
(2001) 06 BOM CK 0049

In the Bombay High Court

Case No : Writ Petition No's. 2350, 2351 and 2352 of 1999

Dadarao Khatke

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 08-06-2001

Acts Referred:

Citation : (2002) 1 ALLMR 599 : (2001) 4 BomCR 372 : (2002) 3 MhLj 863

Hon'ble Judges : A.P. Deshpande, J

Bench : Single Bench

Advocate : D.N. Suryawanshi, for D.J. Chaudhary, for the Appellant; K.B. Chaudhary and N.N. Jadhav, Assistant Government Pleaders and E.P. Sawant, Government Pleader for respondent Nos. 1, 2 and 3 and S. Tiwari, for R.R. Pathare, for the Respondent

Final Decision : Allowed

Judgement

A.P. Deshpande, J.—Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith by consent of the parties.

3. These three petitions are disposed of by this common judgment as they involve a common question of law and facts.

4. The petitioners are members of respondent No. 4 - Society and the petitioners' names were very much included in the final voters' list. The petitioners, with a view to contest the election to the Managing Committee of the Society, submitted their respective nomination papers to the Returning Officer - respondent No. 3. The nomination form of the petitioner in Writ Petition No. 2350/1999 is rejected on the ground that though the petitioner is a borrower member of the respondent - Society, his seconder, by name, Bhanudas Govinda Waghmode, is from non-borrower category. The nomination form of the petitioner in Writ Petition No. 2351/1999 is rejected on the ground that though the petitioner is a non-borrower member of the respondent Society, his proposer and seconder, by name, Fakirrao Apparao Tehke and Laxman Kondibhau Tehke,

respectively, are from borrower category. While nomination form of the petitioner in Writ Petition No. 2352/1999 is rejected on the ground that though the petitioner is a borrower member, his proposer, by name, Bhagwan Bhujangrao Mujmule, is from non-borrower category.

5. The petitioners challenged the said rejection of nomination by preferring appeals before the respondent No. 2. The second respondent rejected the appeals by the impugned orders by holding that the candidate, proposer and the seconder need to be persons belonging to the same category (borrower or non-borrower). The petitioners have challenged the action, of rejection of their respective nomination papers, so also, the appellate orders passed by the respondent No. 2, in the instant petitions.

6. In the submission of the learned Counsel for the petitioners, the said action of rejection of the petitioners' nomination papers is wholly unsustainable in law inasmuch as provision of Section 73-C(3) of the Maharashtra Co-operative Societies Act, 1960, does not envisage separate electoral college for the members belonging to borrower category or non-borrower category. As the final voters' list is the same and as all the voters have a right to cast vote to the Managing Committee members from all the categories, it hardly matters whether proposer or seconder is from the same category or any other category for that matter.

7. To substantiate the said submission, the learned Counsel for the petitioners has invited my attention to a judgment of Division Bench of this Court in the case of Shri Dinkar Pandurang Patil and Anr. v. Chikali Vividh Karyakari Society Ltd., and Ors., 1984 C.T.J. 147. In the said judgment, the learned Judges were called upon to consider and interpret the scope of Section 73-C(3) of the Maharashtra Co-operative Societies Act, 1960. Interpreting the said judgment, the learned Single Judge of this Court in the case of Utrane Vividh Karyakari Seva Sahakari (V) Society Ltd. and Ors. v. Laxman Dalpat Patil and Ors., 1989 Mh.L.J. 1125 has held thus :

"The provision for election of a representative from amongst non-borrowing members u/s 73-C(3) does not mean that election of a representative of non-borrowers should be by the non-borrower members alone. It held that in the absence of any provision for election of such a representative by non-borrowing members alone, the right of borrowing members to exercise their vote in this election cannot be denied. Section 73-C(3) does not contemplate separate constituencies of borrowing and non-borrowing members. It merely ensures a restriction on the number of representatives of non-borrower members. Even the possibility of no such representative being elected cannot be ruled out. In other words, the Division Bench held that by virtue of the provisions of Section 73-C(3) there is no restriction on the right of borrowing members to vote for the candidates of all categories; nor is there a restriction on the right of non-borrowing members to vote for the candidates of all categories."

8. Reading the said two judgments, it leaves no room of doubt that the election for the Managing Committee of the Society, be it from borrower category or from non-borrower category, the electoral college is the same and, as such, every voter has a right to vote for each of the post for the Managing Committee member and the right to vote is in regard to all the categories. In this view of the matter, it is obvious that the nomination paper filed by a person from borrower category may have as his proposer or seconder, a person from non-borrower category. So also, the nomination paper filed by a person from non-borrower category may have as his proposer or seconder, a person from borrower category. Even the Returning Officer held this view when he published the election programme. Note No. 3 down below the election programme categorically states that all eligible voters shall have equal number of voting rights.

9. If all the voters have a right to vote for candidates from all the categories, it does not appeal to reason as to why should a nomination paper be rejected solely for the reason that the said nomination paper is signed by either a proposer or seconder from some other category. In this view of the matter, I am clearly of the opinion that the rejection of the nomination papers of the respective petitioners by the respondent No. 3 Returning Officer was illegal. So also, the rejection of the appeals by the second respondent was bad in law.

10. During the pendency of this petition, the election process has been stayed and hence the Returning Officer will have to be directed to proceed with the election process in accordance with the decision in this Writ Petition.

11. In the result, petitions are allowed. The impugned orders of rejection of nomination papers of the respective petitioners passed by the respondent No. 3, dated 4-5-1999 are quashed and set aside. So also, the appellate orders dated 17-5-1999 passed by the respondent No. 2, confirming the decision of the Returning Officer, are also quashed and set aside. It is declared that the nomination papers filled in by the petitioners were very much legal and proper and had to be accepted by the Returning Officer. The Returning Officer - respondent No. 3 is directed to proceed with the election from the stage at which it was stayed.

12. Rule made absolute in the above terms. In the circumstances of the case there shall be no order as to costs.