

(2022) 03 BOM CK 0118
In the Bombay High Court
Case No : Writ Petition No. 1723 Of 2021

Anil Bhanudas Chaudhari

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 29-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Bombay Reorganisation Act, 1960 — Section 73A, 73C

Citation : (2022) 03 BOM CK 0118

Hon'ble Judges : V.G.Bisht, J

Bench : Single Bench

Advocate : S.P. Bhandarkar, A.M. Kadukar

Final Decision : Dismissed

Judgement

V.G.Bisht, J

1] By the present writ petition under Article 226 and 227 of the Constitution of India, the petitioner has made following prayers:-

" A. Hold and declare that the impugned Order dated 14.03.2022 (Annex-D) passed by Respondent No.2-Returning Officer, Adivasi Vividh Karyakari Co-operative Society, Chandankheda, R. N. 703 Tahsil-Bhadravati, thereby rejecting the Nomination form of the Petitioner for the election of Adivasi Vividh Karyakari Co-operative Society, Chandankheda, R.No.703 Tahsil-Bhadravati is per se illegal, arbitrary and does not stand to the scrutiny of law;

B. Quash and set aside the impugned order dated 14.03.2022 (Annex-D) passed by Respondent No.2 Returning Officer, Adivasi Vividh Karyakari Co-operative Society, Chandankheda, R.No.703 Tahsil-Bhadravati, thereby rejecting the Nomination form of the Petitioner for the election of Adivasi Vividh Karyakari Co-operative Society, Chandankheda, R.No.703 Tahsil-Bhadravati is per se illegal, arbitrary and does not stand to the scrutiny of law, the same being illegal, arbitrary and does not stand to the scrutiny of law;

C. Be pleased to stay the impugned Order dated 14.03.2022 (Annex-D) passed by Respondent No.2 Returning Officer, Aadivasi Vividh Karyakari Co-operative Society Chandankheda, R.No.703 Tahsil-Bhadravati during the pendency of the instant petition;

D. Hold and declare that the impugned Order dated 25.03.2022 (Annex.-H) passed by the Respondent No.3 Assistant Registrar Co-operative Society Tah.-Bhadravati and Tahsil Co-operative Election Officer, Tah. Bhadravati, thereby rejecting the appeal preferred filed by the petitioner and conferring the Impugned Order dated 14.03.2022 passed by the Respondent No.2 is per se illegal, arbitrary and does not stand to the scrutiny of law;

E. Quash and set aside the impugned order dated 25.03.2022 (Annex.-H) passed by the Respondent No.3 Assistant Registrar, Co-operative Society, Tah. Bhadravati and Tahsil Co-operative Election Officer, Tah. Bhadravati thereby rejecting the appeal preferred filed by the petitioner and conferring the Impugned Order dated 14.03.2022 passed by the Respondent No.2 is per se illegal, arbitrary and does not stand to the scrutiny of law;

F. Be pleased to stay the impugned order dated 25.03.2022 (Annex-H) passed by Respondent No. 3 Assistant Registrar Co-operative Society Tah. Bhadravati and Tahsil Co-operative Election Officer Tah. Bhadravati.

G. By way of interim relief, be pleased to retrain the Returning Officer allot the symbol to candidates and publish a final list of candidature as per the Election Programme dated 14.09.2021, during the pendency of the instant Petition;

H. Be pleased to grant ad-interim relief in terms of prayer clause (C) & (F) above;

I. Grant any other relief as this Hon'ble Court deems fit in the facts and circumstances of the instant matter".

2] Heard.

3] Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

4] The brief facts of the case are that the petitioner is running a fair price shop and had filed a nomination form for contesting the Committee Election for the year 2022 from the constituency of General Aadivasi Lonee Account Holder Representative Group. On 11.03.2022, petitioner's name was reflected at Sr. No.17 in the list dated 11.03.2022.

5] According to the petitioner, respondent namely, Suresh Mahadeo Shrirame, who is also contesting the election of the said society preferred an objection on 14.03.2022 and requested to reject/not to accept the petitioner's nomination on the ground that the petitioner is the fair price shop license holder of APMC Bhadravati which also runs the sub market at Chandankheda, and without giving the petitioner a fair opportunity of hearing the respondent No.2, Returning Officer, Aadivasi Vivid Karyakari Co-operative Society, Chandankheda, rejected

the nomination of the petitioner on 14.03.2022. Being aggrieved, the petitioner preferred an appeal before respondent No.3, Assistant Registrar Co-operative Society, Tahsil Bhadravati and Co-operative Election Officer, Tahsil, Bhadravati, but the said appeal also came to be dismissed on 25.03.2022. Hence, this writ petition.

6] Mr. S.P. Bhandarkar, learned counsel appearing for the petitioner vehemently submits that the petitioner is a fair price shop license holder and is not engaged in selling/purchase of the food grains and therefore, has not violated any kind of condition stipulated in the by-laws of the society as is not engaged in any kind of common business concerned to the society. The learned counsel also invited my attention to the certificate (Annexure-1) issued by Chief Secretary Agricultural Market Produce Committee, Bhadravati and would submit that the certificate clearly declares that the petitioner is not engaged in sale and purchase of the grains in the Committee and does not hold any kind of license issued in that respect by the APMC, Bhadravati. Thus, according to the learned counsel, the reliance placed by the Returning Officer and as also the appellate authority on Section 73 C and A of the AMC Act, 1960 was totally misplaced and urged that the petition deserves to be allowed.

7] I have carefully considered the submissions advanced by the learned counsel for the petitioner in the proper perspective. It is seen from the record that the election programme for Adivasi Vividh Karyakari Co-operative Society, Chandankheda, Tahsil Bhadravati has already been issued. The scrutiny of the nomination form has already been done. Tomorrow i.e. on 30.03.2022 allotment of symbol and publication of final list of contesting candidates is scheduled and the date of voting is 10.04.2022. Although, the learned counsel emphasized that he is not interested to install the election process but only that in view of illegalities committed by the Returning Officer and the appellate authority be allowed to participate in the election process.

8] At the very outset, I would like to make it clear that the process of election involves rejection or acceptance of the nomination paper and is very much essential part of the whole election process. It is also clear from the record that the appellate authority i.e. respondent No.3 Assistant Registrar, Co-operative Society after hearing both the parties on merits upheld the rejection order passed by the respondent No.2, Returning Officer. Thus, it cannot be said that, no opportunity was given to petitioner before appellate authority.

9] If at this stage, the petitioner is allowed to participate in the election process, that would tantamount to obstructing and protracting unduly the whole election process, which is not desirable and permissible. It is now well recognised that once the election process has been set in and the programme has been published, it is not desirable to install the whole process for one or the other reasons. Since, the rejection of nomination paper is very much part and parcel of the whole election process, the same cannot be called in question under Article 226 of the Constitution of India clearly, the petitioner has an alternate remedy of

filing the election petition. This being so, at this stage, the writ petition under article 226 of the Constitution of India can not be entertained, particularly when not only the programme of election process has been published but the stage of nomination has also crossed and the only thing now remains to be done is allotment of symbol, publication of final list and the date of voting.

10] In view of the above, the writ petition is rejected.

Under the circumstances, there shall be no order as to costs.