
(1997) 05 BOM CK 0014
In the Bombay High Court
Case No : Writ Petition No. 1897 of 1997

Asaram Gorde

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 30-05-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1997) 99 BOMLR 663 : (1997) 2 MhLj 860

Hon'ble Judges : B.H. Marlapalle, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.H. Marlapalle, J.—Heard Mrs. Kulkarni for the Petitioner, Mr. Babhulgaonkar, learned A.G.P. for respondents Nos. 1, 2 and 3 and Mr. Nagargoje, for Respondent No. 4. Rule returnable forthwith with the consent of the parties.

2. The election programme of Respondent No. 4, Sangh, was declared on 23rd April, 1997 and as per the said programme, last date for filing nomination papers was 12.5.1997, date of scrutiny was 14.5.1997 and the publication of the final list of the contesting candidate was 23.5.1997. In column No. six it was also mentioned if appeal was filed list of valid contesting candidate was to be published on 22.5.1997. The present petitioner submitted his nomination form for election to the Managing Committee of Respondent No. 4-Sangh, on 12.5.1997 and it came to be rejected suo motu by the Returning Officer on 16.5.1997, on the ground that the petitioner didn't fulfil the requirement of byelaw No. 19.1.5 of the byelaws of Respondent No. 4-Sangh. The said order came to be challenged by filing appeal u/s 152-A of the Maharashtra Co-operative Societies Act 1960 before the Additional Commissioner, Aurangabad on 19.5.1997. The said appeal has been rejected by order dated 20.5.1997 and therefore, the petitioner has approached this Court with a prayer to quash and set aside the order passed by the Returning Officer as well as the Appellate Authority.

3. Mr. Babhulgaonkar, learned A.G.P. appearing for the State takes objection on the maintainability of the petition by relying on the Judgment of Punjab & Harayana High Court in case of Smt. Guddi Devi Vs. The State Election Commissioner, Haryana and others, . It is the contention of Mr. Babhulgaonkar that once other remedy has been provided by way of election petition or election dispute, the Writ Petition challenging the order of rejection of nomination form is not maintainable. In reply Mrs. Kulkarni submits that an order rejecting the nomination form passed by the Returning Officer is appealable u/s 152-A under Maharashtra Cooperative Societies Act and Writ Petition challenging the order of rejection of nomination form is maintainable before this Court. It is the contention of Mrs. Kulkarni that if the objection raised by the respondent is accepted, the provision of byelaw u/s 152-A of the Maharashtra Co-operative Societies Act will become redundant. No doubt, in the present case the order passed by the Returning Officer was challenged within a period of three days as prescribed and appeal has been rejected on 20.5.1997. There is no other remedy except by way of Writ Petition before this Court under Articles 226 and 227 of the Constitution of India. If it is held that the W.P. is not maintainable challenging the order passed by the Returning Officer, rejecting the nomination papers, as rightly contended by Mrs. Kulkarni, the provision of appeal u/s 152-A of the Maharashtra Cooperative Societies Act will become redundant. Sub-section (2) of Section 152-A of the Maharashtra Co-operative Societies Act specifically provides that the final list of the candidates contesting the election will be subject to the outcome of the appeal which indicates that if the appeal of the petitioner was allowed by the Appellate Authority, the Returning Officer was obliged to accept the nomination papers of the petitioner and incorporate the name in the list of contesting candidate by reprinting the ballot papers, if such ballot papers were already printed. Mrs. Kulkarni also relied upon the Judgment of this Court in case of Ramesh Rajaram Patil Vs. The Additional Commissioner, Aurangabad Division, Aurangabad and Others, in which it has been held by this Court that the order of the Returning Officer as well as Appellate Authority is assailable in a Writ Petition and direction can be given to the Returning Officer to accept the nomination form if it is held that the order passed by the Returning Officer was erroneous or against the principles of natural justice. The challenge to the maintainability of the petition thus fails.

4. Mr. Babhulgaonkar also objected the petition on the ground that all other contesting candidates have not been included as party and hence the petition was not maintainable. However, it is seen from the record that no other contesting candidate has raised objection on the nomination papers/form of the petitioner and the nomination form came to be rejected by the Returning Officer suo motu. The objection raised must fail.

5. On perusal of the provision of byelaw No. 19.1.5, it is clear that the petitioner was required to satisfy the conditions that during the preceding year i.e. prior to the date of filing of the nomination papers, carried the business of supply of milk for 240 days and in addition petitioner was required to supply 20,000 liters. of

milk in the first year, 30,000 liters of milk in the second year and 40,000 liters of milk in the 3rd year. It is further clarified in the said byelaw that the first year will be counted from the subsequent co-operative year with reference to the membership of the petitioner. In the instant case, the petitioner has become a member on 16.2.1991 and hence the supply of milk has to be counted in the co-operative year 1991-92 onwards. It is not disputed that during the period 1.7.1991 to 30.6.1992, the petitioner has supplied 1,03,190 liters, during the period from 1.7.1992 to 30.6.1993 the petitioner has supplied 1,16,225 liters and during the period from 1.7.1993 to 30.6.1994, the petitioner has supplied 73,518 liters. of milk. It is not disputed that during the cooperative year 1995-96, the society continuously supplied milk for 330 days. It is thus clear that same conditions set out in byelaw 19.1.5 were satisfied and hence, the order passed by the Returning Officer rejecting the nomination form of the Petitioner was totally erroneous and without application of mind to the facts.

6. Mrs. Kulkarni relying upon the provisions of Section 152-A(2) of the Maharashtra Co-operative Societies Act, submits that if the appeal was filed, the last date for publication of final list of valid contesting candidates is required to be published after fifteen days from the date of scrutiny of the nomination form. In the instant case, the date of scrutiny was 14.5.1997 and hence, the final list of valid contesting candidates ought to have been published on 29.5.1997. In the instant case, such a list has been published on 23.5.1997. Mrs. Kulkarni has relied upon the Judgment of this Court in the case of S.S. Kadri v. K.A. Choudhary, reported in 1994 MLJ 581 in which it has been held that the provisions of Section 152-A(2) are mandatory and non observance thereof will vitiate the process of election. This Court further held that if no appeal is filed provisions of time limit prescribed for publication of final list of contesting candidate will not be applicable.

7. In the instant case, the petitioner had preferred an appeal on 19.5.1997 and the same came to be rejected on 20.5.1997. It is thus clear that final list of contesting candidates ought to have been published on 29.5.1997 and not on 23-5.1997, as earlier published:

8. Even on merits, the order passed by the Appellate Authority cannot be sustained in as much as no reasons have been given in support of the said order. The learned Appellate Authority has set out in the impugned order the respective contention and failed to give reasons for rejecting the appeal as is obvious by a mere reading of the said order passed on 20.5.1997.

9. In the result, the petitioner succeeds and rule is made absolute in terms of prayer Clause "B". It is, therefore, directed that the Returning Officer shall accept the nomination form of the Petitioner for the election of Respondent No. 4- Sangh and include his name in the final list of valid contesting candidate of Paithan taluka and reprint the ballot papers, if necessary. No order as to the costs.