitioner Society could have very

much nominated their representatives to vote in the election of the DCCB, Jalna, after notice was published. Though it is the case of the petitioner that at that time the body was not in existence, a new body was not elected, however, the Society by holding general body meeting could have nominated a person as its nominee. In any case, the remedy to file election dispute is available to the society. The rule 10 (4) on which much reliance is placed by the petitioner provides a change only in contingencies i.e. in case of death of the representative or resignation by the representative or is disqualified by adjudication by the Competent Authority under any of the provisions of the Act, Rules, Bye Laws and when the second contingency is when there is a newly elected Committee.

20. In the judgment in the case of **Sangli** (supra) held that time incapacity of the representative was only on account of death. By way of amendment in the rules it is provided that even on resignation or disqualification of such nominated person also there can be change in the nominated member. In this case nothing is shown to attribute contingencies provided in Rule 10 (4), therefore, the argument of the learned Advocate for the petitioner that in view of Rule 10 (4) the representative can be changed is totally

misplaced. In the result, this Court finds that the petition deserves to be dismissed and the same is dismissed. Rule stands discharged.

(KISHORE C. SANT)
JUDGE

mahajansb/