
(2004) 07 BOM CK 0098

In the Bombay High Court

Case No : Writ Petition No. 4616 of 2004

Uttam Ambadas Gawali

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 23-07-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 1
Constitution of India, 1950 — Article 226, 227

Citation : (2006) 1 BomCR 914

Hon'ble Judges : Marlapalle B.H., J

Bench : Single Bench

**Advocate : Rajendra Raghuwanshi and P.D. Bachate, for the Appellant;
Choudhari, A.G.P. for respondent Nos. 1, 2 and 5, V.D. Salunke and Bagul, for
the Respondent**

Final Decision : Dismissed

Judgement

Marlapalle B.H., J.—Heard Shri Raghuwanshi for the petitioner, Shri Salunke for respondent No. 3, learned A.G.P. for respondent Nos. 1, 2 and 5 and Shri Bagul for respondent No. 7.

2. Being aggrieved by the order passed by the Additional Divisional Commissioner at Aurangabad on 8th July, 2004 in Election Petition No. of 2002, the petitioner has filed this petition under Articles 226 and 227 of the Constitution. By the said decision, the election petition, filed by the present respondent No. 3, came to be allowed and the petitioner came to be unseated as a member of the Managing Committee (Board of Directors) of the respondent No. 7 Bank Le. the District Central Co-operative Bank, Parbhani.

3. On or about 8th of March, 2001 one of the sitting members of the Managing Committee of Vividh Karyakari Seva Sahakari Society, Lasina vacated his post and in his place the petitioner came to be co-opted on 24th March, 2001 as a member of the said village level society which, in turn, is a member of the federal society viz. the respondent No. 7. On 26th September, 2001, he came to

be nominated as a delegate of the Lasina Society for being a voter of the respondent No. 7 federal society. Elections for the managing committee of respondent No. 7 federal society were announced on 1st July, 2002 and on 8th of July, 2002 the petitioner had filed his nomination form for the said elections from the Vividh Karyakari Seva Sahakari Society Ltd., Sonpeth circle. While the scrutiny of the nomination form was taken up on 11th July, 2002 the respondent No. 3 had taken objection to the petitioner's nomination contending that he was disqualified as he was held liable for causing losses to the respondent No. 7 Bank u/s 88 of the Maharashtra Co-operative Societies Act, 1960 (the Act, for short). However, this objection was overruled and the petitioner contested the elections and was declared elected on 10th of August, 2002. The respondent No. 3, therefore, filed Election Petition No. 8 of 2002 before the respondent No. 2 u/s 144T of the Act. This petition has been allowed by the impugned order.

4. Shri Raghuwanshi, the learned Counsel for the petitioner has attacked the impugned decision unseating the petitioner on the grounds that (a) the procedural mandatory requirements set out u/s 144V of the Act read with Rule 74 of the Maharashtra Specified Co-operative Societies Election to Committee Rules, 1971 (the Rules of 1971, for short), (b) under Rule 5 of the Rules of 1971 the petitioner was required to be a member of Lasina society Managing Committee for one year prior to the date of his filling in the nomination form to contest the elections of the federal society (respondent No. 7) i.e. as on 8th of July, 2002 and the respondent No. 2 erroneously held that the petitioner was required to be a member of the managing committee of the Lasina society for one year prior to 26th September, 2001; (c) while allowing the election petition, there was no power with the Election Tribunal i.e. the respondent No. 2 to declare the election petitioner as elected in place of the petitioner whose election was held to be invalid; and (d) the requirements, while presenting the election petition and as are set out in the Representation of Peoples Act, were not complied with and on this ground also the election petition was required to be dismissed at the threshold.

