

Shahnawaz A. Mithani ... Petitioner
Vs.
Ismailia CHSL and others ... Respondents

CORAM : R. G. KETKAR, J.
DATE : SEPTEMBER 10, 2015

Not on Board. At the request of Mr. Shah Nawaz A. Mithani, petitioner in person, taken up for admission.

2. Heard Mr. Shahnawaz Mithani - petitioner in person, Ms Vaishali Nimbalkar, learned AGP for respondent No-3 State and Mr. Virani M. Hasan - respondent No.16 in person at length.

3. By this Petition under Articles 226 and 227 of the Constitution of India, petitioner has challenged the order dated 25.08.2015 passed by the respondent No.2 – Returning Officer as also the judgment and order dated 08.09.2015 passed by the respondent No.3 - Assistant Registrar, Co-operative Societies, 'E' Ward, Mumbai. By order dated 25.08.2015, respondent No.2 rejected the nomination of the petitioner on the ground that the petitioner has incurred disqualification for being elected as a member of Committee of respondent No.1 - Ismailia Co-operative Housing Society Limited (for short 'Society') as has been held responsible under Section 88 of the Maharashtra Co-operative Societies Act, 1960 (for short 'Act').

4. Aggrieved by that decision, petitioner preferred Appeal under Section 152-A of the Act before the respondent No.3. By the impugned order, the respondent No.3 dismissed the Appeal and confirmed the order of the respondent No.2 - Returning Officer.

5. Mr. Mithani strenuously contended that the petitioner has instituted Writ Petition No.5883 of 2013 in this Court. The said Petition was heard on 12.07.2013. In the order dated 12.07.2013, it is observed that the petitioner has made out a prima facie case and the impugned order was stayed till the returnable date. Mr. Mithani submitted that the Petition was thereafter adjourned from time to time and in the meantime, ad-interim granted on 12.07.2013 was continued. He submitted that the said Petition is pending admission and the interim order is in force. He further submitted that in pursuance of the order dated 12.07.2013, petitioner has contested the election of the respondent No.1 Society held in the year 2013. He, therefore, submitted that as the interim order passed in that Petition is operating till date, he may be permitted to contest the election, which may be made subject to the further orders to be passed by this Court in the Petition.

6. On the other hand, Mr. Virani Hasan - respondent No.16 in person submitted that on 12.07.2013, this Court in Writ Petition No.5883 of 2013 stayed the impugned order till the returnable date. The Petition was thereafter heard on 06.08.2013, 13.08.2013 and 28.08.2013. However, the ad-interim order granted on 12.07.2013 was not continued. From 26.02.2014 onwards, the ad-interim order, if any, was continued. He, therefore, submitted that as the ad-interim order was not continued, it cannot be said that the same is in force even as of today. He submitted that no case is made out for invocation of powers under Articles 226 and 227 of the Constitution of India.

7. Ms Nimbalkar, learned AGP supported the impugned orders and submitted that as the petitioner was found responsible under Section 88 of the Act, the authorities below rightly rejected the petitioner's nomination papers.

8. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that petitioner has instituted Writ Petition No.5883 of 2013 in this Court challenging proceedings under Section 88 of the Act as also the enquiry report / order dated 03.03.2011 of the Assistant Registrar of Co-operative Societies, 'E' Ward, order dated 20.11.2012 passed by the Divisional Joint Registrar, Co-operative Societies as also order dated 18.03.2013 passed by the Hon'ble Minister for Co-operation. By report / order dated 03.03.2011, the Assistant Registrar of Co-operative Societies held that the petitioner is responsible for causing loss to the tune of Rs.19,000/- and therefore, amount of Rs.20,310/- is liable to be recovered from him. By order dated 20.11.2012, Divisional Joint Registrar partly allowed the Appeal preferred by the petitioner and others and modified the order / enquiry report dated 03.03.2011 to the extent of dropping charge No.2 from the impugned order. Insofar as the other charges are concerned, the order / enquiry report dated 03.03.2011 was confirmed. By the order dated 18.03.2013, the Hon'ble Minister for Co-operation dismissed the Revision Application preferred by the petitioner and others. In other words, the authorities under the Act concurrently found that the petitioner is responsible under Section 88 of the Act for payment of costs of enquiry under Section 85.

9. Aggrieved by that decision, petitioner instituted Writ Petition No.5883 of 2013 in this Court. By order dated 12.07.2013, this Court

issued notice to the respondents, returnable on 06.08.2013. It was further observed therein that as the petitioner has made out a prima facie case, the impugned order is stayed till the returnable dated. Thus, the impugned order was stayed till 06.08.2013 being the returnable date. Perusal of the papers and proceedings of Writ Petition No.5883 of 2013 as also Rojnama indicates that on 06.08.2013, Petition was simply adjourned to 13.08.2013. On 13.08.2013, at the request of the Advocate of the petitioner herein, the matter was adjourned to 28.08.2013. On 28.08.2013, returnable date was extended to 12.09.2013. By subsequent orders, the matter was adjourned from time to time and interim order, if any, was ordered to continue.

10. In my opinion, the contention of the petitioner that the ad-interim order passed on 12.07.2013 is continued till next date cannot be accepted. The ad-interim order was continued only upto 06.08.2013 and thereafter it was not continued.

11. Mr. Mithani submitted that even if it is assumed that the ad-interim order was continued only upto 06.08.2013, nonetheless he contested the election held in August 2013. The Authorities may, therefore, be directed to accept his nomination papers subject to the further orders in this Petition. For the reasons indicated earlier, it is not possible to accept this submission as basically the ad-interim order was not continued after 06.08.2013. Even if it is accepted that the petitioner contested the election in August 2013, two wrongs do not make one correct. In view thereof, no case is made out for invocation of powers under Articles 226 and 227 of the Constitution of India. Petition fails and the same is dismissed.

12. In case the petitioner intends to challenge the election, he is at

liberty to adopt appropriate proceedings. If such proceedings are taken out, the same shall be decided uninfluenced by the observations made herein. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab