

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

WRIT PETITION NO. 3850 OF 2015

Santosh s/o Tryambakrao Pethe,
Age 34 years, occup. Service,
R/o Haribhau nagar, Latur,
Tq. & Dist. Latur ... Petitioner

versus

1. The District Deputy Registrar,
Co-op. Society, Old Collectorate
Building, Latur, Dist. Latur
2. The Returning Officer,
The Kisan Bank Staff Co-operative
Credit Society Ltd., Latur, through
its Office of Assistant Registrar,
Co-operative Society, Old Collectorate
Building, Latur, Dist. Latur
3. Vyankatrao s/o Govindrao Shinde,
Age: major, occup. Service,
R/o Bank Colony, Suyog Gruhnirman
Society, Nilanga, Tq. Nilanga,
Dist. Latur. Respondents

WITH
WRIT PETITION NO. 3851 OF 2015

Shivaji Digambarrao Wagalgave
Age : 36 years, occup. Service,
R/o Vyankatesh Nagar, Latur,
Tq. & Dist. Latur ... Petitioner

versus

1. The District Deputy Registrar,
Co-op. Society, Old Collectorate
Building, Latur, Dist. Latur
2. The Returning Officer,
The Kisan Bank Staff Co-operative
Credit Society Ltd., Latur, through
its Office of Assistant Registrar,
Co-operative Society, Old Collectorate
Building, Latur, Dist. Latur

3. Vyankatrao s/o Govindrao Shinde,
Age: major, occup. Service,
R/o Bank Colony, Suyog Gruhnirman
Society, Nilanga, Tq. Nilanga,
Dist. Latur. Respondents

Mr. V.D. Salunke, Adv. i/b Mr. T. M. Venjane, Adv. for petitioners
Mrs. S.G. Chincholkar, Asstt. Govt. Pleader for respondents 1 & 2
Mr. Ashwin V. Sakolkar, Advocate for respondent no. 3

CORAM : SUNIL P. DESHMUKH, J.
DATE : 7TH APRIL, 2015

Oral judgment:

1. Rule. Rule made returnable forthwith and heard learned counsel for parties by consent.

2. Petitioners purport to challenge the orders dated 24-03-2015 passed by returning officer rejecting their nominations, on the ground of non fulfillment of requirement of making deposit pursuant to rule 23 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014. (Hereinafter, for brevity, said rules are referred to as "the rules").

3. Mr. Salunke, learned counsel appearing on behalf of the petitioners vehemently submits that deficiency as occurred due to not making deposit cannot be termed as of substantial nature and is curable. He contends that, in several decisions it has been considered that the deficiencies which are not of substantial

nature are allowed to be cured and defects in nomination are allowed to be corrected.

4. For aforesaid purpose, Mr. Salunke relies on decision in the case of *Suresh Bhagwanrao Mobile vs. State of Maharashtra* reported in *LAWS (BOM)-1986-1-45/MHLR-1987-1-774*, wherein division bench of this court appears to have considered that failure of candidate to write year of election in the space provided for in the nomination form is of curable nature and as such rejection of the nomination may not be proper.

5. Mr. Salunke has also relied on a decision of the apex court in the case of *Ram Awadesh Singh vs. Sumitra Devi*, reported in *1972 AIR (SC) 580*, which was with reference to section 33(4) of the Representation of the People Act, 1951. He particularly relies on paragraph 13 of the judgment which reads as under;

“ The first question that we have got to decide is whether the defects found in the nomination paper of the appellant are of substantial character. As mentioned earlier, the appellant was fully qualified to be nominated for the election. The only thing said against his nomination is that his nomination paper was not properly filled in. We have earlier seen that a duty is imposed on the Returning Officer by sub-s. (4) of S. 33 to look into the nomination' paper when it is presented and to satisfy himself that the names and the electoral roll numbers of the candidate and that of the proposer as entered in the nomination paper are the same as those entered in the electoral roll.

In this case it is proved that the Returning Officer did look into the nomination paper but unfortunately he also did not notice that the name of the appellant had been removed from the' electoral roll of Arrah constituency. If he had noticed that fact, he, would have asked the appellant either to correct the mistake or to file a fresh nomination paper. We have earlier noticed that the appellant filed his nomination paper on the 6th of January 1969 and the last date for filing the nomination paper was the 8th of that month. That being so, there would have been no difficulty for him either to correct the nomination paper filed or to file a fresh nomination paper. We have earlier noticed that the appellant had with him a certified copy of the electoral roll of the Sandesh constituency and he had shown the same to the Returning Officer. Mistakes complained or occurred because both the appellant as well as the Returning Officer merely looked into the main voters' list but overlooked the deletion noted in a separate list. But the implication of S. 33 (4) is that a wrong entry in a nomination paper as regards the name of the candidate or the proposer or their electoral roll numbers is not a matter of substantial importance. That is why the legislature requires the Returning Officer to look into them and if there are any mistakes to get them corrected. What is of importance in an election is that the candidate should possess all the prescribed qualifications and that he should not have incurred any of the disqualifications mentioned either in the Constitution or in the Act. The other information required to be given in the nomination paper is only to satisfy the Returning Officer that the candidate possesses the prescribed qualification and that he is not otherwise disqualified. In other words those information relate to the proof of the required qualifications. (emphasis supplied)''

From aforesaid, it is easily discernible that the situation was referable to rule 21 (2) of the rules which reads as under;

"21. Presentation of nomination paper and requirement for valid nomination.

