

(1986) 01 BOM CK 0004
In the Bombay High Court
Case No : Writ Petition No. 1276 of 1984

Vilas Krishnarao Raut

APPELLANT

Vs

Returning Officer, Sale Purchase Society Election Digras and
others

RESPONDENT

Date of Decision : 17-01-1986

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1986) MhLj 200

Hon'ble Judges : N.K. Parekh, J; M.M. Qazi, J

Bench : Division Bench

Advocate : R.R. Deshpande, for the Appellant; W.M. Sambre, Govt. Pleader for Respondent No. 1, V.C. Daga and J.T. Gilda, for the Respondent

Final Decision : Allowed

Judgement

M.M. Qazi, J.—The main question that involves in the present petition is about the interpretation of rule 58 (I)(a) of the Maharashtra Co-operative Societies Rules, 1961 (hereinafter referred to as "the Rules"). There is no dispute that the nomination paper of the petitioner was rejected by the Returning Officer on the sole ground that the petitioner was a defaulter within the meaning of rule 58 (I) (a) of the Rules. There is also no dispute that the dues are in respect of honorarium which the society has paid to the petitioner, amounting to Rs. 10,200/- . However, there is a dispute whether the society could legally pay the amount of Rs. 10,200/- to the petitioner and whether the petitioner can retain the same. In our view, it is not necessary to enter into the niceties or the circumstances under which the honorarium was paid. Suffice it to say that the amount was received by the petitioner by way of honorarium in view of the services, which he rendered to the society.

2. Rule 58 (I)(a) of the Rules reads thus : "(1) No person shall be eligible for appointment or election as a member of the Committee of a society, if -

(a) He is in default to any society in respect of any dues from him, either as a borrower or as a surety for such period as is specified in this behalf in the by-laws of the concerned society, or for a period exceeding three months, whichever is less.

In view of the above provision, there can hardly be any doubt that the person must be in default either in his capacity as a borrower or a surety, then alone he would come within the mischief of this provision. It has not been argued before us that the petitioner is in default in his capacity as a surety. Therefore, we need not consider that aspect.

3. The only question that falls for our consideration is whether the honorarium which has been received by the petitioner can be said to have been received by him in his capacity as a borrower. It is nobody's case that the petitioner demanded this amount either as a loan or by way of an advance. Unless it is shown that the petitioner demanded this amount and in pursuance of his demand the amount is paid to him, it would be difficult to hold that he has taken the amount in his capacity as a borrower. Our attention was invited to the resolution dated 25-11-1979 (Annexure B), which shows that in the event one Raghunath Sapre did not take the honorarium, then the petitioner would also not take the same, it is not known whether Raghunath received the honorarium or not. Therefore, Shri Daga argued that the resolution speaks of certain contingency and since it is not known whether that contingency existed or not, it would not be safe to hold that the petitioner was entitled to receive the said amount. We have already observed above that it is not necessary to enter into this controversy since in our view there is no doubt that the amount has been received by the petitioner by way of honorarium. In our view, by no stretch of imagination the honorarium can be termed as an amount, amounting to loan. An honorarium is a sort of reward given to a person in recognition for his services.

4. We are told that a dispute is already filed by the society claiming the amount back from the petitioner. Even if the society succeeds in claiming the amount back, that, in our view, would not affect the "decision in the present petition since it would only mean that the petitioner was paid the amount under certain mistake. Even then it would not be possible to hold that the petitioner Received the amount in his capacity as a borrower. The word "borrower" necessarily implies "to obtain something on a loan, trust or credit, with the intention of returning the same." The facts and circumstances of this case do not warrant the inference of the relationship of creditor and borrower.

5. Shri Deshpande has invited our attention to the decision in Krishanath v. S. B. Kulkarni 1978 MhLJ 431. The relevant portion is as under :

The concept of borrowing is, however, entirely different from the concept of purchase or sale transaction. Normally when something is borrowed the borrower undertakes to return the same thing in species.

It further recites-

It must be remembered that a provision relating to disqualification must be strictly construed and unless a case squarely falls within the disqualifying provision, that case cannot be brought in the Rule by stretching the meaning of the word "default".

Thus, in our view, there is no substance in the submission of Shri Daga that the amount due from the petitioner on account of honorarium amounts to dues within the meaning of Rule 58(1)(a).

6. Shri Daga then argued that the petitioner has an alternative remedy and, therefore, this Court should not interfere and the present petition should be dismissed on that ground alone. He has relied on the decision of this Court in *Chandrakant v. D.D.R. Co-op. Societies Nagpur* 1978 MhLJ 526. This decision no doubt supports the contention of Shri Daga. However, this case came up for consideration before this Court in a recent decision in *Pandurang Hindurao Patil v. State of Maharashtra and others* 1978 MhLJ 431. This court observed, we may say so with respect rightly, that the decision (1978 Mh.L.J. 526) does not lay down that the order of Returning Officer wrongly rejecting or accepting the nomination paper can never be challenged under Article 226 of the Constitution.

It ultimately depends upon the facts of each case whether the High Court should exercise its extra-ordinary jurisdiction under Article 226 of the Constitution. In the peculiar facts and circumstances of this case, we have no doubt that it would not be proper for us to dismiss the present petition at this stage on the ground of alternative remedy.

7. Shri Daga further submitted that in the present case there are disputed questions of facts and the petitioner has not placed sufficient material including the byelaws of the society and, therefore, propriety demands that this Court should restrain from interpreting rule 58(I)(a). In our view, this submission has no substance. We have already observed above that there is no dispute or doubt that the amount was received by the petitioner by way of honorarium and hence we see no difficulty in deciding the present petition, on merit.

8. The petition is allowed. The order dated 10-5-1984 passed by the Returning Officer is quashed and set aside. The rule is made absolute in terms of prayer clause (1). We further direct that the Collector, Yavatmal, to proceed with the election from the stage it was stayed, as expeditiously as possible.