

(2022) 12 BOM CK 0022
In the Bombay High Court
Case No : Writ Petition No. 11684 Of 2022

Jagdish Lahu Badhe

APPELLANT

Vs

State Co-Operative Election Authority And Others

RESPONDENT

Date of Decision : 01-12-2022

Acts Referred:

Maharashtra Co-Operative Societies (Election To Committee) Rules, 2014 — Rule 18, 20, 21, 21(5), 25, 25(5)

Maharashtra Co-Operative Societies Act, 1960 — Section 73B(3), 73FF, 152A

Citation : (2022) 12 BOM CK 0022

Hon'ble Judges : Arun R. Pedneker, J

Bench : Single Bench

Advocate : R. N. Dhorde, V. R. Dhorde, V. H. Dighe, D. R. Kale, D. B. Thoke

Final Decision : Dismissed

Judgement

Arun R. Pedneker, J

1. In the present writ petition the petitioner is challenging the order dated 21.11.2022 passed by respondent no.2 – District Co-operative Election Authority / Divisional Joint Registrar, Co-operative Societies (Dairy), Nashik Division, Nashik whereby the appeal filed under Section 152A of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as '1960 Act') by respondent no.5 is allowed and his nomination form for election to Respondent No.4 – Dudh Sangh is accepted.

2. Heard Mr. R. N. Dhorde, learned Senior Advocate for the Petitioner, Mr. V. H. Dighe, learned Advocate for Respondent Nos.1 and 3, Mr. D. R. Kale, learned Government Pleader for Respondent No.2 and Mr. D. B. Thoke, learned Advocate for Respondent No.5.

3. Brief facts leading to filing of this petition can be summarized as under:-

I] The petitioner is the representative of the cooperative society namely Savda Sahakari Dudh Utpadak Sanstha Ltd., Savda, Taluka – Raver, District – Jalgaon

which is the member of respondent no.4 – Jalgaon Zilla Sahakari Dudh Utpadak Sangh. Respondent no.5 is the representative of Vasant Sahakari Dudh Utpadak Society Ltd., Chinwal, Taluka – Raver, District – Jalgaon.

II] The elections to respondent no.4 –

Dudh Sangh was declared by Respondent No.1 – State Co-operative Election Authority by order dated 27.10.2022. Nominations forms were to be filed from 03.11.2022 to 10.11.2022. The scrutiny of the nomination forms was fixed on 11.11.2022 and the list of valid nomination forms was to be published on 14.11.2022. Withdrawal of the nominated candidates was from 14.11.2022 to 28.11.2022. On 29.11.2022, the election symbols were to be given to the candidates.

III] Respondent no.5 filed his nomination form before respondent no.3 – Returning Officer / District Deputy Registrar, Co- operative Societies, Jalgaon so also the petitioner also filed his nomination form. On 07.11.2022, respondent no.5 obtained certificate from respondent no.4 – Dudh Sangh with respect to the supply of milk by the society he represents.

IV] Respondent no. 4 – Dudh Sangh issued a certificate dated 07.11.2022 with respect to the supply of milk by the Vasant Sahakari Dudh Utpadak Society Ltd., Chinawal for the last three years. The said certificate was annexed to the nomination form of respondent no.5. On the date of scrutiny, the returning officer suo-moto on scrutiny of nomination form of respondent no.5, rejected the nomination primarily on the ground that the Vasant Sahakari Dudh Utpadak Society Ltd., Chinawal did not supply required quantity of milk for the year 2020-2021 and 2021-2022. The requirement of milk supply for the previous 3 years as per the bye-laws is for the first year to be 30,000 liters, second year – 50,000 liters and third year – 70,000 liters.

V] Respondent no.5 being aggrieved by the order passed by respondent no.3 – Returning Officer filed an appeal under Section 152A of the 1960 Act before respondent no.2 – District Co-operative Election Authority. In the appeal, he filed certificates dated 11.11.2022 and 12.11.2022 issued by respondent no. 4 – Dudh Sangh, wherein the certificates indicate that the society he represents supplied the required quantity of milk for the past 3 years being 1,61,529 liters in the year 2019-2020, for the year 2020-2021 it is 86,984 liters and for the year 2021-2022 it is 81060 liters.