A number of decisions have been relied on, in support of these challenges by the learned Counsel and some of them are, as under :

- (i) Purushottam Vs. Returning Officer, Amravati and Others, ;
- (ii) Gadakh Yashwantrao Kankarrao Vs. E.V. alias Balasaheb Vikhe Patil and Others, ;
- (iii) Dr. (Smt.) Shipra v. Sharti Lal Khoiwal A.I.R.1996 S.C. 1691;
- (iv) Anant Woman Tare v. Abdul Rehman Abdul Guffur Antulay and Ors. 1997(1) All. M.R. 116;
- (v) Vinod Ramchandra Gosalka Vs. Sunil Dattatray Tatkare and Others, ;
- (vi) Narendra Bhikahi Darada Vs. Kalyanrao Jaywantrao Patil and Others, ;

(vii) Nagorao s/o Babarao Gaikwad v. State of Maharashtra and Ors. 2002(4) All. M.R. 100;

(viii) Gajanan Narayan Patil v. Rohidas Chudaman Patil and Ors. 2003(1) All. M.R. 653.

5. Shri Salunke, the learned Counsel for the respondent No. 3 and Shri Choudhari, the learned A.G.P. appearing for the respondent Nos. 1, 2 and 5 have both supported the impugned decision of the Election Tribunal. It was contended by Shri Salunke that the entire procedural requirements were met by the respondent No. 3, the Election petitioner, as set out u/s 144V of the Act, issues were duly framed and the present respondent was given sufficient opportunities to lead evidence, which he did not do till the hearing in the Election petition concluded on 7th July, 2004. It was pointed out by Shri Salunke that the procedural requirement, as required to be followed in an election petition under the Representation of Peoples Act, is not mandatory while dealing with an election petition under the Act as has been held by a Full Bench of the Delhi High Court in the case of A.S. Gahlout and Ors. v. Lt. Governor of Delhi and Ors. 1994 C.T.J. 215 . He further pointed out, by relying upon the decision in the case of (H.D. Revanna Vs. G. Puttaswamy and Others, , that even under the Representation of People Act the procedural requirement in moving an election petition, as set out u/s 81(3) or 83(1)(c) are curable and they are not fatal.

6. Constitution of the Managing Committee of a specified society, like the respondent No. 7 is required to be made under Chapter VII of the Act. Section 73FF of the Act deals with disqualification of members of committee and it, inter alia, states that no person shall be eligible for being appointed, nominated, elected, co-opted or for being a member of a committee if he has been held responsible u/s 79 or 88 or has been held responsible for payment of costs of inquiry u/s 85 or has incurred any disqualification under the Act or the Rules made thereunder. In addition to the disqualifications provided u/s 73FF of the Act, there are additional disqualifications provided in the Bylaws of the respondent No. 7 federal society and as per Bylaw No. 30(10) no person shall be eligible to contest the election of the federal society if he has not been a member of the managing committee of the affiliated society atleast for one year before he is so nominated. The exact wording, as appears in the Bye-law No. 30(10) of the Bylaws of the respondent No. 7 federal society, is reproduced as under :

^^30?10? layXu lkslk;V;kaP;k orhus Mk;jsDVj Eg.kwu mesnokj gks.;kl dks.khgh ble ik= gks.kkj ukgh] tj rks&

1? R;kps ukWfeus"ku gks.;kP;k rkj[ksiwohZ ,d o"kZ rjh layXu lkslk;VhP;k iapdesVhr IHkkl n ulsy-

2? Fkdckdhknj vlsy-

3? T;klkslk;Vhpk rks IHkkl n vlsy] frpk vxj vU; dks.kR;kgh laLFkspk rks vukf/kd"r fjR;k Fkdckdhknj vlsy-**

