

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.3493/2021

Shri Shrikant Bhimraoji Gawande

...Versus...

District Cooperative Election Officer and Divisional Joint Registrar, Co-op.
Societies, Amravati and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri M.V. Samarth, Senior Advocate with Shri V.P. Ingle, Advocate for petitioner
Ms Tajwar Khan, AGP for respondent nos.1 and 2

CORAM : AVINASH G. GHAROTE, J.

DATE : 17/09/2021

1. Heard Shri M.V. Samarth, learned Senior Counsel with Shri V.P. Ingle, learned Counsel for the petitioner and Ms Tajwar Khan, learned Assistant Government Pleader for the respondent nos.1 and 2.

2. The petition challenges the order dated 07/09/2021, passed by the respondent no.2, whereby the objection sought to be raised by the petitioner, to the acceptance of the nomination of the respondent no.3, has been rejected, on the ground that such an objection was raised after the scrutiny was over and the nomination of the

respondent no.3 was accepted.

3. Shri Samarth, learned Senior Counsel, by inviting my attention to the provisions of Rule 25 Sub Rule 2 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (for short, "the MCS (EC) Rules, 2014", hereinafter) submits, that the petitioner has right to raise an objection to the nomination submitted by any candidate which has to be considered and decided by the Returning Officer. He further submits that even otherwise, it is the duty of the Returning Officer, to ensure that a disqualified candidate does not enter into the fray and Sub Rule 2 of Rule 25 of the MCS (EC) Rules, 2014, in fact, casts an obligation upon the Returning Officer, to make such summary enquiry, even on his own motion, as he thinks necessary, in respect of any objection raised and upon finding substance therein to reject the nomination, on the grounds, as enumerated in Rule 25 (2) (a) to (d) of the MCS (EC) Rules, 2014. Shri Samarth, learned Senior Counsel further submits that the objection in respect of the candidature of the respondent no.3 was sought to be taken by the petitioner, when the nomination form of the respondent no.3 was being scrutinized, however, since entry into the scrutiny hall was debarred for any other candidate, as the nomination forms were being scrutinized one by one and none, except the candidate, his proposer and seconder were being permitted

to enter, in view of which, at the time when the scrutiny of the nomination of the respondent no.3 was done, the objection could not be taken. However, when the nomination form of the petitioner was being scrutinized, it is alleged, at that point of time, the objection was raised that the respondent no.3 was not qualified, which according to him, was not taken into consideration at all on the count that the period for the same had already lapsed.

4. Shri Samarth, learned Senior Counsel further submits, by relying upon *Shailesh Narayan Shinde Vs. Chetan Vitthal Tupe and others, 2011 (6) Mh.L.J 470* that the purpose of the scrutiny, is to maintain the purity in the election process and at least precaution is to be taken as wrong candidature should not be allowed to go on and if the Returning Officer without proper verification accepts the nomination form and if any election dispute is raised then the election of elected candidate may be set aside, if it was found that the nomination form was wrongly accepted. It has also been held therein that the Returning Officer is required to hold summary enquiry at the time of acceptance of the nomination form. It is also held that it would be permissible for the Returning Officer to act *suo moto* and on his own motion, though there may not be any objection, by any other candidate.

5. Shri Samarth, learned Senior Counsel further places reliance upon the judgment in ***Basawraj and others Vs. The State of Maharashtra and others, MANU/MH/0830/2015***, (para 30) wherein after noticing the judgment of the Hon'ble Apex Court in ***Shri Sant Sadguru Janardan Swami Vs. State of Maharashtra and others, 2001 (8) SCC 509*** and the subsequent judgment in ***Ahmednagar Zilla S. D. V and P. Sangh Ltd. Vs. State (2004) 1 SCC 133***, it has been held, that an interference in the election process, was permissible, if the election was not in conformity with the relevant statutory provisions. He further submits that the judgment of this Court in ***Pandurang Laxman Kadam and others Vs. State of Maharashtra and others, 2016 (4) ALL MR 629***, cannot be said to be a good law as it was rendered, without noticing the judgment in ***Basawraj*** (supra), which was prior in point of time and therefore, ought to be held *per incuriam* for which reliance is placed upon ***Sundeep Kumar Bafna Vs. State of Maharashtra and another, AIR 2014 SC 1745*** (paras 13 and 15).

