

ingale

IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8436 OF 2015

Shri Malhari Sadashiv Gavhane

.. Petitioner

Vs.

The State of Maharashtra and others

.. Respondents

Mr.Vijay Patil, Advocate for the Petitioner.

Ms.Vaishali Nimbalkar, AGP for Respondents No. 1 to 3.

Mr.Y.S.Jahagirdar, Senior Advocate i/b Mr.S.A.Aradhya, Advocate for respondent No.4.

Mr.PS.Dani, Senior Advocate i/b Mr.S.S.Kanetkar, Advocate for Respondent No.5.

CORAM : R. G. KETKAR, J.

DATE : 20th AUGUST, 2015

P.C. :

. Not on board. At the request of Mr.Vijay Patil, taken up for admission.

2. Heard Mr.Vijay Patil, learned Counsel for the petitioner, Ms.Vaishali Nimbalkar, learned AGP for respondents No.1 to 3, Mr.Y.S.Jahagirdar, learned Senior Counsel for respondent No.4 and Mr.PS.Dani, learned Senior Counsel for respondent No.5 at length.

3. By this Petition under Articles 226 & 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 17/08/2015 passed by the Hon'ble Minister for Co-operation, Marketing and Textiles. By that order, the Hon'ble Minister dismissed the Appeal preferred by the petitioner.

4. In support of this Petition, Mr.Patil submitted that the petitioner is a Promoter and Chairman of respondent No.4,

Annasaheb Magar Sahakari Bank Ltd. (for short 'Bank'). The Bank is established in the year 1998-99. The petitioner has let out property bearing Survey No. 681, Hissa No.1 of the building consisting of basement, ground floor plus 3 floors constructed thereon known as Sadashiv Palace situate at Village Bhosari, Tal.Haveli, Dist.Pune (for short 'premises'). The premises were let out for a period of 10 years commencing from 01/07/2006 to 03/06/2016.

5. Mr.Patil submitted that in view of 97th constitutional amendment, the Bank adopted the model bye-laws which were framed in compliance with the constitutional mandate. In the meeting of Special General Body convened on 09/04/2013, the new set of bye-laws were adopted. The amended bye-laws were sanctioned by the Registrar of the Co-operative Societies on 08/07/2014.

6. In May 2015, election process of Bank was set in motion. The dates for filing the nomination forms were between 24/07/2015 & 28/07/2015. The scrutiny was on 29/07/2015. On 27/05/2015, petitioner issued notice to the Bank calling upon it to hand over vacant and peaceful possession of the premises on or before 31/07/2015. Mr.Patil submitted that during the course of scrutiny, respondent No.5 and Bank raised objection for acceptance of the nomination of the petitioner. By order dated 29/07/2015, the Returning Officer over ruled the objection and accepted the

petitioner's nomination.

7. Mr.Patil submitted that aggrieved by the bye-law No. 45(6), petitioner preferred Appeal before the State Government on 13/07/2015. By order dated 16/07/2015, the Hon'ble Minister for Co-operation, Marketing and Textiles (for short 'Authority') stayed operation of the said bye-law. Aggrieved by this order, Writ Petitions were instituted in this Court. By order dated 10/08/2015, this Court disposed of Petitions and directed the Authority to decide the Appeal latest by 19/08/2015. By the impugned order, the Authority dismissed the Appeal. The order was served on the petitioner on 19/08/2015. Mr.Patil submitted that the voting is scheduled on Sunday, the 23rd August, 2015. He, therefore, submitted that the impugned order may be stayed so as to enable the petitioner to contest the election. He submitted that if the stay is not granted, the Returning Officer may delete his name from the list the contesting candidates and from the ballot paper. He further submitted that in the impugned order, it is held that the petitioner did not establish that the bye-law is inconsistent with the provisions of the Maharashtra Co-operative Societies Act, 1960 (for short 'Act'). The said finding is patently unsustainable. He submitted that the Hon'ble Minister has not recorded any finding as to with which provision, bye-law 45(6) is inconsistent. He submitted that it is settled law that once the election process is set in motion, in exercise of powers

under Articles 226 & 227 of the Constitution of India, this Court cannot intervene in the election process. In the event petitioner is elected, respondent No.5 & Bank can institute dispute under Section 91 of the Act. For all these reasons, he submitted that Petition requires consideration.

