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wp4801.25

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 WRIT PETITION NO. 4801 OF 2025

AND

WRIT PETITION NO. 4802 OF 2025

AND

WRIT PETITION NO. 4803 OF 2025

AND

WRIT PETITION NO. 4805 OF 2025

AND

WRIT PETITION NO. 4804 OF 2025

AND

WRIT PETITION NO. 4806 OF 2025

AND

WRIT PETITION NO. 4809 OF 2025

AND

WRIT PETITION NO. 4807 OF 2025

AND

WRIT PETITION NO. 4808 OF 2025

AND

WRIT PETITION NO. 4810 OF 2025

AND

MAGAN MURLIDHAR BAVISKAR

....Petitioner

VERSUS

THE STATE OF MAHARASHTRA THROUGH THE SECRETARY
AND OTHERS

.....Respondents

Mr. B. R. Warma, Advocate for the petitioner
Mr. K. N. Lokhande, AGP for the respondent Nos. 1 & 3
Mr. S. K. Kadam, Advocate for respondent Nos. 2 and 6
Mnr. Vijay B. Patil, Advocate for respondent Nos. 5
Mr. G. D. Jain, Advocate for respondent No. 4

CORAM : KISHORE C. SANT, J.

DATE : 09th APRIL, 2025

P. C.

1. Since the question involved in all these petitions is common and since the petitioner is same and respondent Nos. 1 to 4 are also the same, all these petitions are taken up together for final disposal at the stage of admission by consent of the parties. In all these petitions nominations forms of respondent No.5 is accepted by order of appellate authority.

2. For the purpose of convenience facts have taken from the writ petition No. 4801/2025.

3. The petitioner is a member of respondent Nos. 4 society. Respondent Nos. 1 is the State. Respondent Nos. 2 is the Returning Officer. Respondent Nos. 3 is the Assistant Registrar.

Respondent No. 4 is the Multi Purpose Cooperative Societies Registered under the provisions of Maharashtra Cooperative Societies Act. Respondent No. 5 is the person whose nomination form was rejected by the Returning Officer. However, in appeal it was allowed by the Superior Officer i.e. Assistant Registrar Cooperative Societies, Chopda. Respondent No.6 is the State Cooperative Election Authority who conducts elections to the Cooperative Societies.

4. The facts, in short are that the petitioner is a member of respondent No.4 society. There are total 187 members of the society. Respondent No. 6 declared election program on 10-03-2025 for term from 2025. Nominations were to be filled in from 17-03-2025 to 21-03-2025. Scrutiny was on 23-03-2025 at 11 am. List of valid candidates was to be declared on 25-03-2025. 09-04-2025 is a date fixed for allotment of symbols. Election was to be held on 21-04-2025.

5. Respondent No. 5 submitted nomination form for the

post of 'Director' from the category reserved for SC/ST in WP/4801/2025 and in all other writ petition nomination forms from General Category. The petitioner raised objection before the Returning Officer stating that respondents have not filled in nomination form completely and prayed that these nominations forms be rejected. The Returning Officer, considering the objections held that nomination forms are not properly filled in and rejected the nomination forms. The affidavit is also incomplete. The respondents therefore, filed appeals to the Assistant Registrar Cooperative Societies, Chopda. It is stated in the appeal that respondents happen to be poor agriculturist and are not aware of the formality and do not have sufficient knowledge and therefore, in Annexures 'A' they could not write their names. It is stated that, however, they have signed on the affidavit and prayed for allowing the appeals by setting aside the order passed by the Returning Officer.

6. The learned Taluka Cooperative Societies Election Officer issued notice directing the parties to remain present in

the office on 01-04-2025. In the appeal the petitioner was not made a party. The learned Election Officer held the hearing and allowed the appeal on 01-04-2025. The petitioner thus aggrieved by acceptance of the nomination papers, has approached this court.

7. The learned Advocate Mr. Warma vehemently argued that the Election Officer had allowed the appeal without hearing the petitioner. Nomination forms of the respondents were rejected on an objections by the petitioner, it was necessary to hear the petitioner as well. He submits that the defect in the nomination forms was of substantial character in view of Rule 21 of the Maharashtra Cooperative Societies (Election to Committee) and prays for allowing the applications.