7. Rule 5(2) of the Rules of 1971 states that where a society is a member of a specified society the specified society shall call for the name of the delegate duly authorised to vote at an election on behalf of an affiliated society so as to reach it by 2nd July. While communicating the name of its delegate to the specified society, the affiliated society shall enclose a copy of the resolution of the society or its Committee under which the delegate is so authorised. Rule 73 of the Rules of 1971 states that no election shall be called in question except by an election petition presented to the Commissioner, in accordance with the provisions of Section 144T and the Rules of 1971. As per Rule 74 an election petition calling in question any election may be presented by any candidate or any voter within two months from the date of declaration of result of the election. Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and one spare copy for the use of the Commissioner and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition. As per Rule 75 a petition shall join as respondent to his petition all the contesting candidates as well as any other candidates against whom allegations of any corrupt practice are made in the petition. The trial of the election petition shall be under Rule 76 of the Rules of 1971. On hearing the election petition and on its conclusion of trial, the Commissioner is required to make an order dismissing the election petition or declaring the election of all or any returned candidate to be void or the petitioner or any other candidate to have been duly elected. Grounds for declaring election to be void have been set out under Rule 81 and Rule 82 provides for grounds on which a candidate, other than returned candidate, may be declared to have been elected. It states that if any person, who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the Commissioner is of opinion (a) that, in fact, the petitioner or such other candidates received a majority of the valid votes, or (b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate should have obtained a majority of the valid votes, the Commissioner shall after declaring the election of the returned candidate to be void, declare the petitioner or such other candidate, as the case may be, to have been duly elected. It is on the interpretation of this Rule 82 it is contended by the petitioner that the Election Tribunal fell in grave error in declaring the election petitioner elected which relief is beyond the scope of Rule 82 of the Rules of 1971. It would be advantageous to reproduce the provisions of Sections 144T and 144V of the Act which are relevant for the present purpose.

144-T. Disputes relation to elections to be submitted to the Commissioner or other specified officer.

(1) Notwithstanding anything contained in Section 91 or any other provisions of this Act, any dispute relating to an election shall be referred to the Commissioner of the Division in which such election is held or to an officer not below the rank of Additional Commissioner of a Division authorised by the State Government in this

behalf (hereinafter in this section either of them as the context may require is referred to as "the specified officer").

(2) Such reference may be made by an aggrieved party by presenting an election petition to the specified officer, within a period of two months from the date of declaration of the result of the election:

Provided that, the specified officer that he had sufficient cause for not preferring the petition within the said period.

(3) In exercising the functions conferred on him by or under this Chapter, the specified officer shall have the same powers as were vested in a Court in respect of -

(a) proof of facts by affidavit;

(b) summoning and enforcing the attendance of any person and examining him on oath;

(c) compelling discovery or the production of documents; and

(d) issuing commissions for the examination of witnesses.

In the case of any such affidavit, an officer appointed by the specified officer in this behalf may administer the oath to the deponent.

(4) Subject to any Rules made by the State Government in this behalf, any such petition shall be heard and disposed of by the specified officer as expeditiously as possible. An order made by the specified officer on such petition shall be final and conclusive and shall not be called in question in any Court.

144-V. Contents of petition -

(1) An election petition shall -

(a) contain a concise statement of the material facts on which the petitioner relies;

(b) set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings :

Provided that, where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

8. The constitutional validity of the scheme of Section 144T came to be upheld by this Court in the case of Chapadgaon Vividh Karyakari Seva Sahakari Society and Others Vs. Collector of Amhednagar and Others, . The same view was reiterated in the case of Padmasinghji Bajirao Patil and Ors. v. State of Maharashtra and Ors. Writ Petition No. 5759 of 1995 decided on 10th January, 1996. The view taken by this Court has been confirmed by a three Judge Bench of the Apex Court in the case of Padmasinghji Bajirao Patil and Others Vs. State of Maharashtra and Others, . Another Division Bench of this Court in the case of Radhakrishna s/o Harischandra Gorde v. The Additional Commissioner, Aurangabad and Ors. Writ Petition No. 474 of 1987 decided on 11th August, 1987 considered the provisions of Section 144W of the Act as well as Rule 82 of the Rules of 1971 and it concluded that the provisions of Rule 82 could not override the provisions of Section 144W of the Act. Section 144W of the Act states that a petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates as void, claim a further declaration that he himself or any other candidate has been duly elected. The Division Bench of this Court held that the relief, as set out in Section 144W of the Act, cannot be circumvented by the provisions of Rule 82 and it cannot be narrowed down. The Division Bench concluded that an election petitioner has the remedy of seeking himself as declared elected in place of the returned candidate if the election petition filed u/s 144T is allowed by the Election Tribunal and it is not necessary that only in the case of majority vote that such a relief could be granted. It is for these reasons that the decision of the Apex Court in the case of Gadakh (supra) cannot be made applicable to the instant case.

