

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

WRIT PETITION NO.6304 OF 2023

Ramesh s/o Devrao Sarkate,
Age; 53 years, Occ; Agril,
R/o; Vazar Sarkate, Tq. Mantha,
Dist. Jalna.

..PETITIONER

V E R S U S

1. The State Co-Operative Election
Authority,
Through District Co-Operative Election
Officer, Divisional Joint Registrar Co-
Operative Societies, Aurangabad,
Aurangabad.
2. The Assistant Registrar,
Co-Operative Societies Jalna,
District Jalna.
3. The Jalna District Central Co-Operative
Bank Ltd., Main Branch, Santoshi Mata
Road, Jalna, Tq. and Dist. Jalna.
4. The Chairman/Secretary,
Vividh Karyakari Seva Sahakari Sanstha
Vazar Sarkate, Tq. Mantha, District
Jalna.

...RESPONDENTS

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Advocate for the petitioner : Mr. Sunil P. Koli
Advocate for Respondent No. 1 : Mr. S.K. Kadam
AGP for the Respondents/State : Mr. K.B. Jadhavar
Advocate for Respondent No. 3 : 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 stage of admission.

2 By way of this writ petition, a challenge is raised by the petitioner Ramesh s/o Devrao Sarkate to the order dated 01.06.2023 passed by the District Co-Operative Election Officer, Jalna (Respondent No. 1), thereby, rejecting the objection raised by the petitioner and his claim to include his name on behalf of Society respondent No. 4 in the voters list of 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 valid member and voter of the respondent No. 4 Society established under the Co-Operative Societies Act for the benefits of its members. The petitioner is entitled to vote in the election of the District Central

Co-Operative Bank, Jalna on behalf of Society Respondent No. 4. The term of the earlier body was expired however, the authorities appointed an administrator on the society. The election to the Society thereafter, were held only on 04.05.2023. The Chairman was elected in the first meeting. The Society needs to nominate a candidate for the specific purpose to cast vote as representative in the election of the DCCB, Jalna.

4. In the meantime, respondent No. 1 published a programme of election to the DCCB, Jalna for total 13 posts. The nomination of the Society 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. The decision was to be taken on the said objections before 01.06.2023 and thereafter final voters list was to be published.

5. The case of the petitioner is that the Chairman came to be elected but the Society could not send E-mail immediately to respondent No. 1 Chairman. The Society therefore, send communication on 17.05.2023 that since the election were not held to the Society, the petitioner was nominated for the purpose of

casting vote in the election of DCCB, Jalna. Since the name of petitioner could not be sent in the final voters list, the name of representative of the Society did not appear in it.

6. Respondent No. 3, on 01.06.2023 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 on behalf of 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 of the Society was not functioning and it was only on 09.04.2023, a new body came to be elected and since the first meeting could be held immediately thereafter and the name of the petitioner was sent after nomination. There is no fault of the Society respondent No. 4, in not sending the name of the petitioner prior to 02.05.2023. If no right to vote is given to the petitioner/Society, 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 name of the petitioner ought to have been included as representative of the Society in the final voters list.

8. The learned Advocate for respondent No. 3 vehemently opposes the petition. He produced on record a proclamation dated 03.04.2023, 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 its representative to cast vote 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 by the Society to send a nomination as per Section 27 (c) (a)(1) and (f) (i) of the Act. 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 therefore, 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 Society respondent No. 4, there was no question of making change in the nominated person. He submits that the name of the nominee is to be filled from 03.04.2023 to 02.05.2023 and now the election process has already commenced. Immediately thereafter, the nomination is to be finalized 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 judgment reported in *Mandar Labourer Co-Operative Society Limited v. Mumbai Eastern Suburbs District Labour Co-Operative Societies Federation Limited and Others* – **2022 DGLS (Bom.) 4260 (Bombay High Court)**. The facts of this case law are not applicable to the case in hand.

10. Considering the above submissions and judgment, this Court finds substance in the submissions of the learned Advocate for the respondent No. 3 that the Society could have very much nominated its representative 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 was 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 there i.e. a newly elected Committee. 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

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