IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1239 OF 2024

Sanjay S/o Yadavrao Waghchaure,
Age 56 years, occu. Agri.,
R/o Dhupkheda, Tq. Paithan,
District: Chhatrapati Sambhajinagar. ... **Petitioner**.

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Co-operation Department,
Mantralaya, Mumbai-32.

2. The Joint Registrar Cooperative Societies
and Regional Joint Director (Sugar),
Kranti Chowk, Chh. Sambhajinagar.

3. The State Co-operative Election Authority,
Maharashtra State, Pune,
Central Administrative Building,
Shivajinagar, Pune,
Through its Secretary.

4. The District Cooperative Election Officer and
The Joint Registrar Cooperative Societies and
Regional Joint Director of Sugar,
Chhatrapati Sambhajinagar,
Near Kranti Chowk, Chh. Sambhajinagar.

5. The Retuning Officer,
Shri Sant Eknath Sahakari Sakhar Karkhana Ltd.,
Eknath Nagar, Paithan, Tq. Paithan,
Dist. Chhatrapati Sambhajinagar.

6. Shri Sant Eknath Sahakari Sakhar Karkhana Ltd.,
Eknath Nagar, Paithan, Tq. Paithan,
Dist. Chhatrapati Sambhajinagar.
Through its Administrator/ Managing Director.

7. Dattatray s/o Haribhau Amle,
Age 50 years, occu. Agri.

R/o Panrajangaon Khd. Tq. Paithan,
District: Chhatrapati Sambhajinagar.

8. Digamber Satwaji Gorde,
Age 50 years, occu. Agri.
R/o Balnagar, Tq. Paithan,
District: Chhatrapati Sambhajinagar.

9. Yehwant s/o Tukaram Bhavar – deleted.

10. Deepak s/o Harischandra Fandade,
Age 35 years, Occu. Agri.,
R/o Kesapuri, Tq. Paithan,
District : Chhatrapati Sambhajinagar. … **Respondents**.

WITH

WRIT PETITION NO.1240 OF 2024

Janardhan s/o Shripatrav Kagade,
Age 74 years, occu. Agri.,
R/o At Post Lakhegaon, Tq. Paithan,
District: Chhatrapati Sambhajinagar. … **Petitioner**.

VERSUS

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Eknath Nagar, Paithan, Tq. Paithan,
Dist. Chhatrapati Sambhajinagar.
Through its Administrator/ Managing Director.

7. Dattatray s/o Haribhau Amle,
Age 50 years, occu. Agri.
R/o Panrajangaon Khd. Tq. Paithan,
District: Chhatrapati Sambhajinagar.

8. Digamber Satwaji Gorde,
Age 50 years, occu. Agri.
R/o Balnagar, Tq. Paithan,
District: Chhatrapati Sambhajinagar.

9. Yehwant s/o Tukaram Bhavar – deleted.

10. Deepak s/o Harischandra Fandade,
Age 35 years, Occu. Agri.,
R/o Kesapuri, Tq. Paithan,
District : Chhatrapati Sambhajinagar. … **Respondents**.

WITH

WRIT PETITION NO.1241 OF 2024

Devidas s/o Janardhan Niware,
Age 72 years, occu. Agri.,
R/o Nathnagar, Paithan, Tq. Paithan,
District: Chhatrapati Sambhajinagar. ... **Petitioner**.

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Co-operation Department,
Mantralaya, Mumbai-32.

2. The Joint Registrar Cooperative Societies
and Regional Joint Director (Sugar),
Kranti Chowk, Chh. Sambhajinagar.

3. The State Cooperative Election Authority,
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Central Administrative Building,
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Through its Secretary.

4. The District Co-operative Election Officer and
The Joint Registrar Cooperative Societies and
Regional Joint Director of Sugar,
Chhatrapati Sambhajinagar,
Near Kranti Chowk, Chh. Sambhajinagar.

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Eknath Nagar, Paithan, Tq. Paithan,
Dist. Chhatrapati Sambhajinagar.