9. There is no dispute that an election petition can be presented by any candidate or voter u/s 144T of the Act and this presentation need not be in person and it could be by an authorised person or Advocate. The objection on account of procedural requirements to the election petition was claimed in para 20 of the written statement. It would be advantageous to reproduce the specific procedural objection :

20. ... I say that while filing the election petition due care is to be taken. However, the petitioner has not filed the election petition as per the provisions of Section 144V of the Maharashtra Co-operative Societies Act, 1960. I say that the election petition is not signed and verified in the manner laid down as per the provisions of CPC and as per the provisions of the Act of 1960. I say that the petitioner has made the allegation in respect of corrupt practice and, therefore, the petition should have been accompanied by an affidavit in support of the allegation of such corrupt practice and the particulars thereof. I say that the present election petition is not filed as per the said provisions and the election petition is not properly verified i.e. which part of the election petition is based on the basis of the personal knowledge and which part of the election petition is based on the documents and the legal submissions and which part of the election petition is indicating the corrupt practice. Therefore, the said election petition is not filed as per the mandatory provisions and therefore the same is liable to be

dismissed with costs. I say that any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition. I say that however the same is also not done in respect of the annexure, therefore, therefore, the petition is also liable to be dismissed on this ground with costs.

10. The learned A.G.P. has produced the record from the Election Tribunal and it is noticed from the election petition memo that there was no allegation of corrupt practice against the present petitioner whose election was in challenge. The allegation of corrupt practice made was against the officer who accepted the nomination paper of the present petitioner. The file indicates that a separate affidavit, so as to verify the election petition memo, has been filed by following the due procedure as set out in the Civil Procedure Code. Every page of the annexure has been signed by the petitioner as a true copy. At no point of time an application has been filed by the petitioner praying for dismissal of the election petition on the ground of non-compliance of the procedural requirements as set out u/s 144V of the Act. The Roznama indicates that the following issue was framed on 28th January, 2000 :

Whether the election of respondent is valid?

And the petitioner was represented by an Advocate who remained present before the Election Tribunal on that day. The Roznama has been signed not only by the concerned official but also by the learned Advocates of the respective parties. No further application was taken out either objecting to the issue so framed or for framing any other issues, including the preliminary issue to reject the election petition on the ground of non-compliance of the requirements of Section 144V of the Act. In any case, these procedural deficiencies could be curable and they could not have been fatal but the petitioner could have got an opportunity of taking steps to remove the deficiencies if they were pointed out or objected to by way of a specific application praying for dismissal of the petition on that preliminary ground. The Roznama. also indicates that the election petition was filed on 19th September, 2002 and inspite of notice and causing appearance he chose not to file reply/written statement till 16th April, 2003 on which date he was given a last chance to file his say and he has filed the say on the next date i.e. 7th May, 2003. The election petition was listed for evidence on 25th June, 2003 and only the petitioner's Counsel was present whereas other parties went unrepresented. Similarly, on the next date i.e. 16th July, 2003 the election petitioner's Counsel was present and on 6th August, 2003 he filed an affidavit by way of evidence. The present petitioner sought time to lead his evidence but did not do so on 13th August, 2003, 10th September, 2003, 24th September, 2003, 8th October, 2003, 19th November, 2003, 17th December, 2003, 28th January, 2004, 3rd March 2004 and on 21st April, 2004 he was given a last chance for leading evidence. On the next date i.e. on 9th June, 2004 the learned Presiding Officer of the Tribunal was on tour but no affidavit in reply, by way of evidence, was filed. On 7th July, 2004 none appeared for the present petitioner before the

