

Nikita

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

WRIT PETITION NO.4195 OF 2024

Irfan Gafur Khot,

Age 40 years, Occu.: Agriculture

R/o.Varavade,Tal.Kankavli,

District Sindhudurg

... Petitioner

V/s.

- 1. Ramesh Mahadev Bandal,**
Age 57 years, Occu.:Agriculture
R/o.Varavade(Hiwalwadi),
Tal. Kankavli,Dist. Sindhudurg
- 2. Election Officer,**
Varavade Vividh Karyakari Sahakari
Seva Society Ltd., Varavade,
Tal.:Kankavli, Smt.S.A.Dhawan
- 3. District Deputy Registrar, Coop.
Society,** Sindhudurg OR District
Cooperative Election Officer,
Sindhudurg, Po. Oros,
District Sindhudurg.
- 4. Secretary, State Cooperative
Election Authority,**
Maharashtra State, Pune,
Old Central Building, Pune – 1
Near Sassoon, Pune 1
- 5. Varavade Vividh Karyakari
Sahakari Seva Society Ltd.,**
Varavade, Tal. Kankavli,
District Sindhudurg.

6. **Suresh Dattaram Sadye,**
Age:Major, Occu.: Agriculture
7. **Padmakar Anant Desai,**
Age:Major, Occu.: Agriculture
8. **Hanumant Govind Bondre,**
Age:Major, Occu.: Agriculture
9. **Prakash Mukund Sawant,**
Age:Major, Occu.: Agriculture
10. **Sakharam Daji Sawant,**
Age:Major, Occu.: Agriculture
11. **Ashok Soma Ghadigaonkar,**
Age:Major, Occu.: Agriculture
12. **Dipak Dattaram Ghadigaonkar,**
Age:Major, Occu.: Agriculture
13. **Yakub Adam Khot,**
Age:Major, Occu.: Agriculture
14. **Aajim Suleman Kundalkar,**
Age:Major, Occu.: Agriculture
15. **Jasint Marshal Lobo,**
Age:Major, Occu.: Agriculture
- 16.A **Pandurang Lazman Mestri,**
Age:Major, Occu.: Agriculture
- 16.B **Subhashchandra Dagambar
Prabhudesai**
Age: Major, Occu: Agriculture
17. **Ravikant Sonu Varavdekar,**
Age:Major, Occu.: Agriculture

- 18. Sunil Sambhaji Sawant,**
Age:Major, Occu.: Agriculture
- 19. Subhash Anant Varavdekar,**
Age:Major, Occu.: Agriculture
- 20. Rupali Gopal Bondre,**
Age:Major, Occu.: Agriculture
- 21. Hamaldin Aamroj Fernandis,**
Age:Major, Occu.: Agriculture
- 22. Pramila Hemant Natakar,**
Age:Major, Occu.: Agriculture
- 23. Snehalata Sunil Sawant,**
Age:Major, Occu.: Agriculture
- 24. Rajkumar Dhaku Bondre,**
Age:Major, Occu.: Agriculture
- 25. Maruti Vaman Varavdekar,** ... Respondents
Age:Major, Occu.: Agriculture
All R/at Varavde,
Tal. Kankavli, Dist. Sindhudurg.

Mr. Kalpesh U. Patil i/b Mr. Vivek B. Rane, for the
Petitioner.

Mr. Ruturaj Pawar, for the Respondent No.1.

Mrs. M. S. Srivastava, AGP for the State-Respondent
No.3.

CORAM : AMIT BORKAR, J.

DATED : MARCH 27, 2024

ORAL JUDGMENT:

1. By this petition under Article 227 of the Constitution of India, the petitioner is challenging the order dated 20th February 2024 passed by the Co-operative Appellate Court in Appeal No.39 of 2023 thereby declaring election of petitioner as null and void mainly on the ground after publication of form E-17 under Rule 64 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 the Returning Officer becomes *functus officio* to correct error of declaration of result.

2. The facts relevant to the adjudication of the present writ petition are as follows: The petitioner, respondent No.6, and Respondent No.1 contested the election along with other candidates from the open category. On 16th January 2022, at about 4.00 P.M., the voting of respondent No.5-Society was over. The counting started at 4.30 P.M. on the same day. Respondent No.2-Election Officer, published the names of elected candidates in form E-17, declaring that Respondent No.1 would be elected along with other candidates who secured the highest votes.

3. On 17th January 2022, the petitioner filed an objection with the Returning Officer contending that he secured 117 votes as opposed to 115 votes secured by respondent No.1. Accepting said representation, the Returning Officer on 17th January 2022 modified form E-17 declaring the petitioner as elected candidate by deleting the name of respondent No.1 accordingly fresh form E-17 was published.