6. Shri Samarth, learned Senior Counsel further submits that the Returning Officer, has failed in his duty to consider the objection raised to the candidature of the respondent no.3 and in not accepting the objection and deciding it on the date of scrutiny. Shri Samarth, learned Senior Counsel further submits that merely because the

nomination form of the respondent no.3 already stood accepted, that would not be a bar, to the Returning Officer accepting and considering the objection to the nomination of the respondent no.3, as such an objection, can be made throughout the period on the date of the scrutiny, and once so made, ought to be looked into, in view of the mandate of Section 25 (2) of the MCS (EC) Rules, 2014. He, therefore, submits that there is a failure on part of the Returning Officer to carry on his duty, as imposed upon him by the Rules, in view of which, this Court ought to interfere by exercising its jurisdiction under Article 226 of the Constitution of India, for which, reliance has been placed on the unreported judgment of this Court in *Sadashiv Ganpatrao Mahajan Vs. State of Maharashtra and others, Writ Petition No.1475/2020, decided on 18/12/2020*.

7. Shri Samarth, learned Senior Counsel submits that except the remedy under Article 226 of the Constitution of India, there is no other remedy available including the one under Section 91 of the Maharashtra Co-operative Societies Act, 1960 to challenge the impugned order.

8. Ms Tajwar Khan, learned Assistant Government Pleader appearing for the respondent nos.1 and 2, who has appeared since an advance copy of the petition was served upon the office of the Government Pleader, submits, that the

Returning Officer, has duly performed his duty, in as much as, when the nomination form of the respondent no.3 was being scrutinized, there was no objection whatsoever and on the basis of the papers and material before him, the scrutiny was carried out by the Returning Officer, who, having found everything in order, has accepted the nomination of the respondent no.3. She further submits that a public announcement was being made while scrutinizing the nomination form of each candidate and therefore, it was permissible for the petitioner to have raised his objection, at that point of time, if any. She further submits that in fact in respect of other candidates, six objections were received at the time when their nominations were scrutinized, which have been decided by the Returning Officer, in view of which, the submission made by Shri Samarth, learned Senior Counsel for the petitioner that the objections were not received and decided, does not hold any water. She further submits that whatever enquiry was required to be made during the scrutiny by the Returning Officer, as required by the provisions, has been done and there is no dereliction of duty on his part. She submits that the process of election has now gone to a step, where it is not permissible for this Court to interfere.

9. I, have given my anxious consideration to the rival contentions. The provisions of Rule 25 (2) of the MCS

(EC) Rules, 2014 enjoin upon the Returning Officer, to examine the nomination papers and decide all objections which may be made to any nomination. It further enjoins upon the Returning Officer either on such objection or of his own motion to make a summary enquiry, if he thinks it necessary, for his satisfaction regarding the compliance of the requirements in Rule 25 (2) (a) to (d) of the MCS (EC) Rules, 2014. Such enquiry, therefore, necessarily cannot be a roving enquiry but has to be confined to the satisfaction of the requirements, as indicated above. When the scrutiny is done, of a nomination paper, what is required to be looked into, is whether the candidate is disqualified for being chosen to fill the seat; whether the proposer or seconder is disqualified from subscribing a nomination paper; whether there has been a failure to comply with any of the provisions of Rules 21 or 23 of the MCS (EC) Rules, 2014; and whether the signature of the candidate or the proposer or the seconder on the nomination paper is genuine. In so far as the requirement as mentioned in Rule 25 (2) (a) of the MCS (EC) Rules, 2014 is concerned, the same is to be determined by the Returning Officer, on the basis of the documents submitted to him along with the nomination and if upon perusal of the same, he is satisfied that the same complies with the requirement, as indicated in Rule 25 (2) (a) to (d) of the MCS (EC) Rules, 2014, he has no other option than to accept the nomination. Once the nomination is accepted and