VI] It was the contention of respondent no.5 before the appellate authority that the earlier certificate issued on 07.11.2022 only records the supply of the milk to one centre and not to the second centre and, thus, the present rectified certificate is filed indicating the supply of milk to both the centres of respondent no.4 – Dudh Sangh. Respondent no.4 – Dudh Sangh has not disputed the authenticity of the certificate before respondent no.2. Respondent no.2 – District Co-operative Election Authority on the basis of the fresh certificate produced by respondent no.5, by order dated 21.11.2022 allowed the appeal filed by

respondent no.5 and accepted his nomination form for contesting the election to respondent no. 4 – Dudh Sangh.

4. The petitioner has challenged the order passed by respondent no.2 - District Co-operative Election Authority dated 21.11.2022 in the present writ petition. This court on 24.11.2022, while entertaining the petition observed that ordinarily this court does not entertain a writ petition which would affect the election process. However, the learned advocate for the petitioner submitted that if the nomination of respondent no.5 is rejected, then the petitioner would be the only candidate who would remain in the list and acceptance of the nomination of respondent no.5 is ex-facie illegal. On notice being issued to respondents, this matter is taken up for hearing.

5. The petitioner challenges the impugned order on the following grounds:-

. Learned Senior Advocate Mr. Dhorde for the petitioner, submitted that respondent no.5 did not remain present at the time of scrutiny on 11.11.2022 and that the certificate produced by respondent no.5 indicated that the society, which respondent no.5 is representing had not supplied sufficient quantity of milk to be eligible to contest the election to Respondent no.4 – Dudh Sangh.

6. The learned Senior Advocate for the petitioner relies upon Rules 20, 21 and 25 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 to contend that the returning officer is permitted to adjourn the scrutiny process for not more than a day in case of any objection on which a clarification is required. The learned Senior Advocate submits that respondent no.5 having not remained present and having filed the certificate, which showed inadequate supply of milk by the society, the respondent no.5 represents, he was correctly disqualified by the returning officer and the appellate authority ought not to have accepted the subsequently procured milk supply certificate, from respondent no.5.

7. Election rules 20, 21 and 25 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (hereinafter referred to as '2014 Rules') reads as under:-

"20. Nomination of candidates

(1) Any member whose name appears in the final list of voters may be nominated as the candidate for the election to fill a seat, if he is qualified to be chosen under the provision of the Act, rules and the bye-laws of concerned society:

...

...

21 Presentation of nomination paper and requirements for valid nominations

21(1) On or before the last date for nominations appointed under rule 18, each candidate shall either in person or by his proposer, deliver to the Returning

Officer during the time and at the place or specified in the programme declared under the said rule, a nomination paper completed as provided by rule 20, and signed by the candidate and by two voters of his constituency, one of whom shall be a proposer and the other seconder.

21(2) On the presentation of a nomination paper, the Returning Officer shall satisfy himself that the names and the numbers of the candidates and his proposer and seconder as are entered in the nomination paper are the same as those entered in the list of voters excepting in the case of nomination paper presented under the provisions of sub-section (3) of section 73B for reserved constituency, the candidate shall attach the attested copy of the list of existing committee members to which he represents. If a nomination paper is rejected under this rule, the Returning Officer shall record thereon his reasons for rejecting the same:

Provided that, the Returning Officer shall permit any clerical or technical error in the nomination paper in regard to the said names or numbers to be corrected in order to bring them into conformity with the corresponding entries in the list of voters and where necessary, any clerical or printing error in the said entries shall be overlooked. ...

...

21(5) On receiving nomination paper under sub-rule (1), the Returning Officer shall writ or cause to be written on the nomination paper its serial number, and shall sign or cause to be signed thereon a certificate stating the date on which and exact time at which the application was delivered to him. ...

...

25. Scrutiny of nomination papers

25(1) On the date fixed, for the scrutiny of nomination papers under rule 18, the candidates, one proposer of each candidate duly authorized in writing by each candidate, may attend at the time and place appointed in this behalf, and the Returning Officer shall give or cause to give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered as required by rule 20. No other person shall be allowed to attend the scrutiny of nomination.

