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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.5255 OF 2024

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Thuppil Sundarajan Natrajan ... Petitioner
V/s.
State Co-operative Election Authority
& Ors. ... Respondents

Mr. Mohit Bhardwaj with Arwa Lunawadawala for
the petitioner.

Mr. Dilip Bodake for respondent Nos.1 and 2.

Mr. Atul Vanarse, AGP for the State – respondent
No.3.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ
& AMIT BORKAR, J.**

DATED : JANUARY 7, 2025

P.C.:

1. Heard Mr. Bhardwaj, learned advocate representing the petitioner and Mr. Bodake, learned advocate representing respondent Nos.1 and 2. Learned AGP has also been heard on behalf of respondent No.3-State.

2. This writ petition under article 226 of the Constitution of India has been filed by a Member of a Cooperative Housing Society, namely, Splendor Complex CHS Ltd. seeking a

direction to be issued to the State Co-operative Election Authority (hereinafter referred as to "Election Authority") to decide the representation preferred by him on 15 October 2024 in respect of filling up of certain casual vacancies in the Managing Committee of the said society. The petitioner has also challenged letter/order dated 9 September 2024 whereby an officer was authorized by the Election Authority to preside over the meeting which was to be held for filling up the casual vacancies in the managing committee of the subject society.

3. It has been argued vehemently by the learned counsel appearing for the petitioner that as a matter of fact for certain reasons there were nine casual vacancies which occurred and, accordingly these nine vacancies were to be filled in by co-opting/nominating nine persons. However, a written intimation was sent to the Election Authority that there were only two casual vacancies and the Election Authority without correctly verifying the number of causal vacancies which had occurred in the managing committee, proceeded illegally to appoint an authorized officer to preside over the meeting which resulted in non co-option of seven members, as a result of which the constitution of the managing committee of the society has been rendered illegal.

4. The first and foremost question which needs to be considered and decided for entertaining the instant writ petition is as to whether the prayer for direction being sought to the Election Authority by instituting this petition can be granted. Answer to such an issue would depend on as to what are the statutory functions assigned to the Election Authority under the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "Act, 1960") and the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (hereinafter referred to as "Rules, 2014"). If we come to the conclusion that the Election Authority has been vested with powers to adjudicate and decide the nature of issue raised by the petitioner in his representation dated 15 October 2024, the direction as sought by the petitioner can be issued otherwise prayer made in the petition cannot be granted.

5. The State Co-operative Election Authority has been defined in Section 2(29A) of the Act, 1960 to mean an authority constituted by the State Government under Section 73CB of the Act, 1960. Section 73CB of the Act, 1960 provides that superintendence, direction and control of the preparation of the electoral rolls, and the conduct of all elections to a society shall vest in the authority to be called

as 'the State Co-operative Election Authority' which is to be constituted by the State Government. It further provides that election of members of the committee or election of the office-bearers of a society including any casual vacancy, to the extent applicable, shall be held as per the procedure prescribed. Sub-Section (2) of Section 73CB of the Act, 1960 provides that the Election Authority shall consist of the State Co-operative Election Commissioner, who shall be nominated by the Governor. It further provides that the State Co-operative Election Commissioner shall hold the office for a period of three years. Certain other provisions relating to the State Co-operative Election Commissioner have also been provided therein.

6. Section 73CB of the Act, 1960 further provides that the Election Authority shall hold the elections of the society or class of societies as per the procedure, guidelines and the manner, including using the latest technology and expertise, as may be prescribed. It is also vested with a function of conducting elections to the committee, and also to office of President or Chairperson, Vice-President or Vice-Chairperson, and such other office-bearers as are required to be elected as per bye-laws of the society.

7. Sub-Section (14) of Section 73CB of the Act, 1960 inter alia provides that the committee of every co-operative society shall inform any casual vacancy occurring in the committee or its office bearers within fifteen days of the occurrence of such vacancy. Thus, so far as statutory functions of the Election Authority are concerned, the same may be traced in the provisions contained in Section 73CB of the Act, 1960. However, apart from the power vested in the Election Authority in terms of Section 73CB of the Act, 1960, provisions contained in Rule 3 of the Rules, 2014 may also be referred to which vests specific powers in the Election Authority in order to conduct the elections of the co-operative societies. According to Rule 3 of the Rules, 2014, the powers of the Election Authority includes power to appoint any officer or an employee for the purpose of conducting elections, to requisition any public or private premises, vehicles, services etc., to prescribe the code of conduct, to appoint Observers and Zonal Officers, to issue special or general orders or directions for fair and free elections and to issue general or special orders regarding the estimated amount of election expenditure for societies or class of societies.

8. Apart from Section 73CB of the Act, 1960 and Rule 3

referred to hereinabove, no other provision provide any other power available to the Election Authority.

