

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. OF 906 of 2019**

1. Mr. Tushar Malik,
Major in age, Indian National,
Resident of H. NO. 24,
Ladferm, Bicholim, Goa. Petitioner

V e r s u s

1. Registrar of Co-operative Societies,
Government of Goa,
Office of the Registrar of Co-operative
Societies, 5th floor, Sahakar Sankul,
EDC Complex, Patto Panaji-Goa.
2. The Returning Officer,
The Asst. Registrar of Co-operative
Societies,
Bicholim Zone, Aai Building,
Karapur, Tisk, Sankhali-Goa.
3. The Nandini Sahakari Dudh Vyavsayik,
Sauntha Maryadit,
Kasarpal, Bicholim Goa,
Through its Chief Executive Officer.
4. Shri Naresh D. Malik,
Major in age,
H. No.68, Lafem,
Assnora Goa. Respondents.

Mr. Vivek Rodgruius with Mr. Vithal Naik, Advocates for the Petitioner.

Mr. Manish Salkar, Government Advocate for the Respondent nos.1 and 2.

Mr. S. G. Desai, Senior Advocate with Mr. P. Sawant, Advocate for the Respondent no.4.

**Coram:- C. V. BHADANG &
NUTAN D. SARDESSAI, JJ.
Date:- 21st October, 2019.**

ORDER (Per C. V. Bhadang, J) :

The challenge in this petition is to the order dated 7/10/2019 passed by the second respondent (Returning Officer) accepting the nomination of the fourth respondent, in the election to the Board of Directors of the third respondent “Nandini Sahakari Dudh Vyavsayik Sauntha Maryadit”.

2. The petitioner is one of the contesting candidates at the said election. As per the elections programme notified on 18/9/2019, the scrutiny of the nominations was to be completed by 4p.m. on 3/10/2019 and by 5p.m. on the same day, a list of valid nominations was to be published. The petitioner and the fourth respondent filed their nominations on 30/9/2019. The petitioner raised an objection to the nomination of the fourth respondent on the ground that he had been disqualified by an order dated 13/8/2019 passed by the Registrar of the Co operative Societies under section 59 (11) of the Goa Co-operative Societies Act, 2003, (the Act, for short). The fourth respondent filed a reply and contended that the order dated 13/8/2019, is subject matter of challenge before this Court in Writ Petition no.768/2019.

3. The second respondent, after hearing the parties, found that in the absence of any stay of the order dated 13/8/2019, the objection on the basis of the disqualification of the fourth respondent was well founded and accordingly a list of valid nominations was published on 3/10/2019 at 5p.m., excluding the name of the fourth respondent. However, on the very next date i.e. on 4/10/2019 the fourth respondent intimated to the Returning Officer that this Court has granted stay of the order dated 13/8/2019. It is in these circumstances that by the impugned order dated 7/10/2019 the Returning Officer found that the objection raised by the petitioner is without any substance and therefore the nomination of the fourth respondent (at serial no.11) was accepted and the list of valid nomination was re-published on 7/10/2019 including the name of the fourth respondent. Feeling aggrieved, the petitioner is before this Court.

4. We have heard Mr. Rodrigues, the learned counsel for the petitioner, Mr. Salkar, the learned Government Advocate for the Respondent nos.1 and 2 and Mr. Desai, the learned Senior Counsel for the Respondent no.4.

5. Mr. Rodrigues, the learned counsel for the petitioner submitted that as per the election programme the list of valid nominations, was to be published

at 5p.m. on 3/10/2019 and in fact such a list of valid nominations was published excluding the name of the respondent no.4 on the ground that he has been disqualified by order dated 13/8/2019. It is submitted that the Returning Officer had no power to republish the list of valid nominations that too on 7/10/2019, which was not the date for finalization of the valid list of nomination. It is submitted that the election programme once notified is sacrosanct and no deviation from the same was permissible to be made. The learned counsel also submitted that once the list of valid nominations was finalized on 3/10/2019, the subsequent grant of stay by this Court on 4/10/2019 cannot be the basis for validating the nomination of the fourth respondent. For this purpose reliance is placed on the decision of the Supreme court in the case of **K. Prabhakaran Vs. Jayarajan AIR 2005 SC 688**. It is submitted that the fourth respondent ought to have pointed out to this Court in W.P. No.768/2019 that the list of valid nomination has already been published, which appear to be not done. He, therefore, submitted that the order dated 7/10/2019 by which the name of the fourth respondent is included in the list of valid nominations be set aside.

6. The learned Government Advocate did not dispute that as per the election programme the list of valid nomination was already published on 3/10/2019 excluding the name of the fourth respondent. He did not dispute

that the subsequent order dated 7/10/2019 was not as per the election programme. He however submitted that the petitioner has an alternate remedy of filing an election petition on any such ground.

