
(2020) 08 MP CK 0273
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4503 Of 2020

Ajay Jain

APPELLANT

Vs

Chief Election Authority

RESPONDENT

Date of Decision : 31-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 32, 226

Madhya Pradesh Cooperative Societies Act, 1960 — Section 2(i), 19A, 64

Citation : (2020) 08 MP CK 0273

Hon'ble Judges : G. S. Ahluwalia, J

Bench : Single Bench

Advocate : S.S. Gautam, M.P.S. Raghuvanshi, C.P. Singh

Final Decision : Dismissed

Judgement

This petition under Article 226 of the Constitution of India has been filed seeking the following relief(s) :-

7.1 That, the order dated 15-2-2020 passed by the returning officer Respondent No.6 (rejecting the nomination paper of the petitioner) may kindly be set-aside/quashed.

7.2 That, the entire election process of Basoda Nagarik Sahakari Bank Maryadit, Ganj Basoda may kindly be quashed/set aside.

7.3 That, the respondents authorities may kindly be directed to issue a fresh election programme/process for conducting a free, fresh and impartial election.

7.4 That, enquiry may kindly be ordered against the erring respondent/returning officer who have deliberately compelled the petitioner to initiate this avoidable peace of litigation before this Hon'ble Court.

7.5 That, any other relief which this Hon'ble Court may deem fit in the facts and circumstances of the case also be granted in the interest of justice.

7.6 That, the cost may also be ordered against the respondents.

The necessary facts for disposal of the present petition in short are that the election of the Governing Body of Basoda Nagrik Sahakari Bank Maryadit were declared by election program dated 23- 1-2020. Accordingly, Schedule program for the election of the Bank was declared by order dated 6-2-2020. The petitioner also submitted his nomination paper on 14-2-2020. It is the case of the petitioner, that without assigning any reason, the respondent no.6/returning officer, rejected the nomination paper of the petitioner and orally informed that the signature of the seconder has mismatched, therefore, his nomination paper has been rejected. It is further submitted that the petitioner filed an application before the returning officer for providing reasons for rejection of his nomination paper, but he was informed, that the reasons would be supplied only on the direction of the Court. It is pleaded in the writ petition that as per the provisions of Rule 41 of Co-operative Societies Rules, 1962, the returning officer shall permit any misnomer or inaccurate description or clerical technical or printing error to be corrected. It is submitted that no such opportunity was given. It was pleaded that the signatures of his seconder namely Shri Suresh Kumar Tanwani were his original signatures, because he had also contested the elections on the previous occasions. It is further pleaded that the petitioner fulfills all the requisite qualifications for contesting the election for the post of Directors, and on the previous occasion also, he was elected unopposed. It is further pleaded that the valuable right of the petitioner has been infringed by illegal rejection of his nomination paper.

The respondent no. 6 and 7 have filed their return. The respondent no. 6 has annexed the copies of the nomination paper along with the orders passed by him for rejecting the nomination paper of the petitioner. The respondents no. 6 and 7 have further pleaded that the petitioner has an efficacious remedy of filing an election petition under Section 64 of M.P. Co-operative Societies Act.

This Court by order dated 20/2/2020 had stayed further proceedings pursuant to election programme (Annexure P/2) till next date of hearing.

Being aggrieved by the said order, the respondent no. 7 filed a Writ Appeal which was registered as W.A. No. 343/2020 which was dismissed by order dated 19-3-2020 with the following observations :

(7) True it is that ordinarily, process of election which has commenced, should not be interfered with but it is also true at the same time that a writ court has plenary and wide powers while exercising the power of judicial review to interfere with an ongoing election, though on a very few limited grounds as explained by the Apex Court in "Election Commission of India Thr. Secretary Vs. Ashok Kumar and Ors. [2000 (8) SCC 216]". The said decision has been followed by this Court in Writ Appeal No. 61/2017 (Pradhuman Verma Vs. State of M.P. & Ors.) decided on 22nd of February, 2017.

(8) The discretion exercised by learned Single Judge while passing the impugned

order is based on reasons contained therein and therefore it cannot be said that the impugned order is passed without taking into account the relevant considerations.