(1) On or before the last date for making nominations appointed under Rule 18, each candidate shall either in person or by his proposer, deliver to the Returning Officer during the time and at the place specified in the programme declared under the said rule, a nomination paper completed as provided by Rule 20, and signed by the candidate and by two voters of his constituency, one of whom shall be a proposer and the other seconder.

(2) On the presentation of a nomination paper, the Returning Officer shall satisfy himself that the names and the numbers of the candidates and his proposer and seconder as are entered in the nomination paper are the same as those entered in the list of voters excepting in the case of nomination paper presented under the provisions of sub-section (3) of section 73B for reserved constituency, the candidate shall attach the attested copy of the list of existing committee members to which he represents. If a nomination paper is rejected under this rule, the Returning Officer shall record thereon his reasons for rejecting the same;

Provided that, the Returning Officer shall permit any clerical or technical error in the nomination paper in regard to the said names or numbers to be corrected in order to bring them into conformity with the corresponding entries in the list of voters and where necessary, any clerical or printing error in the said entries shall be overlooked.

6. Mr. Sakolkar, learned advocate appearing on behalf of respondent no. 3 who had taken objection to the nomination of the petitioner points out rule 23 of the rules and submits that it is incumbent upon the candidate to make requisite deposit and in case of failure to do so, it is the duty of the election officer to reject the nomination. He further submits, having regard to the

obligations and duties cast under rule 25, the decision rendered by the election officer, upheld by appellate authority is hardly amenable to interference at this stage.

7. Rule 23 reads as under:

"23. Deposit and Fees.

(1) A candidate shall not be deemed to be duly nominated for election from a constituency unless he deposits or causes to be deposited with the Returning Officer the nomination fee specified hereunder:-

.....

***Provided** that, where a candidate has filed by more than one nomination paper for election in the same constituency, not more than one deposit shall be required to be paid by him under this rule. However, the SCEA shall be competent to fix amount, from time to time, towards deposits as per aforesaid rule by a candidate in the case of any society or class of societies in consideration of the financial standing membership etc. by general or special order:*

***Provided further** that, if a candidate withdraws his nomination, the deposit will be refunded within fifteen days of his withdrawal. "*

8. And in the present matter rule 25 obligates as under:

25. Scrutiny of nomination papers.

(1) On the date fixed, for the scrutiny of nomination papers under Rule 18, the candidates, one proposer of each candidate duly authorized in writing by each candidate, may attend at the time and place appointed in this behalf, and the Returning Officer shall give or cause to give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered as required by rule 20. No other person shall be allowed to attend the scrutiny of nomination.

(2) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary reject any nomination on any of the following grounds, that is to say:-

(a) that the candidate is disqualified for being chosen to fill the seat by or under the Act, the rules and the bye-laws;

(b) that the proposer or seconder is disqualified from subscribing a nomination paper;

(c) that there has been a failure to comply with any of the provisions of rule 21 or 23;

(d) that the signature of the candidate or the proposer or the seconder on the nomination paper is not genuine.

(3) Nothing contained in clause (c) or (d) of sub-rule (2) shall be deemed to authorize the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

(5) The Returning Officer shall hold the scrutiny on the date appointed in this behalf under rule 18, and shall not allow any adjournment of the proceedings, except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control;

Provided that, in case any objection is raised by the Returning Officer or is made by any other person, the candidate concerned may be allowed time to rebut it, not later than the next day before the publication of list of valid nomination and the Returning Officer shall record his decision on the date to which the proceedings have been adjourned.

(6) The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, he shall record in writing, a brief statement of his reasons for such rejection, and a copy of such statement shall be immediately supplied on demand to the candidate or to the proposer concerned. The copy of such statement shall be sent invariably to the SCEA or District Co-operative Election Officer, as the case may be. "

9. Rule 23 declares a candidate shall not be deemed to be duly nominated unless he deposits or causes to be deposited with the election officer the fees specified. Rule 25(2)(c)

authorizes rejection of nomination on failure to comply with rules 21 and 23.

10. In the present matter, there is no dispute about failure to deposit nomination fee. However, it is sought to be contended that the failure is not of substantial nature. It has been considered that rule 23(1) of the rules directs that a candidate is not to be considered duly nominated if the nomination fee specified is not deposited or caused to be deposited. Said rule read with empowerment of the returning officer under rule 25(2) (c) to reject the nomination for failure to deposit the nomination fee would show that while passing the orders rejecting nominations of the petitioners, the returning officer on examination of nomination papers and objection to the nomination, has acted within his powers and authority. Said orders cannot be said to be improper or illegal or without empowerment or without authority of law.

11. While the rule declares a nomination to be not due for want of deposit of nomination fee, it would be difficult to accept the contention of the petitioners that such a defect would be required to be considered as a formal defect and is not of substantial character. It is as such difficult to go by the contention on behalf of the petitioners that, the situation be

given a treatment as considered in the citation relied on, namely, *1972 AIR (SC) 580 (supra)*, for, the situation in the present matter is materially covered by specific rules. The situation that was being considered under the citation appears to be dealing with a situation coming closer to proviso to rule 21. However, it may not be able to contain the present facts and the situation. The citation as such would hardly carry the case forward for petitioners in the present matter.

12. Perusal of the concerned rules shows that on examination of nomination papers and the objections after summary enquiry by the returning officer, it is within his powers to reject the nomination for failure to comply with all the provisions of rule 23 of the rules.

13. Taking into account purport underlying aforesaid rules, I do not deem it appropriate to interfere with the concurrent orders passed by the two authorities.

14. Writ petitions, as such, are dismissed. Rule discharged.

SUNIL P. DESHMUKH, J.

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