

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.15984 OF 2022**

Dr. Arvind Lalitbhai Patel and Anr. ... Petitioners
versus
Viral K. Gandhi and Ors. ... Respondents

Ms Priya Aabad Ponda i/by Mr. Saurabh S. More for Petitioners.
Mr. N.N.Bhadrashete i/by Ms. Priyanka Bhadrashete for Respondent Nos.1 to 9.
Mr. Y.D.Patil, AGP for State.

CORAM: N.J.JAMADAR, J.

DATE : 20 APRIL 2023

P.C.

1. Rule. Rule made returnable forthwith. With the consent of the learned Counsel for the parties, heard finally.
2. This Petition takes exception to an order dated 12 December 2022 passed by the Minister (Co-operation) in Revision Application No.437 of 2022 whereby the Minister allowed the Revision by setting aside the orders dated 24 August 2022 passed by the Joint Registrar, Co-operative Societies, which had upheld the order dated 16 March 2022 passed by the Deputy Registrar, Co-operative Societies, appointing an authorized officer under Section 77A(1-a) (f) of the Maharashtra Co-operative Societies Act, 1960 (the Act, 1960), and directed the authorized officer to handover the charge of Navneet Co-operating Housing Society Ltd. - Respondent No.9 to the committee comprising Respondent Nos.1 to 8.

3. Shorn of unnecessary details, the background facts can be stated as under :

3.1 Respondent No.9 is a society registered under the Act, 1960. The election to the managing committee of Respondent No.9 Society for the term 2022-27 were due. Mr. Anil Ingole was appointed as a Returning Officer to hold the election. The Returning Officer declared the election programme on 24 December 2021. Elections were held on 20 January 2022.

3.2 A dispute arose over the election process. It was alleged that the Returning Officer had counted only 60 votes against 73 votes which were cast. The erstwhile Managing Committee passed a resolution on 25 January 2022 to cancel the election held on 20 January 2022. By a further resolution dated 10 February 2022, Mr. Vaze was appointed as the Returning Officer. Again elections were held on 23 February 2022 and the Managing Committee comprising Respondent Nos.1 to 8 was declared elected.

3.3 A complaint was made before the Deputy Registrar Co-operative Societies. Thereupon, a notice was issued on 18 February 2022 to show cause as to why action should not be taken under Section 77A(1-a)(f) of the Act, 1960 to appoint a committee or Authorized Officer to manage the affairs of the Society. After providing an opportunity of hearing to the parties, the Deputy Registrar was persuaded to appoint an Authorized Officer by invoking the powers under Section 77A(1-a)(f) of the

Act, 1960, opining that two groups of members were claiming to have been elected as the members of the managing committee of the Respondent No.9 Society and day to day functioning of the Respondent No.9 Society was, thus, prejudicially affected.

3.4 Respondent Nos.1 to 9 preferred an Appeal being Appeal No.64 of 2022 before the Joint Registrar, Co-operative Societies. By an order dated 24 August 2022, the Divisional Joint Registrar dismissed the appeal and concurred with the view of the Deputy Registrar that the circumstances warranted the appointment of an Administrative Officer in the wake of the dispute between the rival groups.

3.5 Respondent Nos.1 to 9 carried the matter in Revision before the State Government. By the impugned order dated 12 December 2022 the Minister (Co-operation) allowed the Revision Application by setting aside the orders by the authorities below and directed the Authorized Officer to handover the charge of the Respondent No.9 Society to the managing committee comprising Respondent Nos.1 to 8 (Revision Applicants).

3.6 Being aggrieved, the members of the committee, who claim to have been originally elected in the election held on 20 January 2022, have invoked the writ jurisdiction of this Court.

4. I have heard Ms. Priya Ponda, learned Counsel for the Petitioners, Mr. Bhadrashete, learned Counsel for Respondent Nos.1 to 9 and Mr. Patil, AGP for Respondent State. The learned Counsel took the Court through the relevant

documents and material on record.

5. At the outset, the learned Counsel for the Petitioners would urge that the impugned order deserves to be quashed and set aside on the singular ground of having been passed without providing an opportunity of hearing to the Petitioners. A two pronged submission was canvassed. One, the Minister did not provide any opportunity of hearing at all to the Petitioners. Second, even if the presence of the Petitioners before the Minister on 24 November 2022 is held to have been proved, yet the impugned order is conspicuously silent about the contentions raised by the Petitioners, and this failure to note the submissions, much less, consider the same, indicates that no opportunity of hearing was given to the Petitioners.

