

(1978) 06 BOM CK 0048

In the Bombay High Court

Case No : Special Civil Application No. 187 of 1973

Asram Maruti Pathe

APPELLANT

Vs

A.A. Adari and Others

RESPONDENT

Date of Decision : 12-06-1978

Acts Referred:

Citation : (1978) 06 BOM CK 0048

Hon'ble Judges : V.S. Deshpande, J;M.L. Pendse, J

Bench : Division Bench

Advocate : Y.R. Naik, for the Appellant; C.J. Sawant, A.G.P. for respondent 1 and K.S. Bhadti, for respondents 2 to 10, 13, 14, 16, 19, 21 to 24, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Deshpande, J.—Elections to the managing committee of respondent No. 2 Gangapur Sahakari Sakhar Karkhana Ltd., Gangapur, were held on 15th November, 1977. The Managing Committee under the bye-laws consists in all of 11 elected members. Ten members are elected from the individual members-constituency, while 1 member of the managing committee is elected from the constituency of the society members. Respondent No. 22 is a District Co-operative Bank duly registered in Aurangabad under the Co-operative Societies Act. The Bank contributed capital of respondent No. 2 society to the tune of Rs. 25000/-. The said Bank also was admitted to the membership of respondent No. 2 Society as before as December, 1968, on compliance with all the formalities by it required in this behalf. The petitioner was the nominee of the said respondent No. 22 Co-operative Bank and as such nominee filed his nomination paper as a candidate at the above elections for the Managing Committee of respondent No. 2 Society. There were two other nominations, apart from the petitioner, respondent No. 3 being one of them. Both these candidates challenged the legality of the petitioners nomination on the ground that he as well as his nominating Bank were the defaulters. This objection was over-ruled and the

petitioner's nomination was accepted. Nominations of the other two candidates were rejected. The result was that the petitioner was declared as elected unopposed.

2. Respondent No. 3 and one of the voters respondent No. 4, challenged the validity of the election by an application to the Commissioner of Aurangabad respondent No. 2 being a specified society, the Commissioner alone is competent to adjudicate such election disputes u/s 144-P of the Maharashtra Co-operative Societies Act. One of the points raised in the election petition was that respondent No. 22 was not qualified to be a member of the society and as such nomination of the petitioner as a candidate for election proposed by respondent No. 22 was not filed. By his impugned order dated 15-11-1977 the Commissioner allowed the election petition on the ground and set aside the election of the petitioner. Validity of this order of this Commissioner is challenged in this petition under Article 226 of the Constitution.

3. Mr. Y.R. Naik, the learned Advocate appearing for the petitioner contends that the Commissioner was not competent to inquire into the validity and legality of the membership of respondent No. 22 in an application raising election dispute u/s 144-P of the Co-operative Societies Act. According to Mr. Naik, the list of voters is open to challenge under Rules 4 and 6 of the Election Rules framed for the election of the specified co-operative societies. The voter's list is declared as final, once the said stage is finalised. Mr. Naik, therefore, contends that it was not open for the Commissioner to go behind the voter's list in which respondent No. 22 was listed as a competent voter and held the nomination of the petitioner to be invalid on that ground.

4. Before examining this contention of Mr. Naik in detail. It is necessary to see whether the membership of respondent No. 22 as the shareholder of respondent No. 2 Sahakari Sakhar Karkhana suffers from any illegality or not. Mr. C.J. Sawant, the learned Additional Government Pleader, relied on Clause 5(3)(a) of the bye-laws of the society dealing with membership of the society. The said clause can conveniently be quoted here :

"(3)(a) Society membership shall be open to co-operative institutions registered in the area of operation of the society and to co-operative institution other than Co-operative Banks whose area of operation extends over the area of operation of the society."