7. Mr. Desai, the learned Senior Counsel for the fourth respondent has raised a preliminary objection to the maintainability of the petition. It is submitted that the petitioner has a right of filing an election petition against the final outcome of the election, if so advised and this Court may not entertain a petition under Article 226 of the Constitution of India, as the election program is already notified. He pointed out that the voting is scheduled tomorrow i.e on 22/10/2019.

8. The learned Senior Counsel pointed out that after the impugned order was passed on 7/10/2019, the petitioner filed this petition only on 15/10/2019 and is mentioned for urgent hearing on the eve of the date for voting and this Court may not interfere with the election programme.

9. The learned Senior Counsel has placed reliance on the decision of the Supreme Court in the case of (i) **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and anr. (2001) 8 SCC 509** (ii) **Nanhoo Mal and others Vs. Hira Mal and others, AIR**

1975 SC 2140 and the decisions of this Court in (iii) **Gadhinglaj Taluka Sahakari Sakhar Karkhana Ltd. Vs. Collector of Kolhapur and anr. (2005) 4 ALLMR 626** and (iv) **Pandurang Laxman Kadam and others Vs. State of Maharashtra and others (2016) AIR BomR 336.**

10. It is submitted that under Rule 62 (3) of the Goa Co-operative Societies Rules 2003 (Rules, for short) a Returning Officer can in given circumstances, modify the election programme. It is submitted that the Returning Officer was justified in taking note of the stay granted by this Court to the order of disqualification and then to republish the list of valid nominations including the name of the fourth respondent.

11. Mr. Rodrigues, the learned counsel for the petitioner has placed reliance on the decision of the Supreme Court in the case of **Smt. Bharati Reddy Vs. The State of Karnataka and others (2018) 12 SCC 61** and the decision of this Court in the case of **Shivaji S/O Marotrao Suryawanshi Vs. The State of Maharashtra & Others, 2000 (2) BomCR 837**, in order to submit that in given case, this Court can interfere in the election process under Article 226 of the Constitution of India, notwithstanding the availability of the remedy of an filing election petition. He submitted that there is no absolute rule that in no case this Court can interfere under Article

226 of the Constitution of India.

12. We have given our anxious consideration to the rival circumstances and the submissions made and we are not inclined to entertain this petition in view of the availability of an alternate remedy of filing an election petition to the petitioner.

13. In the case of **Gadhinglaj Taluka Sahakari (supra)** this Court although found that the contention raised on behalf of the petitioner merits consideration, however, this Court refused to depart from the settled position in law that an election can only be challenged in accordance with the statute under which it is held and found that ordinarily this Court will not interfere with the election process. Similar view is expressed in the case of **Pandurang Laxman Kadam (supra)**.

14. The Supreme Court in the case of **Nanhoo Mal and others (supra)** was concerned with the election of a President under the U.P. Municipalities Act, wherein there was remedy of filing of election petition before the District Judge. The Supreme Court inter alia held that thus the only way by which the election of a President can be called in question is by means of an election petition presented in accordance with the provisions of the said Act.

15. In the case of **Bar Council of India Vs. Surjeet Singh, 6 (1973) 1 SCC 95**, the Supreme Court held that a writ petition under Article 226 of the Constitution of India should not be rejected on account of an alternate remedy by way of an election petition where firstly the challenge is not a ground available under the Act or the Rules framed thereunder and secondly, where the validity of the Act or Rule is challenged being ultra vires.

16. In the present case it cannot be disputed that the ground of improper acceptance and/or rejection of the nomination, is a ground available for challenge in an election petition. Thus, although certain exceptions are carved out in favour of entertainment of a writ petition in the face of availability of a remedy of election petition, in the present case, we find that the ground on which the present petition is filed is very much available as a ground to challenge the election by way of an election petition.

17. The reliance placed on the decision in the case of **Smt. Bharati Reddy (supra)** to our mind is misplaced. That was a case where though the respondent nos. 6 and 9 were the voters, were not the members of the Zilla Prashid and the remedy of challenging the elections of the Adhyakshya was not available to them. It was in these circumstances found that they cannot be

denied an opportunity to challenge an election under Articles 226 and 227 of the Constitution of India.

18. In the case of **Shivaji Marotrao Surayawanshi (supra)**, the challenge was to the finalization of the voters list where the objection were raised at the very initial stage and it was found that the concerned authority had failed in their duty to decide the same and therefore the writ petition was filed for seeking necessary directions. It was in these circumstances that this Court found that the petition involved an “extraordinary situation”, requiring interference to stop the mischief. In our view both these cases turned on their own facts.

19. Considering the fact that we are not inclined to entertain the petition in view of the availability of the remedy of filing an election petition, we do not propose to dwell on the merits of the challenge. Thus, the rival contentions of the parties on merits of the challenge are left open to be gone into the election petition, if eventually filed.

20. In the result we decline to entertain the petition, which is accordingly dismissed with no order as to costs. It is made clear that we have not examined the merits of the order passed. Rival contentions of the parties in

that regard are left open.

NUTAN D. SARDESSAI, J.

C. V. BHADANG, J.

Ap/-