

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.9356 OF 2022**

SHAMBHAVI  
NILESH  
SHIVGAN

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Shri Nagesh Lingraj Valyal

..... Petitioner

Vs.

The Deputy Registrar,  
Co-operative Societies & Ors.

....Respondents

....  
Mr. Y.B.Lengare for the Petitioner.

Mr. S.D.Rayrikar, A.G.P. for the State-Respondent No.1.

Mr. Deelip Patil-Bankar, Chief Standing Officer, SCEA, with Ms.  
Pooja Deelip Patil with Mr. Suhas Rohile for R.No.2.

Mr. Sarang S. Aradhye with Ms. Gauri Velankar for R.No.3.

Mr. Anand S. Kulkarni for R.No.4.

**CORAM: SANDEEP K. SHINDE, J.**

**RESERVED ON :SEPTEMBER 7, 2022  
PRONOUNCED ON: SEPTEMBER 13, 2022**

**P.C.**

1. **Rule.** Rule made returnable forthwith. With consent of  
the parties, Petition is taken up for final hearing.

2. On presentation of nomination papers under Rule 21,  
in the form "E-5" of the Maharashtra Co-operative Societies  
(Election to Committee) Rules, 2014, powers of the Returning  
Officer for the scrutiny of nomination papers are circumscribed  
by Rule 25 read with 21(2)(3) of the Rules of 2014. Form E-5,

contains a declaration to be made by the candidate eligible to contest the election to the reserved seat envisaged under Section 73B of the Maharashtra Co-operative Societies Act, 1960. Declaration reads as under;

***"Declaration to be made by the candidate for the constituency under section 73B  
(SC/ST, OBC, NT/DT/SBC)***

*I hereby declare that I am a member of the -----Caste/Tribe which is a Scheduled Caste/Tribe, Other Backward Class/Nomadic Tribe/Special Backward in relation to the State of Maharashtra. I am attaching herewith the attested photocopy of my Caste Certificate issued by Competent Authority.*

*Signature of Candidate"*

. Thus, a candidate eligible to contest election to the reserved seat is required to attach attested photocopy of his caste certificate issued by the Competent Authority. Once, Nomination form is presented with the declaration as above, under Sub-rule (4) of Rule 21, Returning Officer shall verify whether nomination is accompanied with a declaration and attested copy of the caste certificate.

3. Sub-rule (4) of Rule 21 reads as under;

*"(4) In the case of a reserved seat under the provisions of section 73B, a candidate shall not be deemed to be qualified to be chosen to fill the seats unless the nomination paper is accompanied with a declaration required under section 73B [and the attested copies of the caste certificate]"*

. The, expression used in Sub-rule (4), "shall not be deemed to be qualified to be chosen" (emphasis supplied)

clearly defines and confines, the jurisdiction of the Returning Officer limited to verify whether nomination is accompanied with declaration and the attested copy of the caste certificate. The 'deeming fiction' validates nomination, unless not accompanied by declaration and a caste certificate issued by Competent Authority.

4. So far as Rule 24 is concerned, the Returning Officer is vested with jurisdiction to examine nomination paper and decide all objections, which may be made to any nomination, after such enquiry as he thinks necessary. However, enquiry is limited in terms of Clause (a), (b), (c), (d) of Sub-rule (2) of Rule 25. Therefore, the Returning Officer, after making enquiry, is empowered to reject nomination, if the candidate is disqualified, for being chosen to fill the seat, by or under the Act, Rules and the Bye-laws. Expression "Act", "Rules" and "Bye-laws" mean disqualification under the Maharashtra Co-operative Societies Act, Rules and the Bye-laws, which is referable to disqualification defined under Section 73CA, of the Maharashtra Co-operative Societies Act, 1960. Thus, it could be seen that Returning Officer is not vested with powers to verify authenticity and/or ascertain the validity of the caste certificate of the candidate.

5. In the case at hand, Respondent No.4 presented the nomination papers in the form "E/5" with declaration and attached attested copy of his caste certificate issued by the Competent Authority, declaring, he belongs to 'Padmashali', a 'Other Backward Class'.

6. In the case at hand, Returning Officer, enquired into authenticity-validity of Caste Certificate submitted by the Respondent No.4, alongwith Nomination Papers and thereby, over-stepped the jurisdiction and committed an error in exercise of the jurisdiction. Although this order has been set aside by the District Deputy Registrar, in Appeal No.01 of 2022 on some other grounds, the fact remains, the order dated 21<sup>st</sup> June, 2022 passed by the Returning Officer was clearly not sustainable in law for want of jurisdiction. Even otherwise, the larger Bench of this Court on reference in batch of petitions has held that;

*"(ii) Article 243-O(b) of the Constitution of India is a bar for entertaining a writ petition under Article 226 of the Constitution against an order passed by the Returning Officer rejecting nomination paper and such provision would clearly be attracted whenever a writ petition is presented before a Court for its consideration' and "*

7. Therefore, besides other reason, Petition was not maintainable. In the case at hand, election programme was

declared on 31<sup>st</sup> May, 2022. The order of the Returning Officer was set aside by the Deputy Registrar on 30<sup>th</sup> June, 2022. The election of the Respondent-Society was scheduled on 17<sup>th</sup> July, 2022. As such, election process has reached to the final stage, but not held since all election in the State of Maharashtra have been postponed upto 30<sup>th</sup> September, 2022.

8. In consideration of the facts of the case and for the reasons stated above, I am not inclined to consider the effect of subsequent events and order dated 6<sup>th</sup> September, 2022 passed by the Caste Scrutiny Committee by which caste certificate of the Petitioner has been cancelled.

9. For above reasons, Petition is dismissed. However, all contentions of the petitioner are expressly kept open, in the event, Petitioner proceeds to file the Election Petition.

10. Rule is discharged. Petition is disposed of.

**(SANDEEP K. SHINDE J.)**