

(2004) 10 BOM CK 0083

In the Bombay High Court

Case No : Writ Petition No. 1546 of 2004

Mukund alias Shyamrao Kale

APPELLANT

Vs

Sahebrao Rodbaji Sable and Others

RESPONDENT

Date of Decision : 29-10-2004

Acts Referred:

Representation of the People Act, 1951 — Section 81, 82, 83

Citation : (2005) 1 ALLMR 473 : (2005) 2 BomCR 164

Hon'ble Judges : Dharmadhikari B.P., J

Bench : Single Bench

Advocate : P.C. Madkholkar, for the Appellant; P.S. Patil and Deepak Thakre, A.G.P. for respondent Nos. 3, 4 and 6, for the Respondent

Final Decision : Dismissed

Judgement

Dharmadhikari B.P., J.—Heard learned Counsel for the respective parties.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner challenges the order dated 16-2-2004 passed by the Additional Commissioner, Amravati Division, Amravati, allowing Election Petition filed by the present respondent No. 1 against him u/s 144(1) of Maharashtra Co-operative Societies Act, 1960, (hereinafter referred to as the Act) read with Rule 73 of Maharashtra Specified Co-operative Societies Election to Committee Rules, 1971 (hereinafter referred to as Election Rules).

3. Shri Madkholkar, learned Counsel appearing for the petitioner states that point involved is very short and the petition should be disposed of finally. Shri Patil, Advocate appears for the contesting respondent No. 1 while the learned Assistant Government Pleader appears for respondents Nos. 3, 4 and 5. Respondent No. 2 is already served but nobody appears for them. Hence, the matter is taken up for consideration finally at the admission stage.

4. The learned Counsel for the petitioner states that he is challenging the impugned order on three grounds viz., (i) that under Rule 81 (a) of Election

Rules, the disqualification must be shown to exist on the date of Election and in the facts of this case, it must also be shown that the disqualification arose after the filing of nomination paper sit continued till the date of Election. His second ground is that the true copies of Election Petitions supplied to respondents have not been attested by respondent No. 1 as true copies and his last ground is that a party which is really not proper or necessary party has been jointed as respondent No. 5 in the Election Petition. The said party is respondent No. 5 in this writ petition also.

5. The brief facts are : After the petitioner submitted his nomination papers for Election to Yavatmal District Central Cooperative Bank Limited a specified co-operative society u/s 73-G of the Act. His nomination paper was objected to by respondent No. 1 and others on the ground that he is not from weaker section. The petitioner wanted to contest the election from weaker section as defined in Section 73-B of Maharashtra Co-operative Societies Act. He states that those objections were overruled after enquiry by the Returning Officer and no appeal was filed thereafter u/s 152-A of the Act. He, therefore, contends that said order had become final. He, therefore, contends that once he was found to be eligible on the date of filing of nomination papers, if his election is to be set aside on the ground that he was not qualified on the date of his election. Respondent No. 1 ought to have shown that the said disqualification has arisen after the above order of accepting his nomination paper and till the date on which election took place i.e. 28-4-2004. Shri Madkholkar, further points out that under Rule 74(2), the election petitioner is to supply a copy of election petition to each of the respondents and such copies needs to be attested by him under his own signatures to be true copy of the election petition. He invites attention of the Court to the Election Petition which is filed by present respondent No. 1 before the Additional Commissioner, Amravati Division, Amravati. He points out that at last page of election petition, respondent No. 1 has placed his signature below the words "attested by the petitioner". He points out that there is no attestation as true copy as required by Rule 74(2).

By relying upon various judgments of the Apex Court he states that this is a mandatory requirement and hence the election petition ought to have been dismissed on this short ground. He states that it could not have been allowed in any case. The last ground of his attack is that respondent No. 5-Yavatmal District Central Co-operative Bank Limited was neither necessary nor proper party to the election petition. He contends that election petition has been allowed on the basis of evidence adduced by the said Bank which is at respondent No. 5 in the election petition and also respondent No. 5 in the present petition. He argues that this joining of unnecessary party is fatal and has initiated the entire election petition. He contends that, therefore also election petition ought to have been dismissed.

