

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**APPELLATE SIDE CIVIL JURISDICTION****WRIT PETITION NO. 1778 OF 2015**

Shri Shamrao R. Khangal

....Petitioner.

Vs.

The District Deputy Registrar,
Co-operative Societies, Nashik & Ors.

....Respondents.

WITH

WRIT PETITION NO. 1779 OF 2015

Shri Ashok Sakharam Waghmode

....Petitioner.

Vs.

The District Deputy Registrar,
Co-operative Societies, Nashik & Ors.

....Respondents.

Mr. P.N. Joshi a/w Pratik B. Rahade for the Petitioners.

Ms. Vaishali Nimbalkar, AGP for Respondent Nos. 1, 3 and 4.

CORAM:- ANOOP V. MOHTA, J.

DATE :- 20 FEBRUARY 2015.

P.C:-

Rule. Rule, made returnable forthwith. Heard finally by
consent of the parties.

2 So far as Writ Petition No. 1778 of 2015 is concerned, leave is granted to amend the name of Petitioner. Amendment to be carried out forthwith.

3 The Petitioner's nomination was rejected, though supported by all the relevant documents, as required for filing the nomination to contest the election, being belonging to "*other backward category*", as required under Section 73B of the Maharashtra Co-operative Societies Act, 1960 (for short, "the MCS Act") and the Rules in the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (for short, "the MCS Rules, 2014"). Respondent No.1-the District Co-operative Election Officer, rejected the Nomination Form, without giving opportunity and/or to correct the bonafide mistake of not signing the verification/affidavit clause (c) of the Nomination Form. The other documents, as well as, the other parts of the Nomination Form were duly signed. Such bonafide mistake of not signing and/or inadvertently left out one signature, in my view, cannot be the reason to reject the Nomination Form. There are ample evidence on record, as filed in support of the Nomination Form, to prove that the Petitioner is belonging to the other back-ward

class.

4 In my view, the provisions of Sections 73B and 73C of the MCS Act and Rule 21(3) and Rule 25 (2)(c) and specifically 25(4) and proviso to Clause 5 the MCS Rules, 2014, have been totally overlooked. This is not read to mean that, the Returning Officer is not under obligation to see the full compliances, as per the mandate of the provisions. For the defect of this nature, instead of giving opportunity to correct the same, should not have denied and/or rejected the Nomination Form, as done in the present case. The provisions itself provide that the Returning Officer shall not reject any Nomination papers on any defect, which is not substantial character (Rule 25(4)). The missing signature, only in Clause (c) of the Nomination Form, in my view, is not defect of substantial character. There is no objection raised by anybody else, in this regard. The decision of the Returning Officer, to reject the said Nomination Form of the Petitioner, in my view, is liable to be quashed and set side.

5 A Division Bench of this Court in Anant Janardan Patil Vs.

State of Maharashtra & Ors.¹ though dealing with the provisions of Bombay Village Panchayats Act 1958 but, in similarly situated position, where the Nomination Form was rejected on technical ground, not annexing the caste certificate, and held that the defect was not substantial character, therefore, set aside the order of rejection of nomination paper. In the present case, as recorded above, there is one missing signature at Clause No.(c) of the Nomination Form, when the other substantial documents on the part of the record, justified the caste claim, therefore, order dated 11 February 2015 is required to be quashed and set aside.

6 In respect of Writ Petition No. 1779 of 2015 is concerned, the Petitioner is permitted to correct the prayer clause (a). Amendment to be carried out forthwith.

7 The Petitioner, though provided all the necessary requisite documents of caste of “Nomadic Tribe”, but failed to mention the same in clause (c) of the signed Nomination Form. The Returning Officer rejected the Nomination Form for the reasons so recorded

1 2002 (4) Bom. C.R. 270

above. This also, in my view, is a defect of minor nature. It is curable and ought to have granted opportunity to remove the defect. The rejection therefore, is unsustainable and liable to be quashed and set aside. Therefore, for the above reasons, the Petitioner in this matter, also entitled to participate in the election process, as prayed in prayer clause (a).

8 Resultantly, the following order:-

ORDER

- a) Both the Writ Petitions are allowed in terms of respective prayer clause (a), which is as under:-

Writ Petition No. 1778 of 2015:-

“(a) Issue an appropriate Writ/Order, for quashing and setting aside the Order dated 11.02.2015 passed by the Respondent No.4 in appeal No. 2/2015 and allow the Petitioner to contest the election, in the “Other Backward Class Category” of Respondent No.2 Society, on such terms as this Hon'ble Court may deem fit.”

Writ Petition No. 1779 of 2015:-

“(a) Issue an appropriate Writ/Order, for quashing and setting aside the Order dated 11.02.2015 passed by the Respondent No.4 in Appeal No. 1/2015

and allow the Petitioner to contest the election, in the “NOMADIC TRIBE” of Respondent No.2 Society, on such terms as this Hon'ble Court may deem fit”.

- b) The respective Petitioner, to communicate this order by all possible modes, so also the Respondents to avoid further complications for want of communication, in view of the circumstances so referred above.
- c) Rule made absolute accordingly.
- d) There shall be no order as to costs.
- e) The parties to act on an authenticated copy of this order.

(ANOOP V. MOHTA, J.)