

Ebrahim Vs. Returning Officer

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Court : Karnataka

Decided On : Jul-14-1995

Reported in : ILR1995KAR2181; 1995(6)KarLJ470

Judge : G.C. Bharuka, J.

Acts : Karnataka Co-operative Societies Rules, 1960 - Rule 14(2) and 14(3)

Appeal No. : W.P. No. 15459 of 1995

Appellant : Ebrahim

Respondent : Returning Officer

Advocate for Def. : C.M. Monappa, Adv. for R-1 and R-3

Advocate for Pet/Ap. : A.K. Subbaiah, Adv.

Disposition : Petition allowed

Judgement :

ORDER

G.C. Bharuka, J.

1. Petitioner is a member of the second respondent - Co-operative Bank. Undisputedly he is one of the oldest members of the said Co-operative Bank and has held the post of elected Director for twenty-five years.

2. Petitioner had filed his nomination paper which was duly received on 18.4.1995 for his election to the Board of Directors of the respondent-Bank which was scheduled to be held on 26.4.1995. The first respondent was the Returning Officer. On 20.4.1995 the first respondent took up scrutiny of the nomination papers and rejected the same keeping in view the objection raised by 12 members to the effect that in the nomination paper the petitioner had disclosed his name as M.E. Ibrahim; but in the Membership Register and the List of Voters the same is found to be 'Musalmanara E.Ibrahim'. Respondent - Returning Officer has granted an endorsement to that effect which has been placed at Annexure-A.

3. This Writ Petition had been filed by the petitioner challenging the said act of rejection of his nomination paper with an interim prayer to stay holding of the elections. This Court issued Rule on 25.4.1995; and though it rejected the interim prayer as prayed for, it allowed the holding of elections but restrained the respondent from declaring the results of the election without the permission of this Court. Accordingly the elections have been held on 26.4.1995 but the results have been withheld.

4. The learned Counsel for the petitioner has assailed the impugned rejection of his nomination on the grounds that:

(i) The rejection is contrary to the provisions contained under Sub-rules 2 and 3 of Rule 14 of the Karnataka Co-operative Societies Rules, 1960 (the Rules, for short) :

(ii) The action of respondent No. 3 is actuated by mala fides at the instance and instigation of rivals of the petitioner; and

(iii) It suffers from the vice of flagrant and intentional discrimination, inasmuch as the nominations filed by various other candidates in the manner similar to the petitioner have been accepted as valid.

5. Sub-rules 2 and 3 of Rule 14 of the Rules read as under:

'(2) A member desirous of standing as a candidate to the committee of management shall give Notice in writing of his desire to the President of the

Society or any other officer duly authorised by the committee of management in this behalf at least seven clear days before the meeting. A member may nominate any other member or members, who are qualified to be chosen for the committee. The nomination paper shall indicate that the consent of the candidates proposed has been obtained in writing and such writing, together with the nomination paper, shall be delivered to the President of the society or any other officer duly authorised by the committee of management in this behalf at least six clear days before the meeting. The names of candidates whose nomination papers are not accompanied by the writing of the candidates showing consent or received after the prescribed time shall not be included in the ballot paper or voting slip.

'(3) The Notice given by the members intimating their desire to stand as candidates and nomination papers delivered under Sub-rule (2) shall be scrutinised by the committee of management on a day to be fixed by them which shall be at least five clear days before the date of the meeting, of which intimation shall be given to the members desirous of standing as candidates. It will be lawful for the candidates to be present at the scrutiny. The committee shall reject a notice or a nomination paper which is not in accordance with Sub-rule (2) or the proposed candidate is disqualified under these rules to be chosen to the committee of management. The committee of management shall endorse on such nomination paper its decision accepting or rejecting the nomination, and if the nomination paper is rejected it shall be recorded in writing a brief statement of reasons for its rejection. After all the nomination papers have been scrutinised and decisions of accepting or rejecting have been recorded the committee of management, shall prepare a list of validly nominated candidates, that is to say candidates whose nominations have been found to be valid and publish it on the notice board of the society on the very day on which nomination papers have been scrutinised.'

(Underlining is supplied)

6. From a reading of the said provisions in the Rules it is clear that the nominations which have been filed in time can be rejected only if those are not found in accordance with Sub-rule (2) of Rule 14 or if the proposed candidate is

found to be disqualified to be chosen to the Committee under the Rules, in the present case none of the said grounds have formed the bases of the impugned rejection of the petitioner's candidature. According to the learned Counsel for the petitioner, nomination paper was filed by him in accordance with the identity slip (Annexure-B) issued to him in which his name is shown as 'M.E.Ibrahim', with his membership number.