6. As against this, Shri Patil, learned Counsel for respondent No. 1 points out that the judgments on which reliance is being placed by Shri Madkholkar are the

judgments delivered under Representation of Peoples Act, 1951, and said judgments will not apply with same vigour to the election petition under Co-operative Societies Act and the Election Rules. He also relies upon some judgments to point out that these judgments have no application. He further states that the provisions of Section 152-A of Co-operative Societies Act does not contemplate appeal against acceptance of nomination paper and as Election Officer has accepted nomination paper of present petitioner, he could not have filed any appeal u/s 152-A of the Act challenging such acceptance. He, therefore, states that his only remedy was to file election petition and accordingly, the election petition came to be filed. He, therefore, states that the order of Election Officer did not attain finality and it was open to him to show that the petitioner was not qualified to be chosen on the date of election. He states that there is no such requirement in the facts of the present case to show that the petitioner incurred disqualification after the order of Election Officer accepting his nomination paper and before the date scheduled for election. He further states that the addition of Yavatmal District Central Co-operative Bank Limited as party respondents has not affected the trial of election petition in any manner. He states that the said bank could have been used as witness and material produced by the bank could have been produced on record for consideration by Additional Commissioner in the election petition. He therefore, states that no prejudice has been caused to the petitioner by presence of said bank as party respondent in election petition. About the argument that copies of election petition have not been attested to be true copies, he contends that specifically the words "attested by the petitioner" are used at the end of each copy and thereafter petitioner has placed his signature. He states that this was attestation as a true copy and otherwise there was not reasons to put such remark at the end of petition. He points out that after verification, he has placed his signature and then separately these words are written and below this he has put his signature again. He states that this satisfies the requirement of Rule 76(2) of the Election Rules. He further states that in any case such objection was not raised before the Additional Commissioner during trial and invites attention of this Court to provisions of Rule 76(2) which give Commissioner discretion in the matter of dismissal of election petition if it is not fulfilling the requirement of Section 74. He states that has such objection been raised before the Additional Commissioner, he could have very well rectified the mistake before the Additional Commissioner and as, such objection was not raised within time, now he is not in a position to rectify that mistake. He, therefore, contends that such a objection cannot be allowed to be raise for the first time in the writ petition as the opportunity for making such correction is already lost to him.

7. Shri Madkholkar, learned Counsel for the petitioner in reply states that the law of election is a technical law and there is no question of interpreting it in any other manner except by giving the correct meaning to the words issued in statute strictly. He states that the provisions of Representation of People Act, 1950, are almost para materia and therefore, interpretation placed upon them by

the Apex Court must prevail.

8. Having heard parties, it is apparent that present respondent No. 1 has done the attestation by mentioning "attested by petitioner" and thereafter by placing his signature below it. He has not used the words "true copy" any where in it. Therefore, from plain reading, it appears that it is not attested to be true copy but when the purpose of putting such remark and such signature by election petitioner is taken into account, it is apparent that the intention of present respondent No. 1 was to attest it as true copy only. It is further clear that it non-compliance could have enable the Additional Commissioner to consider dismissal of election petition. Rule 76(2) of Election Rules give discretion to the Additional Commissioner. But in that event, the Additional Commissioner also could have given opportunity to respondent No. 1 to make amends by adding words "true copy" at last page of the petition or last page of the copy supplied to the present petitioner. As no such objection is taken by the present petitioner before the Additional Commissioner, this opportunity is lost to present respondent No. 1.

9. This Court has considered the provisions of Rule 74 and 76(2) of Election Rules in the light of Representation of Peoples Act, 1951, in its judgment reported in the case of Shivnarayan Amarchand Paliwal v. Vasant Rao Vithalrao Gurjar, reported in 1992 Bom.C.R.101 : 1992(2) Mh.L.J. 1052, and this Court has held that the term "may" as used in sub-rule (2) of Rule 76 definitely connotes that dismissal of election petition owing to non-compliance of provisions of Rule 74 would not be an unavoidable result. Such dismissal depends upon a decision of authority trying election petition and the use of word "may" by legislature is deliberate in so far as Rule 76(2) are concerned. This Court has held that in Section 86(1) of the Representation of Peoples Act, 1951, the word used is not "may" but "shall" said provisions of Representation of People Act and Election Rules applicable to election of respondents No. 5 are reproduced below:

"Section 86, Trial of election petitions - (1) The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117."

Rule 76(2) of Maharashtra Specified Co-operative Societies (Elections to Committees) Rules, reads as under :

"The Commissioner may dismiss an election petition which does not comply with the provisions of Rule 74."

This Court has, therefore, concluded that the legislature did not propose to achieve the result of dismissal under Rule 76(2) of the Maharashtra Specified Co-operative Societies (Elections of Committee) Rules.

10. Shri Madkholkar, learned Counsel for the petitioner had placed reliance upon the judgment of the Hon"ble Apex Court in the case of F.A. Sapa Etc., Etc., Vs. Singora and others, . He points out that if the petitioner does not supply the certified true copy, Rule 74(2) cannot be said to have been complied with, in

para 31, the Apex Court has considered this aspect and has held that what is essential is that the petitioner filing election petition must take responsibility of it being a true copy of the original election petition and sign in taken thereof. No particular form of attestation is prescribed; all that the sub-section enjoins is that the petitioner must certify the copy under his own signature to be a true copy of the petition. Para 33 of this ruling further shows that if the verification or affirmation is found to be defective, the High Court can direct the petitioner to cure defects within the time stipulated by it.

