

IN THE HIGH COURT OF JUDICATURE OF BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 1341 OF 2015

Vilas Pandharinath Gondkar
Age 51 years, Occu. Service,
r/o Banroad near Ganesh Bandhara
Shirdi, Taluka Rahata,
District Ahmednagar.

... Petitioner

VERSUS

- 1] The State of Maharashtra
Through the Secretary
Cooperation and Textile
Department, Maharashtra
State Mantralay, Mumbai.
- 2] The Election Returning Officer
Shri Sai Sansthan Employees
Credit Cooperative Society Ltd.,
Shirdi, Tq. Rahata,
District Ahmednagar.
- 3] Shri Sai Sansthan Employees
Credit Cooperative Society Ltd.,
Shirdi Tq. Rahata District Ahmednagar.
Trough its Secretary.
- 4] Rajendra s/o Sopanrao Jagtap
Age 47 years, Occu. Service,
r/o Chhatrapatinagar, Nagar-
Manmad Road, Shirdi
Tq. Rahata, District Ahmednagar

... Respondents

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Mr. R.T. Nagargoje, Advocate for petitioner
Mr. U.H. Bhogle, A.G.P. for Respondent/ State
Mr. V.D. Hon, Sr. Advocate holding for
Mr. V.B. Anjanwatikar, Advocate for respondent No. 4

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CORAM : RAVINDRA V. GHUGE, J.

DATE : 6th FEBRUARY, 2015

PER COURT :

1. The petitioner is aggrieved by the order dated 30-01-2015 passed by the Returning Officer (RO) thereby negating the objections raised by the petitioner as regards respondent No. 4 having a third child.

2. The submissions of the petitioner are summarised as under :-

a] Elections of the Shri Sai Sansthan Employees Credit Co-operative Society Ltd., Shirdi, Tq. Rahata, Dist. Ahmednagar are underway.

b] Election programme dated 14-01-2015 has been published.

c] Elections are to be held for eleven seats.

d] Respondent No. 4 has filed nomination papers for contesting the elections.

e] The petitioner raised an objection to the acceptance of nomination paper of the fourth respondent vide his objection dated 28-01-2015.

f] It was specifically canvassed that the fourth respondent has three biological children and the third child is born after the cut of date.

g] The fourth respondent submitted his reply dated 29-01-2015.

h] There is no denial by the fourth respondent that the third male child following two daughters born earlier is his third child.

i] By the impugned order dated 30-01-2015, the RO has not adverted to any of the claims/ contentions of the petitioner and has shirked his duties by not passing any order on the objections. Instead he has decline to pass an order on the ground that Writ Petition No. 1384 of 2012 is pending hearing before this Court.

j] The first girl child of the fourth respondent 'Pratiksha' is born on 26-05-1995.

k] The second girl child 'Samiksha' is born on 20-09-2000.

l] The third child (male) namely 'Samarth' is born on 03-12-2009.

m] Copy of the fourth respondent's declaration form by way of employee details submitted to Shri Saibaba Sansthan Trust bears his signature, his photographs, ration card number, details and photograph of his wife and three children along with their blood group and dates of birth.

n] Copy of the birth certificate of the third child of the fourth respondent is placed on record which is issued by the Registrar of birth and death section, Shirdi Nagar Panchayat, Shirdi dated 30-04-2010 indicating that the third child was born on 03-12-2009.

3. The petitioner has thereafter relied upon Rule 25 (2) (b) of the 2014 Rules to submit that the scrutiny of nomination papers is to be done by the RO who has disregarded the objections raised by the petitioner. It is submitted that Section 73 (CA) (1) (vii) has been introduced on 07-09-2001 through Maharashtra Act, 34 of 2001, clearly stating that no candidate can contest an election as he stands disqualified if he has more than two children.

4. The petitioner further submits that the reply filed by the fourth respondent before the RO in response to the complaint/ objections raised by the petitioner, reveals no denial as regards the existence of the third child as well as the date of birth of the third child.

5. The petitioner, therefore, submits that the fourth respondent now cannot turn around and claim either that the third child is not his biological son or dispute the date of birth of the said child. He further states that the signature of the fourth respondent appearing on his reply dated 29-01-2015 is the same signature appearing in the declaration of employee details submitted by him to the Shri Saibaba Sansthan Trust, Shirdi.

6. The petitioner, therefore, contends that the impugned order be set aside and the matter be remitted back to the RO for considering the above referred documents as evidence and pass a necessary order.

7. Shri Hon learned Senior Advocate appears on behalf of the fourth respondent. His contention is that this petition need not be entertained since Rule 78 of the 2014 Rules enable the petitioner to file a proper election petition under Section 91 of the Maharashtra Co-operative Society, 1960. Since the nomination paper of the fourth respondent has been accepted, this petition should not be entertained as it would amount to interfering in the election process which has already commenced.

8. Shri Hon further submits that though there is no denial in the reply of the fourth respondent dated 29-01-2015 as regards the existence of the third child, the said respondent desires to reserve his submissions to be set out in a proper election petition. When confronted with the document as regards the employee details declaration which is at page 33 and 34 of the petition paper book and the birth certificate of the third child at page 35 of the petition paper book, he submits that the fourth respondent would face these documents as and when the situation may arise.

9. I find it quite conspicuous that the fourth respondent has not refuted the objections raised by the petitioner on 29-01-2015. There is no denial as regards the existence of the third child and the date of his birth.

10. However, since I am not inclined to entertain this petition in view of the fact that the election process has already commenced, it needs to be kept open for the petitioner to prefer a proper challenge as regards the disqualification of the fourth respondent under Section 73 (CA) (1) (vii) of the Maharashtra Cooperative Societies Act, 1960 (MCS Act). Needless to state, the petitioner would be at liberty to raise all the grounds as have been raised in this petition in the event an election petition is preferred under Section 91 of the MCS Act.

11. In the light of the above, this petition is disposed off with liberty to the petitioner to resort to an appropriate proceeding. In the event such a proceeding is initiated by the petitioner, the contentions recorded here-in-above and the submissions of the fourth respondent as are recorded in this order, shall be considered by the concerned authority while deciding the said proceedings.

12. In order to ensure that ends of justice would be met, I make it clear that the any proceedings initiated against the fourth respondent as regards applicability to Section 73 (CA) (1) (vii) and/or an election petition preferred either by the petitioner or any other aggrieved person, the pendency of Writ Petition No. 1384 of 2012 and orders passed therein shall not be an impediment for the competent authority to either decline to hear the said election / any other proceedings or to pass any orders.

13. Writ Petition No. 1384 of 2012 pending before this Court shall be decided and any proceedings arisen out of the ensuing elections involving the fourth respondent shall be decided by the authority before whom they are preferred, on their own merits.

14. With these observations, this petition is disposed off.

(RAVINDRA V. GHUGE, J.)