25(2) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary reject any nomination on any of the following grounds, that is to say:-

(a) that the candidate is disqualified for being chosen to fill the seat by or under the Act, the Rules and the bye-laws;

(b) that the proposer or seconder is disqualified from subscribing a nomination

paper;

(c) that there has been a failure to comply with any of the provisions of rule 21 or 23;

(d) that the signature of the candidate or the proposer or the seconder on the nomination paper is not genuine.

...

...

25(5) The Returning Officer shall hold the scrutiny on the date appointed in this behalf under rule 18, and shall not allow any adjournment of the proceedings, except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:

Provided that, in case any objection is raised by the Returning Officer or is made by any other person, the candidate concerned may be allowed time to rebut it, not later than the next day before the publication of list of valid nomination and the Returning Officer shall record his decision on the date to which the proceedings have been adjourned."

8. Mr. Dhorde, learned Senior Advocate for the petitioner relies on judgment of Vijaysingh Krishnarao Parbat Vs. Returning Officer, Janata Sahakari Bank Ltd. and others reported in 2003(2) Mh.L.J. 485 to contend that the candidate must be eligible as on the date of filing of nomination. The aforesaid judgment of Vijaysingh Krishnarao Parbat (supra) at paras 8 and 11, reads as under:-

"8...

...But the the candidate must be eligible to contest the election and such eligibility has to be satisfied on or before the last date of filing of the nomination paper and the decision as regards the candidate's disinterest to contest the election after the scrutiny is of no consequence for the purpose of deciding the eligibility criteria for contesting the election. Being so, a person to be eligible to contest the election has to disclose himself to be not a defaulter at least on or before the last date of filing of the nomination paper. Clearing of default subsequent to the said date would not enure to the benefit of such candidate and would not entitle him to contest the election.

11 It was also sought to be contended that the candidature of the petitioner was not objected to by any other contesting candidates but by the Society. Undoubtedly, there are no provisions either in the said Act or the Rules framed thereunder prohibiting the society or its management from bringing to the notice of the scrutiny officer the issue of non-eligibility of a contesting candidate at the time of scrutiny. Considering that section 73FF clearly disqualifies a defaulter from contesting the proceedings, it is the duty of the scrutiny officer to ascertain from the records available before him or made available before him either by the contesting candidates or by the society itself as to whether the contesting

candidates are qualified to contest the election in accordance with the provisions of law or not. Viewed from this angle, no fault can be found with the order passed by the scrutiny officer based on the objection raised on behalf of the said Society in relation to the eligibility of the petitioner to contest the election."

9. Mr. Dhorde, learned Senior Advocate for the petitioner relies on the another judgment in case of Manchak Shahaji Pawar Vs. State of Maharashtra and others reported in 2011(3) Mh.L.J. 833, wherein it has been held that the candidate has to be eligible on the date of filing his nomination and subsequent removal of the ineligibility would not subserve the cause of removal of the ineligibility.

10. Mr. Dhorde, learned Senior Advocate for the petitioner also relies on the judgment of this court in the case of Yogendra Tarachand Katare Vs.

The Assistant Registrar Co-operative Societies cum Appellate Authority and others (WP/2481/2022 dated 06.05.2022), to contend that the eligibility of the candidate is to be on the date of submission of the nomination form and the ineligibility operating on the date of nomination form cannot be removed at a later point of time. In the aforesaid judgment in the case of Yogendra Tarachand Katare (supra), at paras 4 and 6 reads as under:-

"4. The learned counsel for the petitioner Mr. Ghare has two fold submissions to canvass. The first submission is that the relevant date to decide the eligibility of the candidate is the date of the submission of the nomination form. The ineligibility operating on the date of the nomination form cannot be removed by clearing the arrears of loan, at any point in time after the submission of the nomination form, is the submission. The other submission is that in any event the respondent 4 did not produce on record any material on the date of the scrutiny to demonstrate that he was not a defaulter.

6. In the present case, the well settled position of law appears to be, that the ineligibility operating cannot be removed, after the submission of the nomination form, much less by producing material in appeal, and the relevant date is the date of submission of the nomination form. Such view is consistently taken by this Court inter alia in Manchak s/o Shajaji Pawar Vs. State of Maharashtra and others 2011(3) Mh.L.J. 833 and Ravi Amrutrao Ragde v. Commissioner, Amravati Division and others 2006(2) Mh.L.J. 33."

