

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

907 WRIT PETITION NO. 2318 OF 2024

SUPDU ZIPRU WAGH

VERSUS

THE STATE OF MAHARASHTRA THROUGH THE SECRETARY
AND OTHERS

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Advocate for the Petitioner : Mr. Suryawanshi Sanket N.

AGP for Respondents: Ms.R.R. Tandale

Advocate for Respondent Nos. 3 and 4 : Mr. Dighe Vitthal
Haribhau

Advocate for Respondent Nos. 5 and 6 Caveator : Mr. Ashwin V.
Hon

...

CORAM : S. G. MEHARE, J.

DATE : 06th MARCH, 2024

PER COURT :

1. Heard the learned counsel for the Petitioner.
2. The petitioner has submitted his nomination in the election of respondent No. 4/society. However, his nomination was rejected on 12.02.2024 on the following grounds :
 - a) The affidavit in clause (c) of the nomination form was not filled.
 - b) The attested copies of the caste certificates were not attached to the nomination form.
 - c) The caste certificate was also not attached.

- d) During the scrutiny, the petitioner had time to the petitioner, but he did not produce his caste certificate.

3. The petitioner had preferred a petition before this Court on the day of the distribution of symbols. 27.02.2024 was the last date for withdrawal of the application, and 28.02.2024 was the last date for distribution of the symbols when the matter was listed for hearing.

4. The learned counsel for the petitioner argued that the petitioner was present with necessary documents, however, the Election Officer/ respondent No. 3 did not accept the documents. The defects in the nomination form was curable. The contents of the application filled in the nomination form were sufficient to understand the intention of the candidate from which constituency he is contesting the election. He would submit that once a declaration has been given in the nomination form that he belongs to a reserved category caste or special caste, he is not required to fill it in the form. Therefore, the rejection of the nomination form by the Election Officer is against the law.

5. per contra the learned counsel Mr. Dighe, for

contesting respondent Nos. 3 and 4 would argue that the rules provide that the form should be filled completely. Leaving the affidavit column blank is an incurable defect. The Election Officer has no power to give a candidate to cure it. Very few defects are curable. It was serious infirmity. Therefore, the nomination form was correctly rejected. The nomination form of the single candidate was valid. Therefore, the Election Officer is bound to declare the election of the unopposed candidate under Rule 32 of the Maharashtra Co-Operative Societies Election to Committee Rules 2014 (the “Rules 2014” for short). Once the election is declared under Rule 32 of the Rules, the only remedy is to file an election dispute under Section 91 of the Maharashtra Co-Operative Societies Act, 1960 (hereinafter referred to as the “Act”).

6. The learned Senior Counsel Mr. V.D. Hon, for respondent Nos. 5 and 6, argued the same points. He argued that the nomination form of the petitioner was incomplete. It was a serious infirmity, and it was not curable. Filling out an affidavit was essential. The reasons for the rejection of the nomination form were legally correct and within four corners of the law. He pressed into service the judgment of this Court in

the case of **Kiran Ashokrao Patil Dongaonkar Vs. The Collector and Election Officer, Aurangabad and two Others, Writ Petition No. 7251 of 2007, dated 21.08.2008.**

7. Against the above citation, the learned counsel for the petitioner vehemently argued that since the petition is pending before this Court, the Election Officer ought not to have exercised powers under rule 32 of the Rules, 2014. In his arguments, he relied upon the case of **Nandiesha Reddy Vs. Kavitha Mahesh, (2011) 7 SCC 721**. He also relied on an unreported judgment in the case of **Rukhmini Sheshrao Shinde Vs. The State of Maharashtra and Others in Writ Petition Nos. 3 of 2021 and 4 of 2021.**

8. The legal position is clear that the clock cannot be reversed once an unopposed candidate is declared elected under Rule 32 of the Rules 1948. The better remedy is an election dispute under Section 91 of the Act of 1960. Thus, it would be inappropriate to comment on the grounds of rejection for the reason that Rule 32 of the Rules, 2014, came into effect. Thus, the Court is of the opinion that recording any finding on the grounds of rejection of the petition may come in the way, if they

prefer dispute under Section 91 of the Act.

9. The law laid down in the case of **Kiran Ashokrao Patil Dongaonkar** (supra) squarely covers the issue raised before the Court, in view of the declaration of the election unopposed under Rule 32 of the Rules, 2014. Thus, the petition is infructuous, hence, the following order :

ORDER

- a) The Writ Petition stands disposed of as infructuous.
- b) It is made clear that the findings in this order are in the context of nomination form only, if the proceeding under Section 91 of the Act is preferred, the Co-Operative Court should not be influenced by the findings recorded by this Court in this petition.
- c) In case an election dispute under Section 91 of the Act 1960 is filed, the Co-Operative Court shall endeavour to dispose of the proceeding within six to eight months from the date of appearance of all the respondents.
- d) No order as to the costs.

(S. G. MEHARE)
JUDGE