
(1998) 09 BOM CK 0110

In the Bombay High Court

Case No : L.P.A. No. 14 of 1998 in Writ Petition No. 1884 of 1997 with Civil Application No. 1284 of 1998

Ramesh Patil and others

APPELLANT

Vs

Shivaji Kachru Patil and others

RESPONDENT

Date of Decision : 18-09-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Maharashtra Co-operative Societies Act, 1960 — Section 56(b)

Citation : (2000) 1 BomCR 829 : (1999) 3 MhLj 649

Hon'ble Judges : R. J. Kochar, J; A. D. Mane, J

Bench : Division Bench

Advocate : V. D. Hon, for the Appellant; S. B. Talekar, For respondents Nos. 11, 12, 14 and 16, P. B. Shirsath, For respondent No. 15, A.G.P., For State, for the Respondent

Final Decision : Dismissed

Judgement

A. D. Mane, J.—This Letters Patent appeal arises out of the order dated 24-2-1998 passed in writ petition No. 1884 of 1997 by the learned Single Judge.

2. It is relevant to mention the circumstances under which the writ petition No. 1884 of 1997 was filed. The petitioner are the members of the respondent No. 7 Co-operative Society called as Dongaon Vividh Karyakari Seva Sahakari Society Ltd. The election of the society for electing the members of the Managing Committee was ordered on 5-8-1996. The respondent No. 4 was appointed as returning officer to declare the election programme for a period of 1996-97 to 2000. The respondents Nos. 1 to 10 filed their nomination forms but, the returning officer by his order dated 5-5-1997 returned their nomination forms on various grounds. That order of the returning officer was challenged before the Assistant Registrar, Cooperative Societies respondent No. 13 by way of an appeal on 15-5-1997 but, their appeal was dismissed. Therefore, the respondents Nos. 1 to 10 filed writ petition No. 1884 of 1997 challenging the rejection of their

nomination forms.

3. The learned Single Judge granted interim relief by which further stages of election programme were stayed on 20-5-1997. The petition was however, finally heard on 24-2-1998 and the same was allowed with direction that the returning officer should accept the deposit amount of Rs. 25/- each from the respondents Nos. 1 to 10 by accepting their nomination forms and proceed with the election programme from the stage it was stayed.

4. It appears that before the interim stay could be granted, the election was over and the appellants were elected unopposed.

5. Mr. Hon, learned Counsel for the appellants submits that the learned Single Judge ought not to have entertained the petition in view of the alternative efficacious remedy by filing election petition which was available to the respondents Nos. 1 to 10 as laid down by the Supreme Court in 1993 (4) SCC 473. The impugned order, therefore, suffers from legal infirmity. In this context, it is submitted that the respondents Nos. 1 to 10 have not complied with the requirements of deposit as per the Bye Law No. 11 read with section 56(b) of the Maharashtra Co-operative Societies Act, 1960 and, therefore, the nomination papers filed by them were contrary to the provisions of law and they were rightly rejected.

6. On the other hand, it is urged by Mr. Talekar, learned Counsel for the respondents Nos. 1 to 10 that in the first place the Letters Patent Appeal is not maintainable. Secondly, it is urged that the respondents Nos. 1 to 10 were denied to file their nomination forms and in turn, they were prevented to participate in the election and, therefore, the petition was rightly entertained inasmuch as, the election petition is not an appropriate remedy in the given set of circumstances of the case.

7. It may be stated that the learned Counsel requested that appeal may be disposed of at this stage alone. We, therefore, admit the appeal and take it for final hearing.

8. The petition, as framed, is one under Articles 226 and 227 of the Constitution of India. On going through the impugned order it is clear that the learned Single Judge seems to have exercised jurisdiction with unlimited prerogative under Article 226 of the Constitution of India. In this context, it may be stated that as observed by the Supreme Court in case of Vanita M. Khanolkar vs. Pragna M. Pai, AIR 1998 SC 424 that any statutory provision barring an appeal or revision cannot cut across the Constitutional powers of a High Court. Appeal was maintainable as the order under appeal was passed by the learned Single Judge of High Court exercising original jurisdiction of the Court. We, therefore, find no merit in the contention of Mr. Talekar, learned Counsel that the Letters Patent Appeal is not maintainable. No doubt, Mr. Talekar, learned Counsel for the respondents relied upon the decision reported in Surinder Kaur Vs. State of Punjab and others, but, with respect we may say that the case is not applicable

to the facts of the present case.

9. Indeed, the respondents Nos. 1 to 10 tried to suggest that they were prevented to purchase nomination forms and as such, they were prevented to participate in the election inasmuch as, they could not file their nomination forms in time. It is stated that the last date of filing nomination papers was 30-4-1997. The forms were to be sold on 30-4-1997 and the last date for accepting the nomination was fixed as 2-5-1997 between 10.30 a.m. to 4 p.m. The scrutiny of the nomination papers was fixed on 5-5-1997 upto 2 p.m. It is pointed out that on 1-5-1997 the respondents Nos. 1 to 10 addressed a letter to the respondent No. 3 that they were denied nomination forms by the respondent No. 4. Returning Officer and, therefore, they requested the Assistant Registrar, Co-operative Societies to intervene. Notwithstanding the fact, that the respondents Nos. 1 to 10 purchased nomination forms privately and approached the respondent No. 4 at 3 p.m. to tender their nomination papers on 2-5-1997. The respondent No. 4 however, refused to accept their nomination forms on the ground that the nomination forms were not purchased from him. It appears that thereafter, the respondents Nos. 1 to 10 approached the respondent No. 3 with eleven nomination forms and respondent No. 3 appears to have forwarded the same with letter to respondent No. 4 on 5-5-1997. It may be stated that the Returning Officer rejected the nomination forms for non-compliance with the requirement of making deposit under Bye law 11(1) of the Bye laws and Rule 56(b) of the Maharashtra Co-operative Societies Rules, 1961.

10. It may be stated that as seen from the impugned order, the Secretary of the Society respondent No. 7 who was present in the Court, was called in Chamber and in the presence of the learned Advocates for the respective parties, the learned Single Judge appears to have made certain queries with him and in answer, he appears to have stated that the returning officer had directed him to issue receipts for payment of the amount and he accordingly, issued the receipts and therefore, there was compliance of the relevant bye-laws and the Rules. In our considered opinion, the evidence on the basis of which the petition was allowed in the above form is risky to be accepted. The fact, therefore, remains that the returning officer rejected the nomination forms as they were not properly submitted. Quite apart, it is clear from the arguments advanced by Mr. Talekar that these respondents were in arrears of society's funds and they have cleared their arrears only on 5-5-1997. That means, it does not appear that any one of them were sincere in purchasing the nomination forms on 30-4-1997. Therefore, their theory of denial of opportunity to purchase nomination forms by the returning officer on 30-4-1997 does not appear to be reliable. This aspect appears to have been overlooked by the learned Single Judge. Therefore, there is no substance in the contention of the respondents Nos. 1 to 10 that they have been prevented to participate in the election and, therefore, there is no alternative remedy for them to challenge the said action. We are of the view that it is a simple case of rejection of nomination forms and it is well settled that the only remedy is to file election petition against the rejection of nomination papers.

Therefore, the petition should have been dismissed on that ground alone.

11. Therefore, according to us, this is a fit case to interfere with the impugned order in appeal.

12. Appeal is, therefore, allowed. The impugned order dated 24-2-1998 in writ petition No. 1884 of 1997 is set aside and the writ petition is dismissed. C.A. stands disposed of.

Appeal allowed as writ petition should have been dismissed as only remedy as to file election petition.