IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 684 OF 2024

Sanjay Manikrao Nikam
VERSUS
The Returning Officer Agricultural Produce Market Committee And Others
...
Advocate for the Petitioner : Mr. Savant Vilas P
AGP for Respondent/State : Mr. A.S. Shinde
Advocate for Respondent No.1 : Mr. V.H. Dighe
Advocate for Respondent No.2 : Mr. Prashant Suryawanshi
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CORAM : S.G. MEHARE, J.

DATED : JANUARY 16, 2024

PER COURT :-

1. Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The petitioner has submitted the nomination to the election of the Maharashtra Agricultural Produce Market Committee on 29.12.2023 of the Village Panchayat Constituency (Economical Weaker Section). His application was scrutinized on 01.01.2024. On his own, the Returning Officer rejected the nomination because, as per Rule 10(1)(g) of the Election Rules, 2017, the petitioner was holding a trading licence of the market; hence, he is not eligible to contest the election. Against the said order, the present petitioner had preferred the appeal before respondent no.3. Respondent No.3 registered the appeal bearing No.01/2024, granted a hearing to the

respective parties and dismissed the appeal on 15.01.2024. Against the said order, the petitioner is before the Court.

3. The petitioner admits that he had the trading licence of the Agricultural Produce Market Committee. However, after 31.03.2023, he never applied for the renewal of the trading licence. He is an agriculturist. His main source of income is agriculture. Nobody objected his nomination; however, the Returning Officer had the influence of the ruling party, therefore, he suo-moto took the action. He would submit that the Returning Officer again passed a detailed order on the same day and added clause 10(2)(ii) of the Election Rules, 2017. He illegally held the petitioner as a person with a trading licence; therefore, he was disqualified to contest the election from the Village Panchayat Constituency (Economical Weaker Section).

4. Learned counsel for the petitioner has vehemently argued that for the first time before the Appellate Authority, the respondents have produced an application in the name of the petitioner dated 23.11.2023 for renewal of his trading licence. They have also produced the receipts of the licence, renewal fee and supervision fee dated 23.11.2023. Learned counsel for the petitioner has vehemently argued that these are all created documents, and those were not before the Returning Officer. Learned counsel for the petitioner argued that he never applied for renewal of his licence on

23.11.2023. However, by creating false evidence, his nomination has been illegally rejected.

5. Learned counsel for respondent no.1 submits that the petitioner had a trading licence. The trading licence of the petitioner was renewed as per his information, and in a meeting dated 10.12.2023, the trading licence of the petitioner was renewed. He has deposited the requisite fees. He also produced the receipt dated 23.11.2023. He has also produced the original Register of renewal of the licence. He would submit that the petitioner had a trading licence; hence, he could not contest the election from the Village Panchayat Constituency (Economical Weaker Section).

6. Learned counsel for respondent no.3 Mr. Dighe has vehemently argued that the material placed before the Appellate Authority was not denied. The record is maintained by the Committee. On the day of submitting the nomination, the trading licence of the petitioner was renewed. He has submitted the documents to that effect. He also submits that the petitioner is not an agriculturist. The cut-off date was 01.09.2023. On that day, the petitioner had no trading licence; hence, he was not listed in the voter list of the traders' constituency. He would submit that the petition is bad for non-joinder of all contesting members. To bolster his arguments, he relied on the case of *Vijaysingh Krishnarao Parbat, Vs.*

Returning Officer, Janata Sahakari Bank Ltd and others, 2003 (2) Mh.L.J. 485.