6. Shri Sant Eknath Sahakari Sakhar Karkhana Ltd.,
Eknath Nagar, Paithan, Tq. Paithan,
Dist. Chhatrapati Sambhajinagar.
Through its Administrator/ Managing Director.

7. Mahesh s/o Baburao Bombale – Deleted.

8. Deepak s/o Devichand More – deleted.

9. Sachin s/o Vikramrao Ghayal,
Age 37 years, Occu. Business,
R/o Pannalal Nagar, Paithan, Tq. Paithan,
District : Chhatrapati Sambhajinagar.

10. Aabasaheb s/o Sheshrao More,
Age: 55 years, Occu: Agril.,
R/o. Katpur, Tq. Paithan,
Dist. Chh. Sambhajinagar.

11. Eknath s/o Baban Nawale,
Age: 45 years, Occu: Agril.,
R/o. Wahegaon, Tq. Paithan,
Dist. Chh. Sambhajinagar.

12. Bhaskar s/o Sheshrao More – deleted.

13. Arefkhan Yusufkhan Pathan – deleted.

14. Haribhau s/o Bapurao Mapari – deleted.

15. Vishnu s/o Asaram Bodakhe,
Age: 56 years, Occu: Agril.,
R/o. Jaisingnagar, MIDC, Paithan,
Tq. Paithan, Dist. Chh. Sambhajinagar.

16. Bhagyashree Ravindra Ghayal– deleted. …. **Respondents**.

WITH

WRIT PETITION NO.1242 OF 2024

Rajendra s/o Babasaheb Gabhud,
Age 74 years, occu. Agri.,
R/o At Post Lakhegaon, Tq. Paithan,
District: Chhatrapati Sambhajinagar. … **Petitioner**.

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Co-operation Department,
Mantralaya, Mumbai-32.

2. The Joint Registrar Co-operative Societies
and Regional Joint Director (Sugar),
Kranti Chowk, Chh. Sambhajinagar.

3. The State Co-operative Election Authority,
Maharashtra State, Pune,
Central Administrative Building,
Shivajinagar, Pune,
Through its Secretary.

4. The District Co-operative Election Officer and
The Joint Registrar Co-operative Societies and
Regional Joint Director of Sugar,
Chhatrapati Sambhajinagar,
Near Kranti Chowk, Chh. Sambhajinagar.

5. The Returning Officer,
Shri Sant Eknath Sahakari Sakhar Karkhana Ltd.,
Eknath Nagar, Paithan, Tq. Paithan,
Dist. Chhatrapati Sambhajinagar.

6. Shri Sant Eknath Sahakari Sakhar Karkhana Ltd.,
Eknath Nagar, Paithan, Tq. Paithan,
Dist. Chhatrapati Sambhajinagar.
Through its Administrator/ Managing Director.

7. Gulab Rustumrao Landge,
Age 65 years, Occul Agri.,
R/o Unchegaon, Tq. Paithan,
District: Chhatrapati Sambhajinagar.

8. Pralhad s/o Kalyanrao Aute,
Age 56 years, occu. Agri.
r/o Mauli Apegaon, Tq. Paithan,
District: Chhatrapati Sambhajinagar.

9. Asaram s/o Baburao Shinde – Deleted.

10. Kakasaheb Manikrao Gore – Deleted.

11. Ravindra Abasaheb Bodkhe – Deleted.

12. Bhausaheb Vithal Pise,
Age 50 years, occu. Agri.,
R/o Uchegaon, Tq. Paithan,
District: Chhatrapati Sambhajinagar.

13. Datta Shrikisan Wakade,
Age 40 years, occu. Agri.,
R/o Takli Ambad, Tq. Paithan,
District: Chhatrapati Sambhajinagar.

14. Sunil s/o Dagadu Chitale – Deleted.

15. Anilkumar Murlidhar Tupkari – Deleted.

16. Santosh s/o Ramrao Wakade – Deleted.... **Respondents**.

WITH

WRIT PETITION NO.1243 OF 2024

Shahadeo s/o Gangaram Narwade,
Age 76 years, occu. Agri.,
R/o Tanda Bu. Tanda Kh.,
At Post Balanagar, Tq. Paithan,
District: Chhatrapati Sambhajinagar. ... **Petitioner**.

