

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 973 OF 2015

ABASAHEB HANUMANT CHITTE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Shri Latange V.B. h/f Shri Irpatgire A.N.
AGP for Respondents 1 to 4 : Shri Shelke V.G.
Advocate for Respondent 5 : Shri Kokale D. B.

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WITH
WRIT PETITION NO. 1018 OF 2015

MADHAV BABRUWAN SURYAWANSHI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Shri Salunke V.D. h/f Shri Patil S.Y.
AGP for Respondents 1 to 3 : Shri Suryawanshi K.M.
Advocate for Respondent 4 : Shri Hon V.D. Sr. Adv. i/b Shri Hon A.V.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 18, 2015

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PER COURT :-

1. A common issue is involved in both these petitions in relation to the Maharashtra Cooperative Societies Act, 1960 and the Maharashtra Cooperative Societies (Election to Committees) Rules, 2014.

2. The contentions of Shri Salunke and Shri Latange for the petitioners are as under:-

(a) The election programme has been declared for the respondent - Society on 12.1.2015.

(b) The preliminary voters' list is published on 12.1.2015 and the objections were called for till 16.1.2015.

(c) The names of the petitioners are not found in the preliminary voters' list and, therefore, an objection is raised on 16.1.2015, requesting for inclusion in the final voters' list.

(d) By the impugned orders passed by the Returning Officer, the objections are over-ruled and the request is rejected.

(e) The bye-laws have been amended on 13.4.2013 and the share capital value has been increased from Rs.10/- to Rs.100/- on 19.9.2013.

(f) The petitioners claim to be members of the concerned society for several years.

(g) Once a person becomes a member, he continues to be a member and his membership cannot be terminated on account of any provision subsequently introduced.

(h) Whether amended provisions can be made applicable retrospectively to the existing members, is the question.

(i) Section 26 of the MCS Act mandates that a member should be given a due notice and a reasonable period to comply with the directions to pay the increased / deficit share value, Rs.90/- in the instant case.

(j) The sixth proviso below Section 26(2) enables an existing member to be a valid voter in any election conducted immediately after the date of commencement of the Maharashtra Cooperative Societies (Amendment) Act, 2013.

(k) Individual notice was not given by the respondent Society.

(l) Bye-law 7(1) mandates payment of deficit share value within three months from the date of notice.

(m) Notice dated 15.10.2014 has been affixed in the society's office and individual notices were not served upon the petitioners.

(n) The petitions, therefore, deserve to be allowed and the respondents deserve to be directed to include the names of the petitioners in the final voters' list and permit them to vote in the elections scheduled on 22.2.2015.

3. Shri Hon, learned Sr. Advocate, along with the learned AGP have opposed these petitions. It is stated that the cut off date for preparation of

final voters' list is 31.10.2014. A notice dated 15.10.2014 was affixed in the society's office. Several members have paid deficit share capital and their names have been included in the final voters' list. Election symbols have been allotted on 18.2.2015 and the last stage of casting votes is scheduled on 22.2.2015. All earlier stages, as indicated by the election programme, have been completed.

4. It is further submitted that Rule 78 of the Rules of 2014, enables the petitioners to question any election on every ground that they may desire to raise. The Apex Court has laid down the law in the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others [(2001) 8 SCC 509]. It is, therefore, submitted that the judgment of the Single Judge Bench of this Court delivered on 16.10.1996, in the matter of Rajan Dinkarrao Parhate and others Vs. State of Maharashtra and others [1997 (1) Mah. L.J. 543] as is cited by the petitioners, would, therefore, not be applicable, in view of the judgment of the Apex Court in the case of Shri Sant Sadguru (supra).

5. I have considered the factual matrix in these two petitions as are recorded herein above. The voting is scheduled on 22.2.2015. Election symbols have been allotted on 18.2.2015.

6. The learned Division Bench of this Court (Coram : R.M.Borde & Sunil P. Deshmukh, JJ.) have considered a similar situation in Writ Petition No.

1753 of 2015 (Maroti Ganpatrao Shinde Vs. State of Maharashtra & others),
by order dated 13.2.2015. The view taken by this Court is reproduced as
below:-

" Since process of election has commenced, in view of the judgment of the Supreme Court in the matter of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs.State of Maharashtra and Others [(2001) 8 SCC 509], no interference is called for in the present Writ Petition. In view of this, Writ Petition stands disposed off, keeping open option for the petitioner to raise challenge to the election in accordance with the provisions of Maharashtra Co-operative Societies Act, 1960."

7. In the light of the above and in the light of the view taken by the learned Division Bench of this Court on 13.2.2015, no interference is called for in both these petitions. As such, both the petitions are disposed off by keeping open the option to the petitioners to raise a challenge to the election, in accordance with Rule 78 of the Rules of 2014 and Section 91 of the MCS Act, 1960. All contentions of the petitioners are kept open.

(RAVINDRA V. GHUGE, J.)

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