

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 722 OF 2019**

VIKAS VISHWANANTH PRABHU.

... Petitioner

Versus

CO-OPERATIVE OFFICER-1 AND
RETURNING OFFICER FOR THE GOA
STATE CO-OP. BANK LTD. AND 4 ORS.

... Respondents

Mr. Ashwin D. Bhobe, Advocate for the Petitioner.

Mr. D. Pangam, Advocate General with Mr. D. Shirodkar, Addl.
Government Advocate for Respondent Nos.1 to 3.

Mr. Prasanna Chawdikar, Advocate for Respondent No.4.

Ms. S. Lodayekar, Law Officer of Respondent No.5 present in the
Court.**Coram:- M. S. SONAK &
NUTAN D. SARDESSAI, JJ.****Date:- 19th August, 2019****P.C.**

Heard Mr. Bhobe, learned counsel for the Petitioner, Mr. D. Pangam, learned Advocate General alongwith Mr. D. Shirodkar, learned Addl. Government Advocate for Respondent Nos.1, 2 and 3 and Mr. P. Chawdikar, learned counsel for Respondent No.4 and Ms. S. Lodayekar, Law Officer of Respondent No.5 is present on behalf of Respondent No.5.

2. In this petition, challenge is to the rejection of the Petitioner's nomination papers for election to the board of directors of

the Society. The rejection has been effected by the orders dated 08.08.2019 and 09.08.2019.

3. Mr. Bhobe, learned counsel for the Petitioner submits that the Petitioner as well as the society which the Petitioner purports to represent has complied with the provisions of Section 52(2) of the Goa Co-operative Societies Act, 2001 (the said Act). He points out that the Society has, made payment to the members as patronage refund in proportion in contribution to the members. He submits that merely because such payment has been referred as bonus, that, does not change the essential character of the payment, as patronage. He submits that relevant material, including in the form of audit report was placed before the Returning Officer. He submits that such material has not at all been considered by the Returning Officer, and since it is quite clear that there is Section 52(2) of the said Act, the rejection of the nomination papers was not at all proper.

4. Mr. Bhobe points out that this is a case where the rejection of the nomination papers is *ex facie* illegal, null and void. He submits that in such situation, the exercise of jurisdiction under Article 226 of the Constitution of India is not barred, particularly, when after the restoration of Petitioner's nomination papers, election can proceed in accordance with law. He submits that a different approach is expected in cases where the nomination papers were rejected since such rejection

deprives the voters of choosing a candidate of their choice. For all these reasons, Mr. Bhobe, submits that this petition may be entertained and relief as prayed for be granted.

5. Mr. D. Pangam, learned Advocate General opposes the contention raised by Mr. Bhobe both on merits as well as on the ground of availability of alternate and efficacious remedy under the said Act by way of institution of election petition or raising dispute, once the election concludes. He submits that this is a case where no payments were made for three out of five years preceding the date of election. He submits that this is a case where some payments have been made by clubbing two or more years so as to create a facade of compliance of provisions of Section 52(2) of the said Act. He submits that the payment made does not qualify as patronage. In any case, Mr. D. Pangam, submits that it is almost settled position in law that election process should not be questioned until the same is concluded. He points out that the Petitioner has alternate and efficacious remedy of instituting election petition or raising dispute in terms of Section 83 of the said Act. He relies upon some decisions in support of this submission. Mr. P. Chawdikar, learned counsel for Respondent No.4 adopts the submissions made by the learned Advocate General besides he points out that Respondent No.4 has already been declared as elected unopposed.

6. According to us, looking to not only the statutory scheme of the said Act but also settled principles in such matters, it may not be appropriate to entertain the present petition which seeks to call in question the election process, particularly, when the Petitioner, has alternate and efficacious remedy of raising dispute in terms of Section 83 of the said Act. The issue as to whether there is proper compliance of provisions of Section 52(2) of the said Act or not are issues which cannot be decided in this petition in effective manner, particularly, since election is now scheduled on 25th August, 2019 and such decision would involve adjudication into disputed question of fact. Merely because some arguable case is made out by the Petitioner or because some arguable defences are raised by the learned Advocate General, normal rule that challenge the election must be after the conclusion of the election, cannot be deviated from.

7. In *Shaji K. Joseph Vs Viswanath and others* (2016)4 SCC 429, the Hon'ble Apex Court even after concluding that Respondent No.1 in the said proceedings had made out a *prima facie* case in the context of rejection of his nomination papers, disapproved the view taken by the High Court interfering with the election process after the same had commenced but will now be concluded. The relevant observations in paragraphs 14, 15 and 16 read thus :

“14. In our opinion, the High Court was not right in interfering with the process of election especially when the process of election had started upon publication of the

election program on 27th January, 2011 and more particularly when an alternative statutory remedy was available to Respondent no.1 by way of referring the dispute to the Central Government as per the provisions of Section 5 of the Act read with Regulation 20 of the Regulations. So far as the issue with regard to eligibility of Respondent no.1 for contesting the election is concerned, though prima facie it appears that Respondent no.1 could contest the election, we do not propose to go into the said issue because, in our opinion, as per the settled law, the High Court should not have interfered with the election after the process of election had commenced. 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.

15. This Court, in Ponnuswami v. Returning Officer (supra) has held that once the election process starts, it would not be proper for the courts to interfere with the election process. Similar view was taken by this Court in Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra (supra).

16. Thus, in view of the aforesaid settled legal position, the High Court should not have interfered with the process of election. We, therefore, set aside the impugned

judgment and direct that the result of the election should be published. We are sure that due to interim relief granted by this Court, Respondent no.1 must not have been permitted to contest the election. It would be open to Respondent no.1 to approach the Central Government for referring the dispute, if he thinks it proper to do so. No issue with regard to limitation will be raised if Respondent no.1 initiates an action under Section 5 of the Act within four weeks from today.”

8. According to us, the facts in the present case is not appropriate to rule upon rival contentions on merits in the sense, on the issue of rejection of the nomination papers of the Petitioner. This is because any observation at this stage will perhaps prejudice the parties should they choose to question the election by way of election petition upon conclusion of election. All that we say that this is not a kind of case where we should exercise our extraordinary jurisdiction rather than relegate the party to avail alternate and efficacious remedy available under the constitution itself. This is more so in view of the observations of the Hon'ble Apex Court in ***Shaji Joseph*** (supra).

9. Accordingly, we dismiss this petition only on the ground that the Petitioner has alternate and efficacious remedy available of raising dispute once the election is concluded. There is no dispute that grounds now raised by the Petitioners can be raised by the Petitioner in such dispute. We therefore, have no doubt, that should the Petitioner raise dispute, the same will be decided in accordance with law and on its

own merits, including, particularly, without being influenced by the orders impugned in this petition or circumstance that we have not entertained this petition.

10. With liberty as aforesaid, this petition is dismissed. There shall be no order as to costs.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

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