

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3365 OF 2024**

Rajghor Ranjhan Jaynatilal

... Petitioner

Versus

Election Scrutiny Committee of B.B.A. & Anr.

... Respondents

Mr. Debasish Mitra, Mr. Ranjan Rajghor, Mr. Sudeep Das Gupta a/w. Mr. Mercy Thomas for the Petitioner.

Mr. Mukul Tally, Mr. Yash Kataria and Ms. Nikita Jadhav i/b. S. Mahomedbhai & Co. for Respondent No.1.

**CORAM: G. S. KULKARNI &
 FIRDOSH P. POONIWALLA, JJ.
DATED: 4th MARCH, 2024**

Oral Judgment :- (Per G. S. Kulkarni, J)

1. On an urgent application as made on behalf of the petitioner, we have taken up the proceedings on board.

2. This petition under Article 226 of the Constitution of India assails the decision of the election scrutiny committee of the Bombay Bar Association, (an association of the Advocates on the original side of the Bombay High Court), whereby the petitioner's nomination form, for election to the membership of the standing committee held on 29 February 2024 was rejected. Such elections concerned the election of the President, the Vice-President, Honorary Secretary and members of the Standing Committee.

3. The Petitioner had submitted her nomination form for election as a member of the Standing Committee, however, the Advocate (respondent No.2) who proposed the Petitioner's nomination form, withdrew her consent. For such reasons, the election scrutiny committee on 17th February 2024 decided that the petitioner's nomination form was required to be rejected.
4. The elections were scheduled on 29th February 2024. On the same day, the results thereof were declared late in the evening. Today the new Committee is to take over the charge. It is at this stage that the present proceedings are filed praying for the following diverse reliefs:-

"A) That this Hon'ble court be pleased to set aside the decision of the scrutiny committee invalidating form of the candidate petitioner which was duly signed on the last date of submission by proposal and seconded.

B) That this Hon'ble court be pleased to stop election of BBA / and its result as natural justice has not been followed by the scrutiny committee while scrutinising the forms.

C) That this Hon'ble court be pleased to direct scrutiny committee to add name of petitioner in list by allowing replacement of proposer and till then stay to the election of BBA to get equal opportunity of contesting to petitioner be given and natural justice be followed.

(D) That this Hon'ble court be pleased to set aside the decision of the scrutiny committee by directly entertaining letter of proposer in this regard of form of petitioner without any rules for it and without giving I giving opportunity to petitioner to replace proposer.

E) That this Hon'ble court be pleased direct the committee to take cognizance of other form replacing proposer due to last minute belated backout of the proposer with undisclosed reason giving rise to malpractices in election by 3rd party.

F) That this Hon'ble court be pleased to stay the election of BBA/result till the rules and provisions are formed with regard to dealing with such belated withdrawal of proposal/seconder in nomination form of candidates be done.

G) That this Hon'ble court be pleased to set aside the decision of the scrutiny committee depriving the petitioner from her right of equality of contesting election being permanent member and fair opportunity of replacing the proposer in event of belated withdrawal of proposer.”

5. At the outset, an objection is raised by Mr. Tally, the learned Counsel for Respondent No.1, to the maintainability of this Petition. He would submit that the prayers made by the petitioner are in relation to the elections, which have already been held, the results of which stand declared. It is submitted hence at such stage no relief can be granted to the Petitioner on a concluded election process. The next objection of Mr. Tally and which is more fundamental is that the Petition is also not maintainable, for the reason that the Bombay Bar Association is not a 'State' within the meaning of Article 12 of the Constitution of India, as none of the essential requirements to hold this body to be a 'State' under Article 12 are present. It is hence Mr. Tally's submission that the Petition needs to be dismissed.

6. Mr. Mitra, learned Counsel for the Petitioner, on instructions submits that the Petitioner is not pressing for all the reliefs. The only reliefs which would be pressed by the Petitioner are prayer clauses (d) and (g). He submits that the intention of the Petitioner is that the Bombay Bar Association needs to have rules to deal with such situation, that when for no fault of the candidate his nomination form cannot be invalidated / rejected, merely because the proposer withdraws his / her recommendation in proposing a nomination.

7. Having heard learned Counsel for the parties, we are not persuaded to accept the contentions, as urged on behalf of the Petitioner, that any relief can be granted to the Petitioner, by entertaining this Petition filed under Article 226 of the Constitution. This, firstly, for the reason that we cannot accept the Petitioner's contention that the Bombay Bar Association is a 'State' under Article 12 of the Constitution of India. We are informed by Mr. Tally that the Bombay Bar Association is an Association of Persons (AOP), having its bye-laws and Rules. It does not receive any aid / financial assistance from the government to meet its expenditures, nor does the government have any other form of controlling stake either in the establishment or in the management or administration of the bar association. There is no deep or pervasive "State control" in the management of its affairs. Furthermore, the functions of the Bombay Bar Association do not relate/or are governmental functions. For all these reasons the Bombay Bar Association cannot be held to be a 'State' under Article 12 of the Constitution of India. Thus, on this ground alone, we cannot entertain this Petition. We may observe that the alternate remedy for the Petitioner, if at all, would be to file a Civil Suit for redressal of any election grievance which the Petitioner has.

8. Be that as it may, the issues which are raised in the Petition concern the elections of the Standing Committee of the bar association. Election itself is a creature of the statute. Such elections are held according to the Rules and

Regulations. If the Petitioner has any grievance regarding the same, certainly the remedy for the Petitioner cannot be to invoke the writ jurisdiction of this Court.

9. Needless to observe, as fairly stated by Mr. Tally, if the Petitioner has any grievance, she is free to make a representation to the standing Committee of the Bombay Bar Association, which would look into all the concerns raised by the Petitioner.

10. Before parting we may clarify that our observations as made in this judgment are confined in the context of the petitioner's case which raises issues in regard to the elections of the bar association. Hence our judgment ought not to be construed to have delved on any other issues which are not before us.

11. Writ Petition is accordingly dismissed. No costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)

corrected as per speaking to minutes order dated 17.04.2024.