

(1970) 06 BOM CK 0007

In the Bombay High Court

Case No : Special Civil Application No. 1879 of 1968

Madhukar Ganpatrao Somvanshi

APPELLANT

Vs

Sheshrao Narayanrao Biradar and Others

RESPONDENT

Date of Decision : 24-06-1970

Acts Referred:

Citation : AIR 1972 Bom 129 : (1971) 73 BOMLR 720 : (1971) ILR (Bom) 1592 : (1971) MhLj 961

Hon'ble Judges : Nathwani, J;Chitale, J

Bench : Division Bench

Advocate : P.B. Sawant, for the Appellant; B.R. Naik, Vikram Hipparkar and R.S. More, for the Respondent

Judgement

Chitale, J.—The facts leading to this petition, briefly stated are as follows : Nilanga Taluqa Co-operative Supervising Union, Nilanga, District Osmanabad, Opponent No. 6, is a Federal Co-operative Society, (hereinafter referred to as the "Federal Society"), deemed to have been registered under the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as the Act). 124 Co-operative Societies are affiliated as members to the said Federal Society. The Managing Committee of the Federal Society consists of 8 members (including the Chairman), one of whom is nominated by the Government, one is nominated by Osmanabad District Central Co-operative Bank and the other six are elected. The election to the Managing Committee of the Federal Society was scheduled to be held on 16th September 1967, nominations were to be submitted on or before 2-9-1967, scrutiny the list of the candidates contesting the election was published on 8-9-1967. On 14-9-1967 i.e. two days prior to the date of the election, respondent No. 1 Sheshrao Narayanrao Biradar submitted an application to the District Deputy Registrar, Co-operative Department, Maharashtra State, contending that the procedure preceding the election was not properly followed. One of the grievances raised at the hearing was that although some of the member societies were disqualified, they were allowed to contest the election. This application was heard by the Registrar's nominee and by his order dated

15th April 1968 he granted respondent No. 1's application and rejected the nomination papers of the present petitioner Madhukar Ganpatrao Somvanshi and respondents Nos. 2 to 5. Against this decision, the present petitioner preferred appeal to Maharashtra State Co-operative Tribunal, Bombay. The Tribunal by its decision dated 11th September 1968 held that the dispute in question was not one contemplated by Section 91 of the Act, hence no appeal lay to the Tribunal. The Tribunal recorded no findings on merits. In view of the finding that no appeal lay, the appeal was dismissed. The present petition is preferred against this decision of the Tribunal.

2. Mr. Sawant, who appears for the petitioner, relies on the Supreme Court decision in *Narayan Bhaskar Khare Vs. The Election Commission of India*, . Relying on this decision, it is urged that wrong rejection or acceptance of nomination papers cannot form the subject-matter of a dispute contemplated by Section 91 of the Act, if such a dispute is raised before the declaration of result of the election. The Supreme Court in that case observed that although Art. 71(1) of the Constitution undoubtedly confers jurisdiction on the Supreme Court to inquire into and decide all doubts and disputes arising out of or in connection with the election of the President or Vice-President, the question for consideration before the Court was whether there was anything in the Constitution indicating the time or stage at which and the manner in which such doubts and disputes are to be inquired into and decided. The Supreme Court referred to Articles 327, 329(b) and Section 80 of the Representation of the People Act, 1951, and held : (P. 120).

"It is quite clear from the language of the section that any improper reception or refusal of a vote, or any non-compliance with the provisions of the Constitution or of the Act or of any rules or orders made under the Act or the improper acceptance or rejection of a nomination paper may be made a ground for challenging the election. This means that all doubts and disputes relating to any stage of the entire election process is to be canvassed by an election petition presented to this Court after the election in its wide sense in concluded.

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.....The well-recognised principle of election law, Indian and English, is that elections should not be held up and that the person aggrieved should not be permitted to ventilate his individual interest in derogation of the general interest of the people, which requires that elections should be gone through according to the time schedule. It is, therefore, in consonance both with the provisions of Art. 62 and with good sense to hold that the word "election" used in Art. 71 means the entire process of election...."

3.It is obvious that the above Supreme Court decision clearly lays down that wrong acceptance or rejection of a nomination paper can be made a ground of attack only after the result of the election is declared, and not at any stage prior to that.

4. We may also refer to the decision of the Supreme Court *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, . In that case the appellant's nomination paper was rejected by the Returning Officer. He applied to Madras High Court under Art. 226 of the Constitution. The Supreme Court confirmed the decision of Madras High Court that it had no jurisdiction to interfere at that stage in view of the provisions of Article 329(b) of the Constitution and S. 80 of the Representation of the People Act. In this case, the Supreme Court rejected the contention that the remedy which merely allows a candidate to have an election set aside only after the election is held is not as efficacious as the one which would enable him to stop holding the election. The Supreme Court pointed out that there was another side of the question to be considered, viz. inconvenience to the public administration on account of elections and the administrative business being required to be held up while individuals prosecute their grievances. By this decision the Supreme Court held that questioning the rejection of a nomination paper is questioning the election, hence it could not be done prior to the declaration of results of an election in view of Art. 329(b) of the Constitution and Section 80 of the Representation of the People Act.

