



Mumbai Cricket Association

CRICKET CENTRE, WANKHEDE STADIUM, 'D' ROAD, CHURCHGATE, MUMBAI - 400 020.

TEL.: 2279 5500, FAX: 91-022-2279 5566/67/68

E-mail : mcacrik@mumbaicricket.com, Website: www.mumbaicricket.com

**FROM THE OFFICE OF THE ELECTORAL OFFICER
MCA ELECTIONS FOR THE POST OF VICE PRESIDENT
REPORT OF SCRUTINY PROCEEDINGS
SCRUTINY of Nomination Forms Dated 03/12/2022 at 11:00 am**

1. As per the declared election program, scrutiny of the four nomination papers submitted by the two candidates (Shri Naik and Shri Shaikh) started at around 11:40 on 02/12/2022. The request of Shri Naik, to present his case through his advocate Adv Abhishek Bhat was accepted. Adv. Bhat argued that Shri Shaikh has no locus standi to contest the election, since his proposer and seconder have withdrawn their signatures to his candidature. Shri Shaikh requested to defer the hearing till 11:00 am the next day i.e. 03/12/2022 giving him opportunity and time to consult and present his lawyer. This request was accepted and the further hearing of the objection was fixed at 11:00 am on 3/12/2022. The summary of the proceedings held on 02/12/2022 were uploaded on the website of MCA for the information of all members.

1.1 The postponed hearing was started at 11:30 am on 03/12/2022. Adv Vipin Kamdi remained present on behalf of Shri. Shaikh. Adv Kamdi argued that the points raised in the Objection by Shri Naik are completely devoid of merit and need to be rejected summarily. He submitted written arguments alongwith two judgements of the Hon'ble Supreme Court 2012 (4) Supreme 342 of Petitioner Shambhu Prasad Sharma dated 03/07/2012 and (2017) AIR (SC) 2859 of Petitioner Kameng Dolo dated 09/05/2017.

1.2 Adv Bhat replied to the contentions of Adv Kamdi and requested to reject the Nomination Forms of Shri Shaikh.

2. The facts of the case as brought to my knowledge are as follows:

JSShat
3/12/22
3=10 pm.

2.1. Shri Sanjay Naik & Shri Shaikh submitted 2 Nomination forms (complete in all aspects) each to the Authorized Person (AP) on the date & time as shown in the table given below:

Sr. No.	Name of Candidate	Proposed & Seconded By	Date & Time of submission to EO / AP	Letter of Withdrawal of Signature	
				Proposer	Seconder
1	SANJAY NAIK	YOUNG BOYS C.C.	28/11/2022 at 11.16 am	Nil	Nil
		MASKATI CRICKET CLUB			
2	SANJAY NAIK	CROWN C.C.	28/11/2022 at 11.16 am	Nil	Nil
		VICTORY C.C.			
3	IQBAL SHAIKH	KRIDARANG CRICKET CLUB	30/11/2022 at 02.50 pm	30/11/2022 at 06.35 pm	01/12/2022 at 12.10 pm
		ELPHINSTONE CRICKET CLUB			
4	IQBAL SHAIKH	YOUNG MOHAMMEDAN C.C.	30/11/2022 at 03.00 pm	Nil	01/12/2022 at 12.10 pm
		ELPHINSTONE CRICKET CLUB			

NOTE: All forms were submitted to Mr. Kinjal Patel, authorised by E.O. by order dated 28th November 2022

2.2 These were duly uploaded on the website of MCA immediately after the end of Nomination period i.e. 5pm on each day.

2.3 Two letters were received by the office of MCA one each on 30/11/2022 at 6:35 pm & 1/12/2022 at 12:10 pm from the Proposer and Seconder of Shri Shaikh, informing that they have withdrawn their signature to the candidature of Shri Shaikh. Details of these letters are as shown in the above table.

3. Shri Sanjay Naik & his advocate argued (giving reference to the Rule 32 & 33 of the Constitution of MCA, and Rule 3, 5 & 22 of Rules of elections of MCA) that since the proposer & seconder of Shri Shaikh have withdrawn their signature before the date & time of scrutiny:

JSScharp
3/12/22
3 = 10 pm

a) Shri Shaikh has no locus standi to contest the election &

b) candidature of Shri Shaikh does not survive

3.1. To ensure transparency, Constitution of MCA provides for deposit and submission of nomination papers, dispute against candidacy etc through the quoted rules. Since Constitution does not have any explicit provision, the Proposer and Secunder can withdraw their signature before the last date of nomination. The Proposer and Secunder has liberty to withdraw their signatures, similar to their right to sign on nomination papers in our democratic set up. Shri Shaikh should have filed fresh nomination after the said withdrawal of signature.

3.2. Adv Bhat did not cite any judgement of the Court, to support his claim.

3.3. Adv Bhat further requested that the candidature of Shri Sanjay Naik should only be treated as valid for the post of Vice President, in view of above facts & legal provisions.