9. Much emphasis has been laid by the learned counsel for the petitioner on the proviso appended to Rule 74 of the Rules, 2014 to submit that the Election Authority is well within its statutory powers to determine and adjudicate, if the issue relating to occurrence of casual vacancy is brought to its notice. He has argued that since the proviso appended to Rule 74 categorically provides that at any point of time during tenure of a committee there would not be nominated members of the committee exceeding 1/3rd of the total strength of the committee and the Election Authority has been vested with the power to appoint an officer to preside over meeting of the committee to be held for filling up the casual vacancies. He further submitted that it is the duty of the Election Authority before proceeding to appoint the officer to preside over the meeting to ascertain as to whether the number of casual vacancies intimated to him is correct or not, and in case the Election Authority comes to the conclusion that intimation of the number of casual vacancies is not correct, he will refuse to authorize the officer to preside over the meeting unless correct number of casual vacancies is

intimated to him.

10. It is in the wake of the aforesaid submissions that it has been argued by the learned counsel for the petitioner that before issuing the letter/order dated 6 September 2024 authorizing an officer to preside over the meeting, it was incumbent upon the Election Authority to have correctly ascertained the number of casual vacancies occurring at that particular point of time, which, according to the petitioner, were nine whereas meeting was held only to nominate two persons. He, thus, argued that the representation made by the petitioner on 15 October 2024, .e., after the nomination of two members can be decided by the Election Authority and, hence, prayer made in the petition may be granted.

11. Rule 74 of the Rules, 2014 is extracted hereinbelow:

"74. Casual vacancies.—(1) *In the event of the vacancy occurring on account of death, resignation, disqualification or removal of an elected committee member of a society or through such a member becoming incapable of acting, prior to the expiry of his term of office or otherwise, the committee of the society shall forthwith communicate the occurrence of such vacancy to the State Co-operation Election Authority and District Co-operation Election Officer, and the vacancy shall be filled within one month from the date of such communication, by nomination of the eligible members out of the same class of the members in respect of which casual vacancy/vacancies has arisen, in the meeting of the remaining members of the committee, which shall be presided over by an officer authorized by State Co-operation Election Authority :*

Provided that, at any instance during the tenure of a

committee, there shall not be nominated members of the committee exceeding one third of the total strength of the committee.

(2) The member so elected or nominated under sub-rule (1) shall hold office so long only as the member of the committee in whose place he is elected would have held it, if the vacancy had not occurred."

12. Having considered the submission made by the learned counsel for the petitioner and on going through various statutory provisions contained in the Act and Rules, we are of the opinion that the submission made by the learned advocate for the petitioner that the nature of dispute raised by the petitioner in his representation dated 15 October 2024 can be decided by the Election Authority is misconceived for the reason that no such power is vested with the Election Authority as per the proviso appended to Rule 74 read with Rule 3 of the Rules, 2014.

13. If we peruse the proviso appended to Rule 74, what we find is that the said proviso contains a substantive provision which is mandatory and which states that at any point of time nominated members of the committee shall not exceed one third of the total strength of the committee. This is a provision which needs to be followed by every committee of every co-operative society. It is to be ensured by the committee that at any point of time the nominated members do not exceed one

third of the total strength of the committee. It is only in case that number of nominated members exceed one third of the total strength of the committee at any given point of time that any grievances can be raised and redressal thereof can be found in the statutory mechanism available in the Act and Rules.

14. We further note that the only role assigned statutorily to the Election Authority under Rule 74 is to authorize an officer to preside over a meeting of the committee which is to take place for filling up the casual vacancy/vacancies. Rule 74 mandates that in the event of vacancy occurring on account of death, resignation, disqualification or removal of a member or in case such a member becoming incapable of acting, the committee of the society shall communicate the occurrence of such vacancy to the Election Authority and the vacancy shall be filled in within one month from the date of such communication, by nomination of the eligible members out of the same class of the members in respect of which casual vacancy/vacancies has arisen. It also provides that such vacancies will be filled in a meeting of the remaining members of the committee, which is to be presided over by an officer to be authorized by the Election Authority. Thus, the provision

contained in Rule 74 can be bifurcated in two parts, first part mandates communication of the vacancy by the committee to the Election Authority / District Co-operation Election Officer, and the latter part only empowers the Election Authority to authorize an officer who would preside over meeting of the committee to be held for nomination of the members.

15. In our considered opinion, to ascertain as to whether the number of casual vacancies intimated to the Election Authority or the District Co-operation Election Officer is correct or not is not the function which is conferred by Rule 74 or even by Rule 3 of the Rules, 2014. Rule 3 enlists in detail the powers and functions of the Election Authority whereas Rule 74 only provides as to what needs to be done by the Election Authority in only one exigency, i.e., in the exigency of occurrence of the casual vacancy. On intimation of such vacancy the Election Authority has been mandated to authorize an officer to preside over a meeting of the committee. No other function, from a bare perusal of Rule 74, can be deduced which can be said to be conferred on the Election Authority. As a matter of fact, this legal position has been admitted by the learned counsel for the petitioner.