11. Mr. Dhorde, learned Senior Advocate for the petitioner also relies upon the case of Dalsing Shamsing Rajput Vs. State of Maharashtra and others reported in 2006(3) Mh.L.J. 592, to contend that acceptance of the nomination of a ineligible candidate can be interfered by the writ court where the election petition is not a efficacious remedy.

12. Mr. D. R. Kale, learned Government Pleader appearing for Respondent No.2 submits that the certificate given by respondent no.5 alongwith nomination form had some deficiency in it. As the said certificate had given the data of only one centre, therefore, at appellate stage, respondent no.5 gave a corrected

certificate, authenticity of which was not disputed by respondent no.4 – Dudh Sangh. The learned Government Pleader submits that error of this nature can be corrected by the Returning Officer himself under proviso to Rule 25(5). However, respondent no.5 was not present for hearing and in any event no notice was given to him about the deficiency in his milk supply certificate.

13. Respondent no.5 on being made aware having faced a disqualification immediately approached respondent no.4 – Dudh Sangh and got a corrected certificate and filed the same before the appellate authority alongwith the appeal memo. Mr. Kale, learned Government Pleader submits that the appellate authority exercises the same power as that of the Returning Officer and in terms of proviso to Rule 21(5) correction could have been carried out by the nominated candidate before the Returning Officer and the same can also be done by the appellate authority. Mr. Kale, learned Government Pleader submits that the elections are now at a very advanced stage and the petitioner can approach alternate forum at appropriate stage for adjudication and interference in the election at this stage is not conducive to the election process.

14. In response to the submission of the learned Government Pleader, the learned Senior Advocate Mr. Dhorde for the petitioner does not seriously dispute the legal position that the Returning Officer could have corrected the error while scrutinizing the nomination form under proviso to Rule 25(5) of the 2014 Rules. However, he submits that respondent no.5 should have remain present for the scrutiny of his papers. It is only when the candidate prays for the correction, and makes an application for the correction of the nomination papers or rectification of the defect that the Returning Officer can grant not more than one day's time to clear the defect.

15. Although Mr. Dhorde, learned Senior Advocate for the petitioner accepts the position in law that the Returning Officer can rectify the defect in nomination papers but on facts he submits that respondent no.5 is disentitled to do so and in any event he further submits that the scrutiny was fixed on 11.11.2022 and the document / certificate which is filed before the appellate authority is of 12.11.2022, and no subsequent correction in the nomination is permissible. He specifically relies on the judgment of this court in case of Yogendra Tarachand Katare (supra) to contend that the ineligibility operating as on the date of filing of the nomination cannot be cured by the petitioner subsequently.

16. Having considered the rival submissions, I am of the prima-facie view that the nomination paper could have been corrected by the Returning Officer if respondent no.5 was present before the Returning Officer on 11.11.2022. However respondent no.5 was not present on the said date and he has rectified the defect at a later stage before the appellate forum. The reliance on judgment of Yogendra Tarachand Katare (supra) is of no assistance to the petitioner as the fresh certificate indicates that the Society represented by respondent no.5 was supplying sufficient quantity of milk for the relevant years and thus it is not a defect cured later on but it is merely a certificate indicating that the milk supply

was sufficient at a prior point of time, thereby indicating eligibility of respondent no.5 to contest elections from the prior eligible date.

17. The submission of the learned Senior Advocate Mr. Dhorde for the petitioner that in the fact situation respondent no.5 ought not to have been given the opportunity to produce a fresh certificate and that the appellate authority ought not to have exercised the powers to grant an opportunity to respondent no.5 to produce a fresh certificate is something that can be gone into by an election petition by leading evidence. Once in principle it is prima facie accepted that the nomination papers can be rectified by the candidate before the Returning Officer and the same power can be exercised also by the appellate authority, whether in a factual situation such a power ought to have been exercised or not is something that can be gone into after leading evidence before the appropriate authority and cannot be decided in the present writ petition in summary manner.

18. Thus, writ petition is accordingly dismissed with liberty to the petitioner to approach the alternate forum by appropriate election petition as may be available under the 1960 Act and 2014 Rules.

19. All issues on facts and law are kept open including the powers of the returning authority and the appellate authority in rectifying the defects in the nomination papers to be finally decided in the election petition if filed by the petitioner before the appropriate authority.

20. Writ Petition is dismissed with above liberty.