VERSUS

1. The State of Maharashtra,
Through its Secretary,
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The Joint Registrar Co-operative Societies and
Regional Joint Director of Sugar,
Chhatrapati Sambhajinagar,
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5. The Returning Officer,
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6. Shri Sant Eknath Sahakari Sakhar Karkhana Ltd.,
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District: Chhatrapati Sambhajinagar.

8. Digamber Satwaji Gorde,
Age 50 years, occu. Agri.
R/o Balnagar, Tq. Paithan,
District: Chhatrapati Sambhajinagar.

9. Yehwant s/o Tukaram Bhavar – deleted.

10. Deepak s/o Harischandra Fandade,
Age 35 years, Occu. Agri.,
R/o Kesapuri, Tq. Paithan,
District : Chhatrapati Sambhajinagar. … **Respondents**.

...

Advocates for the Petitioners in all WP : Mr. Ghatol-Patil S. B. with Mr. Rahul C. Babar, Mr. D. S. Daspute, D. B. Dansode.
AGPs for Respondents-State : Mr. A. S. Shinde, Mrs. M. L. Sangit, Mrs. R. R. Tandale, respectively.
Adv. for Respondent Nos.3 to 5 in all WP : Mr. S. K. Kadam.
Advocate for Respondent No.6 in all WP : Mr. D. J. Choudhari.
Adv. for respondent No.7 in WP/1241/24 : Mr. B. B. Bhise.

...

CORAM : S. G. MEHARE, J.
DATE : 07.02.2024

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.

2. The petitioners had filed a nomination for the election of Shri Sant Eknath Sahakari Sakhar Karkhana Ltd., Taluka Paithan, District Chhatrapati Sambhajinagar from Sugarcane Producers Members Constituency. Since they did not comply with bylaw 28(2) provisions of the Sugar Factory/respondent No.6, their nomination forms were rejected. They have a

common grievance against the order of their rejection. Hence, they are taken up for hearing and disposal together.

3. Bylaw No.28(2), under which the nominations have been rejected, is reproduced for ready reference, it reads thus ;

> “२८) .....
>
> (१) .....
>
> (२) त्याने पोटनियम ९ मधील तरतुदीप्रमाणे कारखान्याचे कार्यक्षेत्रातील त्याने पिकविलेला उस भागाच्या प्रमाणात निवडणूकी पुर्वीच्या लगतच्या पाच गाळप हंगामापैकी तीन गाळप हंगामामध्ये कारखान्यास घालण्याचे बंधन पाळलेले असले पाहिजे.”
>
> "(2) He should have complied with the obligation of supplying the sugar cane to the factory for three out of five crushing seasons preceding the election in proportion to the area in which he produced the sugar cane in the operational area of the factory as per sub-rule 9."

4. The Returning Officer rejected their nominations, observing that they did not supply the sugarcane for three seasons preceding the election of the society/respondent No.6.

5. Learned counsel for the petitioners has vehemently argued that this Rule was enacted pursuant to Section 26 of the Maharashtra Co-operative Societies Act, 1960 (For short 'MCS Act'). However, Section 26 has been amended and the earlier clause, which was that it should be the duty of every

member of the Society to utilize the minimum level of services at least once in 5 consecutive years as specified in the bylaws of the Society. That clause, which was co-related with the condition to supply sugarcane at least three seasons out of five seasons preceding the election, becomes redundant. Therefore their nominations should not have been rejected. Based on facts, he argued that the petitioner had been to the sugar factory to supply the sugarcane, but the sugar factory did not collect their sugarcane. Therefore, it could not be held that they voluntarily failed to supply the sugarcane. He has supplied the sugarcane for 2023-2024, considering that they have fulfilled the condition of bylaws 28(2). Since there is no wilful default on their part, they could not be deprived of contesting the election of respondent No.6. However, as far as the case of Shahadeo Narwade (Writ Petition No.1243 of 2024) is concerned, he has supplied sugarcane for three seasons preceding the elections. He further argued that the election program was declared on 04.01.2024. Therefore, the preceding three seasons should be counted from that date. He also argued that the family members of the petitioners had supplied the sugarcane for the last three seasons. Therefore, also they could not be disqualified. He would submit that the crushing season runs normally between October-November to March-