7. In reply, learned counsel for the petitioner has referred to Rules 5, 6, 7 and 8 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967. Referring to Rule 6, he pointed out that the application for renewal of the trader should be in a prescribed form. He further referred to sub-rule 2 of Rule 6 and pointed out that the application for renewal should be filed with a proper amount of fees. He never deposited the fees as such. He heavily relied upon sub-rule 5 of Rule 6 and argued that the Market Committee should record the date on such application with an entry in the Register prescribed on that behalf on receipt of such application for renewal. The Committee has to make an enquiry and decide the application within thirty days of its receipt. Further relying on sub-rule 5A of Rule 6, he has pointed out that every application for renewal of a licence shall be made before the 28th or 29th February, as the case may be, every year. If there is a delay in filing an application for renewal on the said date, the Market Committee is competent to accept the application on payment of a late fee at the rate of 10% of the licence fee per day of default. No amount of the late fee was ever asked to be paid. It is the condition that the requisite fees should be deposited along with an application for renewal of the application. Referring to sub-rule 7, he further argued that renewal is for three

market years. Therefore, the documents placed before the Appellate Authority showing the renewal of the licence from 01.04.2023 to 31.03.2024 are nothing but false and concocted documents. He would submit that since no other member raised the objection, all the aspirants/contestants of the election are not the necessary party. Today is the last date for withdrawal of the nomination till 03.00 pm. Tomorrow is the date for allotting the symbols.

8. Hearing the respective counsels, the point is whether the petitioner is from the Constituency of the Village Panchayat (Economical Weaker Section) and disqualified from being the holder of trading licence. It is not disputed that before 01.04.2023, the petitioner had a trading licence. A serious dispute has been raised about not submitting the application for renewal of the licence. The law imposes the duty on the Committee to maintain the Register of the receipt of the application for renewal. An opportunity was granted to the respondents to produce the Register. The person authorized to appear before the Court from the Market Committee through his counsel states that no such register is maintained. However, the proceeding book was maintained. The receipt paying Rs.300/- placed on record does not bear the signature of the petitioner. It has been explained that the petitioner refused to sign the said receipts. That means when the application was filed, the requisite fee for renewal, as provided under sub-rule 2 of Rule 6 of Rules, 1967, was not

deposited. Admittedly, the renewal application is after 28th or 29th of February of the year. If it was filed after the said date, the Market Committee was to accept the application only after depositing the late fee. However, the respondents produced the receipt of the supervision fee.

9. Learned counsel for the petitioner has correctly pointed out that the late fee should be at the rate of 10% of the licence fee per day of the default. No evidence as such is produced on record. On the cut-off date i.e. 01.09.2023, the petitioner had no licence as he did not renew his licence. He placed on record the 7/12 extract showing that he is an agriculturist. A submission at the bar was made that his main source of income is agriculture. It is correct that the record maintained by the office in due course has a presumptive value. However, the documents placed on record by the respondents show that those are not in consonance with Rules 1967. The Returning Officer himself decided on the nomination form of the petitioner and passed two orders. In the second order, he has added another rule. Even though it is considered that he has done it in good faith, there was no material before the authority to show that the petitioner had applied for renewal of the licence on 23.11.2023. The petitioner was not listed in the voter list of the traders. So, prima facie, in the absence of any objection or the material, the nomination ought to have been accepted. The other material was brought before the

Appellate Authority for the first time. However, the petitioner has specifically denied that he had applied for renewal on 23.11.2023 and deposited the renewal or late fee at any time. The submissions of the learned counsel for the respondent/Returning Officer that he denied signing the receipts appear not genuine.

10. Evaluating the material before the Court, the Court is of the view that the balance tilts in favour of the petitioner. It is seriously doubtful whether he applied for renewal on 23.11.2023. The renewal of one year also appears in contravention of sub-rule 7 of Rule 6 of Rules, 1967. In the above facts, the petition deserves to be allowed. Hence, the following order :

ORDER

(I) Writ Petition is allowed.

(II) The order of the Returning Officer/respondent no.1 dated 01.01.2024 and Appellate Authority/District Deputy Registrar, Co-operative Societies, Chattrapati Sambhajinagar dated 15.01.2024 is quashed and set aside.

(III) The Returning Officer/respondent no.1 is directed to accept the nomination of the petitioner for the constituency of Village Panchayat (Economical Weaker Section) for the election of the Agricultural Produce Market Committee, Sillod.

(IV) No order as to costs.

(V) The counsel representing respondent no.1/Returning Officer to intimate this order to him.

(S.G. MEHARE, J.)

Mujaheed//