Election Tribunal when it was called out and, therefore, the learned Presiding Officer closed the case for final decision/order. Thereafter, it appears that on the same day the present petitioner's learned Advocate appeared and filed arguments in writing. These Roznama details have been dealt with only to show the attitude of the present petitioner before the Election Tribunal and it would not be permissible for him to take a plea that principles of natural justice were violated, issues were not framed and he was not given due opportunity to lead evidence. This Court in the case of Dhanraj Lilaram Motwani and Another Vs. Rajendra Kumar Dayachand Jain and Others, , was required to deal with a similar situation. While deciding a rent suit time was granted to file reply on 21st July, 1994 by way of last chance and the matter was fixed on 4th August, 1994 on which date against a prayer for adjournment was made by the Counsel for time to file reply as he was busy in the School Tribunal. This Court referred to the provision of Order XVII, Rule 1 of the CPC and held that despite number of opportunities having been given and when the last opportunity was given on 21st July, 1994 for filing the reply and the case was adjourned to 4th August, 1994 it could not be said that the trial Court committed any error of jurisdiction or exercised jurisdiction illegally or with material irregularity. The exercise of jurisdiction in accordance with the procedure prescribed by law could not be said to be improper.

11. The Roznama, as referred to herein above, clearly indicates that the election Tribunal did not commit any procedural error and, in fact, it gave a sufficiently long leverage to the present petitioner to meet the challenge raised to his election. It was the petitioner who did not take the benefits of the opportunities offered by the Tribunal and, therefore, it would not lie in his mouth now to allege that the Tribunal committed procedural irregularities or it disregarded the principles of natural justice.

12. This Court, in the case of Sambha etc. v. The Assistant Registrar, Co-operative Societies etc. 1996 C.T.J. 226, inter alia, held that, in addition to the disqualification set out u/s 73FF of the Act, the "disqualifications provided under the Bylaws would be binding and they could be treated as additional grounds to upset the election. It is, thus, clear that the requirements of Bylaw No. 30(10) of the respondent No. 7 federal society are in addition to the grounds of disqualifications set out. u/s 73FF of the Act and the Election Tribunal would be justified in allowing the election petition on any of these grounds. In the instant case, the election petition has been allowed on the ground that the present petitioner sustained disqualification under Bylaw No. 30(10). The learned Counsel for the petitioner vehemently urged that this view of the Tribunal is patently erroneous. The Tribunal concluded its decision by the following observations on this ground.

^^&& ijHk.kh ftYgk e;/orhZ lgdkjh cSad ;kapk mifo/kh dzekad 30?10??1? uqlkj ukWfeus"ku gks.;kP;k rkj[ksiwohZ fnukad 26&9&2001 P;kiwohZ 1 o"ksZ g;k dkyyo/kh dfjrk xSjvfiykFkhZ dzekad 1 layXu lkslk;Vhps iapdesVhr laHkkln ulY;kps

fl} gksr vkgs- dkj.k xSjvfiykFkhZ dzekad 1 ;kauk lq:okrhyk iapdesVhps ,dk
lnL;kauh fnukad 8&3&2001 jksth jkthukek fnY;kewys jhDr >kysY;k inkoj fnukad
24&3&2001 jksth fu;qDrh dj.;kr vkyh gksrh- R;keqys xSjvfiykFkhZ dzekad 1 gs
ojhy mifo/kh uqlkj cWadsph fuoM.kwd y<fo.;kl ik= uOgs] gs fl/n gksrs-**