so declared, in my considered opinion, in absence of any objection being raised, before its acceptance, the same cannot be permitted to be raised at a later point of time, as permitting it to be so done, would result in keeping the situation fluid and open, without attaining any finality, which is impermissible, for in absence of any finality, the process cannot go ahead. It is, therefore, necessary for any objection, to the candidature of any person, to have been raised, at the time when the said nomination is being scrutinized. That having not been done, it would not be permissible for any candidate or objector to raise any objection at a later point of time as that would amount to reopening of the acceptance of the nomination, acceptance of which has already been announced and declared.

10. The impugned order dated 07/09/2021, categorically records, that while the nomination of the respondent no.3 was being scrutinized, no objection was raised by anyone whatsoever, and in view of the contention of the learned Assistant Government Pleader that the scrutiny was public and objections were indeed accepted and decided in respect of other candidates, the contention that the objection was not permissible to be tendered, at the time when the scrutiny of the nomination of the respondent no.3 was being done, is clearly not borne out. That apart, the question whether the scrutiny was open or closed, now

sought to be raised, would clearly be a disputed question, which at this stage would not be permissible to be gone into in the writ jurisdiction under Article 226 of the Constitution.

11. ***Shailesh Narayan Shinde*** (supra) relied upon by Shri Samarth, learned Senior Counsel for the petitioner, holds that the Returning Officer is required to hold a summary enquiry at the time of acceptance of the nomination form even if no objection is raised, by anyone. There cannot be any dispute with this proposition.

12. In fact, the position has been considered and elucidated by the Hon'ble Apex Court in ***Kisan Shankar Kathore v. Arun Dattatray Sawant, (2014) 14 SCC 162***, in the following words :

“43. When the information is given by a candidate in the affidavit filed along with the nomination paper and objections are raised thereto questioning the correctness of the information or alleging that there is non-disclosure of certain important information, it may not be possible for the Returning Officer at that time to conduct a detailed examination. Summary enquiry may not suffice. The present case is itself an example which loudly demonstrates this. At the same time, it would not be possible for the Returning Officer to reject the nomination for want of verification about the allegations made by the objector. In such a case, when ultimately it is proved

that it was a case of non-disclosure and either the affidavit was false or it did not contain complete information leading to suppression, it can be held at that stage that the nomination was improperly accepted. Ms Meenakshi Arora, learned Senior Counsel appearing for the Election Commission, rightly argued that such an enquiry can be only at a later stage and the appropriate stage would be in an election petition as in the instant case, when the election is challenged. The grounds stated in Section 36(2) are those which can be examined there and then and on that basis the Returning Officer would be in a position to reject the nomination.”

13. In fact, in such an enquiry, which of course has to be summary in nature, considering the time frame within which it has to be undertaken and completed, what the Returning Officer has to satisfy himself, is whether the nomination would satisfy the requirement of law, as applicable thereto, which in the present case was the requirements as listed in Rule 25 (2) (a) to (d) of the MCS (EC) Rules, 2014, in fact had been done by the Returning Officer, on the basis of the position as placed before him and since there was nothing to excite his suspicion on record, his action of accepting the nomination cannot be faulted with.

14. The judgment of the Hon'ble Apex Court in *Shri Sant Sadguru Janardhan Swami* (supra) categorically holds that preparation of the voters' list must be held to be a part of the election process and is in fact an intermediate stage and the election once set in motion, ought not to be interfered with.

15. It is true that in *Basawraj* (supra) in spite of noticing *Shri Sant Sadguru Janardhan Swami* (supra) the learned Division Bench interfered with the election, however, it was only for the reason that it was found that the entire election process was not in conformity with the relevant statutory provisions and without impeding the ongoing process, the illegality that had occurred in the matter of deletion of the names from the final voters' list of the societies and their nominees, which were included in the provisional voters' list, could not be cured. The fact position in the instant matter, as narrated above, is quite different and therefore, the dictum in *Basawraj* (supra) is clearly inapplicable.

