

(2001) 12 BOM CK 0058

In the Bombay High Court

Case No : Writ Petition No. 3989 of 2001

Bhaiyyaji Sitaram Kannamwar

APPELLANT

Vs

Assistant Registrar and Others

RESPONDENT

Date of Decision : 03-12-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 2 ALLMR 762 : (2002) 3 BomCR 631

Hon'ble Judges : V.M. Kanade, J

Bench : Single Bench

Advocate : M.V. Samarth, for the Appellant; Deopujari, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

V.M. Kanade, J.—Heard the parties. Rule returnable forthwith with the consent of the parties.

2. The brief facts of the case are that the petitioner is a member of Vividh Sahakari Sewa Sahakari Sanstha Limited, Pipartola, Taluka Amgaon, District-Gondia. The society passed a resolution requesting the Assistant Registrar, Co-operative Society, Amgaon to hold the election and accordingly, the respondent No. 1 Assistant Registrar directed the society to appoint a Returning Officer. Accordingly, the respondent No. 2 was appointed as a Returning Officer. The petitioner and respondent Nos. 3 to 5 were also the members of the said society, filed their nomination forms. However, the nomination forms of the respondent Nos. 3 to 5 were rejected by the Returning Officer since they were defaulters. However, in the appeal filed by the respondent Nos. 3 to 5, the respondent No. 1 passed an order on 19-11-2001 and allowed the appeals and directed the Election Officer to include the names of the respondent Nos. 3 to 5 in the list of valid candidates. The petitioner is challenging the said order dated 19-11-2001.

3. The petitioner is also challenging the election programme declared by the

respondent No. 2. The Counsel appearing on behalf of the petitioner contended that the provisions of section 152-A of the Maharashtra Co-operative Societies Act, 1960 have not been complied inasmuch as, there is no gap of 15 days between the scrutiny of nomination papers and last date of withdrawal of candidates and as such the election programme published by the Returning Officer is bad in law and illegal. He submitted that the date of declaration of the final list of candidate was 8-11-2001, whereas the actual date of withdrawal of candidate is 17-11-2001.

Sub-section (2) of section 152-A is reproduced below:

"Notwithstanding anything contained in this Act or the Rules or the Bye-laws made thereunder, the list of validly nominated candidates shall be subject to the decision of any appeal filed under sub-section (1), and the period between the date of scrutiny of nomination papers and the last date of the withdrawal of candidates shall not be less than fifteen days."

4. Mr. Samarth, learned Counsel appearing on behalf of the petitioner relied upon judgment of this Court reported in *Utrane Vividh Karyakari Seva Sahakari (V) Socy. Ltd. and Others Vs. Laxman Dalpat Patil and Others*,

5. Mr. Deopujari, learned Counsel appearing on behalf of the respondents, submitted that the election process cannot be disturbed and that the petitioner had an alternate remedy of filing of an election petition. He submitted that so far as the impugned order dated 19-11-2001 is concerned, the Assistant Registrar, Co-operative Society had rightly allowed the appeal and had set aside the order of rejection of nomination form of respondent Nos. 3 to 5. He submitted that in view of respondent of the Maharashtra Co-operative Societies Act, 1960 and Rules framed thereunder and also in view of the decision given by the High Court which is reported in *Ramesh Rajaram Patil Vs. The Additional Commissioner, Aurangabad Division, Aurangabad and Others*, , the said order was valid and proper. He further submitted that so far as the second objection regarding the election programme is concerned, he submitted that the said objection has been raised for the first time in this petition which has been filed under Article 226 of Constitution of India. He submitted that the election programme was declared on 27-10-2001 and thereafter, the petition was filed on 26-11-2001. He submitted that it was opened for the petitioner to file an election petition and raise the said objection in an election petition. He submitted that in the case reported in 1989 M.L.J. 1125, *Utrane Vividh Karyakari Seva Sahakari (V) Society Limited and others v. Laxman Dalpat Patil and others*, the High Court had given a decision after an election petition was filed by the petitioner, therefore, submitted that at this stage, the High Court should not interfere under Article 226 of Constitution of India.

6. I have perused the petition and seen the judgments and order passed by the Assistant Registrar and in my view since the petitioner has an alternate remedy of filing the election petition, at this stage the writ petition under Article 226 of

Constitution of India cannot be entertained, particularly when the election is to be held on 4th of December, 2001.

7. In view of the above, the writ petition is rejected. Under the circumstances, there shall be no order as to costs.