7. It is not in dispute that the membership number of the petitioner is 378/168/1 as is apparent from the voter's list filed at Annexure-I by the contesting respondent. Petitioner's father's name has been shown in the Member-Share register as 'Essac Saheb'. Respondents do not dispute that in the nomination paper filed by the petitioner he had correctly disclosed his membership number as well as his parentage. Therefore, the only objection which remains is that instead of writing his name as 'Musalmanara E. Ibrahim' he has written it as M.E. Ibrahim as indicated by respondents themselves in the identity Slip (Annexure-B) communicated to the petitioner for purpose of General Annual Meeting which was scheduled on 26.4.1995 for holding of elections. It is also not disputed by the respondents that there is no other member of the respondent - Cooperative Bank the initials of whom (i.e. the first and second name) starts with 'M.E.' followed by Ibrahim. Therefore, even if it is said that the petitioner has committed some technical error in filing the nomination paper, still it cannot be said that it is in any way substantial in nature. In the nomination paper the Petitioner has duly disclosed his correct membership number, parentage and his native place which was more than sufficient to appropriately identify the candidate.

8. In the case of HENRY v. ARMITAGE 1. (1883) 12 QBD 257 which related to the election of a town councillor, one of the persons nominated instead of stating his full name in the nomination paper namely 'William Moore Skinner' made an abbreviated statement as 'Wm. Moore Skinner'. Repelling the objection taken to the acceptance of the nomination paper on the said ground it was held by the Court of Appeal that an abbreviation of a Christian name which can only be understood as meaning that particular name is sufficient.

9. In the case of PRATAP SINGH v. KRISHNA GUPTA 2. : [1955]2SCR1029 , while dealing with the technical errors committed in filing of the nomination papers in an election under the C.P. and Berar Municipalities Act, the Supreme Court has held thus:

'Tendency of the courts towards technicality is to be deprecated. It is the substance that counts and must take precedence over mere forms. Some rules are vital and go to the root of the matter; they cannot be broken; others are only directory and a breach of them can be overlooked provided there is substantial compliance with the rules read as whole and provided no prejudice ensues; and when the legislature does not itself state which is which, judges must determine the matter and exercising a nice discrimination, sort out one class from the other along broad based common-sense lines.'

10. The learned Counsel for the respondents has raised an objection with respect to entertainment of the Writ Petition since according to him both the questions pertaining to rejection of nomination and secondly, the validity of the election, which have already taken place, Petitioner can well agitate that question by raising a dispute under Section 70 of the Karnataka Co-operative Societies Act. A Bench of this Court in the case of LINGANGOUDA SIDDANGOUDA PATIL v. THE RETURNING OFFICER IN THE ELECTION OF DIRECTORS TO THE KARNATAKA CENTRAL CO-OPERATIVE BANK LTD., DHARWAR AND ANR. 3. 1961 Mys.L.J. 942 had rejected a similar objection by holding that -

'This is, however, a matter on which I do not wish to express any opinion since, in my view, even if it was possible for me to agree with Mr. Nesargi that the petitioner could have made a reference under Section 70 of the dispute in this case, the fact that he could have made such reference cannot constitute a bar to the exercise of our jurisdiction under Article 226 of the Constitution in a case like this where the order of the Returning Officer rejecting the nomination paper of the petitioner is so plainly unsustainable, as to attract the jurisdiction of this Court under Article 226 of the Constitution. In cases like this, it would be wasteful expenditure of public time and money to insist on the petitioner adopting the procedure referred to in Section 70 of the Co-operative Societies Act and to refuse the exercise of our jurisdiction

under Article 226 of the Constitution.

In my opinion, this writ petition should succeed. The order of the Returning Officer made on September 21, 1960, is quashed, and the Returning Officer is directed to accept the nomination paper of the petitioner and his notice of candidature. The Returning Officer will now proceed with the election to the Committee of Management of the Karnataka Bank in accordance with law, and he will take all necessary steps and measures to hold that election from the stage at which it was interrupted.'

11. Accordingly, keeping in view of the facts of the case and the statutory provisions, it is held that the nomination of the petitioner had been wrongly rejected, and accordingly the election held cannot be sustained. Accordingly respondents 1 and 2 are directed to hold fresh elections on the basis of the nominations already accepted and that of the petitioner as valid, on a date to be fixed by them in accordance with the Act and the Rules framed thereunder.

12. Writ Petition is accordingly allowed. But there will be no order as to costs.

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