April. However, this season period may differ, and it is always subject to the orders of the Sugar Commissioner. There was no evidence of last year's crushing season, as per the directions of the Sugar Commissioner. He has referred to the various documents placed on record and vehemently argued that the Returning Officer did not apply his mind and mechanically passed the order. The Appellate Authority also, without application of his mind, dismissed their appeal. Supplying the sugarcane in a season would not be under the control of the agriculturists or the members. It depends on the nature. If there are such natural impediments, the bylaws should be read in that context, and the members could not be held ineligible to contest the election.

6. To bolster his argument, he relied on the case of ***Yeshwant Khashaba Dubai Vs. Krishna Sahakari Sakhar Karkhana Ltd. ; Laws (Bom.)-1989-2-13***. He further relied on the case of ***Suresh Anandrao Choudhari Vs. State of Maharashtra and others ; (2012) 3 Mh.L.J. 945***. He argued that since Section 26 of the MCS Act was amended, the provisions for disqualifying the members from contesting the members provided therein have also been deleted . Hence, it is

presumed that bylaw No.28(2) has no force of law. None of the parties can take advantage of this situation.

7. In response to the objections of learned counsel for the respondents, in Writ Petition Nos.1239 of 2024, 1240 of 2024 and 1243 of 2024 has argued that the results have been declared unopposed as per Rule 32 of the Maharashtra Co-operative Societies Election Rules, 2014 (for short 'Rules 2014'). Therefore, these petitions became infructuous; it has been argued for the petitioners that the petitioners have the right to contest and continue their petitions. Before the date of withdrawal of the nominations their petition was subjudiced before this Court. They may be listed in the list of contesting candidates for election. An Election Petition is not a remedy against the rejection of nominations. On the contrary, the only remedy for them is the writ petition.

8. To bolster his arguments, he relied on the case of ***Dalsing Shamsing Rajput Vs. State of Maharashtra and others ; 2006 (3) Mh.L.J. 592***. He prayed to allow the writ petitions.

9. Per contra, learned counsel Mr. Kadam for Returning Officer/respondent No.5 has vehemently argued that once the election is declared, the petitions against the rejection of

nomination become redundant. He referred to Rule 78 of the Rules 2014 and pointed out that the only remedy is under Section 91 of the MCS Act. He also referred into service Rule 25(2) of Rules 2014 and vehemently argued that the Returning Officer has to make a summary inquiry, and he is not empowered to make the inquiry in detail as if it is a proceeding. He would submit that whether really respondent No.6 denied collecting sugarcane from petitioners is a disputed fact. Otherwise, also, it is not the jurisdiction of the Returning Officer. By way of amendment to Section 26, the active and non-active member clause has been deleted. However, every Society has its bylaws. It has a statutory force. Therefore, barely amending Sections 26 and 27 of the Act 1960 would not automatically make the bylaws redundant about the qualification to contest the election.

10. Learned counsel for respondent No.6 Mr. D.J. Choudhari has argued that three candidates have already been declared elected unopposed. His arguments are also in tune with the arguments of learned counsel Mr. Kadam. He referred to Rule 6 of the Rules 2014 and argued that Sections 26 and 27 of the Act 1960 have been amended in the context of the provisional voters list. Reading these amended provisions together would

definitely not affect the qualifying clause to contest the members as prescribed in bylaws 28(2) of the Society. Apart from that, he referred to the said bylaws and pointed out that there is a footnote at the bottom of that bylaw that Rule 28 applies only to the candidates from the sugarcane producers members' constituency. All these candidates were contesting from the same constituency. Hence, Rule 28(2) is squarely applicable. None of them produced satisfactory evidence before the Returning Officer that they had supplied the sugarcane preceding three years out of the five from the date of the declaration of the election. He has vehemently argued that 01.10.2023 was the cutoff date. Three preceding years have been considered from the cutoff date. The documents on record show that the petitioners supplied the sugarcane after the cutoff date. Therefore, they could not take advantage of the fact that it was their last supply of sugarcane, and they acquired the qualification to contest the election. The crushing season was over in March 2023, and they supplied the sugarcane after the season for 2023-2024. The material date for eligibility was 11.01.2024. He also argued that since there was *prima faci*e evidence before the Returning Officer that the petitioners had not complied with bylaws 28(2) of the Society, their nominations were correctly dismissed. He relied on the