11. Next ruling on which reliance has been placed is in the case of Sharif-ud-din Vs. Abdul Gani Lone, . Perusal of this judgment shows that para 19 of this ruling states that is essential for election petitioner to serve upon the respondents a copy of election petition duly attested under his own signature to be true copy. However, in view of the discussion above and particularly provisions of Rule 76(2) of the Election rules, it is apparent that these rulings will not apply with same rigour in the facts and circumstances of the present case.

12. The other rulings on which reliance has been placed by Shri Madkholkar consider the same aspect of the matter and if is not necessary for this Court to consider the same in view of the view taken by the learned Singe Judge of this Court in the matter already referred to above.

13. Shri Patil, learned Counsel, on the other hand, has relied upon the judgment of Apex Court in the case of G. Mallikarjunappa and Another Vs. Shamanur Shivashankarappa and Others, . This judgment is again on Representation of Peoples Act, 1951, but here the Apex Court has taken view that Election Petition cannot be dismissed in limine on the grounds that affidavit filed in support was not in proper format or that verification of affidavit and Election Petition did not tally and held that the defect in verification and the affidavit is a curable defect. He also relies upon other judgment which is reported at F.A. Sapa Etc., Etc., Vs. Singora and others, for the same purpose. This judgment is also cited by Advocate Shri Madkholkar and is already considered above by this Court.

14. About the arguments of Advocate Shri Madkholkar, on the point of incurring of disqualification between the date of passing of order by- Election Officer accepting his nomination paper till the date of election, a look a Section 152-A of the Maharashtra Co-operative Societies Act, 1960 becomes necessary. Said section reads thus:

"Section 152-A. Appeal against rejection of nomination paper at election. - (1) Notwithstanding anything contained in this Act or the Rules or the bye-laws made thereunder, a person aggrieved by the rejection of nomination of a candidate at the election of committee of any society other than a society specified by or u/s 73-G, may file an appeal to the Registrar within three days of the date of rejection of the nomination. The Registrar shall dispose of such appeal within ten days of the date of receipt of such appeal and the decision of the Registrar in appeal shall be final and no further appeal or revision shall lie

against the decision of the Registrar in such appeal. (In the case of a society specified by or u/s 73-G, an appeal shall lie to the Divisional Commissioner who shall dispose of such appeal within ten days from the date of receipt of such appeal and the decision of the Commissioner in appeal shall be final and no further appeal or revision shall lie against the decision of the Division Commissioner in such appeal).

(2) 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 candidatures shall not be less than fifteen days."

It is apparent that the remedy of filing appeal u/s 152-A is not available to respondent No. 1 as the said appeal can be filed only against rejection of nomination paper. Thus, the order rejecting the objection raised by the said respondent to the nomination paper of petitioner had not become final. Therefore, the arguments are misconceived and are liable to be rejected.

15. The last argument of Advocate Shri Madkholkar is that respondent No. 5-bank was neither necessary nor proper party to the Election petition. However, it is apparent that by presence of respondent No. 5 as party respondent in Election Petition, trial of Election Petition has not been adversely affected in any manner. It is further apparent from arguments of Advocate Shri Madkholkar that because of presence of said Bank as party respondent in Election petition, no prejudice has been caused to the present petitioner. In this connection, the arguments that joining of unnecessary party in Election Petition is not permitted are, therefore, liable to be rejected. The present petitioner, whose election came to be challenged, ought to have shown that the conduct of Election petition by Additional Commissioner has been affected to his prejudice by presence of said Bank as party respondent.

16. Shri Patil, learned Counsel for respondent No. 1 has relied upon a judgment in the case of B.S. Ritakiran v. Mahalingappa, reported in 2002(1) All.M.R. 309(S.C.). In this judgment, the Apex Court has considered the very same question and has held that those who are specified in Section 82 of the Act must be made parties to an election petition and if they are not, the election petition is one which does not meet the provisions of Section 82 and must, therefore, be dismissed by reason of the terms of Section 81(1). It does not, however, follow that if to an election petition parties other than those who are necessary parties u/s 82 have been impleaded, the election petition is one that does not comply with the provisions of Section 82 and must be dismissed. Such a petition can be amended by striking out from the array of parties those additionally impleaded. It is, thus, clear that by joining respondent No. 5 - Bank in his election petition, the present respondent No. 1 has not committed any such illegality which will go to the route of the matter. The present petitioner could have raised objection about it in Election Petition and the learned Additional Commissioner could have

passed appropriate orders considering that objection. However, as already stated above, presence of said respondent in any way has not prejudiced the present petitioner and as such said objection is also liable to be rejected.

17. Thus, I do not find any merit in this writ petition. The learned Additional Commissioner has not shown to have committed any error or any jurisdictional mistake. The order is within the four corners of law and calls for no interference in the writ jurisdiction. The writ petition, therefore, fails and is accordingly dismissed. There shall be no order as to costs.