(9) This Court, accordingly, declines interference on merits and relegates the parties to agitate their rights and liabilities before the Single Bench by filing their respective pleadings so that learned Single Judge can adjudicate the matter and the interim order passed 3 WA.343.2020 (if subsisting) comes to an end at the earliest.

Thereafter, in the wake of Covid 19 Pandemic, the matter could not be listed and ultimately came up for hearing on 17-6-2020 and the following order was passed :

It appears that respondent No. 6 had refused to give any reason in writing for rejecting the nomination papers on the ground that they are in a sealed cover. In view of the fact that the interim order dated 20.02.2020 has been confirmed by a Division Bench of this Court in W.A. No. 343/2020, therefore, in order to find out as to whether this case falls in the exceptional category or not, it would be essential to peruse the nomination papers. Accordingly, Shri Sundaram is directed to produce the nomination papers which have been kept in a sealed cover by the respondent No. 6.

The petitioner was also granted opportunity to file his rejoinder, if he so desires. Accordingly, rejoinder to the return filed by the respondent no. 7 was filed by the petitioner.

Thereafter, the matter was taken up on 24-7-2020, and the other respondents were granted time to file their return.

On 27-7-2020, the Counsel for the respondent no. 6 submitted that he shall file the return during the course of the day and the Counsel for the petitioner sought two days time to go through the return of the respondent no. 6.

Before the hearing of the matter could begin, this Court made it clear that in exceptional case, the writ petition in election matters can be entertained therefore, the parties must argue the matter, by keeping that aspect in their minds.

Challenging the action of the respondent no. 6 in rejecting the nomination paper, it is submitted by the Counsel for the petitioner, that the nomination paper of the petitioner was proposed by Shri Balkrishna Agrawal and Seconded by Shri Suresh Tanmani. From the order passed by the returning officer, it appears that an objection was raised that the signature of Shri Suresh Tanmani doesnot tally with his signatures which are available in the record of the Bank, therefore, they appears to be forged, and therefore, the returning officer, directed the Bank Manager to compare the signatures, and accordingly held that the signature of Shri Suresh Tanmani does not tally with the signatures available in the Bank Record. In order to disqualify his proposer Shri Balkrishna Agrawal, it was held

that since, the son of Shri Balkrishna Agrawal is having a money lending licence and accordingly in the light of the provisions of Section 19-A Explanation (ii), since, the son of Shri Balkrishan Agrawal was in the business which was similar to the business carried on by a marketing Society, therefore, Shri Balkrishan Agrawal is disqualified as a member. It is submitted that the entire proceedings were done behind the back of the petitioner. It is incorrect to say that the petitioner was not present at the time of scrutiny and in order to substantiate his submissions, the Counsel for the petitioner referred to endorsement made by respondent no. 6 dated 15-2-2020 (Annexure R7/7) to show that the scrutiny was done in the presence of all the candidates and proposers and seconders. It is further submitted that it is incorrect to say that the son of Shri Balkrishan Agrawal is covered by the definition of "family" as given in Section 2(i) as there is nothing on record to show that the son of Shri Balkrishan Agrawal is dependent on him. It is further submitted that so far as the disqualification of the members is concerned, the returning officer has no jurisdiction to decide the same. The Counsel for the petitioner has relied upon the judgment in the case of M.P. Rajya Krishi Vipnan Board Vs. Shri Dayal Gupta and others by order dated 14-2-2020 passed in W.A.No. 273/2020 (Gwalior Bench), Brijbehari Gupta Vs. L.L. Khare and others reported in AIR 1976 MP 156, Ratan Singh Thakur Vs. State of M.P. and others by order dated 13-3-2007 passed in W.P. No. 1968/2007 (Principal Bench), Ravi Shanker Shukla Vs. State of M.P. and others by order dated 13-3-2007 passed in W.P. No. 2020/2007 (Principal Bench), Naresh Sharma Vs. Commissioner-cum-Registrar reported in 2009 (1) MPLJ 59, Ghanshyam Tiwari and others Vs. State of M.P. and others reported in 2010(3) MPLJ 407, Atar Singh Vs. State of M.P. and others by order dated 18-12-2013 passed in W.P. No. 947 of 2013 (PIL) (Gwalior Bench), and Pradhuman Verma Vs. State of M.P. and others by order dated 22-2-2017 passed in W.A. No. 61/2017.