6. In view of the aforesaid nature of the objection, the learned AGP was directed to place the original record and proceedings before the Minister (Co-operation). I have perused the original record and proceedings tendered by the learned AGP.

7. The learned Counsel for Respondent Nos.1 to 9 banking upon the entry in the roznama dated 24 November 2022 and the attendance sheet which forms part of the original record and proceedings, would urge that not only the Petitioners were present but also they were provided an opportunity to tender written submissions. The said fact is evident from the application of the Petitioners submitted before the Minister on 19 December 2022. Thus, the Petitioners cannot be now heard to urge

that they were not provided an effective opportunity of hearing.

8. Respondent No.1 has tendered an additional Affidavit to bolster up the contention that the impugned order was passed post hearing the parties.

9. I have considered the rival submissions. From the perusal of the roznama of the proceedings before the Minister, it becomes abundantly clear that 24 November 2022 was the first date of hearing of the Revision Application. The roznama records the presence of the parties and their Advocates and the representatives of the authorities below. It thereafter proceeds to record that the proceedings stood closed for passing final order.

10. Ms. Ponda would urge that conspicuous by its absence is the entry in the roznama that the parties were heard.

11. Mr. Bhadrashete stoutly joined the issue by canvassing a submission that the Petitioners were undoubtedly present before the Minister and the mere omission to record that “arguments were heard” would not erode the sanctity of the hearing conducted by the Minister. The contention in the application dated 19 December 2022, that the Minister had directed the parties to file and exchange written submissions, runs counter to the version of the Petitioners, urged Mr. Bhadrashete.

12. Had the matter been restricted to an entry in the roznama that the parties were heard, different considerations would have come into play and, in that event, there would have been scope for consideration of parole evidence as to whether

the parties were really heard. What accentuates the situation is the fact that the impugned order does not record any of the submissions canvassed on behalf of the Petitioners – Respondent No.4 in the Revision Application. In contrast, the impugned order copiously records the submissions on behalf of Respondent Nos.1 to 8 and the Deputy Registrar, Co-operative Societies.

13. The situation which thus obtains is that the Minister (Co-operation) did not note, much less, consider the submissions on behalf of the Petitioners. An endeavour was made on behalf of Respondent Nos.1 to 9 and the State to salvage the position by canvassing a submission that though the Petitioners were present, they did not advance submissions. This submission does not merit countenance. It is not the case that the Minister (Co-operation) recorded the fact that the Petitioners declined to advance submissions despite opportunity having been availed to them. On the contrary, the roznama, after noting the presence of the parties and their Advocates, simply records the proceedings were closed for passing orders.

14. In substance, the omission to mention the fact that the parties were heard would not have assumed decisive significance, had the impugned order noted the submissions canvassed on behalf of the Petitioners and dealt with those submissions. Absence thereof gives considerable heft to the submission on behalf of the Petitioners that the impugned order came to be passed without providing an effective opportunity of hearing.

15. It is trite if an order is passed in flagrant violation of principle of natural justice and fundamental principle of judicial process, the Court can legitimately exercise the writ jurisdiction. The Petition, thus, deserves to be allowed and the matter is required to be remitted back to the Minister (Co-operation) for afresh determination.

16. Hence, the following order :

ORDER

- (i) The Petition stands allowed.
- (ii) The impugned order dated 12 December 2022 passed by the Minister (Co-operation) in Revision Application No.437 of 2022 stands quashed and set aside.
- (iii) Revision Application No.437 of 2022 stands remitted to the file of the State Government for afresh decision.
- (iv) The State Government shall decide the Revision Application as expeditiously as possible after providing an effective opportunity of hearing to the parties.
- (v) The parties shall appear before the State Government on 16 May 2023.
- (vi) Since the impugned order has been given effect to, it may not be expedient to again appoint an Authorised Officer in terms of the order dated 16 March

2022 passed by the Deputy Registrar, Co-operative Societies. However, Respondent Nos.1 to 9 shall not be entitled to claim equities on the said count and shall not take any major policy decision without the approval of the General Body of the Respondent No.9 Society till the decision of the Revision Application No.437 of 2022.

(vii) Original record and proceedings of Revision Application No.437 of 2022 be returned to the learned AGP.

(viii) No order as to costs.

(ix) Rule made absolute in the aforesaid terms.

(N.J.JAMADAR, J.)