4. This act, a fresh declaration of the results of the Returning Officer, was challenged by respondent No.1 by filing Election Dispute No.154 of 2022 before the Co-operative Court, Kolhapur, mainly on the ground that the Returning Officer, having published the election result by form E-17, had no power to modify such result. The Co-operative Court dismissed the dispute; however, by the impugned judgment and order, the Appellate Court allowed the appeal and set aside the petitioner's election. The petitioner has, therefore, filed a present writ petition.

5. The learned counsel for the petitioner invited my attention to Rule 64 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014, submitted that the Returning Officer had the power to declare the election result by the provisions of the Rules. The counting sheet indicates that the petitioner secured more votes than respondent No.1 and, therefore, the mistake of declaring respondent No.1 as the Returning Officer rectified the elected candidate by issuing fresh form E-17. Relying on Rule 14 of the said Rules, he submitted that the Returning Officer was under obligation to conduct an election of society by the Rules. Fresh declaration of form E-17 was in consonance with the provisions of the Rules, and, therefore, the Appellate Court was not justified in setting aside the petitioner's election.

6. Per contra, learned counsel for Respondent No.1 submitted that once the Returning Officer exercises power under Rule 16 by publishing form E-17, he becomes *functus officio*. Being a creature of the Rules, the Returning Officer has only those powers expressly conferred on it under the Rules. Once he exhausts power under

Rule 64, he ceases to be a Returning Officer for the purpose of conducting the election, and the only remedy of an aggrieved person is to approach the Court under Section 91 of the Maharashtra Co-operative Societies Act, 1960.

7. I have heard the learned counsels for the parties and perused the judgment impugned and other material on record. The limited question that arises for consideration in the writ petition is whether the Returning Officer, having published the result of the election by publishing form E-17, could have modified such result on the ground that the earlier declaration was not in accordance with the Rules. For the purpose of adjudicating the issue involved, it is necessary to consider relevant provisions of the Rules, which are as under:

“(2) Definitions

In these rules, unless the context requires otherwise,-

9) “election” means an election to elect a committee or committee member and office bearer of a Co-operative Society.

(16) “Returning Officer” means any person appointed by the SCEA or by an officer authorized by SCEA in this behalf for the conduct of the election of Societies ;

12. Appointment of Returning Officers, Assistant Returning Officers and such other Officers required to conduct the elections.

(1) The SCEA or the officer authorized in this behalf shall appoint the Returning Officer and may also appoint one or more persons to be called as the Assistant Returning Officer to assist the Returning Officer.

(2)

14. General duty of Returning Officer.

It shall be the general duty of the Returning Officer at any election to do all such acts and things as may be necessary for effectually conducting the election in the manner provided in these Rules and bye-laws made by the society or societies.

64. Declaration of result and publication of names of the members of the committee.

The Returning Officer shall then declare the candidate to whom the highest number of valid votes- has been given as having been elected and certify the return of election in Form E-17, where the District Co-operative Election Officer himself is not the Returning Officer shall send signed copies thereof to the District Co-operative Election Officer. On receipt of the declaration, the District Co-operative Election Officer shall, subject to general or special orders issued by SCEA, publish the names of all elected committee members by causing a list of such names together with their permanent addresses and the names of the constituencies from which they are elected on the notice board of his office and shall send a copy thereof to the registered address of the society concerned for affixing it on the notice board and also for its record. The District Co-operative Election Officer shall send a list of the elected committee members to the SCEA.

65. Account of election expenses.

(1) Every candidate at an election shall, either by himself or by his Election Agent, keep a separate and

correct account of all expenditures in connection with the election incurred or authorized by him or by his Election Agent between the date of the order calling the election and the date of declaration of the result thereof, both dates inclusive within the period of thirty days from the date of declaration of the result.

(2)

(3)

(4) Every contesting candidate at an election shall, lodge with the District Co-operative Election Officer through the Returning Officer an account of his Election expenses within the time and in the manner in Rule 67.

78. Election disputes.

No election shall be called in question, except by an election petition presented to the Co-operative Court as laid down in section 91.”

8. Before considering the scheme of election Rules, it is necessary to set out the history which prompted enactment of such Rules. Before the 97th amendment to the Constitution of India, elections of Specified Societies defined under the provisions of Section 73 (G) of the Act were governed by the Maharashtra Specified Co-operative Societies Elections to Committees Rules, 1971. The elections of Notified Societies were governed by Rule 56 of the Maharashtra Co-operative Societies Rules, 1961 and the elections of other Societies were governed by the Election Rules approved by the Assistant Registrar. The 97th amendment to the Constitution of India inserted Article 243 ZK (2), which mandated that by enacting a law, superintendence, direction and control of

the preparation of electoral rolls and conduct of all elections to the co-operative society was to be vested in a body. Article 243 ZK (2)-required the constitution of the election authority. Under Article 243 ZK(2), such mandate required the State Legislature to amend the Maharashtra Co-operative Societies Act, 1960, to introduce Maharashtra Co-operative Societies (Election to Committee Rules) 2014. By amendment Mah. 16 of 2013, Section 73G, Rule 56A to 56Z were deleted.