Per contra, the Counsel for the respondents have supported the orders passed by the returning officer, and submitted that this case doesnot fall within the category of exception case, so as to bypass the statutory remedy of election petition. The Counsel for the respondent no. 7 has relied upon the judgment in the case of Abhishek Kumar Jain Vs. State of M.P. And others by order dated 25-5-2018 passed in W.P. No. 11928 of 2018 (Gwalior Bench), Ganesh and others Vs. State of M.P. and others reported in 2002(5) MPLJ 246.

The petitioner has filed rejoinder to the return filed by the respondent no. 7 and submitted that writ petition in election matters is also maintainable.

Heard the learned Counsel for the parties.

The undisputed facts are that in the nomination form of the petitioner, Shri Balkrishan Agrawal had proposed and Shri Suresh Kumar Tanmani had seconded. In the entire writ petition or in the rejoinder, the petitioner has not uttered a single word with regard to disqualification of Shri Balkrishna Agrawal. It is not out of place to mention here, that apart from holding that the signatures of Shri Suresh Kumar Tanmani differs from the record of the Bank, the returning officer

had also declared Shri Balkrishna Agrawal as disqualified and as a consequence thereof, he rejected the nomination form of the petitioner. It is true, that the petitioner has taken a stand in his writ petition that he was not aware of the reasons for rejection of his nomination paper and he was informed orally that the signatures of Shri Suresh Kumar Tanmani have mismatched, but did not utter a single word with regard to disqualification of Shri Balkrishna Agrawal. The petitioner also did not file any rejoinder to the return filed by the respondent no. 6. The petitioner also did not file any application for amendment in the writ petition after coming to know about the reasons for disqualification of Shri Balkrishna Agrawal. Further, whether the son of Shri Balkrishna Agrawal would be covered by the definition of "Family" as defined under Section 2(i) of M.P. Co-operative Societies Act or not is a disputed question of fact, which cannot be decided by this Court in exercise of powers under Article 226 of the Constitution of India. Further more, it is well established principle of law that this Court cannot go beyond the pleadings, and in absence of pleadings, the question of disqualification of Shri Balkrishna Agrawal cannot be decided. The Supreme Court in the case of State of Orissa Vs. Mamata Mohanty reported in (2011) 3 SCC 436 has held as under :

55. Pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that "as a rule relief not founded on the pleadings should not be granted". Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ. [Vide Sri Mahant Govind Rao v. Sita Ram Kesho, Trojan & Co. v. Nagappa Chettiar, Ishwar Dutt v. Collector (L.A.) and State of Maharashtra v. Hindustan Construction Co. Ltd.]

Rule 49-E(5)(d) of M.P. Co-operative Societies Rules, 1962 reads as under :

(d) The Returning Officer shall for reasons to be recorded in writing reject a nomination paper only on the following grounds :

(i) If the nomination paper is not in accordance with the preceding sub-rule.

(ii) If the candidate is disqualified to be elected or proposer/seconded is disqualified to vote by or under the Act, rules or bye-laws of the society.

As already pointed out, the petitioner has not challenged the decision of the returning officer by which Shri Balkrishna Agrawal was declared disqualified. Even the petitioner has not pleaded the question of jurisdiction of the returning officer to declare Shri Balkrishna Agrawal as disqualified. The oral submissions in absence of pleadings cannot be accepted so as to take the respondents by surprise. Mere mass rejection of nomination papers cannot be presumed to be an arbitrary and malafide action on the part of the Returning Officer.

Thus, in absence of any challenge to the decision of the returning officer in declaring Shri Balkrishna Agrawal as disqualified, this Court cannot look into the correctness of the order passed by the Returning officer.

Therefore, in absence of any pleading with regard to the disqualification of Shri Balkrishna Agrawal, it is held that the petitioner has failed to prove that the election process was vitiated and was a farce which would shake the confidence of people in democracy.

Accordingly, this petition fails and is hereby Dismissed.