

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 288 OF 2016

Bhaskar V. Nerlekar and anr. .. Petitioners
vs.
The Returning Officer
Laxmi Cooperative Bank Ltd.
Alias District Deputy Registrar
Cooperative Societies, Solapur and ors. .. Respondents

Mr. Sarang Aradhye for the Petitioners.
Mr. S.D. Rayrikar, AGP for Respondent No.1.

CORAM : M. S. SONAK, J.
DATE : 12 JANUARY 2016.

P.C. :-

1] The challenge in this petition is to the order dated 28 December 2015 made by the Returning Officer accepting the nomination of Respondent No.4 for elections which are now scheduled to be held on 24 January 2016 (date of Poll).

2] Mr. Aradhye, learned counsel for the Petitioners, submits that the circumstance that remedy by way of election petition is available is not a bar to entertainment of extra ordinary jurisdiction under Articles 226 and 227 of the Constitution of India. Mr. Aradhye relied upon the decision of the Division Bench of this Court in case of *Dalsing s/o. Shamshing Rajput vs. State of Maharashtra and*

ors.¹, which according to him, lays down the proposition that the election petition is not an efficacious remedy particularly in a situation where a Court can prevent the Respondent from contesting election without disturbing the election programme. Mr. Aradhye points out that the impugned order, by which the nomination of Respondent No.4 has been accepted is patently illegal and is in fact contrary to the law laid down by this Court in Writ Petition (St.) No. 8168 of 2015 and connected matters.

3] Mr. Aradhye is no doubt right in his submission that mere availability of an alternate remedy is not a bar to exercise of constitutional remedy guaranteed by Articles 226 and 227 of the Constitution of India. However, the existence of power is one thing and its exercise quite another. In the present case, the election programme has commenced from 11 December 2015. The list of validly nominated candidates is to be published by tomorrow, i.e., 13 January 2016. The actual poll is scheduled on 24 January 2016. Thus, the election programme is quite at an advanced stage. The Petitioners have not even been able to serve notice upon Respondent No.4, though the learned counsel for the Petitioners states that all efforts were made in this regard.

1 2006(3) Mh.L.J. 592

4] The Petitioners, admittedly, will not be without any remedy. Upon conclusion of election, the Petitioners will be entitled to question the election, on the ground that the nomination of Respondent No.4 was not liable to be accepted. At this stage, the interference with the impugned order, will affect the election process. Therefore, it is not possible to exercise the discretionary and extra ordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

5] For the aforesaid reasons, present petition is not entertained. Needles to note that the Petitioners will be entitled to avail the alternate remedy available under the law.

6] The petition is disposed of, in the aforesaid terms.

(M. S. SONAK, J.)

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