It is not disputed before us by Mr. Naik, that area of operation of respondent No. 2 -Society is confined to Gangapur Taluka. Respondent No. 2-Society is admittedly registered at Aurangabad. In other words, respondent No. 22-Society not having been registered in the area of operation of respondent No. 2-Society cannot fall under the first part of Clause 5(3)(a) of the bye-laws of the society. The question whether respondent No. 2-Society can fall under the second part of this clause admits of little difficulty. Co-operative Banks have expressly been excluded from the second part of this clause on the plain reading of this clause

thus respondent No. 22 shall have to be held as being not eligible and qualified to be a member of respondent No. 2-Society. It is true that respondent No. 22 has subscribed to respondent No. 2's capital to the tune of Rs. 25,000/- and the said society appears to have been accepted as member as before as December, 1968. This, however, cannot be an answer to the point raised before the Commissioner that under the scheme of the bye-laws of respondent No. 2-Society, respondent No. 22 is ineligible and disqualified to be its member. It is not disputed by Mr. Naik that language of Clause 5(3)(a) of the bye-laws of the society stood as it is found to day inspite of several amendments. We shall, therefore, have to hold respondent No. 22 is not qualified legally to be a member of respondent No. 2 Society. It must also consequently follow that respondent No. 22 could not nominate any one on its behalf as a candidate for the Managing Committee of respondent No. 2-Society. Nor could it otherwise propose any one as a candidate for the said election purposes.

5. Mr. Naik, no doubt is right relying on the language of sub-rule (4) of Rule 6, sub-rule (5) requires the preparation of a provisional list of voters. Persons shown as members as on 30th June of the year immediately preceding the year of election, are entitled to be included in the provisional list as voters. Rule 5 indicates what is required to be included in such provisional list voters. Rule 6 then provides for objections to such provisional list of voters and adjudication thereof. After hearing the same. Sub-rule (4) then is to the following effect :

"6(4) The Collector shall, after considering each claim or objection give his decision thereon in writing to the person concerned before 10th August and take steps to correct the provisional list whenever necessary. The list as finalised by the Collector after deciding all claims and objections shall be the final list of voters."

6. There is no doubt that list so finalised by the collector, after deciding all claims and objections, is to be treated as final list of voters for the purpose of elections for which the same is prepared in terms of Rule 4. Respondent No. 22 is included as member and voter in such a final list of voters.

7. Mr. Naik, therefore, contends that this finality attached to the list of voters prevents the courts or Tribunals deciding the election petition from challenging its correctness or otherwise going behind the same in any manner. According to Mr. Naik voter's list prepared for the election year concerned does disclose respondent No. 22 as the voter and as such voter respondent No. 22 was entitled to propose the nomination of the petitioner as its nominee. In support of this contention Mr. Naik relies on the judgment of the Supreme Court in the case of Shri Shreewant Kumar Choudhary Vs. Shri Baidyanath Panjiar, , and also on the judgment of this Court in the case of Dhondba v. Civil Judge Jr. Divisional Hinganghat AIR 1976 Bom. 232. The Supreme Court judgment is based on section 30 of the Representation of the Peoples Act of 1951 which expressly bars the jurisdiction of the Civil Court from entertaining or adjudicating upon any question about any person's title to the registration in an electoral roll for any

constituency or any question with regards to its legality. It is obvious that the language of section 30 is different from the language of rule 6(4) of the Election Rules under consideration. Bombay judgment deals with the effect of section 13(2) of the Bombay Village Panchayats Act under which electoral roll prepared for the Assembly elections under the provisions of the Representation of the Peoples Act was the electoral roll from which the voter's list was prepared. It is thus clear that the said voter's list also is equally governed by section 30 of the Representation of Peoples Act of 1951, which is the basis of the judgment of the Supreme Court. Co-operative Societies Act does not have any provision analogous to above section 30 and the ratio of the rulings in the above two judgments has, therefore, no relevance in the present case. It is, not necessary to consider in the present case to what extent Rule 6(4) can prevent the Commissioner from going behind the authenticity or correctness of the final list of the voters prepared under Rules, 4 to 6 of the above Rules.

