

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1010 OF 2016

Rajgopal M. Miniyar .. Petitioner
vs.
The Returning Officer
through Dy. Dist. Registrar and ors. .. Respondents

Mr. P.S. Dani, Senior Advocate i/b Mr. Tushar N. Sonawane for the Petitioner.

Ms M.S. Bane, learned B-Panel Counsel for Respondent Nos.1 and 3.

Mr. Rupesh K. Bobade for Respondent No.2.

Mr. Suhas S. Inamdar for Respondent No.2A.

CORAM : M. S. SONAK, J.

DATE : 29 JANUARY 2016.

P.C. :-

1] The challenge in this petition is to the acceptance of nomination paper of Respondent No.2 for election to the Board of Directors of Vikas Shakari Bank Limited (Bank), polling of which is scheduled on 15 February 2016.

2] Mr. Dani, learned senior advocate for the Petitioner, has submitted that in terms of bye-laws no.40, to contest election to the Board of Directors, the active member must, *inter alia*, hold shares of the bank of aggregate value of minimum Rs.15000/-. Mr. Dani pointed out that in the present case, Respondent No.2 holds shares of the aggregate value of only Rs.1000/- and therefore, Respondent No.2 is clearly ineligible to contest the election. He submits that the

decision of the Returning Officer to accept the nomination of Respondent No.2, on the basis that Respondent No.2 has deposited with the Bank the balance amount of Rs.14,000/-, is *ex-facie* erroneous and contrary to the decision of this Court in Writ Petition No. 8168 of 2015 and connected matters decided on 30 March 2015. Mr. Dani pointed out that mere deposit of balance amount is not the same as holding of shares in the equivalent amount. In this regard, Mr. Dani also made reference to bye-laws No.11, which provide that the Board of Directors of the Bank has to approve the application of a person, for his admission as a member.

3] Mr. Dani, by reference to Section 152A of Maharashtra Cooperative Societies Act, 1960 (said Act), including sub-section 2 thereof, submitted that the legislative intent is that the disputes in relation to nomination are best sorted out, before, the election concludes. Mr. Dani pointed out that in the present case, if the nomination of Respondent No.2 is rejected, it is possible that there is no contest at all in the matter. For all these reasons, Mr. Dani submitted that this is a fit case where this petition ought to be entertained and the decision to accept the nomination of Respondent No.2, struck down. Mr. Dani also placed reliance upon the decision

of the Division Bench of this Court in case of ***Dalsing s/o. Shamsing Rajput Vs. State of Maharashtra – 2006 (3) Mh.L.J. 592.***

4] In this case, the election process is at a fairly advanced stage. The date for publication of list of validly nominated candidates is 3 February 2016 and the actual date of poll is 15 February 2016. If the provisions of Section 152A of the said Act are perused, then, there is a statutory remedy by way of appeal provided in case of rejection of nomination paper. However, in case of acceptance of nomination paper, there is no remedy by way of an appeal provided by the legislature. This, at least *prima facie*, indicates that in case of acceptance of nomination paper, even assuming that such acceptance was wrongful, the ordinary remedy would be to institute an election petition, once the elections conclude. Section 91 of the said Act contemplates dispute touching the elections of committee or its officers. In these circumstances, it will not be appropriate to entertain the present petition, at this stage. Rather, in the facts and circumstances of the present case, it will be appropriate if the Petitioner is relegated to avail the remedy of instituting an election petition, if and when, any action arises for the same.

5] In case of *Dalsing Rajput (supra)*, the Division Bench of this Court has held that even the availability of alternate statutory remedy, is never a bar for exercise of extra ordinary jurisdiction under the Articles 226 and 227 of the Constitution of India. However, the decision of the Division Bench is not an authority that the discretionary jurisdiction under Articles 226 and 227 of the Constitution of India has to be exercised in each cases where the acceptance of nomination is questioned. These are matters, which will turn upon the facts and circumstances of each cases.

6] Since, the Petitioner is being relegated to avail alternate remedy, it will not be appropriate to comment upon the contentions with regard to eligibility or otherwise of Respondent No.2, in the matter of election to the Board of Directors of the Bank. All such issues are expressly kept open.

7] The petition is disposed of in the aforesaid terms. There shall however, be no order as to costs.

(M. S. SONAK, J.)