

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2786 OF 2016

Anjanabai Gangadhar Garkar,
Age: 45 years, Occu.: - Agril.,
R/o : At Ankhali, Post: Salna,
Tq. Aundha, Dist. Hingoli.

...PETITIONER

versus

1. The State of Maharashtra
Through its Secretary,
Co-operation Department,
Mantralaya, Mumbai.
2. The Assistant Registrar,
Co-operative Societies, Aundha
(Nagnath), Tq. Aundha (N.)
Dist. Hingoli.
3. State Co-operative Election Authority,
Central Administrative Building
Shivajinagar, Pune.
4. The Taluka Co-operative Election
Officer, Aundha (Nagnath),
Tq. Aundha (N), Dist. Hingoli.
5. The Returning Officer,
Vividh Karyakari Seva Sahakari
Society Ltd., Ankhali,
Tq. Aundha (Nagnath),
Dist. Hingoli.

...RESPONDENTS

WITH
WRIT PETITION NO. 2783 OF 2016

Dwarkabai Gangadhar Garkar,
Age: 55 years, Occu.: - Agril.,
R/o : At Ankhali, Post: Salna,
Tq. Aundha, Dist. Hingoli.

...PETITIONER

versus

1. The State of Maharashtra
Through its Secretary,
Co-operation Department,
Mantralaya, Mumbai.

2. The Assistant Registrar,
Co-operative Societies, Aundha
(Nagnath), Tq. Aundha (N.)
Dist. Hingoli.
3. State Co-operative Election Authority,
Central Administrative Building
Shivajinagar, Pune.
4. The Taluka Co-operative Election
Officer, Aundha (Nagnath),
Tq. Aundha (N), Dist. Hingoli.
5. The Returning Officer,
Vividh Karyakari Seva Sahakari
Society Ltd., Ankali,
Tq. Aundha (Nagnath), Dist. Hingoli. ...RESPONDENTS

WITH
WRIT PETITION NO. 2784 OF 2016

Damodar S/o Bapurao Garkar,
Age: 40 years, Occu.: - Agril.,
R/o : At Ankali, Post: Salna,
Tq. Aundha, Dist. Hingoli. ...PETITIONER

versus

1. The State of Maharashtra
Through its Secretary,
Co-operation Department,
Mantralaya, Mumbai.
2. The Assistant Registrar,
Co-operative Societies, Aundha
(Nagnath), Tq. Aundha (N.)
Dist. Hingoli.
3. State Co-operative Election Authority,
Central Administrative Building
Shivajinagar, Pune.
4. The Taluka Co-operative Election
Officer, Aundha (Nagnath),
Tq. Aundha (N), Dist. Hingoli.
5. The Returning Officer,
Vividh Karyakari Seva Sahakari
Society Ltd., Ankali,
Tq. Aundha (Nagnath),
Dist. Hingoli. ...RESPONDENTS

WITH
WRIT PETITION NO. 2787 OF 2016

Dattarao S/o Uttamrao Garkar,
Age: 23 years, Occu.: - Agril.,
R/o : At Ankhali, Post: Salna,
Tq. Aundha, Dist. Hingoli.

...PETITIONER

versus

1. The State of Maharashtra
Through its Secretary,
Co-operation Department,
Mantralaya, Mumbai.
2. The Assistant Registrar,
Co-operative Societies, Aundha
(Nagnath), Tq. Aundha (N.)
Dist. Hingoli.
3. State Co-operative Election Authority,
Central Administrative Building
Shivajinagar, Pune.
4. The Taluka Co-operative Election
Officer, Aundha (Nagnath),
Tq. Aundha (N), Dist. Hingoli.
5. The Returning Officer,
Vividh Karyakari Seva Sahakari
Society Ltd., Ankhali,
Tq. Aundha (Nagnath),
Dist. Hingoli.

...RESPONDENTS

WITH
WRIT PETITION NO. 2788 OF 2016

Kamaji S/o Ganpati Avhad,
Age: 35 years, Occu.: - Agril.,
R/o : At Ankhali, Post: Salna,
Tq. Aundha, Dist. Hingoli.

...PETITIONER

versus

1. The State of Maharashtra
Through its Secretary,
Co-operation Department,
Mantralaya, Mumbai.

2. The Assistant Registrar,
Co-operative Societies, Aundha
(Nagnath), Tq. Aundha (N.)
Dist. Hingoli.
3. State Co-operative Election Authority,
Central Administrative Building
Shivajinagar, Pune.
4. The Taluka Co-operative Election
Officer, Aundha (Nagnath),
Tq. Aundha (N), Dist. Hingoli.
5. The Returning Officer,
Vividh Karyakari Seva Sahakari
Society Ltd., Ankhali,
Tq. Aundha (Nagnath),
Dist. Hingoli.

...RESPONDENTS

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Mr. Shahaji B. Ghatol Patil, Advocate for petitioners

Mr. V.G. Shelke, AGP for respondents No. 1 and 2

Mr. Sahebrao K. Kadam, Advocate for respondents No. 3 to 5

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CORAM : SUNIL P. DESHMUKH, J.

DATED : 9th MARCH, 2016.

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally, with consent.