case of ***Shivshankar Dudh Vyavsayek Va Utpadak Sanstha Maryadit and others Vs. State of Maharashtra and others; 2004(1) Mh.L.J. 779*** and vehemently argued that in this case, this Court held that the bylaws approved by the statutory body had a binding force. The statutory body has sanctioned the bylaws of the society respondent No.6. Hence, it has a binding force. Apart from that, the amendments in Sections 26 and 27 did not mention any consequences on the bylaws of the Society. He was relying on the case of ***Manchak Vs. State of Maharashtra and others; 2011 (2) ALL MR 561***. He vehemently argued that the Rule of material dates plays a vital role in considering the qualification for contesting the election. In said case, respondent No.4 committed the defaults on 28.05.2010, i.e., the date on which the crop loan ought to have been paid. Even on the last date of the nomination, the loan was not repaid. He has cleared the loan while scrutiny was undertaken. In these sets of facts, it has been held that on the relevant date i.e. till the last date prescribed for filing nomination papers, the respondents did not clear the dues, and therefore, they were disqualified. Payment after the last date does not wipe out non-eligibility. He would again reiterate that the material date was 11.10.2024, i.e., the last date for nomination. Until that date,

there was no evidence that the petitioners had supplied the sugarcane as required under bylaws 28(2) of the Society.

11. He further relied on the case of ***Sambha Vs. State of Maharashtra and others ; 1996 (2) Mh.L.J. 182*** and argued that though the statute provides for the qualification and disqualification to become the member as eligible to contest the election the additional qualifications could be added in bylaws of the Society. In paragraph No.5, it has been observed that considering the argument of the learned counsel for the petitioner that, "Therefore, disqualifications as laid down in the Act and rules cannot be watered down by the Society by framing bylaws contrary to it. But, it does not mean that the additional qualifications cannot be prescribed under the bylaws. In many cases, qualification in respect of residence is prescribed. In many cases, the number of shares that should be held by a member for being entitled to election as Director is also prescribed. It cannot be said that no additional qualifications can be prescribed under the bylaws. It would be within the jurisdiction of the Registrar to examine whether bylaws included are proper and reasonable. Since the Registrar approved the present bylaws it can well be presumed that the Registrar has accepted its necessity."

12. It would be proper to deal firstly with the effect of the amendment of Sections 26 and 27 in MCS Act. Learned counsel for the petitioners has correctly pointed out that clause B of Sub Section 2 of old Section 26 has been deleted. However, the bylaws remained unchanged and provided some qualifications to contest the election. The condition was that the person wishing to nominate and contest the election must supply the sugarcane to the Society if he is from the sugarcane producers' members constituency for three preceding seasons out of five. The wording of the said bylaw 28(2) reads that as per sub-clause 9, the person who wishes to qualify to contest the election has to supply the crop produced in the area of operation of the factory preceding three years out of five seasons. The words 'before the election' indicate that the preceding five years should be counted from the proposed election. The election of the Society has been proposed for the year 2023-2024 to 2028-2029. There is not much quarrel about the season of sugarcane crushing. Unless there are exceptional circumstances, the crushing season is between October-November and March-April. However, reading this sub-clause (2) of bylaws 28, the candidates should supply the sugarcane for crushing for at least three seasons out of five

before the election. The election program was published on 04.01.2024. However, the election was declared to be held on 11.02.2024. This may be the correct date to count the last five years. So the person who wishes to contest the election has to satisfy that at least three years before 11.02.2024, he has supplied sugarcane to the Society. In all petitions, except writ petition No.1243 of 2024, the documents placed on record indicate no supply for the last three years. However, the explanation of the petitioners is that they had been to respondent No.6, but they refused to collect the sugarcane. This seems to be a dispute between the Society and the members, and it is a disputed fact. The remedy was available to the petitioners to obtain certain orders from the competent Authorities about the non-accepting of the sugarcane for the season. Considering the scope and powers of the Returning Officer, the Court is of the view that it was beyond his powers to consider the disputed fact of refusing to collect sugarcane. It requires a detailed inquiry. The returning Officer did not commit any mistake in not accepting their submissions.