9. The Maharashtra Co-operative Societies (Election to Committee) Rules 2014 were notified to regulate the conduct of elections to Co-operative Societies, exercising power under Sub-section (J) and (2) of Section 165. The Rules constituted an Election Authority to supervise and conduct the elections of Co-operative Societies. State Co-operative Election Authority was granted powers under Rule 3 to conduct these elections, including the authority to appoint the District Co-operative Election Officer and Returning Officer. The Returning Officer, appointed under Rule 12, operates under the supervision of the State Election Authority. Rule 14 mandates the Returning Officer to perform duties in accordance with the Rules and bye-laws. Furthermore, Rule 64 empowers the Returning Officer to declare the candidate with the highest number of valid votes as elected and to certify such election using form E-17. Upon receiving this declaration, the District Co-operative Election Officer is obliged, as per Rule 64, to announce the names of elected Committee members along with the details provided.

10. In the light of the statutory scheme regulating the election of

a co-operative society, it is necessary to consider the applicability of the Doctrine of *functus officio*.

Black's Law Dictionary 6th Edn., p. 673) gives its meaning as follows:

“Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority.”

P Ramanatha Aiyer's *The Law Lexicon* (1997 edition) defines the term *functus officio* as:

“A term applied to something which once has had a life and power, but which has become of no virtue whatsoever ... One who has fulfilled his office or is out of office; an authority who has performed the act authorised so that the authority is exhausted.”

The Doctrine of *Functus Officio* in law refers to the idea that once a decision has been made by a quasi-judicial authority on a particular matter, that decision is final and the authority that made it no longer has jurisdiction to revisit or amend it, except in specific circumstances permitted by law. In other words, it means that once a decision is made, it is done and cannot be changed unless specific power is conferred by applicable law. This principle helps ensure finality and certainty in legal or quasi-judicial proceedings. This principle is applicable when anybody exercises the function of a quasi judicial forum. The quasi-judicial authority becomes *functus officio* when an order is pronounced, published, notified, or communicated to the party concerned.

The principle of *functus officio* embodies the concept of finality. After a quasi-judicial authority has made a decision, they

are generally prohibited from revisiting, amending, correcting, clarifying, or reversing it, except when exercising the power of review as authorized by law. Once a quasi-judicial decision reaches finality, it can typically only be altered through proceedings before a court.

11. Rule 64, upon close examination, indicates that once the Returning Officer completes and certifies the results in form E-17, the only obligation remaining is to send the list of elected candidates to the District Election Officer. No other authority, including the Returning Officer, is granted the power to modify the result once such a declaration is made. In case of a contested result alleging a breach of Rules, the remedy for an aggrieved person is to approach the co-operative court under Section 91 of the Maharashtra Co-operative Societies Act, 1960. Rule 64 leaves no room for the Returning Officer to retract or modify the election result. Once the power is exhausted by declaring the result and publishing it in form E-17, the Returning Officer, being a creation of the Rules, has no further authority beyond what is expressly conferred by the Rules. After the declaration of the result in form E-17, the duties of the Returning Officer are restricted to those conferred under part VIII of the election Rules, explicitly overseeing the election expenses provided by each candidate. Rule 65 mandates that every candidate maintain a separate and accurate account of all election-related expenditures and submit it to the District Co-operative Election Officer through the Returning Officer. Hence, the only duty remaining with the Returning Officer after exercising power under Rule 64 is to exercise power under

Rule 65 to submit the accounts of election expenses of a candidate to the District Co-operative Election Officer. Therefore, after the exercise of power under Rule 64, the Returning Officer becomes *functus officio* in relation to the declaration of the result.

12. Therefore, in my opinion, despite the petitioners securing more votes than respondent No.1, the declaration of respondent No.1 as a person having secured the highest votes was not in accordance with the Rules. The Returning Officer, having exhausted power under Rule 64 by fresh result under Form E-17, has exhausted his power, he becomes *functus officio* and has no power to modify or change the result.

13. Therefore, there is no legal infirmity in the impugned order.

14. The writ petition is dismissed. No costs.

15. It is made clear that it shall be open to the petitioner to adopt appropriate proceedings to ventilate his grievance, subject to its maintainability.

(AMIT BORKAR, J.)