

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3784 OF 2015

Avinash Tukaram Patil .. Petitioner
-Versus-
Returning Officer, Kolhapur
Zilla Sahakari Dudh Utpadak Sangh
Maryadit Kolhapurt (Gokul)
and Ors. .. Respondents

Mr.V.B.Rajure for petitioner
Mr.Amit Borkar for respondent No.3
Ms.M.S.Bane, B Panel Counsel for State respondent Nos. 1 and 2

CORAM : R.M.SAVANT, J

DATE : 16th APRIL 2015.

PC.

1] The writ jurisdiction of this Court is invoked against the order dated 4/7th April 2015 by which the order the appeal filed by the petitioner being Appeal No.1 of 2015 came to be rejected by the District Cooperative Election Officer and Divisional Joint Registrar, Cooperative Societies (Milk), Pune Division, Pune.

2] The Petitioner claims to be a member of the Managing Committee of the Yeshwantrao Chavan Sahakari Dudh Vyasayik Sanstha Maryadit,

Rashivade Budruk, Taluka Radhanagari, Dist. Kolhapur (for Short Sanstha). The election to the respondent No.1 Federal society was announced and the petitioner was desirous of contesting the elections to the reserved seat. In terms of section 73(B) of the Cooperative Societies Act, a person desirous of contesting a reserved seat has to produce a certificate that he is a member of the Managing Committee of the member society. In terms of Rule 21 of the Maharashtra Cooperative Societies (Election to Committee) Rules, the candidates filing the nomination for a reserved seat has to submit the list of existing committee members. Rule 25 postulates the rejection of the nomination at the time of scrutiny for non compliance of Rule 21. It is an undisputed position that the petitioner did not submit the list of existing committee members of the said Sanstha. Petitioner's nomination was accordingly rejected by the Returning Officer by an order dated 25th March 2015. The petitioner, aggrieved by the said order filed an appeal being Appeal No.1 of 2015 under section 152(a). The Appellate Authority confirmed the order passed by the Returning Officer. However, on the additional ground that in view of the fact that all the contestants were not joined to the appeal, the appeal was required to be dismissed. The appellate authority placed reliance on the judgement of a learned Single Judge of this Court in the case of Vijaysingh Krishnarao Parbat Vs. Returning Officer, Janata Sahakari Bank Ltd. and Ors., reported

in 2003(2) MLJ 485, wherein the learned Single Judge has held that in an appeal filed against the rejection of nomination, the contesting candidates are required to be joined as parties as otherwise there is a defect in appeal and which would be fatal. It is the said order dated 4/7th April 2015 which is taken exception to by way of the above petition.

3] The principal contention urged on behalf of the learned Counsel Mr.Rajure appearing for petitioner is that in terms of the proviso to sub-rule 5 of Rule 25 the Returning Officer ought to have given an opportunity till the next date to the petitioner to make compliance of Rule 21. It is the submission of the learned Counsel that the same having not been done the order passed by the Returning Officer and as confirmed by the appellate authority is vitiated.

4] Per contra, the learned Counsel appearing for the respondent No.3 Federal Society would contend that since the petitioner appeared at the scrutiny after the Returning Officer had rejected his nomination, the said course of action could not be adopted. Insofar as the defect which was found by the appellate authority, that is non joinder of the other contesting candidates is concerned, the learned Counsel would contend that the learned Single Judge in the judgement reported in 2003 MLJ 485

(supra) has placed reliance upon the unreported decision of a Division Bench of this Court in Letters Patent Appeal No.143 of 1996 in the matter of Kishore Rajaram Sawant Vs. Returning Officer and Ors. dated 26th July 1996. In my view, therefore, the reliance placed by the learned Counsel for the petitioner on the judgement reported in 1997 (2) MLJ 860 (Asaram S/o. Patilba Vs. State of Maharashtra) is misplaced.

5] Insofar as the opportunity, which the learned Counsel for the petitioner states that, was not granted to the petitioner, it is required to be noted that in the impugned order the Appellate Authority has made an observation that the petitioner appeared at the scene of the scrutiny long after the scrutiny had commenced and this fortifies the case of the learned Counsel for respondent No.3 that the petitioner had appeared at the scene of scrutiny after the order was passed by the Returning Officer. Once that be so, the Returning Officer could not have reversed his decision in the matter of giving an opportunity to the petitioner. Hence, there is no merit in the said contention of the learned Counsel for the petitioner.

6] Insofar as the joinder of parties is concerned, the findings recorded by the Appellate Authority that the appeal was required to be dismissed on the ground that all the contestants were not joined, cannot be faulted with

in the light of the judgement of the learned Single Judge of this Court in the case of Vijaysingh Krishnarao (supra) which, as indicated above, which relies upon the unreported decision of the Division Bench of this Court.

7] In that view of the matter, no case for interference is made out. The Writ Petition is accordingly dismissed. No costs.

(R.M.SAVANT, J.)