5. In view of the above two decisions of the Supreme Court, it is clear that respondent No. 1's application in effect contending that the nomination papers of the petitioner and respondents Nos. 2 to 5 were wrongly accepted could not be entertained before the declaration of the results of the election. If so, it is urged by Mr. Sawant for the petitioner, the decision of the Registrar's nominee dated 15-4-1968 is without jurisdiction.

6. Dr. Naik, who appears on behalf of respondent No. 1, relies on bye-law 23(8) of the Federal Society and contends that even though the dispute in question may not be a dispute u/s 91, bye-law 23(8) is binding on all the members of the Federal Society, it provides an internal arrangement enabling the member aggrieved to challenge wrong rejection of nomination papers and such arrangement is binding on the members of the Federal Society, hence the decision of the Registrar's nominee is legal and valid. Strictly speaking, bye-law 23(8) does not apply to the facts of the present case, inasmuch as the grievance of respondent No. 1 was not that a nomination paper was wrongly rejected, but his grievance was just the converse of it viz. the nomination papers of some members were wrongly accepted. Thus on the wording of bye-law 23(8) itself, it is clear that the said bye-law does not empower the Registrar's nominee to decide the dispute raised by respondent No.1. In the alternative, it is urged by Dr. Naik that if the dispute falling u/s 91 of the Act and if so, the Registrar's nominee would have jurisdiction to decide the dispute. In view of the above mentioned Supreme Court decisions, we are unable to accept this contention of Dr. Naik.

7. We may also refer to an unreported decision of this Court in Special Civil Appln. No. 1069 of 1968 decided on 16-10-1968(Bom). Patel, J., who delivered the

judgment, points out that in view of the clear wording of Section 92 which provides a period of limitation for filing election disputes, an election dispute as contemplated by Section 91 could not be field, nor entertained prior to the declaration of the result of the election. We agree with this view expressed in the said decision. Dr. Naik, however, relies on some of the observations in the said decision. The observations relied upon are :-

".....The Tribunal has rightly held that an appeal provided under Election Rules of this Bank is as a matter of internal management of the Bank and by a rule it cannot call upon the Registrar or the Deputy Registrar either to treat an appeal as a dispute to which only the Returning Officer apparently is made a party....."

8.We are unable to hold that these observations support Dr. Naik's contention. The other observations that follow clearly indicate that this Court held that a rule cannot be regarded as valid, if it elevates a matter which does not strictly fall within the scope of Section 91 of the Act to a dispute under that section. Dr. Naik contends that bye-law 23(8) provides an internal arrangement, the members of the Federal Society agreed to abide by that bye-law, thus that bye-law would be binding on the members, if so, the decision of the Registrar's nominee would be valid and binding on the members of the Federal Society, irrespective of the question whether the dispute falls u/s 91 of the Act or not, and whether an appeal lies to the Tribunal or not. In view of the principle laid down by the Supreme Court, which is mentioned above, we are unable to accept this contention. A bye-law like bye-law 23(8) in this case cannot be said to be a valid bye-law, inasmuch as if such a bye-law is allowed to work, it would give rise to conflict of decisions. Dr. Naik does not dispute that a candidate defeated at the election would be entitled to challenge the election after the declaration thereof on the ground of wrong acceptance or wrong rejection of nomination papers. Thus if the above contention of Dr. Naik is accepted as correct, the same question may be inquired into on two or more occasions by different authorities or tribunals and this may obviously give rise to conflicting decisions. Thus it is in our opinion clear that a bye-law that provides for a challenge to the procedure adopted regarding an election even before the declaration of the result of that election cannot be held to be a valid bye-law in view of the above decisions of the Supreme Court. In effect such a bye-law constitutes an agreement amongst the members of the Society which may defeat relevant provisions or principles of law relating to elections. As pointed out by the Supreme Court, it is very vital for the public administration that elections are held in time according to the schedule notified and they are not delayed on account of individual grievances of a candidate. We, therefore, hold that respondent No. 1's application dated 14-9-1967 was untenable and it was wrongly entertained by the Registrar's nominee.

9.We must mention here that Dr. Naik raised the objection that the only relief claimed in this petition is to have the decision of the Tribunal set aside, there is

no prayer seeking the relief that the order passed by the Registrar's nominee on 15-4-1968 is without jurisdiction and respondent No. 1's application dated 14-9-1967 should be rejected holding the same to be untenable. This objection is technically correct although the necessary relief can be said to be implied in the prayer that the Tribunal's decision should be set aside. In order to obviate the technical difficulty, however, we allow the petitioner to amend the petition by adding the necessary prayer.

10. For reasons indicated above, we make the rule absolute and reject respondent No. 1's application dated 14-9-1967 challenging the acceptance of the nomination papers of the petitioner and respondents Nos. 2 to 5. Respondent No. 1 shall pay the petitioner's costs.

11. Rule made absolute.