13. The petitioner contends that the period of one year for being the member of the managing committee of the affiliated society, which nominated him as its representative and a voter for electing the Managing Committee of the respondent No. 7 federal society, must be counted with reference to the date of filing the nomination form and not with respect to the date of his nomination as a delegate. If this interpretation is accepted the bylaw will have to be reread in the words which do not appear in it. In short, the petitioner contents that the words ^R;kps ukWfeus"ku gks.;kP;k rkj[ks iwohZ** to be read as ^R;kus ukWfeus"ku QkeZ Hkj.;kP;k rkj[ks iwohZ**. When the bylaw does not say so it was not for the election Tribunal to change the language of the bylaw. Under Rule 5 of the Rules of 1971 an affiliated society is required to nominate its delegate for being a voter in the elections of the federal society and the reference of nomination is to such an eventuality and it cannot be read to mean that the filling in of nomination form is the relevant date for counting the period of one year. The language of Clause (10)(1) of Bylaw No. 30 puts emphasis on the contesting candidate's tenure as member of the committee with the affiliated society and he has to be a member of its managing committee atleast for one year prior to the date he is nominated as its delegate to the federal society. In the case of Tarlochan Dev Sharma Vs. State of Punjab and Others, , a three Judge Bench noted, thus: "9. To find the meaning of a word or expression not defined in an enactment the courts apply the "subject and object rule" which means ascertain carefully the subject of the enactment where the word or expression occurs and have regard to the object which the Legislature has in view. Forego the strict grammatical or etymological propriety of language, even its popular use; let the subject or the context in which they are used and the object which the Legislature seeks to attain be your lenses through which look for the meaning to be ascribed. "In selecting one out of the various meanings of a word, regard must always be had to the context as it is a fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Therefore when the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of - -"

In the instant case, the language of Clause (10)(1) of Bylaw No. 30 is clear and we need not search for any other meanings or any other words and to substitute the words from outside which they do not find place therein to arrive at its correct meaning. The period of one year, as stated therein, has to be with reference to the date of the nomination of the delegate by the affiliated society to the federal society and not with reference to the date of filing the nomination form for contesting election. The Tribunal was right in its view in this regard.

14. There is no doubt that once elected to an office in a democratic institution the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law. A returned candidate must hold and enjoy the office and discharge the duties related therewith during the term specified by the relevant enactment is a valuable statutory right not only of a returned candidate but also of the constituency of the electoral college which he represents and removal from such an office is a serious matter. It curtails the statutory term of the holder of the office and a stigma is cast on the holder of the office in view of certain allegations having been held to be proved. Under the provisions of the Act one sustains a further disqualification if he is unseated out so long as the Election Tribunal has rendered his verdict by following the due procedure and in keeping with the principles of natural justice, the rights of the elected member are always subject to the verdict of the Election Tribunal. As noted earlier, the impugned order does not suffer from any error apparent on the face of the record on the points of fact as well as law.

A six Judge Bench in the case of *N.P. Ponnuswami v. The Returning Officer, Namakkal Constituency, Namakkal, Salem Dist.* and Ors. AIR 1952 S.C. 641, held that (a) rejection or acceptance of a nomination paper is included in the term "election"; (b) any matter which has the effect of vitiating the election should be brought up only at the appropriate stage in an appropriate manner before a special Tribunal and should not be brought up at an intermediate stage before any Court. Under the election, law, the only significance which the rejection of a nomination paper has consists in the fact that it can be used as a ground to call the election in question; (c) the right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it.

Keeping in mind this well established position in law it is clear that the instant petition has to be treated to be a petition under Article 227 of the Constitution and it is only for examining the legality of the order passed by the Election Tribunal. It does not involve considerations of any fundamental rights of the petitioner. The powers of this Court are limited when it considers the challenge to the view taken by the Election Tribunal in supervisory jurisdiction and, therefore, having considered the rival contentions there is no doubt that the view taken by the Election Tribunal in the instant case does not suffer on any count. It is neither perverse nor does it suffer from material irregularities.

16. The petition, thus, fails and the same is hereby rejected summarily.