16. In *Pandurang Laxman Kadam* (supra) the issue was regarding non-inclusion of names in the list of voters, on the plea that since the constituency amongst others comprised of persons who were eligible for a permanent housing accommodation in a project by co-operative

societies of slum dwellers, which list was notified, the names included in the list should automatically be included in the voters' list. The learned Division Bench held that since the authority while dealing with the claims and objections had held that there was divergence or difference between those who were identified as eligible slum dwellers and those whose names were found in the provisional voters' list, and any determination of the issue as to what scrutiny could have been undertaken and to what extent were all matters raising disputed questions of fact which could not be decided in writ jurisdiction, declined to interfere. It would thus be apparent that what has been held in *Pandurang Laxman Kadam* (supra) is that if the determination of the issue involves disputed questions of fact, the Court would not go into them in the writ jurisdiction. In view of what has been discussed in above in respect of *Basawraj* (supra) and *Pandurang Laxman Kadam* (supra), in my considered opinion, *Sundeep Kumar Bafna* (supra), is clearly not attracted as both *Basawraj* (supra) and *Pandurang Laxman Kadam* (supra) are on different factual footing.

17. It would be material to note that the provisions of Section 152 A of the Maharashtra Co-operative Societies Act provide an appeal against the rejection of nomination paper at election, which obviously is with a view to test the veracity of the decision of rejection, which in a given

circumstance, may be further amenable to writ Jurisdiction of this Court, though in limited circumstances, as held by the learned Division Bench in *Mohd. Talib s/o Mohd. Sadique (Dr.) Vs. Dr. A.S. Kuchewar, 2007 SCC OnLine Bom 49 : (2007) 4 Mh. L.J. 557*, where the nomination paper of the candidate was rejected only on the ground that his name had been shown as “Dr. Mohammad Talib Mohd. Sadique” in the electoral roll and in the nomination form it was mentioned as “Mohd. Talib Mohd Sadique” and there was no dispute about the identity of the voter, or by the learned Single Judge of this Court in *Sadashiv Ganpatrao Mahajan* (supra) whereupon an objection raised, the nomination was rejected, which was overturned in appeal, which decision was interfered in writ jurisdiction by this Court, by restoring the decision of rejection of the nomination, which on facts is not attracted in the present matter.

18. The contention of Shri Samarth, learned Senior Counsel for the petitioner regarding absence of any remedy under section 91 of the Maharashtra Co-operative Societies Act, 1960, against the impugned action, has to be viewed in light of the position that with an intention to minimize, interference in the election process the Legislature while providing a remedy against the rejection of a nomination paper, has intentionally refrained, from providing any remedy, against the acceptance of nomination paper, as that

is a ground, permissible to be raised in the election petition filed after the entire process is over, which is also a reason why the acceptance of nomination ought not to be interfered with.

19. In fact, the hands-off policy, in regard to interference by the Courts in elections, has been once again reiterated by the Hon'ble Apex Court in ***State of Goa Vs. Fouziya Imtiaz Shaikh and another, 2021 SCC Online SC 211***, and though the decision was rendered in the backdrop of Article 243 ZG(b) of the Constitution, the principle, thereof, would also be applicable to elections being conducted under the other Statutes also, more so in view of what has been said in ***Kisan Shankar Kathore*** (supra) that at times it may not be possible for the Returning Officer, to decide upon the objections raised, considering the limited summary nature of the enquiry to be conducted by him, in the limited time frame, while deciding the question of validity of the nomination.

20. In view of the above discussion, I do not see any reason to interfere in the impugned order. The writ petition is, therefore, dismissed. There shall be no order as to costs.

21. Needless to say that all objections which the petitioner may have against the nomination of the

respondent on.3, would be available, in case the election is being challenged in appropriate proceedings.

(AVINASH G. GHAROTE, J.)

Wadkar