

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

WRIT PETITION NO. 4264/2022

(MARUTI KACHRU SHINDE **VERSUS** THE AD-HOC COMMITTEE, MAHARASHTRA STATE
WRESTLING ASSOCIATION & ANOTHER)

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

Court's or Judge's order

Shri C.A. Joshi, counsel for the petitioner.
Shri K.B. Zinzarde, counsel for the R-2.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE : JULY 27, 2022.

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Considering the urgency in the writ petition, this Court had issued notice on 26.07.2022 making the same returnable today. The notice was issued only to the respondent no.2 since the challenge has been raised by the petitioner to the rejection of his nomination form in absence of any substantial defect. In these circumstances, presence of the respondent no.1 is not found necessary.

RULE. Rule made returnable forthwith and heard the learned counsel for the parties.

Learned counsel Shri K.B. Zinzarde waives notice of hearing for the respondent no.2.

On 11.07.2022, notice was published by the Ad-hoc Committee of the Maharashtra State Wrestling Association proposing to conduct the elections for the Office bearers and Members to the Executive Committee. The nomination forms were to be filled from 22.07.2022 and scrutiny of the same was to be undertaken from 23.07.2022. The nomination form of the petitioner was rejected on the ground that the serial number of the proposer and the seconder in the nomination form had not been disclosed. It was expected that the serial number in the electoral college list ought to have been indicated therein. On this count the nomination form of the petitioner was held to be invalid. This order is challenged in the present writ petition.

Shri C.A. Joshi, learned counsel for the petitioner submits that the name of the proposer is at Serial Number 12 in the electoral college list while the name of the seconder is at Serial Number 10 in the very same list. There is no dispute with regard to the presence of their names in the electoral college list. Only for the reason that the serial number in the said list was not mentioned the nomination form ought not to have been rejected. The defect was not substantial in nature and it was a curable one. The respondent no.2 ought to have given an opportunity to the petitioner to cure the said defect. Placing reliance on the decision in *Mohd. Talib Mohd. Sadique Versus Dr.A.S. Kuchewar* [2007(4) Mh.L.J. 557], he submitted that since the defect was not of a substantial nature the nomination form of the petitioner was not liable to be rejected.

Shri K.B. Zinzarde, learned counsel for the respondent no.2 opposed the aforesaid submissions. According to him the Returning Officer was justified in rejecting the nomination form for the reason that the serial number of the proposer and the seconder was not mentioned therein. In absence of that information no error was committed by the Returning Officer while rejecting the nomination form. Hence no interference was called for.

Without prejudice to the aforesaid contentions, on instructions it is submitted that it is likely that the nomination forms of other candidates may have been rejected for failure to mention the serial numbers of the proposer and the seconder in the nomination form. It is also likely that for some other minor errors the nomination forms of other candidates may have been rejected. If the Court was inclined to direct acceptance of the petitioner's nomination form, the Returning Officer was willing to re-consider the nomination forms of the similarly situated candidates that were rejected.

We have heard the learned counsel for the parties. It is undisputed that the petitioner failed to mention the serial numbers of the proposer and the seconder in the nomination form. It is also not in dispute that the names of the proposer and the seconder are mentioned in the electoral college list at Serial Number 12 and 10 respectively. This Court in *Mohd. Talib Mohd. Sadique* (supra) has held that a defect in the nomination form which is not of a substantial nature can be permitted to be cured especially when the identity of the candidate or the proposer and the

seconder is not disputed. We find that the ratio of the aforesaid decision would be applicable to the facts of the present case. Once it is found that the name of the proposer and the seconder are mentioned in the electoral college list and the nomination form of the petitioner is rejected only for the failure to mention the serial numbers in the same, the said rejection is on account of a minor defect and not of a substantial nature. We are therefore inclined to direct the respondent no.2 to permit the petitioner to remove the said defect and thereafter consider the nomination form. Since it is informed on behalf of the respondent no.2 that such opportunity may also be given to other similarly situated candidates whose nomination forms have been rejected on account of minor defects, we are inclined to permit the respondent no.2 to do the same.

Accordingly the decision of the Returning Officer dated 22.07.2022 rejecting the petitioner's nomination form is set aside. The petitioner is permitted to submit the serial numbers of the proposer and the seconder in the said nomination form by making necessary corrections. Similarly the spelling mistake in the petitioner's name in the nomination form is also permitted to be corrected. The respondent no.2 is free to permit similarly situated candidates to remove the minor defects in the nomination form, if necessary by re-scheduling the election programme that was published on 11.07.2022. Needless to state that the programme can be re-scheduled from the stage of scrutiny of the nomination forms. The Returning Officer is free to publish the revised scheduled of elections starting from the stage of scrutiny of the nomination forms.

With these directions, the writ petition is allowed. Rule is made absolute in aforesaid terms. No costs.

Authenticated copy of this order be supplied to the learned counsel for the parties.

(URMILA JOSHI-PHALKE, J.)

(A. S. CHANDURKAR, J.)

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