

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

WRIT PETITION NO. 2133 OF 2015

Ganesh S/o Sanduppa Kothale
& others

... Petitioners

Versus

The State of Maharashtra
& others

... Respondents

.....

Mr. Sudhir V. Kulkarni , Advocate for petitioners
Mr. K.M. Suryawanshi, A.G.P. for respondent Nos. 1 to 3
Mr. M.D. Deshpande, Advocate for respondent No. 4

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 23rd FEBRUARY , 2015

PER COURT :

1. I have heard Shri S.V. Kulkarni, learned Advocate for the petitioners for quite some time, learned A.G.P. on behalf of respondent Nos. 1 to 3 and Shri M.S. Deshpande, learned Advocate on behalf of respondent No. 4 society.
2. Grievance of the petitioners is that their names have not been included in the final voters list despite having filed their representation dated 09-02-2015.
3. The election programme was declared on 04-02-2015. Last date for raising objections to the preliminary voters list was

09-02-2015. By the impugned order dated 11-02-2015, the objections of the petitioners and their request for inclusion in the final voters list has been turned down.

4. Shri Kulkarni vehemently submits that the petitioners are not seeking any interference or stay to the election programme. They are valid voters and their names need to be included so as to enable them to cast their votes. They have complied with the bye-laws. They also claim that they hold 10 R land or more, so as to be valid members under bye-law No. 4 (14).

5. The learned Advocate for the respondent No. 4 society submits that reasons have been assigned by the Returning Officer in the impugned order. The society has not included the names of the petitioners since there is a dispute as regards payment of increased share capital, which were earlier Rs. 10/- and then enhanced to Rs. 100/-.

6. The learned A.G.P. submits that this Court cannot go into the disputed questions as regards which of the petitioners have paid deficit share value post amendment in the bye-laws or as regards whether the petitioners hold at least 10 R of land so as to be eligible under bye-law No. 4 (14). He further submits that once the election programme has been set in motion, it is settled

position of law that issuing directions for inclusion in the final voters list and for permitting the petitioners to vote, would also amount to causing interference in the election process.

7. The learned Division Bench of this court (**Coram : - R.M. Borde and Sunil P. Deshmukh, JJ**) has on 13-02-2015 delivered an order in **13.02.2015 in Writ Petition No.1753/2015** in the matter of *Maroti Ganpatrao Shinde vs. State of Maharashtra and others*, as under:-

“Since process of election has commenced and today is the date for declaring final list of contesting candidates, in view judgment of the Supreme Court in the matter of “Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Another V. State of Maharashtra and Others” reported in (2001) 8 SCC 509, no interference is called for in the present writ petition. In view of this, writ petition stands disposed of keeping open option for the petitioner to raise challenge to the election in accordance with provisions of Maharashtra Co-operative Societies Act.”

8. In the light of the above, I do not deem it proper to keep this petition pending. Interest of justice would be met by granting liberty to the petitioners to avail of a statutory remedy as has been held by the Division Bench of this Court in the above reproduced order by placing reliance on the judgment of the Apex Court in the matter of *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj)*

Sahakari Dugdha Utpadak Sanstha & another Vs. State of Maharashtra & others, reported at 2002 (1) Mh.L.J. 659.

9. As such, the petitioners are granted liberty to file an election petition after the elections are held, in light of Rule 78 of 2014 Rules read with Section 91 of the Maharashtra Cooperative Act, 1960. Needless to state, the dismissal of this petition shall be of no impediment to the petitioners who are at liberty to raise all contentions and grounds in support of their case including the challenge to the impugned order dated 11-02-2014.

10. Writ Petition is, therefore, disposed off.

(**RAVINDRA V. GHUGE, J.**)