

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

WRIT PETITION NO.3800/2023

Bhaiyalal Nathuji Takote,
aged about 68 Yrs., Occ. Retired,
R/o Flat No.51/D Tapovan Complex,
Jaiprakash Nagar, Somalwada, Nagpur. ... Petitioner

- Versus -

1. Returning Officer,
Gandhibag Cooperative Bank Ltd.
Nagpur cum District Deputy
Registrar, Cooperative Societies,
Nagpur.
2. Gandhibag Cooperative Bank Ltd.,
through its General Manager,
office at Chitnis Park Chowk, Ruikar
Marg, Mahal, Nagpur.
3. State Cooperative Election Authority,
Mumbai, through its Commissioner,
Pune. ... Respondents

Mr. A.M. Ghare with Mr. O.A. Ghare, counsel for the Petitioner.
Mr. A.A. Madiwale, Assistant Government Pleader for
Respondent No.1.
Mr. P.V. Ghare, counsel for respondent No.2.
Mr. S.S. Ghate, counsel for respondent No.3.

CORAM: A.S. CHANDURKAR & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 27.6.2023

ORAL JUDGMENT (Per A.S. Chandurkar, J.)

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. The election programme for holding elections to the respondent No.2 Cooperative Bank came to be published on 22.5.2023. The Returning Officer was accordingly appointed to conduct the said elections. The nomination forms were to be submitted from 25.5.2023 to 31.5.2023. After publication of the list of nominations received, scrutiny of the nomination papers was to be made on 1.6.2023. List of valid nominations was to be published on 2.6.2023. As per the election programme, the nomination papers were to be withdrawn till 16.6.2023. The petitioner who had submitted his nomination form approached the Returning Officer on 19.6.2023 seeking leave to withdraw the nomination form. In the said application, he stated that he

was unwell on 16.6.2023 and hence could not withdraw his nomination form. As there was holiday on 17th and 18th the request for withdrawing the nomination was being made on 19.6.2023. The Returning Officer on the same day rejected the said application on the ground that as per the election programme the nomination form could have been withdrawn on 16.6.2023 till 3 p.m. The aforesaid order passed by the Returning Officer is under challenge.

3. The learned counsel for the petitioner submits that elections are to be held for 14 posts from open category and 15 nomination forms were validly received. On account of petitioner's ill-health he could not withdraw his nomination form. If the nomination form is permitted to be withdrawn, all 14 candidates who had submitted their nomination forms could be elected unopposed. This would result in avoiding to hold the elections which in turn could save the election expenses. It is, therefore, prayed that the petitioner be permitted to withdraw his nomination form.

4. The aforesaid prayer is opposed by the learned counsel for the respondents. According to respondent No.1, the application for withdrawal having been made after the last date its rejection was proper. The election programme has further progressed with publication of final list of contesting candidates and allotment of symbols. Arrangements have been made for conducting the said elections. Similar stand is taken by the learned counsel for the respondent No.3 that the impugned order has been passed in accordance with the provisions of Rule 27 of the Maharashtra Cooperative Societies (Election to Committee) Rules, 2014 (for short "Rules of 2014"). The learned counsel for the Bank, however, submits that amount of approximately ₹28,00,000/- has been deposited with the respondent No.3 for holding said elections. If all candidates are declared elected unopposed it would result in saving considerable expenses.

5. After hearing the learned counsel for the parties we find that under the election programme the last date for withdrawing the nomination forms was 16.6.2023 till 3 p.m. The

petitioner submitted his application on 19.6.2023 which is after the last date prescribed. Without going into the question as to whether the petitioner was prevented from making request for withdrawing his nomination form on 16.6.2023, we do not find that the Returning Officer erred in refusing to permit the petitioner from withdrawing the nomination form.

6. The facts of the present case are peculiar as elections are to be held for 14 posts and there are 15 valid nominations. If the petitioner is permitted to withdraw his nomination form there would be no occasion to hold the elections for the said 14 posts since all validly nominated candidates would be declared elected unopposed as a consequence of Rule 32 of the Rules of 2014. This could result in saving time as well as unnecessary expenditure in conducting the elections. Keeping that aspect in mind and in view of the peculiar facts stated hereinabove, we are of the view that the petitioner deserves to be granted permission to withdraw his nomination form since that would enable avoiding holding of the unnecessary elections.

7. Though we have held that the order dated 19.6.2023 passed by the respondent No.1 is in accordance with Rule 27 of the Rules of 2014, in the peculiar facts of the present case the application of the petitioner dated 19.6.2023 seeking permission to withdraw the nomination form deserves acceptance. This would be subject to the petitioner paying an amount of ₹10,000/- (₹ Ten Thousand Only) to the respondent No.1 for being appropriated towards election expenses till date. On such payment the respondent No.1 shall pass appropriate orders on the aforesaid application dated 19.6.2023 and treat the said nomination form of the petitioner as withdrawn. It is clarified that the present order is passed in the peculiar facts of the present case and shall not be treated as precedent. Rule is made absolute in the aforesaid terms.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)

Tambaskar.

Signed By: NILESH VILASRAO
TAMBASKAR

Private Secretary
Date: 28.06.2023 17:28