

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5988/2017

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
---	---------------------------

Mr. Rupesh Zade for the petitioner.
Mr. G. S. Godbole i/b. Drupad S. Patil with
Kaustubh Tipse for the Respondent No.4.

CORAM : K. K. TATED, J.
DATE : JUNE 12, 2017

P.C.:

1. Mentioned. Not on board. At the request of learned counsel for the petitioner, the matter is taken on board for urgent orders.

2. By this petition under Article 227 of the Constitution of India, the petitioner challenges order dated 16.05.2017 passed by the Returning Officer rejecting the petitioner's nomination form and the order dated 26.05.2017 passed by the Assistant Registrar, Cooperative Societies, Baramati, Pune confirming the order passed by the Returning Officer.

3. It is the contention of the petitioner that both the Authorities below failed to consider the

fact that the petitioner has complied with Rule 23 of the Maharashtra Cooperative Societies (Election to Committee) Rules, 2014 by paying nomination form fees. In support of his contention, he relies on receipt No.17, 6 and 5 issued by the Election Officer. He submits that the Election Officer himself, on the back side of all these receipts, written the name of other candidates on whose behalf they paid the nomination fees. These facts were not considered by both the Authorities below. He further submits that the Appellate Authority, by its impugned order dated 26.05.2017 rejected their appeal No.1/2017 only on the grounds that they have not made all the candidates as party respondent. He submits that it is not necessary to make all other contesting candidates as party respondent. In support of his contention he relies on the judgment of this court in the matter of ***Asaram s/o. Patilba Gorde Vs. State of Maharashtra & Ors. 1997(2) Mh.L.J.860.*** He relies on paragraph 4 of the said judgment, which reads thus:

“4. Mr. Babhulgaonkar also objected the petition on the ground that all other contesting candidates have not been included as party and hence the petition was not maintainable. However, it is seen from the record that no other contesting candidate has raised objection on the nomination papers/form of the petitioner and

the nomination form came to be rejected by the Returning Officer suo motu. The objection raised must fail.”

4. On the basis of these submissions, the learned counsel for the petitioner submits that the impugned order passed by both the Authorities are required to be set aside.

5. On the other hand, the learned counsel for the respondent vehemently opposed the Writ Petition . He submits that the appellate authority, by impugned order dated 26.05.2017 has rightly rejected the petitioner's appeal No.01/2017 on the ground that the petitioner has failed and neglected to make party to all the contesting parties in the present proceedings. He submits that this court, in the matter of ***Vijaysingh Krishnarao Parbat Vs. Returning Officer & Ors. 2003(5) BCR 330*** held that it is necessary to make all the candidates as party to the proceedings. He relies on paragraph 9 of the said judgment which reads thus:

“9. As rightly submitted by the learned Advocates for the respondents, the Division Bench has already held that in order to enable the party to challenge the decision of the Returning Officer as regards the rejection of the nomination paper, all other candidates are necessary parties to the proceedings and, admittedly, in the case in hand neither at the stage of the appeal under section 152-A of the said Act nor in this proceedings all the

candidates have been joined as the parties. On this count also, the petition is liable to be rejected.”

6. On the basis of these submissions, the learned counsel for the respondent submits that there is no merit in the Writ Petition and the same is required to be rejected with costs.

7. Heard. It is to be noted that, at the time of rejecting the petitioner's appeal No.1/2017 the Appellate Authority raised objection about non joining of all the contesting parties in the appeal. That ground for rejecting the appeal is supported by the judgment of this court in the matter of ***Vijaysingh Krishnarao Parbat***. This court, in the said judgment, relied on the earlier judgment of the Division Bench.

8. Considering these facts, I do not find any substance to entertain the Writ Petition as the issue is already covered by the judgment of this court in the matter of ***Vijaysingh Krishnarao Parbat***.

9. Hence, the Writ Petition stands rejected.

JUDGE