16. Raising a dispute touching the constitution of the managing committee of the society, it has rightly been pointed out by the learned counsel for the petitioner that since nomination against the casual vacancies will not amount to election, therefore, recourse to raising election dispute under Rule 78 read with Section 91 cannot be taken; however, while appreciating such submission raised by the learned counsel for the petitioner, we may point out at this juncture itself that Section 91 is not confined to disputes relating to elections of the committee or its officers alone. Section 91 falls under Chapter IX of the Act, which commences with the heading "Settlement of Disputes". Section 91 commences with a non obstante clause and provides that any dispute (i) touching the constitution, (ii) election of the committee or its officers, (iii) conduct of general meetings, (iv) management or business of a society shall be referred by any of the parties to the dispute. It also provides that such a dispute can be referred by a federal society to which the society is affiliated, or even by a creditor of the society to the Co-operative Court.

17. Section 91 of the Act, 1960 contains a caveat, according to which, such a dispute can be referred to the Co-operative Court if both the parties to the dispute are a society, its

committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer etc., or is a member of a society, or a society which is a member of the society etc.

18. Section 91 of the Act, 1960 is quoted hereinunder:

"91. (1) *Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, election of the committee or its officers, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the society, to the Co-operative Court, if both the parties thereto are one or other of the following :—*

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society or the Official Assignee of a de-registered society ;

(b) a member, past member or a person claiming through a member, past member or a deceased member of a society, or a society which is a member of the society or person who claims to be a member of the society ;

(c) a person other than a member of the society, with whom the society has any transactions in respect of which any restrictions or regulations have been imposed, made or prescribed under section 43, 44 or 45, and any person claiming through such person ;

(d) a surety of a member, past member or deceased member, or surety of a person other than a member with whom the society has any transactions in respect of which restriction have been prescribed under section 45, whether such surety or person is or is not a member of the society ;

(e) any other society, or the Liquidator of such a society or de-registered society or the Official Assignee of such a de-registered society.

Provided that, an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947, or rejection of nomination paper at the election to a committee of any society or refusal of admission to membership by a society to any person qualified therefor, or any proceeding for the recovery of the amount as arrear of land revenue on a certificate granted by the Registrar under sub-section (1) or (2) of section 101 or sub-section (1) of section 137 or the recovery proceeding of the Registrar or any officer subordinate to him or an officer of society notified by the State Government, who is empowered by the Registrar under sub-section (1) of section 156, or any orders, decisions, awards and actions of the Registrar against which an appeal under section 152 or 152A and revision under section 154 of the Act have been provided, shall not be deemed to be a dispute for the purposes of this section.

(3) Save as otherwise provided under 7 sub-section (2) of section 93, no Court shall have jurisdiction to entertain any suit or other proceeding in respect of any dispute referred to in sub-section (1).

Explanation 1.—A dispute between the Liquidator of a society or an Official Assignee of a de-registered society and the members (including past members, or nominees, heir or legal representative of deceased members) of the same society shall not be referred to the Co-operative Court under the provisions of sub-section (1).

Explanation 2.—For the purposes of this sub-section, a dispute shall include—

(i) a claim by or against a society for any debt or demand due to it from a member or due from it to a member, past members or the nominee, heir or legal representative of a deceased member, or servant for employee whether such a debt or demand be admitted or not ;

(ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan by a society and recovered from the surety owing to the default of the principal borrower, whether such a sum or demand be admitted or not ;

(iii) a claim by a society for any loss caused to it by a member,

past member or deceased member, by any officer, past officer or deceased officer, by any agent, past agent or deceased agent, or by any servant, past servant or deceased servant, or by its committee, past or present, whether such loss be admitted or not ;

(iv) a refusal or failure by a member, past member or a nominee, heir or legal representative of a deceased member, to deliver possession to a society of land or any other asset resumed by it for breach of conditions of the assignment."

19. Having regard to the contents of the representation made by the petitioner dated 15 October 2024 in respect of which a direction has been sought to be issued in this petition to the Election Authority to decide the same, we conclude that the same raises a dispute touching the constitution of the committee and, accordingly, the dispute raised will fall within the phrase "any dispute touching the constitution" occurring in Section 91(1) of the Act, 1960. The petitioner is a member and, accordingly, he will have locus to raise such dispute by making a reference to the Co-operative Court under section 91 of the Act, 1960. The entire submissions of the learned counsel for the petitioner, as already discussed above, rests on a misconceived reading of the proviso appended to Rule 74 of the Rules, 2014, which, as we have already held, does not vest or create any power or authority in the Election Authority; rather it is a substantive provision which is to be followed, according to which, at any given point of time

nominated members of the committee shall not exceed one third of the total strength of the committee. Such a provision does not vest any power or jurisdiction in the Election Authority to decide the disputes relating to number of casual vacancies which are intimated by the committee to the Election Authority. As already observed above, since the dispute raised by the petitioner in his representation dated 15 October 2024 is essentially a dispute touching upon the constitution of the committee of the society, hence, we are of the clear opinion that the petitioner has wrongly chosen to approach the Election Authority for redressal of his grievance instead of approaching the Co-operative Court invoking the Section 91 of the Act, 1960.

20. For the reasons aforesaid, we find that the writ petition is highly misconceived which is hereby dismissed.

21. We, however, keep it open to the petitioner to seek appropriate remedy for redressal of his grievance before an appropriate forum/court/authority.

22. Interim Application(s), if any, also stand disposed of.

23. There shall be no order as to costs.

(AMIT BORKAR, J.)

(CHIEF JUSTICE)