

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5153 OF 2017
(Vyankat Mangaji Lohbande and another Vs. The District Deputy
Registrar and others)

Mr.S.T.Veer., learned counsel for the petitioners.
Mr.D.J.Chaudhari, learned counsel for respondent No.4.
Mr.M.B.Bharaswadkar, learned AGP for State.

(CORAM : M.S.Sanklecha, J.)

DATE : 24/04/2017

PER COURT :

1. This petition has been filed by 2 petitioners challenging the order dated 11/04/2017 passed by the District Deputy Registrar, Co-operative Societies (respondent No.2), in an appeal under Rule 51(A) of the Maharashtra Agricultural Produce Marketing (Development and Regulation Rules, 1963 (Rules) framed under the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (Act). The impugned order while allowing the appeal filed by respondent No.4 Mr.Shivraj rejected the nomination form filed by the 2 petitioners for election to Agricultural Produce Market Committee (APMC), Mukhed, Dist. Nanded. The election to APMC, Mukhed is scheduled on 29/04/2017.

2. The Board of Directors of the APMC are elected from 4

constituencies namely the Co-operative Societies Constituency, Gram Panchayat Constituency, Traders' Constituency and Hamal and Mapari Constituency. Both the petitioners i.e. petitioner No.1 Vyankat and petitioner No.2 Balaji had filed their nominations for elections to the APMC from the Co-operative Constituency. The nominations of both these candidates were accepted by the Returning Officer on 27/03/2017. On 11/04/2017, respondent No.4 herein Mr.Shivraj being a candidate standing for election to APMC filed an appeal to Respondent No.1-District Deputy Registrar, Co-operative Societies, Nanded challenging the order of the Returning Officer accepting the nomination form of both the petitioners for the elections.

3. The impugned order dated 11/04/2017 of respondent No.1-District Deputy Registrar, Co-operative Societies, Nanded rejected the nomination form of both the petitioners on investigation of facts that they are not entitled to contest from Co-operative Constituency meant for agriculturists. So far as petitioner No.1 Mr.Vyankat is concerned, the impugned order holds that he could not contest from co-operative constituency as his name appears in the Traders Constituency list in terms of Rule 41(2)(ii) of the Rules. This Rule disqualifies/prohibits a person to contest from a Co-operative Constituency if he *inter-alia* has

a traders' license or interest in a joint family or a firm which has a Traders License. The impugned order dated 11/04/2017, on consideration of facts found that Mr.Vyankat, petitioner No.1 herein is having a Traders License. Thus disqualified to contest the election to APMC from the Co-operative Society Constituency. So far as petitioner No.2-Mr.Balaji is concerned, the impugned order holds that his wife has a Traders License. Thus the petitioner No.2 was not entitled to contest the election from the Co-operative Society Constituency in view of the bar in Rule 41(2)(ii) of the said Rules of the family having a Traders License. This after the impugned order does not accept the contention urged by petitioner No.2 that there was a Court order which partitioned the properties between the petitioner No.2-Mr.Balaji and his wife and other family members resulting in the Traders' License going exclusively in favour of the wife of petitioner No.2 Mr.Balaji. The partition is evidenced by a deed dated 08/03/2017 i.e. the very date when the elections were declared and schedule notified. The Court has thereafter passed an order on the basis of a compromise arrived at between petitioner No.2 and his wife showing a separation of the property between them and other family members, although otherwise petitioner No.2 Mr.Balaji and his wife continued to reside as a family and there was no divorce nor any divorce proceedings pending between them. On the aforesaid facts,

the impugned order concludes that the so called partition deed and this separation is only shown for the purpose of contesting election from Co-operative Societies Constituency, when in fact the family of petitioner No.2 is having a Traders' License which renders him ineligible to contest from the Co-operative Constituency.

4. From the aforesaid facts, it is evident that the issues which arise for adjudication are disputed question of facts. A writ court would not entertain such disputed question of facts particularly when the Rules provide a remedy by filing of a election petition in terms of Rule 88 of the said Rules.

5. However, it is contended by the petitioners that this Court should exercise its supervisory jurisdiction as the impugned orders passed by the District Deputy Registrar, Co-operative Societies is on the face of it contrary to the statutory provisions as well as decision of this Court governing the challenge to a nomination form for the purposes of election to the APMC. In particular, it is submitted that respondent No.4-Mr.Shivraj had not filed any objection before the Returning Officer with regard to the candidature of petitioner No.1 i.e. Vyankat. So far as petitioner No.2 is concerned, Mr.Veer, the learned counsel for the petitioners does not dispute the fact that the objection

was raised with regard to filing of his nomination before the Returning Officer. Consequently, it is submitted that respondent No.4 Mr.Shivraj could not be an aggrieved person so as to file an appeal under Rule 51 of the said Rules in respect of the acceptance of nomination of petitioner No.1.

