

Mr. S. S. Kanetkar for Petitioner.
Ms M. S. Bane, "B" Panel AGP for Respondents No.1 and 2-State.

P.C. :

2. Heard Mr. Kanetkar, learned Counsel for petitioner and Ms Bane, learned AGP for respondents No.1 and 2-State at length.

3. Mr. Kanetkar submitted that today (by 3.00 p.m.) is the last date for withdrawal of the nomination papers. He, therefore, got the papers produced for obtaining urgent relief.

4. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 29.04.2017 passed by the respondent No.2, District Deputy Registrar, Co-operative Societies, Pune (Rural) in an appeal under Rule 51 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967 (for short 'Rules'). By that order, respondent No.2 allowed the appeal preferred by respondent No.4 and set aside the order dated 15.04.2017 rejecting his nomination paper on the ground that there is discrepancy between the name and signature of the proposer Shri Jagtap

as per Rule 50(2)(d) of the Rules.

5. In support of this Petition, Mr. Kanetkar invited my attention to the nomination form submitted by respondent No.4. In item No.5 (4), name of the proposer is mentioned as 'Amol Anandrao Jagtap'. First name 'Amol' is struck out and in its place name 'Surendra' is mentioned. However, the proposer has signed as 'A. A. Jagtap' and not as 'S. A. Jagtap'. He also invited my attention to the affidavit made by Shri Jagtap as Surendra Anandrao Jagtap. It is stated therein that the person by name 'Surendra Anandrao Jagtap' and 'Amol Anandrao Jagtap' is one and the same person. Surendra Anandrao Jagtap and Amol Anandrao Jagtap is one and the same person and the affidavit is signed as 'Surendra Anandrao Jagtap'. In the PAN Card of said Jagtap, his signature is totally different than the one as Surendra Anandrao Jagtap or Amol Anandrao Jagtap. He relied upon the Rule 50(2)(d) which empowers the Returning Officer to reject the nomination on the ground that the signature of the candidate or the proposer on the nomination paper is not genuine.

6. Mr. Kanetkar submitted that Rule 51(1) of the Rules lays down that any candidate aggrieved by a decision of the Returning Officer accepting or rejecting a nomination paper can prefer an appeal within a period of seven days by furnishing copy of the Petition of appeal together with as many copies of the Petition as there are candidates whose nomination papers have been accepted (excluding himself). In the present case, there are 38 validly nominated candidates. Respondent No.4, however, impleaded petitioner on the ground that only two candidates are contesting from the Constituency of Scheduled Caste / Scheduled Tribes. He submitted that this is contrary to Rule 51(1) of the Rules. He submitted that as the signature of the proposer Shri Jagtap

appearing on the nomination form is different than the one appearing on the affidavit and PAN Card, respondent No.2-Appellate Authority was not justified in allowing the appeal.

7. Mr. Kanetkar submitted that nomination was rightly rejected by the Returning Officer on the ground of discrepancy in the name and signature of the proposer. However, respondent No.2 allowed the appeal on the ground that petitioner did not raise objection about discrepancy in the name and signature at the time of scrutiny of nomination. Respondent No.2 also relied upon the affidavit made by Mr. Jagtap to the effect that 'Surendra Anandrao Jagtap' and 'Amol Anandrao Jagtap' are not different persons but he is one and the same. Petitioner did not establish that the signature of the proposer is not genuine as contemplated by Rule 50(2)(d) of the Rules and that respondent No.4 impleaded all the validly nominated candidates from Scheduled Caste / Scheduled Tribe Constituency.

8. I have considered the submissions advanced by Mr. Kanetkar. I have also perused the material on record. Rule 50 of the Rules reads thus,

50. Scrutiny of nominations.

(1) On the date appointed for the scrutiny of nominations under rule 43, the candidates, one proposer of each candidate, and one other person duly authorised in writing by each candidate, but no other person, may attend at the time and place appointed in this behalf under rule 43 and the Returning Officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered as required by sub-rule (1) of rule 45.

(2) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination, and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds, that is to say:-

(a) that the candidate is disqualified for being chosen to fill the seat under these rules:

- (b) that the proposer is disqualified from subscribing a nomination papers:
- (c) that there has been a failure to comply with any of the provisions of rule 45 or 48:
- (d) that the signature of the candidate or the proposer on the nomination paper is not genuine.

(3) Nothing contained in clause (c) or (d) of sub-rule (2) shall be deemed to authorise the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

(5) to (8) ... ”

9. A perusal of Rule 50 extracted hereinabove shows that the Returning Officer has to hold summary inquiry either on objection raised by any candidate or on his own motion. Sub-Rule (4) thereof lays down that Returning Officer shall not reject any nomination paper on the ground of any defect which is not of any substantial character.

10. A perusal of the impugned order shows that respondent No.2 has considered provisions of Rule 50(2)(d) and the objection raised by the petitioner herein. Respondent No.2 noted that at the time of scrutiny of nomination papers, petitioner did not raise any objection about discrepancy in the name and signature of the proposer. As the proposer of the respondent No.4 has made affidavit dated 15.12.2017 to the effect that Surendra Anandrao Jagtap and Amol Anandrao Jagtap are not different persons but he is one and the same person, and that petitioner did not establish that the signature of the proposer is not genuine, respondent No.2 accordingly allowed the appeal.

11. A perusal of Rule 50(2)(d) shows that nomination can be rejected

if the signature of the candidate or the proposer on the nomination paper is not genuine. In other words, nomination cannot be rejected on the ground other than the ground that the signature of the candidate or the proposer is not genuine.

12. Rule 51(1) reads thus,

“51. Appeal

(1) Any candidate aggrieved by a decision of the Returning Officer accepting or rejecting a nomination paper, may present an appeal therefrom to the Collector or the District Deputy Registrar, as the case may be within a period of seven days from the date on which the notice containing the names of the candidates accepted by the Returning Officer is affixed on the notice board under sub-rule (8) of rule 50 and shall ordinarily furnish on the same to the Returning Officer a copy of the petition of appeal together with as many copies of the petition as there are candidates as there are candidates whose nomination papers have been accepted (excluding himself).”

13. A perusal of Rule 51(1), extracted hereinabove, shows that in the appeal, the appellant has to implead candidates whose nomination papers have been accepted. Admittedly, in the present case, petitioner and respondent No.4 are the candidates whose nominations are accepted from Scheduled Castes / Scheduled Tribes Constituency. In view thereof, respondent No.4 rightly impleaded petitioner as the only candidate in the appeal. Hence, I do not find any merit in the submission of Mr. Kanetkar that respondent No.4 should have impleaded 38 validly nominated candidates.

14. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed reserving liberty to the petitioner to file election dispute, if so advised. All contentions are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)