8. Mr. Sawant drew our attention to Rule 19 of the said Rules. It will be convenient to quote sub-rules (1) and (2) therefore here for the purposes of the point raised before us :

"(1) On or before the date appointed under sub-rule (1) of Rule 16, each candidate shall either in person or by his proposer deliver to the Returning Officer during the time and at the place specified in the order made under the said Rules a nomination paper completed as provided by Rule 18 and signed by the candidate and by a voter of his constituency as proposer.

(2) Any person who is not subject to any disqualifications as a voter under the Act, 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 a proposer."

Rule 23(2) then indicates how the Returning Officer is required to examine the nomination papers so proposed and filed and decide all objections. He is authorised under this sub-rule to reject the nomination paper where proposer is found to have been disqualified from subscribing the nomination paper. In other words, notwithstanding the negligence or omission of any one in not raising any proper objection in time as against the voter's list, the Returning Officer is under a statutory obligation under the above Rule 19(2) to find out if the proposing voter is not disqualified under sub-rule (2) of Rule 19. In the event the proposer being found so disqualified, the Returning Officer has no other alternative than to reject the same. The fact that voter happens to have been included in the voters list notwithstanding such disqualification is no answer to this statutory obligation of the Returning Officer. Looked at from this point of view, it was obviously necessary for the Returning Officer to find out whether respondent No. 22 could be so qualified to be as a voter. In terms of Rule 4(1) only the members of any society as on 30th June, before the election year could get themselves included as voters in such voter's list. In other words, the person or society not so qualified or eligible to be a member of respondent No. 2-Society could not have been included in the list of voters as such voter. Due to this

disqualification respondent No. 22 could not have proposed the petitioner as its nominee. Consequently notwithstanding respondent No. 22 being included in the voter's list as voter, the Returning Officer could not have accepted the nomination paper of the petitioner so proposed by respondent No. 22 because of the mandate contained in Rule 19(2) of the above Rules. The ratio of the two judgments relied on by Mr. Naik can be of no assistance whatsoever to the petitioner's disqualification in the present case. The question of voters list being correct or not does specifically arise in the present case. The question of correcting the voter's list also does not arise directly or indirectly. Voter's list may remain as it is and it is possible that respondent No. 22's nominee may possess merely a right of vote because of retention of its name in this final voter's list. Rule 19(2) however, prevents the Returning Officer from accepting the nomination papers proposed by respondent No. 22 because of its disqualification and ineligibility to be a member of respondent No. 2-Society. No such question had cropped up in either of these judgments and reliance thereon by Mr. Naik, therefore, appears to us to be thoroughly misconceived.

9. Mr. Naik then contends that there is no provision specifying the disqualification of voters. As indicated earlier, Rule 4(1) indicates that voter cannot be any other person than a member of the society. Qualifications or disqualifications of voters are, therefore, synonymous with the qualification and disqualifications of the members themselves. According to the Naik, section 26 is the only disqualifying provision in the whole of the enactment and it does not disqualify a person from becoming a member merely because its registered office is situated beyond the area of operation of the main society. The contention is entirely misconceived. Suffice it to observe that the bye-laws can create disqualification and as long as any such provision of the bye-law is not shown to be contrary to rules or the Act such disqualifying provisions of the bye-laws should prevail. As indicated earlier, bye-law 5(3)(a) does disqualify a Co-operative Bank from becoming a member in the event of its registered office not being situated in the area of operation of the main society. This disqualification does prevent the said Bank from becoming a member and consequently from proposing the petitioner as its nominee and candidate at the elections of the Managing Committee. There is no much substance in the contention of Mr. Naik, that this cannot be a ground for setting aside the election under Rule 81 of the rules. Rule 81 in terms requires the Returning Officer not to accept any nomination paper in the event of the proposal being in any manner defective.

10. Mr. Naik, also made some grievance against the Commissioner contending that the Commissioner proceeded to decide the matter and refused to adjourn the hearing inspite of the petitioner's request to that effect. Apart from whether this contention is well founded or not, Mr. Naik is unable to tell us how this can make any difference to the decision on the point as discussed above.

11. There is no merit in the petition.

12. Rule is accordingly discharged with costs of respondent No. 1.