

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8525 OF 2023

Pimpode Budruk Vikas Seva Society Ltd.Petitioner

Versus

The State of Maharashtra & Ors.Respondents

Appearances :

Dr. Uday P. Warunjikar, a/w. Sumit S. Kale for Petitioner.

Mr. Sanjiv Kadam, for Respondent No.4.

Mr. N. K. Rajpurohit, AGP for State.

**CORAM : DHIRAJ SINGH THAKUR &
SANDEEP V. MARNE, JJ.**

DATE : JULY 24, 2023.

P. C. :

Petitioner society has filed this petition challenging order dated June 20, 2023 passed by the Divisional Joint Registrar of Co-operative Societies by which a direction is issued to the District Co-operative Election Officer to conduct re-election against one vacant post of Director. Petitioner-Society also challenges letter dated June 26, 2023 of the District Co-operative Election Officer directing the Election Officer--cum-Assistant Registrar of Co-

operative societies to reconvene meeting of Board of Directors of Petitioner-Society for the purpose of electing a Director. Petitioner-Society also challenges Notice dated June 28, 2023 by which election programme for electing vacant post of Director is published by the Election Officer.

2. Petitioner is a Co-operative Credit Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 (**Act of 1960**) and is engaged in distributing credit loans to the farmers in the Koregaon Taluka of District Satara. The managing committee of the Petitioner-Society was elected in the year 2021 for the period 2021-22 to 2026-27. The managing committee comprises of 13 Directors. One of the elected Directors tendered resignation on April 24, 2023, which was accepted in the Annual General Body Meeting dated June 06, 2023. The Petitioner-Society accordingly requested Assistant Registrar, Co-operative societies to conduct elections for appointment against vacant post of Director. Accordingly, by order dated May 09, 2023, the District Co-operative Election Officer appointed Assistant Registrar of Co-operative Societies, Koregaon as the Election Officer. The Election Officer accordingly convened meeting of Board of Directors on June 01, 2023 for election of Director against vacant post. However, it appears that on June 01, 2023, the requisite coram for the meeting was not complete. The meeting was accordingly adjourned and scheduled to be conducted on June 07, 2023. Accordingly notice for conducting meeting on June 07, 2023 was published by the Society and by the Election Officer. In the meeting of Board of Directors held by the Election Officer on June 07, 2023 Mr. Janardhan Dhondiram Nikam came to be elected as a Director against the vacant post.

3. Respondent No.4 (Mr. Suryakant Bapurao Nikam) filed complaint dated June 13, 2023 before the Divisional Joint Registrar of Co-operative Societies, Kolhapur against election of Shri. Janardhan Dhondiram Nikam. It appears that the Divisional Joint Registrar called for report of the Assistant Registrar of Co-operative societies, Koregaon. The Divisional Joint Registrar thereafter issued letter dated June 20, 2023 to the District Co-operative Election Officer observing some discrepancies in the election conducted by the Election Officer. The Divisional Joint Registrar held that the Election Officer conducted fresh meeting of the Board of Directors on June 07, 2023 without prior permission of the District Co-operative Election Officer, which action was *ultra virus*. The Divisional Joint Registrar therefore directed the District Co-operative Election Officer to conduct election afresh by reappointing Election Officer. Petitioners have challenged the letter dated June 20, 2023 in the present petition.

4. In pursuance of the directions issued by the Divisional Joint Registrar on June 20, 2023, the District Co-operative Election Officer directed the Election Officer to reconvene meeting of Board of Directors and re-conduct elections. The Election Officer accordingly communicated to the society by letter dated June 28, 2023 to reconvene meeting of Board of Directors. The Election Officer also published a programme for convening meeting of Board of Directors on July 06, 2023 for conducting fresh elections. However it appears that on account of issuance of order dated June 28, 2023 by the State Government postponing of elections of all Co-operative societies in the State, the election could not be conducted as scheduled on July 06, 2023. Petitioners have also challenged order dated June 26, 2023 of District

Co-operative Election Officer as well as letter dated June 28, 2023 of the Election Officer.