4. Shri Shaikh & his advocate Adv Kamdi, referring to their 2 mails dated 30/11/2022 and 02/12/2022 addressed to EO, informed that

a) his nomination forms (2) have been voluntarily signed by both the proposer & seconder out of their own free will.

b) two letters by proposer & seconder withdrawing their signature to my candidature were submitted much later and that too after valid submission of nomination forms to EO/ AP

c) the proposer & seconder were allegedly coerced to send the 2 letters.

4.1 Adv Kamdi for Shri Shaikh argued that:

a) There is no provision in law which provides that subsequent withdrawal of signature by proposer or seconder will amount to withdrawal of nomination of a candidate. Valid signatures are required for the nomination form to be complete, at the time of submission of form to E.O. /AP.

JSScharp
3/11/22
3:10 pm.

b) Scrutiny can be done only on the material parameters which will affect the democratic principles adversely. Nomination papers are not supposed to be rejected unless there is material defect in the form.

c) Since election is an exact & time bound process, there cannot be any going back once the complete nomination forms are submitted to EO/AP.

d) There is no provision in law to consider subsequent change of mind/willingness of proposer or seconder. If the proposition of Shri Sanjay Naik is accepted, no legal process including election can ever be completed.

e) There are no explicit provisions for scrutiny and/or rejection of Nomination Forms in the MCA constitution. Further there is no provision even in Representation of People's Act 1951 for rejection of nomination forms on the ground of subsequent change of mind or willingness on behalf of proposer/ seconder. Nomination Forms can be challenged only when there is doubt about the signature not being genuine, besides some other specified parameters.

f) Adv Kamdi submitted his written arguments alongwith the above referred 2 judgements of Hon'ble Supreme Court in support of his claim.

g) Adv Bhat is misleading the E.O. by misinterpreting the election rules 3, 5 & 22 and is also raising doubts about the integrity of election process.

4.2 In the end, Adv Kamdi requested that the objection of Shri Sanjay Naik should be rejected, and his candidature should be held valid. He further requested that action should be taken against Shri Naik, for the alleged intimidation, pressure on proposer & seconder and adopting unfair practices in elections.

5. After carefully going through the allegations of Shri Sanjay Naik, defence of Shri Shaikh, arguments of both the advocates, Constitution of MCA, provisions in the RP Act , I find that:

5.1 Initial willingness of both the proposer & seconder to the candidature of Shri Shaikh until the time of acceptance by AP, was allegedly withdrawn subsequently.

JSSchawp
3/19/22
3=10 pm. 4

5.2. There are no explicit provisions for rejection of nomination forms in the Constitution of MCA. The Election Commission of India however has provided for broad rules for scrutiny and/or rejection of Nomination Forms.

5.3. Point 6 & 11 of the Circular issued by ECI to ROs (Section 36 of the Act) on the above subject of scrutiny & rejection reads as follow:

(6) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

(11) ix. If the nomination paper is not signed by the candidate or his proposer(s) or the signature there in is not found genuine

5.4 From above it is clear that

a) nomination forms not signed by the proposer or signature and/or not found genuine can be the ground for rejection.

b) nomination paper should not be rejected on the ground of any defect which is not of substantial character

c) there is no explicit provision for rejection of nomination forms on the ground that proposer/seconders have withdrawn their signatures.

6. **Conclusion:** In the present case the letter of withdrawal of signatures, were submitted much later after their submission to the Authorised Person. It appears to be an afterthought. Further election is an exact and a time bound process. Willingness of proposer and seconder at the time of filing of nomination, is of importance. Subsequent change of mind and or unwillingness cannot be a ground for rejection of the nomination paper. If this concept of withdrawal of signature/ consent is accepted, then no legal process, including election, can ever be completed. Non-genuineness can be a ground of an objection during scrutiny. The letters of withdrawal of signature of proposer and seconder are totally silent about genuineness, intimidation, malpractices etc. It only mentions that signature was affixed on Nomination Paper erroneously. I find no substance in the arguments of Adv Bhat. As against this the arguments of Adv

JSScha
3/12/22
3=10/pm.


Kamdi were found to be valid, supported by cited judgements. In view of above, the Objection of Shri Naik cannot be upheld.

In a democratic process, every interested person should be given opportunity to contest and equal level playing field must be provided. Keeping this principle in mind, ECI has rightly directed that the nomination forms should not be rejected on the ground of any defect which is not of a substantial character. If the nomination papers are rejected on the sole ground of the withdrawal of signature, the democratic process will be very adversely affected. It will amount to denying a person his constitutional right to contest. Infact, MCA should enquire the two emails and take appropriate action in the interest of justice.

7. In view of above, I hereby pass the following order:

ORDER

- A. Objection raised by Shri Naik against the candidature of Shri Shaikh quoting the letter of withdrawal of signature, is hereby rejected.
- B. All the 4 nomination forms are found valid after scrutiny. Therefore, both Shri Naik and Shri Shaikh are declared as valid candidates.


3/12/22
(J. S. Saharia) 3=10/22
Electoral Officer
MCA