6. This issue, Mr.Veer submits is no longer *res-integra* in view of the decision of this Court in Sheshrao Vs. S.D.O. Buldhana (Notes of cases 1974 Mh.L.J. 18). The aforesaid decision relied upon by the petitioners is only an extract of the actual decision and not the full decision. It does not set out the complete facts nor the law is existing at the time when the decision was rendered. Therefore in the absence of examining the context in which the aforesaid observations as found in the extract were made, it would not be appropriate to hold that in all cases only on an objection being taken, before the Returning Officer, could an appeal be filed under Rule 51 of the said Rules. Moreover, the issue of an aggrieved person being necessarily a party to the lis before the Lower Court, is prima facie a debatable issue in terms of Rule 51 of the Rules. This is so as an obligation is cast upon the Returning Officer to examine the nominations filed and if he finds the same in order to accept it or otherwise reject it. Mr.Chaudhary, the learned counsel for respondent No.4 contends

that a person could be aggrieved by the non-action of the Returning Officer in examining of the nomination papers so as to file an appeal to the Appellate Authority even if he has filed no objection before the Returning Officer. This is an issue which require some consideration in depth and could be property dealt with, if and when the petitioners file an election petition in terms of Rule 88 of the said Rules.

7. It is next submitted by Mr.Veer, the learned counsel for the petitioners that as respondent No.4 had filed his appeal to the District Deputy Registrar, Co-operative Societies without having made all the other candidates contesting the elections to APMC, Mukhed as party respondents, the appeal itself is not maintainable as it is in breach of Rule 51(1) of the said Rules. However, it must be noted that the petitioners were represented before the District Deputy Registrar in the appeal filed by respondent No.4. At that time, it is to be noted that the petitioners themselves did not urge any objection with regard to the maintainability of the appeal filed by respondent No.4 before the District Deputy Registrar on account of non-joinder of necessary parties. They participated in the proceedings without raising this issue. Thus waiving any objections to the same. Therefore to now challenge the order on the ground that all the necessary parties namely the candidates standing for elections to

APMC were not joined as parties by respondent No.4, cannot be countenanced in a writ proceedings.

8. Moreover, as pointed out by Mr.Chaudhary, the learned counsel for respondent No.4, that in the petition filed before this Court, the petitioner has not made all the candidates standing for elections, which are scheduled on 29/04/2017 to the APMC. Thus the petition should not be entertained on the above ground. In support, reliance is placed upon the decisions of this Court has in Vijaysingh Krishnarao Parbat Vs. Returning Officer, Janata Sahakari Bank Ltd., [2003(2) Mh.L.J.485] and Tukaram Hari Khamkar Vs. Shree Bharat Urban Co-operative Bank Ltd., and others in WP No.2614/1982, wherein this Court held that a petition could not be entertained when it had not joined all the candidates standing for elections in the petition. This for the reason that the petition was held to be bad for non-joinder of necessary parties. It held that the other candidates contesting the election would be vitally interested in the decision taken by this Court in this petition. Therefore, on the aforesaid ground, the petition is liable to be dismissed.

9. Moreover, once an election process has been triggered and the polling for electing the candidates to the APMC is now scheduled on

29/04/2017, it would not be appropriate at this stage to disturb the election process. This is based upon the decision of the Apex Court in Shaji K. Joseph Vs. v. Viswanath and others, 2016(4) SCC 429 wherein it has held that, “..... The judgments referred to hereinabove clearly show the settled position of law to the effect that whenever the process of election starts, normally courts should not interfere with the process of election for the simple reason that if the process of election is interfered with by the courts, possibly no election would be completed without court's order. Very often, for frivolous reasons candidates or others approach the courts and by virtue of interim orders passed by courts, the election is delayed or cancelled and in such a case the basic purpose of having election and getting an elected body to run the administration is frustrated. For the aforesaid reasons, this Court has taken a view that all disputes with regard to election should be dealt with only after completion of the election.” Thus in the present facts, it would not be proper to interfere with the election process.

10. No doubt, this Court, in its extra ordinary jurisdiction under Article 227 of the Constitution of India, would, in appropriate cases, interfere with the orders rejecting/accepting nomination to elections

which on the face of it are perverse or without jurisdiction. This is so as judicial review is a part of the basic structure of the Constitution. However, where there are disputed question of facts as in this case, then the Court would not exercise its extraordinary supervisory jurisdiction under Article 227 of the Constitution of India. The disputed question of fact which arise for consideration could be resolved with the petitioner filing an election petition under Rule 88 of the said Rules to challenge the elections *inter-alia* the basis of the alleged improper rejection of their nominations. In the above view, the petition is dismissed.

11. However, it is made clear that the view taken and observations made by this Court are in the context of the petitioners approaching this Court in its jurisdiction under Article 227 of the Constitution of India. Needless to state, if the petitioners do file an election petition, the same will be considered on its own merits. All contentions kept open.

(M.S.Sanklecha, J.)