13. Another limb of the argument of the learned counsel for the petitioners is that if any family member supplies the sugarcane for crushing preceding five years to the election or

at least for three season, any of his family members become entitled to contest the election. This seems to be the argument for the first time before this Court. The contesting respondents have argued that in bylaws 28(2), the word "तो" (means 'he') has been used. Therefore, it cannot be said that "he" includes family members who are members of the Society. That apart, there was no evidence on record to show that their families had supplied the sugarcane for crushing for three years preceding the election. In the case of *Yashwant (supra)*, relied on by the petitioners, the Court held that the other part of the bylaws would have to be read with substantive provisions of the Act, including Section 79B. A member is not expected to comply with the procedure, which is impossible to comply. Therefore, it will not cover a case where the member was unable to supply agricultural produce for a reason beyond his control or for good reason or justification. If for a good reason, which is not voluntary, he was not able to cultivate sugarcane, then, such a case is not covered by the said bylaws. In the case at hand, none of the petitioners has a case that the non-supply of sugarcane for three seasons preceding the election was beyond their control and for good reasons or justifications. On the contrary, they are blaming respondent No.6 that they had been to the Society i.e. the sugarcane factory, but they refused

to accept the sugarcane. That was the right time for the petitioners to resist the denial. Unfortunately, it was not the case of the petitioners as such. Therefore, the ratio laid down in the case of *Yashwant (supra)* would not come to their aid.

14. The ratios laid down in the case of *Shivshankar (supra) and Sambha (supra)* are squarely applicable to the case at hand. Therefore, it could not be said that the qualification prescribed under the bylaws 28(2) of the Society has been redundant in view of the amendment in Sections 26 and 27 of the MCS Act, 1960.

15. In Writ Petition No.1243/2024, the learned counsel for the petitioners referred to the certificate of the Society showing that he has supplied the sugarcane for 2021, 2022, 2023 and also supplied one receipt dated 26.11.2023 for the crushing season 2023-2024. He submits that before the cutoff date, he has supplied the sugarcane for crushing. Therefore, considering the material date i.e. 11.01.2024, he has supplied the sugarcane for crushing, and that satisfied the condition of bylaws 28(2). Hence, their nominations should not have been refused.

16. Learned counsel for respondent No.6 has vehemently opposed the argument and stated that the crushing season for 2023-2024 was over in April 2023. As per the condition required under bylaws 28(2), the last season was 2022-2023 only, which ended in April 2023. Any supply thereafter would be considered for the next season. He seems to have correctly interpreted that the crushing season of the year for the election would be counted for the preceding five years of the election. This election is for 2023-2024 to 2028-2029. Though the petitioners supplied the sugarcane on 26.11.2023 i.e. before the material date 11.01.2024, it could not be held that it was the supply for the preceding five years of the elections. The season for 2022-2023 was ended in April. Considering this clause, the petitioners would have to supply the sugarcane for crushing for 2020-2021, 2021-2022 and 2022-2023. Admittedly, they did not supply the sugarcane for 2020-2021. Therefore, this receipt dated 26.11.2023 would not assist the petitioners in holding them qualified to contest the election. The rest of the arguments were similar as advanced and discussed above.

17. Perused the impugned orders. Upon giving a conscious thought over the arguments, rules, and provisions of the law,

this Court does not find any illegality in rejecting the nominations. As a result, all these writ petitions fail. Hence, the following order :

O R D E R

(i) All writ petitions stand dismissed.

(ii) No order as to costs.

(iii) Rule stand discharged.

(iv) Needless to say, the rejection of the petitions against nomination does not take away the right of the aggrieved persons to impugn the elections under Section 91 of the MCS Act.

(S. G. MEHARE, J.)

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vmk/-