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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7010 OF 2015

Pramod Diwakar Bhokardole

PETITIONER

VERSUS

The State of Maharashtra & others

RESPONDENTS

.....

Mr. N. K. Tungar, Advocate for the petitioner

Mr. S. G. Sangale, AGP for respondent State

.....

WRIT PETITION NO.7011 OF 2015

Sanjay Krishnaji Bhokardole

PETITIONER

VERSUS

The State of Maharashtra & others

RESPONDENTS

.....

Mr. N. K. Tungar, Advocate for the petitioner

Mr. S. K. Tambe, AGP for respondent State

.....

WRIT PETITION NO.7039 OF 2015

Hemant Divakar Bhokardole

PETITIONER

VERSUS

The State of Maharashtra & others

RESPONDENTS

.....

Mr. N. K. Tungar, Advocate for the petitioner

Mr. V. G. Shelke, AGP for respondent State

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 14th JULY, 2015

ORAL ORDER :

1. The petitions had been moved by the petitioners aggrieved by orders passed by returning officer, Jalgaon Jananta Sahakari Bank Ltd., Jalgaon, which had been received to the petitioners on 29th June, 2015.

2. Earlier on, this court had not entertained grievance of the petitioners in writ petitions No. 6744 of 2015, 6745 of 2015 and 6759 of 2015 having regard to section 152-A of the Maharashtra Co-operative Societies Act, since the writ petitions were opposed on that ground. Subsequent to that, the petitioners had been before the Divisional Joint Registrar, Nashik, against the order of rejection of their nominations. The Divisional Joint Registrar, Co-operative Societies had returned the appeals under order dated 9th July, 2015 on the ground that the concerned bank operates in all the districts of the Maharashtra and, therefore, appeals would be outside his jurisdiction. Contention of the petitioners is that the return of appeals is not proper, for, it is not clear that the rejection of nominations is by District Deputy Registrar and Election Officer and Divisional Joint Registrar, Co-operative Societies to be appellable to Additional Commissioner and Special Registrar, Co-operative Societies, Pune. He submits that

the last date of withdrawal of nomination is today i.e. 14th July, 2015 and that symbols would be allotted tomorrow i.e. on 15th July, 2015.

3. On merits, he contends that rejection of nominations by the returning officer is absolutely illegal and improper, for, there is one single voters list without there being any bifurcation as voters from Jalgaon district and those from outside Jalgaon district. He further refers to rules 20 and 21 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014, which, for ready reference are reproduced hereinbelow.

20. Nomination of candidates.— (1) Any member whose name appears in the final list of voters may be nominated as the candidate for the election to fill a seat, if he is qualified to be chosen under the provision of the Act, rules and the bye-laws of concerned society:

Provided that, where the seats are reserved on the committee of any society as provided under section 73B and 73C of the Act, any individual member of the society, or any member of the committee of a member society, whether elected, co-opted or nominated shall be eligible for being nominated as candidate.

Provided further that, in case of associate members of co-operative housing society and cooperative premises society, the member whose name stands first in the share certificate shall be eligible to be nominated as candidate for the election. In absence of such person whose name stands second as associate member and in the absence of both, the person whose name stands next and likewise in the absence of the preceding persons the person whose name is next on the share certificate, who is not a minor shall be eligible to be nominated as candidate for the election.

(2) Every nomination paper presented under rule 21 shall be completed in FORM 'E-5':

Provided that, a failure to complete or defect in completing the declaration as to symbols in a nomination paper, shall not be deemed to be a defect of a substantial character within the meaning of these rules.

(3) Any person whose name is entered in the final list of voters may be a proposer or seconder for nominating a candidate for election:

Provided that, in the case of election from constituency of societies, the proposer and the seconder shall be from the same constituency except reservation falling under section 73 B and 73C.

(4) A nomination paper shall be supplied by the Returning Officer to any voter on demand and on payment of such fees as mentioned in rule 23 and subject to change by the SCEA.

21. Presentation of nomination paper and requirements for valid nominations.

(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.

(3) Any person who is not subject to any disqualification as a voter under the Act, these rules or bye-laws and whose name is entered in the list of voters for the constituency, for which the candidate is nominated, may subscribe as proposer and seconder :

Provided that, the nomination paper shall be accompanied by an affidavit , specified by SCEA, mentioning the candidate is not disqualified under section 73CA of the Act and the attested copies of caste certificates.

(4) In the case of a reserved seat under the provisions of section 73B, a candidate shall not be deemed to be qualified to be chosen to fill the seats unless the nomination paper is accompanied with a declaration required under section 73B.

(5) On receiving nomination paper under sub-rule (1), the Returning Officer shall write or cause to be written on the nomination paper its serial number, and shall sign or cause to be signed thereon a certificate stating the date on which and exact time at which the application was delivered to him.

4. He, therefore, contends that the rejection of nominations by the returning officer is highly improper. Their cases are not at all covered by the proviso as, there is no constituency of societies and as such, rejection on the ground that proposer and seconder are from Jalgaon district is not proper. The proviso applies in the cases to the elections from constituency of societies and not otherwise. He submits that limitation appearing in respect of constitution of Board of Directors about ten from Jalgaon district and two from outside Jalgaon district has a different connotation and does not at all speak of any bifurcation of voters. The rules do not, in any way, restrict that proposer and seconder should be from Jalgaon district or from outside Jalgaon district. He, therefore, submits that rejection of nominations is improper. He further submits that since the date of withdrawal is today, objection being taken on the ground of appellate authority, especially when it is not clear as to whether the returning officer is Divisional Joint Registrar or not, it would not be proper and it is not now possible for them to approach the appellate authority as has been sought to be contended.

5. Learned AGPs, however, submit that having regard to that appellate authority being provided, in view of communication dated 7th April, 2015, writ petitions need not be entertained. They submit that constitution of board of directors of the bank, ten from Jalgaon district and two from outside Jalgaon district, impliedly suggests that the proposers and seconders must be from the same constituency. However, they are not in a position to make submissions on designation of returning officer. They, therefore, submit that the petitions, additionally for alternate remedy being available, may not be entertained.

6. Having to that in earlier round the petitioners were relegated to appellate authority and in hazy situation about designation of returning officer, and having regard to exigency as is occurring in the present matters, I do not think that contended appellate forum would be an efficacious remedy for the petitioners at this stage.

7. Looking at the scenario that there is only one voters list without bifurcation in respect of voters from Jalgaon district and those from outside Jalgaon district and having regard to sub rule 3 of Rule 20 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 and the proviso, distinction sought to

be made by learned AGPs would not be a reason good enough for rejecting nominations of the petitioners. I, therefore, allow the writ petitions in terms of prayer clause "B".

8. Parties to act upon authenticated copies of this order. Learned AGPs to communicate this order to the returning officer.

[SUNIL P. DESHMUKH, J.]

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