

(2010) 12 BOM CK 0071

In the Bombay High Court

Case No : Writ Petition No. 10896 of 2010

Narsanna Naganna Arge

APPELLANT

Vs

Assistant Registrar, Co-operative Societies, Returning Officer
for election of Seva Sahakari Sanstha Maryadit, Yetale,
Sayyana Bhojanna Sagamwar and Executive Magistrate, Biloli

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Citation : (2011) 3 MhLj 211

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : Mahesh S. Deshmukh, for the Appellant; V.A. Shinde, A.G.P. for R.
Nos. 1, 2 and 4 and Meghana V. Reddy, Advocate for R. No. 3, for the Respondent

Final Decision : Allowed

Judgement

S.S. Shinde, J.—This writ petition is directed against the order dated 24th November, 2010 passed by the Respondent No. 1 Assistant Registrar, Cooperative Societies, Dharmabad, Dist. Nanded in Appeal preferred by Respondent No. 3.

Rule. Rule is made returnable forthwith and by consent of the parties taken up for final hearing.

2. The Petitioner herein is a member of the Seva Sahakari Sanstha Maryadit, Yetale, Tq. Dharmabad, Dist. Nanded. The election programme for the election of the said society was published on 25th October, 2010. It is the case of the Petitioner that the Respondent No. 3 filed nomination form from OBC Reserved category for contesting the election of the said society. The Returning Officer - Respondent No. 2 rejected the nomination form after scrutiny. The Returning Officer found that the certificate produced by the Respondent No. 3 mentions that he belongs to sub-caste Golla, which comes under N.T. Category and is at Sr. No. 9 in the list of Nomadic Tribes in Maharashtra as published by the

Government. The Returning Officer, upon perusal of the caste certificate, found that the Respondent No. 3 belongs to caste Golla, which comes under N.T. Category, who wished to contest the election from OBC category. After scrutiny of the nomination form, the Returning Officer rejected the nomination form of the Respondent No. 3.

3. Being aggrieved by the said order, the Respondent No. 3 herein filed appeal before the Assistant Registrar, Cooperative Societies, Dharmabad u/s 152 of the Maharashtra Co-operative Societies Act, 1960. The Assistant Registrar - Respondent No. 1, without setting aside the order of the Returning Officer rejecting the nomination form of Respondent No. 3, directed the Returning Officer to accept the nomination form of the Respondent No. 3 for contesting the election of the said Society from OBC reserved category. Hence, this petition.

4. The learned Counsel for the Petitioner submits that the Respondent No. 3 herein produced caste certificate dated 15.7.1990 at Annexure (B), page 18 of the compilation of the writ petition with the nomination form before the Returning Officer and after scrutiny, the Returning Officer found that Respondent No. 3 belongs to Golla subcaste, which comes under N.T. Category as mentioned in Government Resolution of Education and Social Welfare Department No. C.B.C. 136 M, dated 21st November, 1961, whereas, the Respondent No. 3 wanted to contest the election from OBC reserved category. Therefore, the Returning Officer rejected the nomination form of the Respondent No. 3. The learned Counsel for the Petitioner submits that the Respondent No. 3 in appeal produced another caste certificate dated 27.7.1990 (Annexure "E" colly, page 31 of the compilation), issued by the same authority i.e. Taluka Executive Magistrate, Biloli wherein, the subcaste of the Respondent No. 3 has been mentioned as "Gollear" which comes under OBC category at Sr. No. 9 as mentioned in Government Resolution of Education and Social Welfare Department No. C.B.C. 136 M, dated 21st November, 1961. The learned Counsel for the Petitioner submits that the Respondent No. 3 has obtained two caste certificates dated 15.7.1990 and 27.7.1990 from the same authority, showing "Golla" caste from N.T. Category and "Gollear" subcaste from OBC category. In fact, both these castes have been mentioned in the List of of Nomadic Tribes at Sr. No. 9. Therefore, the learned Counsel would submit that the Respondent No. 3 has played fraud on the authorities and submitted certificates as per his convenience one before the Returning Officer and another before the appellate authority. The appellate authority, without ascertaining the correctness of the caste certificate of the Respondent No. 3, wrongly allowed his appeal directing the Returning officer to permit the Respondent No. 3 to contest he election.

5. In pursuance to the notice issued by this Court on 1st December, 2010, the contesting Respondent No. 3 is represented through counsel. The learned Counsel representing the Respondent No. 3 has tendered affidavit across the Bar. Relying on the said affidavit, the learned Counsel for the Respondent No. 3 submitted that since the election process has already been started and even

symbol has been allotted to Respondent No. 3, at this belated stage and more particularly, when election process is on and polling is scheduled to be held on 12th December, 2010, any interference at this stage will amount to interference in the election process, which would be against the settled law by this Court that once election process is on, no Court shall interfere in election process. The learned Counsel for Respondent No. 3 placed reliance on the judgment of this Court in case of Umaji Manglu Borse v. Returning Officer and Ors. 2010 (3) Bom.C.R. 282 and more particularly, paragraph 15 of the same and submitted that there is alternate remedy available to the Petitioner to challenge the election of the Respondent No. 3 in case the Petitioner wishes to do so. The substance of the argument of learned Counsel for Respondent No. 3 is that since the election process is on and the appellate authority has directed the Returning Officer to accept nomination form of Respondent No. 3 and symbol is also allotted to the Respondent No. 3, at this belated stage, this Court may not interfere in the election process and if at all the Petitioner is aggrieved, he can file election petition.

