

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

WRIT PETITION NO. 1708 OF 2023

Vivekanand Tularam Raut__ Vs. __ District Deputy Registrar, Co. Op Societies, and
ors

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

Court's or Judge's orders

Mr. A.M.Ghare, Advocate for the petitioner
Ms. T.H.Khan, AGP for Respondent No.1
Mr. J.K.Matale, Advocate for the respondent No.4.

CORAM : AVINASH G. GHAROTE, J.
DATE : 20/03/2023

1] Heard Mr. Ghare, learned counsel for the petitioner, Ms. Khan, learned AGP for respondent no.1 and Mr. Matale, learned counsel for respondent No.4.

2] The petition seeks to challenge the order passed by the respondent no.1, who is the appellate authority under Section 152-A of the Maharashtra Cooperative Societies Act (for short “the MCS Act”), whereby the rejection of the nomination paper of the respondent No.4 by the Returning Officer, has been set aside.

3] Mr. Ghare, learned counsel for the petitioner by relying upon **Baghele Narottam**

Gendlal vrs. State of Maharashtra, 2016 (4) Mh.L.J 353, submits that the requirement of proviso to Rule 21(3) of Maharashtra Co-operative Societies Election to Committee Rules, 2014 (for short “the Rules of 2014), of submitting a declaration is mandatory and since in the instant case the said declaration has not been signed by the respondent no.4, the requirement is not complied, as a result of which the impugned order cannot be sustained.

4] Though respondent nos. 5 & 6 have been served, none appears.

5] Mr.Matale, learned counsel for respondent nos. 4 submits that under Rule 25(4) of the Rules of 2014, this was not a defect of a substantial character and therefore, it was not permissible for the Returning Officer to have rejected the nomination form and the Respondent no.1 therefore, in appeal, has rightly set aside the order.

6] Learned AGP appearing for respondent no.1 has supported the impugned order.

7] In **Baghele Narottam Gendlal** (Supra),

while considering the same position, regarding non submission of the declaration as contemplated by the proviso to Rule 21(3) of the Rules of 2014, it has been held that non submission of the affidavit-B/declaration (pg.23) is a defect of a substantial character and therefore, Rule 25(4) of the Rules of 2014 is not applicable. In the instant matter, the respondent no.4 himself by his communication dated 8.3.2023 (pg.30) to the respondent no.in appeal has admitted that the declaration filed by him does not bear his signature and has sought leave to cure the defect by signing it before the respondent no.1. In view of this admission, it is clearly apparent that the requirement of the proviso to Rule 21(3) of the Rules, 2014 has admittedly not being complied with. It is therefore apparent that the declaration as contemplated by proviso to Rule 21(3) of the Rules, 2014 , in absence of the signature of the respondent no.4 cannot be considered to be one which can satisfy the requirement of the aforesaid provision. In view of what has been held in **Baghele Narottam Gendlal** (supra), since this requirement has been held to be mandatory and the defect of this nature is also held to be of a substantial character, the same cannot be ignored by invoking Rule 25(4) of the

Rules of 2014.

8] The learned respondent No.1 has in the impugned order tried to lay the blame for such defect upon the respondent no.2, the Returning Officer by holding that it was his duty to have verified the nomination for any defect and thereafter to have accepted it, as a result of which the respondent no.4 has been deprived of the principles of natural justice. I am afraid, such a course of action is not available to the Returning Officer, while acting in such capacity, for the reason that while doing so, he is an independent person and does not have the right to advise any one whomsoever, as to any requirement of the relevant rules to be complied with. The respondent no.1 has also relied upon the provisions of Rule 25(4) of the said Rules, 2014 to upset the order of the rejection of Returning Officer, which was impermissible in view of what has been held in **Baghele** Narottam Gendlal (supra).

9] That being the position, it is apparent that there is no declaration as contemplated by the proviso to Rule 21(3) of the Rules of 2014, which could be said to comply with the requirement of law in that regard, filed by the respondent no.4 along

with his nomination paper, as a result of which the Respondent no.2 was justified in rejecting the same. The impugned order dated 13.3.2023 is accordingly quashed and set aside and the petition is accordingly allowed in above terms. No costs. Ld. AGP to communicate this order to the respondent no.2.

JUDGE

Rvjalit