2. Aggrieved by orders dated 01-03-2016 passed by the appellate authority – Assistant Registrar, Co-operative societies, Aunda Nagnath, District Hingoli, confirming rejection of nominations of petitioners in respect of their stated candidature to two reserved seats for women category in writ petitions No. 2786 and 2783 of 2016 and also three seats for general borrower category in writ petitions No. 2784, 2787 and 2788 of 2016 in the elections to managing committee of *Ankhali Vividh Karyakari Seva Sahakari Society. Ltd. Ankhali*, the petitioners are before this court.

3. Main grievance of the petitioners is that, the orders have been passed by hyper technical consideration rather than spirit underlying the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (for short "Rules of 2014") letting opening to the returning officer to give opportunity to remove deficiencies of technical nature. The nomination forms of the petitioners stand rejected by the returning officer for the reason that they have not signed requisite affidavits appended to their nomination forms.

4. Mr. Ghatol Patil, learned counsel for the petitioners submits that the sole reason which, appears to have weighed with the returning officer is that affidavits as referable to proviso to Rule 21(3) of Rules of 2014 do not bear signatures of the petitioners, is hyper technical. In order to support his submission that since defects and deficiencies creeping in while filling in the nomination form cannot be said to be substantial. He places reliance on decision in the case of *Arun Laxman Alne Vs. Returning Officer/Sub-Divisional Officer and others* reported in *2010(4) Bom. C.R. 214*. The decision had been rendered in the context of the fact that requisite affidavit in the nomination form was kept blank, however, affidavit in printed format had been available on a stamp paper of Rs.100/- and all necessary material as appended to annexure-A had been made available in said format on the stamp paper. It is in that context it has been ruled that nomination of the petitioner could not have been rejected on that count. In the present case, fact and situation is, however, different in the sense that it could not be said that there had been any affidavit in any other form being available

along with nomination form and form appended for affidavit has been left unsigned. It appears to be deficient of requirement under relevant rules as such, no benefit and assistance can be secured in the present case from the citation relied upon on behalf of the petitioners.

5. Learned counsel further goes on to submit that having regard to the spirit underlying decision rendered by the Supreme Court in the case *Resurgence India Vs. Election Commission of India and another* reported in *AIR 2010 Supreme Court 344*, with reference to the Representation of the People Act, 1951, particularly, having regard to the contents as appearing in paragraph No. 21 of the judgment wherein the Supreme Court opined that in addition to the standard draft format for reminding the candidates to file an affidavit as stipulated, another clause might be inserted for reminding the candidates to fill in the blanks with the relevant information thereby conveying message that no affidavit with blank particulars will be entertained. He further submits that having regard to the contents of said paragraph, it was duty of the returning Officer to check whatever the information required is furnished at the time of filing nomination paper. In the present case, according to him, no opportunity had been given and in the process it was not noticed that affidavit had not been signed.

6. Mr. S.K. Kadam, learned counsel appearing for respondents No. 3 to 4, however, stiffly opposes the writ petitions. In the first place, he points out that writ petitions cannot be maintained without arraying the persons whose nominations are found to be valid. He refers to a decision of Hon'ble single judge of this court in the case of *Vijaysingh*

Krishnarao Parbat Vs. Returning Officer and others reported in 2003(5) Bom C.R. 330 and with reference to paragraph No. 9 of the judgment he submits that petitions are liable to be rejected on the ground of non-joinder of necessary parties to the proceedings. He further refers to that election programme has progressed further and elections to the seats of which candidature is sought under writ petitions, have reached to their logical end and pursuant to rule 32 of the Rules of 2014, there has been declaration of results of election of the candidates from those categories.

7. Mr. Shelke, learned Assistant Government Pleader appearing for respondents No. 1 and 2 supports the impugned orders contending that nomination forms being deficient of the mandatory requirements, affidavits without signatures cannot be said to be affidavits. Having regard to Rule 21(3) of the Rules of 2014, nominations of the present petitioners to the categories desired, have been rightly rejected. Writ Petitions, according him, do not call for any interference, having regard to the stage where the elections have reached, as has been referred to by the counsel appearing for respondents No. 3 to 5.

8. Taking stock of the situation, present cases do not appear to be fit for exercising discretionary powers in favour of petitioners as there has already been declaration of results of election in respect of quite a few seats pursuant to election programme and Rules of 2014. Rejection of nomination forms of the petitioners whether proper or not can be subject-matter in appropriate proceedings. So far as other contention with regard to ground for rejection of nominations being technical in

nature, *prima facie* position emerges that there are no requisite declarations on affidavit in the absence of signatures. In the circumstances, no fault can be found with returning officer while rejecting nomination forms of the petitioners. Having regard to that results of election have already been declared in respect of two seats for women category and also the symbols in respect of other categories have been allotted and all other stages in election have reached save polling of other seats, interference at this stage would not lead to any fruitful purpose in favour of petitioners. As such, leaving it open for petitioners to take appropriate remedies as would be available in law including an election petition, writ petitions stand rejected. Rule stands discharged.

9. Needless to refer to that all contentions as have been taken in writ petitions by the parties are kept open to be agitated in appropriate proceedings and that the reasons given for rejection of present writ petitions have limited efficacy to the extent of rejection of these writ petitions and no further. The fori wherever any remedy would be maintainable and resorted to would decide the proceedings uninfluenced by observations above.

Sd/-

(SUNIL P. DESHMUKH, J.)