The judgment in Umaji's case (supra) is not applicable in the facts of this case for the simple reason that in the said case, the Returning Officer had accepted the nomination of the candidate and said acceptance was subject matter of the writ petition. However, in the present case, the Returning Officer has rejected the nomination form of the Respondent No. 3. Therefore, the facts in both cases stand on different footings.

6. Though this Court has directed the authorities to file their affidavit-in-reply, the same are not filed. However, the learned A.G.P. makes a statement that affidavit-in-reply is ready but, the same is not filed at least one day prior to listing of this matter. The said affidavit-in-reply cannot be relied since it was not made available even to other contesting parties.

7. Upon perusal of the order passed by the Returning Officer, it clearly emerges that the nomination of the Respondent No. 3 for contesting the election from OBC category has been rightly rejected by the Returning officer after proper scrutiny. The reason which is given for rejecting the nomination form of Respondent No. 3 is that the subcaste "Golla" comes under N.T. Category and not OBC and, therefore, Respondent No. 3 cannot contest the election from OBC category.

8. Upon perusal of the order of the appellate authority, it clearly appears that the appellate authority has not set aside the order of the Returning Officer rejecting nomination form of Respondent No. 3. The appellate authority has not given any reasons whatsoever or has not properly adverted to the reasons given by the Returning Officer and relying on some other certificate submitted by the Respondent No. 3 herein, in which subcaste is mentioned as "Gollewar" from OBC category, accepted the said certificate and directed the Returning Officer to allow the Respondent No. 3 to contest the election from OBC reserved category. In my opinion, the Respondent No. 1 Assistant Registrar either has not properly

applied his mind or for extraneous consideration, accepted the contention of the Respondent No. 3 and placed reliance on the other certificate submitted by the Respondent No. 3 showing that he belongs to Gollewar subcaste under OBC category.

9. The basic questions which falls for consideration is that as to how the Respondent No. 3 can have two caste certificates, one showing subcaste "Golla" from N.T. Category and another showing subcaste "Gollewar" from OBC category. It is pertinent to note that both these certificates have been issued by the same authority i.e. Taluka Executive Magistrate, Biloli on 15.7.1990 and 27.7.1990 respectively, hardly with a gap of 11 days. Prima facie, I am of the opinion that the Respondent No. 3 has played fraud on the authorities and the appellate authority -Respondent No. 1 Assistant Registrar, Cooperative Societies, Dharmabad has succumbed to the said fraud. In my opinion, the appellate authority should have questioned the Respondent No. 3 about having two different caste certificates belonging to "Golla" from N.T. Category and "Gollewar" from OBC category.

10. Taking overall view of the matter, in my opinion, if such undeserving persons are allowed to contest election, that will create hindrance in democratic set up to have proper and fair elections. Therefore, this is a fit case in which not only the order of the appellate authority is required to be set aside but, the Superintendent of Police, Nanded is required to be directed to investigate into the matter through the concerned Police Station about the fraud played by the Respondent No. 3. It is also impossible to digest as to how the authority can issue two different certificates within a span of 11 days to one and the same person mentioning in one certificate that he belongs to "Golla" from N.T. Category and in another certificate showing that he belongs to "Gollewar" from OBC category. In my opinion, this is a fit case, not only to investigate the conduct of the Respondent No. 3 but, even the authority who has issued two different caste certificates in favour of Respondent No. 3. Since the appellate authority has passed the order as quasi judicial authority, it may not be proper to direct investigation against the appellate authority. However, in the facts of this case, it would be just and proper to direct the Superintendent of Police, Nanded to enquiry into the matter and if necessary, after giving opportunity to Respondent No. 3 and the concerned Officer who has issued two different certificates, to register FIR and proceed further with the investigation.

11. In the above background, writ petition is allowed. The impugned order dated 24th November, 2010 passed by the Respondent No. 1 - Assistant Registrar, Cooperative Societies, Dharmabad, Dist. Nanded in Appeal preferred by Respondent No. 3 is hereby quashed and set aside. As a result, the Respondent No. 3 will not be entitled to contest the election of the Seva Sahakari Sanstha Maryadit, Yetale, Tq. Dharmabad, Dist. Nanded.

In due course, the Superintendent of Police, Nanded to make enquiry into the matter of Respondent No. 3 having got two different caste certificates and after

giving opportunity to the authority who has issued said caste certificates dated 15.7.1990 and 27.7.1990 (Annexure "B" & "E", respectively to this petition), should take appropriate steps and if necessary, register criminal case against the said officer who has issued said certificates and also against the Respondent No. 3 herein.

It is made clear that the Superintendent of Police, Nanded should do so only after giving full opportunity of hearing to the Respondent No. 3 and the concerned authority who has issued two different caste certificates to the Respondent No. 3. The Superintendent of Police, Nanded to submit report to this Court within three months from today.

Rule is made absolute in the above terms with no order as to costs.