8. The learned Advocate Mr. Patil, vehemently submits that defect in the forms was not of substantial character. Now the election process is setting in motion. The object of filing present objection was that in absence of these respondents the

election would be unopposed. The candidate need not write symbol in view of section 73 (c) of the Maharashtra Cooperative Societies Act. There are no illegalities committed by the Election Officer. He relies on section 7(d) of the Maharashtra Cooperative Societies Act and Rule 20 of Maharashtra Cooperative Society (Election) Rules ('Said Rules' for the sake of brevity). From explanation 5 of the said Rules he points out all the nominations papers are signed by the candidates. He, thus, prays for dismissal of the writ petition.

9. Mr. Kadam, learned advocate for the respondents submits that scrutiny is made under Rule 25. Grounds for rejection are given in clause-A and C of Sub-Rule 2 of Rule 25 are material. The proviso to sub-Rule 2 is also material. He submits that in the Annexures 'A' even the names of the candidates are not written. The State Cooperative Election Authority (SCEA) has provided format of nomination form annexures 'A'. The candidates are required to fill in the nomination in the said format. Not writing the name in the

nomination form Annexures 'A' is a defect of substantial character. There is no provision to remove objection in the nomination forms. If time is given for removal of objection, then the time given for the election would be redundant. He, thus supports the petitioners.

10. The learned AGP for the respondent No.3 supports the order.

11. Considering these petitions what requires to be seen is Rule 21 Sub-Rule (2)(3) which reads as under:-

“21. Presentation of nomination paper and requirements for valid nominations:

(2) On the presentation of a nomination paper, the Returning Officer shall satisfy himself that the names and the numbers of the candidates and his proposer and seconder as are entered in the nomination paper are the same as those entered in the list of voters excepting in the case of nomination paper presented under the provisions of sub-section (3) of Section 73(B) for reserved constituency, the candidate shall attach the attested copy of the list of existing committee members to which he represents. If a nomination paper is rejected under this rule, the Returning Officer shall record thereon his reasons for rejecting the same.

(3) Any person who is not subject to any disqualification as a voter under the Act, these rules or bye-laws and whose name is entered in the list of voters for the constituency, for which the candidate is nominated, may subscribe as proposer and seconder:

25. Scrutiny of nomination papers :

(a) that the candidate is disqualified for being chosen to fill the seat by or under the Act, the Rules and the bye-laws;

(b) that the proposer or seconder is disqualified from

subscribing a nomination paper;

(c) that there has been a failure to comply with any of the provisions of rule 21 or 23.”

12. These rules needs to be considered in view of actual nominations forms filled in. From the Annexures ‘A’ to nomination formss it is clearly seen that the respondents have not even put any date, their names, declaration about their categories. They have not given even choice of symbols. Annexures ‘A’ is also totally blank except the signature. This court finds that Annexures ‘A’ is thus totally incomplete. It is not pointed out that said defect is curable and opportunity need be given to carte defects.

13. In the judgment reported in 2016(4) Mh.L.J. 353 in the case of Baghele Narottam Gendlal and another Vs State of Maharashtra and others this court has considered section 73-CA of the Act and Rules 21(2), 25(2)(4) & (5). It is held that submission of affidavit to the effect that candidates have not incurred any disqualification under Section 73-CA of the Society Act is mandatory and in case it is not filled in the Returning

Officer would be justified in rejecting the nomination paper. In that case, the nomination forms were rejected as the petitioners therein had not signed affidavit 'B'. In that view, the nominations were rejected and same was upheld by the high court.

14. In the present case Election Officer had considered this aspect and held that the nomination forms were not complete and rejected the nomination forms.

15. In the appeal only justification given for not completely filling in Annexures 'A' is due to inadvertence and ignorance. The fact of incomplete nomination forms is thus accepted by the respondents. The appellate authority however did not consider this aspect. He did not properly consider the Rule 25(4). He taken the defect to be not of substantial character and wrongly relied upon the judgment in WP/1778/2015. He also did not consider that he entertained the appeal without adding this petition as party. The judgment is thus without following basic principles of natural justice.

16. Considering all above, this court finds that the appellate authority has failed to appreciate the law correctly. The Returning Officer had rightly rejected the nomination forms. The appellate authority however wrongly interfered in the said orders and passed erroneous orders. This court finds that the impugned orders deserve to be quashed and set aside and same are set aside.

17. All Writ petitions stand allowed in terms of prayer clause-A.

[KISHORE C. SANT, J.]

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