

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

6 WRIT PETITION NO.6291 OF 2023

**MOHAN LOBHAJI BRAMHARAKSHAS
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS**

Mr.Yuvraj V. Kakade, Advocate for the petitioner.
Mr.D.R. Kale, Government Pleader for respondent/State.
Mr.V.H. Dighe, Advocate for respondent Nos.2 and 4.

**CORAM : KISHORE C. SANT, J.
DATED : 13.06.2023**

PC :-

01. This petition is challenging an order passed by the Appellate Authority i.e. the Joint Registrar, Co-operative Societies and Regional Joint Director (Sugar), Aurangabad dated 09.06.2022. The appeal was filed by the petitioner challenging rejection of his nomination by the Returning Officer in the election of Shri Renukadevi Sharad Sahakari Sakhar Karkhana Ltd.

02. The petitioner had filed form from reserved category i.e. from Scheduled Caste/Scheduled Tribe. In the said form he has not filled up the declaration that he belongs to the Scheduled Caste or Scheduled Tribe as required under section 73(b) of the Co-operative Societies Act. The learned Advocate for the petitioner submits that in-fact said defect was curable. By

inviting attention of this Court to Rules 21 and 25 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014, he points out that at the time of scrutiny, the petitioner had in-fact produced certificate issued by the Competent Authority i.e. Executive Magistrate, Paithan and under such circumstances, the defect was curable and such certificate could have been accepted by the Returning Officer. He specifically relied upon Rule 25 (3) and (4) of the said Rules, which are reproduced as under :-

“25. Scrutiny of nomination papers

x x x x x

(3) Nothing contained in clause (c) or (d) of sub-rule (2) shall be deemed to authorize the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed. (4) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. (3) Nothing contained in clause (c) or (d) of sub-rule (2) shall be deemed to authorize the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

x x x x x”

03. Thus, the learned Advocate for the petitioner submits that the defect was not of substantial character and the petitioner could have been offered opportunity to fill up the contents of the form. He submits that in-fact in the form he had clearly indicated that he is filling up form for the post

reserved for SC/ST candidates in column No.1 and column No.6. He also pointed out that declaration was signed and only contents were not filled in and therefore that cannot be said to be a defect of substantial character. By relying upon Rule 21(2) he also submits that his candidature ought to have been allowed.

04. The learned Advocate for the petitioner relies upon judgment in the case of Jagdish Lahu Badhe Vs. State Co-operative Election Authority reported in AIR ONLINE 2022 BOM 535, wherein this Court had allowed the petitioner to contest the election. It was held that nomination could have been corrected by the Returning Officer. In that case respondent No.5 was present before the Returning Officer. A certificate showing that milk was supplied in sufficient quantity for the relevant year was not correct. However, there were two certificates and the Court had held that another certificate was correctly given and was produced by the candidate and that ought to have been accepted. There nomination of respondent No.4 was accepted. Against that petitioner had approached this Court. This Court had held that the form was rightly accepted.

. The learned Advocate for the petitioner thus submits that in this case also the Returning Officer ought to have accepted the nomination paper of the petitioner.

05. The learned Government Pleader Mr. Kale supports the order passed by the Appellate Authority.

06. The learned Advocate for respondent Nos.2 and 3 Mr. Dighe vehemently opposes the petition. He submits that when the declaration about caste itself is kept blank in the form, said form can not said to be a form duly complete in all respect. For acceptance of the nomination form, it is necessary that the form is complete in all respect. Merely filing document at the time of scrutiny is not sufficient, when the form itself is incomplete.

07. Considering the submissions, this Court finds that when the form itself was not duly filled in, the Returning Officer is not expected to look into any other material. Though submission is made by the learned Advocate for the petitioner that the defect is of curable nature, it can be cured and the defect is not of substantial character, this Court finds that question of looking

to other material would arise only when the form is completely filled in. Not giving declaration in the form cannot be said to be a curable defect and therefore submitting caste certificate later on, would not cure the defect in the form. More so, it is found that said portion of declaration is scored off. It is submission of the learned Advocate for the petitioner that in-fact if the original form is seen, there is no scoring off on the part of declaration. However, going into that question would be an exercise of finding of fact, which is not expected in the writ jurisdiction.

08. On going through the impugned order, this Court finds that there is no mistake committed by the Appellate Authority calling for interference at the hands of this Court. Thus, this Court finds that no case is made out to allow the petition. The writ petition stands dismissed.

[KISHORE C. SANT, J.]