

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1351 OF 2023

Suresh Ganpat Naitam__ Vs. __ State of Maharashtra and ors

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. T.S.Kene, Advocate for petitioner
Mr. N.R.Patil, AGP for respondent no.1
Mr. R.J.Kankale, Advocate for respondent no.3
Mr. A.R.Patil, Advocate for respondent No.4

CORAM : AVINASH G. GHAROTE, J.
DATE : 15/03/2023

1] Heard Mr. Kene, learned counsel for the petitioner, Mr. Patil, learned AGP for respondent no.1, Mr. Kankale, learned counsel for respondent no.3 and Mr. Patil, learned counsel for respondent no.4.

2] The petition challenges the order of the Election Officer (Respondent no.2) dated 20.2.2023, rejecting the objection raised by the petitioner to the nomination of the respondent nos.4 & 5, claiming that the respondent nos.4 & 5 were the nominal members of the respondent no.3 society and therefore were not entitled to contest the election or vote in light of the language of Section 27(8) of the Maharashtra Co-operative Societies Act, 1960 (for short "the MCS Act"). The respondent no.2 by the impugned order has held that he has no jurisdiction

to decide the issue whether the respondent nos.4 & 5 are the nominal member or not and therefore has rejected the objection.

3] Mr. Kene, learned counsel for the petitioner submits that along with the objection, a certificate dated 20.2.2023 (pg.17) issued by the respondent no.3 society indicating that the respondent nos.4 and 5 were the nominal members, was placed on record and therefore, the respondent no.2 placing reliance upon the certificate ought to have rejected the nomination papers of respondent nos.4 and 5.

4] Mr. Patil, learned counsel for respondent no.4 submits that the certificate issued by the respondent no.3 society is incorrect, as the respondent no.4 is a regular member of the respondent no.3 society.

5] Mr. Kankale, learned counsel for the respondent no.3 society has supported Mr. Kene, learned counsel for the petitioner.

6] No doubt that under Section 27(8) of the MCS Act, a nominal member of the society is neither entitled to vote nor to contest in an election, however, for this purpose the position that the

respondent no.4 was a nominal member has to remain uncontroverted. The enquiry to be conducted by the Returning Officer under Rule 25(2) of the Maharashtra Co-operative Societies Election to Committee Rules, 2014 (for short “the Rules of 2014), is a summary enquiry, to be conducted within the time frame permitted for the same, which is very less, considering that the scrutiny has to be completed as per the schedule of the election. For this purpose, it is therefore necessary that an uncontroverted position is brought to the notice of the Returning Officer which would entitle him, on its basis to reject the nomination form of the candidate/ respondent no.4.

7] In the instant matter, though the objection raised by the petitioner to the nomination of respondent nos.4 & 5, carried with it the certificate dated 20.2.23 issued by the respondent no.3 society stating that the respondent nos.4 & 5 were nominal members of the society, however, considering the fact that the name of the respondent nos.4 & 5 were included in the provisional voters’ list as prepared and submitted by the respondent no.3 society to the Returning Officer under Rule 6(1) of the Rules of 2014, and without any objection were also included in the final voters’ list, there is

clearly a controversy regarding the status of the respondent nos.4 & 5 as to whether they are nominal members or regular members. Though the respondent no.3 society has supported the stand of the petitioner in this regard, however, it is material to note that it is the respondent no.3 society itself which has prepared the provisional voters' list under Rule 6(1) of the Rules of 2014 and submitted the same to the Returning Officer under Rule 6(3) of the said Rules. Thus the very stand of the respondent no.3 society as now taken, is contradictory to what it had taken at the time of preparation of the provisional voters list. The nature of enquiry as contemplated by Rule 25(2) of the Rules of 2014 being summary and considering the time restraints at the time of scrutiny, it would not be permissible to the Returning Officer to hold a detailed enquiry to resolve this controversy. This therefore can only be done by the petitioner by instituting appropriate proceedings challenging the election under Section 91 of the MCS Act.

8] At this juncture, it is necessary to put a word of caution to the respondent no.3 society, because of whose action/inaction the present situation has arisen. Under Rule 6(1) of the Rules of 2014, it is the statutory obligation of the respondent

no.3 to prepare a correct provisional voters' list of all the persons who are eligible to cast vote in the election of the managing committee of the society, regard being had to what is stated in Rule 6(1) of the Rules of 2014 which also includes the requirements as contemplated by Sections 26 and 27 of the MCS Act. It is because of the action of the respondent no.3 society that the present situation has arisen. This is a word of caution not only to the respondent no.3 society, but all societies similarly situated to respondent no.3 and it would be appropriate if severe penalty and costs is imposed upon such societies, in case the provisional voters' list which is submitted by them under Rule 6(1) of the Rules of 2014 is found to be inaccurate and inconsistent with the register of members as maintained by them under Section 38 of the MCS Act and the requirements of Rule 6(1) of the Rules of 2014. The inaccuracies in the provisional voters' list, as submitted by the Society to the Returning Officer, is the root cause of a number of litigations, which come to this Court, which can clearly be avoided if the accuracy of the provisional voters list, vis-a-vis the membership register and Sections 26 & 27 of the MCS Act is maintained, which clearly is the obligation of the Society. In that view of the matter

since in the instant matter, it is the respondent no.3 society which is responsible for the controvertial position, which has resulted in this litigation, I deem it not only appropriate but also necessary to impose a cost of Rs.10,000/- upon the respondent no.3 society, to be paid to the High Court Legal Services Sub Committee, Nagpur. The Registrar (Administration) of this Court shall ensure recovery of such costs.

9] In view of the above discussion, I am not inclined to interfere in the order of the Returning Officer. The petition is therefore dismissed. No costs.

JUDGE

Rvjalit