

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

1 WRIT PETITION NO.6332 OF 2023

Ram S/o. Nivrutti Zinjurde,

...PETITIONER

Versus

1. The State of Maharashtra through its Secretary
Co-operative Marketing and Textile Department
Mantralaya, Mumbai ...RESPONDENT
2. The District Cooperative Election Officer,
and Regional Joint Director (Sugar)
Nanded, Tq. & Dist. Nanded
3. Returning Officer,
Purna Sahakari Sakhar Karkhana,
Vasmat, Dtq. Vasmat, Dist. Hingoli
4. Purna Sahakari Sakhar Karkhana
Vasmat, Tq. Vasmat, Dist. Hingoli
Through its Managing Director
5. Dhondiram Balasaheb Pardikar,
Age-48 years, Ocu-Agril,
R/o. Saraswati Colony, Vasmatnagar,
Vasmat, Tq. Vasmat, Dist. Hingoli

Mr. N. B. Khandare, Advocate for the petitioner

Mr. K. B. Jadhavar, AGP for the respondents/State

Mr. S. K. Kadam, Advocate for respondent Nos. 2 and 3

CORAM : KISHORE C. SANT, J.

DATE : 23rd JUNE, 2023

JUDGMENT :

2. Rule.

3. Rule made returnable forthwith with the consent of the parties.

4. One of the contesting members in the election to the sugar factory has filed this petition aggrieved by the decision dated 12-06-2023 taken by the Returning Officer overruling objection in respect of acceptance of nomination papers of respondent No.5.

5. Elections of Purna Sugar Co-operative Factory are declared & as per schedule. 26-06-2023 is the last date of withdrawal of nomination papers. The petitioner raised objection to the nomination papers of respondent No.5 on the ground that respondent No. 5 has supplied sugar cane from the

area out side the jurisdiction of the sugar factory which in his submission is in contravention of Rule 28(2) of the bye-laws. Rule 28 Sub-Rule 2 requires a member of the sugar factory to supply the sugarcane at least for three seasons out of five preceding crushing seasons. It also requires that said sugarcane should be grown in the village within the area of operation of the sugar factory as required under Rule 9. Rule 9 prescribes that sugarcane should be grown on the area of minimum 20 Guntha of the land under command area. The petitioner raised this objection. The respondent appeared and filed his say. Though he accepted that he supplied the sugarcane to the factory from the area out side the jurisdiction, however, there is no restriction to bring the sugar cane from outside. The learned Returning Officer considered the objection and say filed by the respondent. He recorded findings that there is no sufficient proof produced on record to support the objection and over ruled the objection.

6. The learned advocate for the petitioner vehemently

argued the matter. He submits that Rule 28 (2) is binding on all the members. The wording of the bye-laws shows that it is mandatory for a member to supply sugarcane for at least in three seasons out of preceding five crushing seasons. He submits that object can be gathered from Rule 17(b) of the Bye-laws. Rule 17(b) prescribes that the members of the sugar factory should produce the sugarcane and should supply it to the sugar factory. To save the time and to maintain the productivity, the sugar factory has to make a plan about the cultivating the sugarcane with planning to transport sugarcane to the sugar factory etc. He submits that it is for this reason bye-laws 28 (2) specifically provides that the sugarcane should be supplied from the jurisdiction of the sugar factory. Reading bye-laws 9, 17 and 28 together would make it clear that it is mandatory to supply the sugarcane for efficient working of the sugar factory.

7. Learned advocate relies upon the judgment passed by this court in writ petition No.254/2023 considering the judgment in the case of Dalsingh Shamsing Rajput Vs State of

Maharashtra and Ors reported in 2006 (5) Bom. C. R. 691 and Dattatray Genaba Lole and others Vs Divisional Joint Registrar, Co-operative Societies and others to submit that even at this stage the court can interfere with the election process and can direct the rejection of the nomination papers, if it is wrongly accepted by the Returning Officer. In the case of Dalsing Rajput (supra) it was a case that the person whose nomination paper was accepted was neither a member nor voter of the society but still his nomination paper was accepted and he was allowed to contest the election. In that case therefore, the nomination was rejected by this court. In the case of Vaibhav Manohar Bhokare in writ petition No. 254 of 2023 there was a default by the borrower and the guarantor in terms of bye laws No. 4(17) and 44 (9) and defaulter was not entitled to contest the election.

8. Learned advocate for respondent No.5 vehemently opposes the petition. He submits that in reply he had clearly stated that said sugarcane allegedly supplied from the village out side the jurisdiction was transported by the sugar factory

itself. He submits that application was vague. He submits that alongwith nomination papers he had annexed the certificate issued by the Executive Director of the Sugar Factory certifying that he had supplied sugarcane for three years in the last preceding five years. He submits that it is this certificate which needs to be accepted. Certificate produced by the petitioner, need not be considered as the same is disputed etc. He also submits that there is a remedy of filing election dispute under Section 91 of the Cooperative Societies Act and therefore, the petition need not be entertained.

9. Mr. S. K. Kadam, learned advocate appearing for the Returning Officer submits that though a remedy is provided against rejection to nomination paper no such remedy is provided against acceptance of nomination papers by the Returning Officer. This indicates that the legislature has consciously not provided remedy against rejection of the nomination papers so as to allow the election to go on in case of rejection of nomination form. Therefore, only remedy is

provided by way of election dispute.

10. Learned advocate for respondent No.4 submits that bye-laws should be strictly construed and need to be adhered to if the nomination form is accepted. In this case acceptance of nomination form of respondent No. 5 runs contrary to the bye-law No. 28 (2). He submits that in fact respondent No.5 has accepted in his say that he had given sugarcane from the outside the jurisdiction of the sugar factory.

11. Learned AGP supports the order of the Returning Officer.

12. Considering the Rule 28(2), no doubt, makes it mandatory to supply sugarcane for at least three crushing seasons out of five preceding crushing season. However, when the objection is raised it becomes necessary to have strict proof of this fact and there should be no scope for interpretation or dispute the said facts. Looking to the certificate annexed

alongwith nomination form it is seen that column about the place from where the sugarcane is supplied is not provided. It has only two columns showing the year of crushing season and second column provides as to whether the sugarcane was supplied or not. From the said certificate it becomes difficult to come to any conclusion about from which place sugarcane was supplied. In this case, though the certificate is produced alongwith objection it is dated 09-06-2023 wherein there are five columns provided as name of village, area, quantity provided and date on which crop is sold. This certificate is issued after the nomination was filed and thus can be said to be a certificate specifically obtained for some purpose and therefore, needs to be proved. Certainly before the Election Officer there is no stage to prove the documents otherwise, whereas certificate which was produced alongwith nomination papers needs to be accepted as it is. The dispute is provided under Section 19(1) wherein the parties can lead the evidence in detail in support of their case. Looking to this petition and the contention of the parties, this court finds that certainly disputed

questions are there. It is always safer to allow the person to contest the election rather than not to allow him to participate. As already discussed even legislature has not provided remedy against acceptance of nomination papers and has provided a remedy only in case of rejection of nomination papers. This also needs to be kept in mind while dealing with the petition under Article 227 of the Constitution of India.

13. Considering all the above, this court finds this petition need not be entertained since the petitioner has a remedy to file election dispute.

14. With this, writ petition stands disposed off.

[KISHORE C. SANT, J.]

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