8. On the other hand, Mr.Jahagirdar and Mr.Dani supported the impugned order. It was submitted that the Special General Body meeting was convened on 19/04/2013 when the petitioner as a sitting Director was present. The bye-laws were approved by the Registrar on 08/07/2014. It is only on 13/07/2015, petitioner preferred Appeal before the Hon'ble Minister and the stay was granted on 16/07/2015. It was submitted that having regard to the fact that bye-laws came into force after its approval on 08/07/2014, the Authority was not justified in granting stay that too on 16/07/2015. It was also submitted that in the order dated 10/08/2015 passed by this Court, it was made clear that acceptance of the petitioner's nomination and his right to contest the election would be contingent upon the decision that would be rendered in the Appeal and mere acceptance of his nomination would not create any equities or right in favour of the petitioner.

9. Mr.Jahagirdar has tendered order dated 20/08/2015 passed by the Returning Officer deleting petitioner's name from the list of the contesting candidates. The same is taken on record and

marked 'X' for identification. It was further submitted that as the Appeal preferred by the petitioner is dismissed and the petitioner's name is also deleted from the list of contesting candidates, granting of stay to the impugned order, will amount to interfering with the election process.

10. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, pursuant to 97th constitutional amendment, Bank adopted the model bye-laws which were framed in compliance with the constitutional mandate. A meeting of Special General Body was convened on 09/04/2013. The petitioner attended the meeting and model bye-laws were approved. The said bye-laws were sanctioned by the Registrar of the Co-operative Societies on 08/07/2014. Thus, amended bye-laws became operational with effect from 08/07/2014. The bye-law No.45(6) provides that a member would be disqualified to become a Director if he or his family member has interest in any premises taken by the Bank on rental basis or on ownership basis. Admittedly, petitioner has let out premises to the Bank for a period of 10 years commencing from 01/07/2006 to 03/06/2016. It is also evident from the record that the election process of the Bank was set in motion in May 2015. On 13/07/2015, petitioner filed Appeal before the State Government challenging bye-law No. 45 and in particular clause (6) thereof. On

16/07/2015, stay was granted. The petitioner's nomination was accepted on 29/07/2015 on the basis of stay granted by the Hon'ble Minister. But for the stay granted by the Hon'ble Minister, petitioner's nomination was liable to be rejected. In my opinion, once the amended bye-law became operational with effect from 08/07/2014, the Authority, with respect, was not justified in staying the operation of that bye-law on 16/7/2015 i.e. to say after more than one year.

11. Mr.Patil submitted that the amended bye-law will operate prospectively. In other words, he submitted that if the petitioner were to let out premises to the Bank, on and after 08/07/2014, then alone, petitioner will incur disqualification. It is not possible to accept this submission. In order to find out whether the petitioner is qualified or not, what is relevant is the date on which the scrutiny of nomination took place and whether on that date, petitioner was qualified to contest the election or not. The petitioner could file nomination only on the strength of the stay granted by the Hon'ble Minister. But for the stay granted by the Hon'ble Minister, petitioner cannot be considered to be eligible to contest the election. While disposing of the Petitions on 10/08/2015, this Court made it clear in clauses (iii) & (iv) that acceptance of nomination of the petitioner and his right to contest the election would be contingent upon the decision that would be rendered in the Appeal and mere acceptance of his nomination would not create any

equities or right in petitioner's favour. Clauses (iii) & (iv) read thus :

“(iii) Though the nomination of the Respondent No.3 is accepted, it is clarified that the acceptance of the nomination of the Respondent No.3 and his right to contest the election would be contingent upon the decision that would be rendered in the Appeal and such further orders that would be passed in the challenge raised to the final order that would be passed by the Appellate Authority.

(iv) Mere acceptance of the nomination would not create any equities or right in favour of the Respondent No.3.”

12. As noted earlier, by the impugned order, Hon'ble Minister has dismissed the Appeal. As I have already held that the nomination of the petitioner was accepted on the basis of the stay granted by the Hon'ble Minister, even if it is held that stay was validly granted, having regard to the fact that Appeal was dismissed by the Hon'ble Minister by the impugned order and in view of clauses (iii) & (iv) of the order dated 10/08/2015 passed by this Court extracted hereinabove, I am of the opinion that petitioner is not entitled to any relief in this Petition. More so when, his name is also deleted by order dated 20/08/2015 passed by the Returning Officer from the list of contesting candidates. Entertaining this Petition and granting interim relief as prayed by the petitioner will amount to interfering with the election process. Hence, no case is made out for invocation of powers under Articles 226 & 227 of the Constitution of India. Petition fails and the same is dismissed.

(R. G. KETKAR, J.)