5. Appearing for Petitioner-Society, Dr. Warunjikar the learned counsel would submit that the Divisional Joint Registrar does not have jurisdiction under the provisions of Act of 1960 to nullify the election already held. That election of a validly elected director can be challenged either by filing an election petition or by challenging the resolution by filing a Dispute before a Co-operative Court under Section 91 of the Act of 1960. He would further submit that even if it is assumed that Divisional Joint Registrar has the jurisdiction to question validity of election process, his decision is in gross violation of principles of natural justice, as neither society nor the elected director were heard before taking decision on June 20, 2023.

6. Mr. Kadam, the learned counsel appearing for Respondent No.4 would oppose the petition and support the order passed by the Divisional Joint Registrar. He would submit that entire process of election conducted by the election officer on June 07, 2023 was in gross violation of the Rules and prescribed procedure. That the Divisional Joint Registrar had rightly acted upon the complaint filed by the Respondent No.4 and set aside the election. He would further submit that no prejudice has been caused to the society as the Divisional Joint Registrar's decision merely contemplate holding of fresh election. He would submit that elected Director has not challenged the decision to hold fresh elections and that there is no reason for the society to feel aggrieved by the decision of the Divisional Joint Registrar. He would pray for dismissal of the petition. Alternatively Mr. Kadam would submit that in

the event of this Court remanding the matter for fresh decision of Divisional Joint Registrar, *status quo* as on today is required to be maintained and illegally elected director cannot be permitted to function during pendency of proceedings before the Divisional Joint Registrar.

7. We have also heard Mr. Rajpurohit the learned AGP who would support the decision of Divisional Joint Registrar and District Co-operative Election Officer.

8. We have considered the submissions advanced by the learned counsels for the parties. Perusal of the letter dated July 20, 2023 of the Divisional Joint Registrar would indicate that he has taken cognizance of complaint dated June 13, 2023 filed by Respondent No.4. It appears that the Divisional Joint Registrar called for explanation from the Assistant Registrar of Co-Operative Societies, Koregaon (Election Officer) who had conducted election of June 07, 2023. The explanation was called for vide letter dated June 15, 2023. Thus, within 02 days of filing of complaint by Respondent No.4, the Divisional Joint Registrar took cognizance thereof and called for explanation from the Election Officer. The report as sought for by the Divisional Joint Registrar was submitted by the Election Officer on immediately next day i.e. June 16, 2023. The Divisional Joint Registrar immediately issued communication dated June 20, 2023 to the District Co-operative Election Officer annulling the election already held. The alacrity with which the Divisional Joint Registrar acted in the matter is perplexing. By way of impugned communication dated June 20, 2023 the Divisional Joint Registrar has annulled the election conducted in the meeting of the Board of

Directors held on June 20, 2023. Before doing so the Divisional Joint Registrar did not feel it appropriate to hear either the society or at least elected Director whose election he has set aside. This action on the part of Divisional Joint Registrar is in gross violation of principles of natural justice. The decision of the Divisional Joint Registrar is thus unsustainable. Therefore Divisional Joint Registrar's decision dated June 20, 2023 deserves to be set aside. The consequential actions taken by the District Cooperative Election Officer and Election Officer allotted to the Society in scheduling fresh elections are also required to be set aside. The proceedings are required to be remanded before the Divisional Joint Registrar for decision afresh.

9. Dr. Warunjikar would strenuously submit before us that Divisional Joint Registrar does not possess jurisdiction to annul election of a elected Director. In our view, since the proceedings are being remanded, this issue can be raised by Petitioner-Society as well as by the elected Director before the Divisional Joint Registrar, who had adjudicate upon the issue of his own jurisdiction.

10. Accordingly, Writ Petition partly succeeds. The decision of the Divisional Joint Registrar dated June 20, 2023 is set aside. The consequential communications of the District Co-operative Election Officer dated June 26, 2023 and the Election Officer dated June 28, 2023 are also set aside. The proceedings are remanded to the Divisional Joint Registrar for fresh decision after providing an opportunity of hearing to Petitioner-Society as well as the elected Director. Fresh decision be taken by the Divisional Joint Registrar as

expeditiously as possible preferably within a period of two weeks from today.
All contentions of the parties are left open.

11. With the above directions, Writ Petition is disposed of.

SANDEEP V. MARNE, J.

DHIRAJ SINGH THAKUR, J.

KISHOR
VISHNU
KAMBLE

Digitally
signed by
KISHOR
VISHNU
KAMBLE
Date:
2023.07.25
17:26:18
+0530