

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1945 OF 2015

ASHOK JAIWANTA WADMARE
VERSUS
STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Shri Choudhary D.J.
AGP for Respondents 1 to 4 : Shri Korde D.R.
Advocate for Respondent 5 : Shri Naikwade S.K.

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

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PER COURT :-

1. The brief facts narrated by the petitioner for assailing the rejection of his nomination paper are as under:-

(a) The election programme for holding election to the respondent No.4 - Society has been declared on 20.1.2015.

(b) The petitioner filed his nomination paper on 2.2.2015 from the Scheduled Caste category.

(c) His nomination form was rejected on the ground that he is an employee of a School, operated by a trust - Adarsh Shikshan Sanstha.

(d) The petitioner preferred an appeal to the competent

authority, which has rejected the appeal by order dated 13.2.2015, concluding that the petitioner cannot contest the elections in the light of Section 76CA(1)(f)(vi) of the Maharashtra Cooperative Societies Act, 1960 ("MCS Act").

(e) The petitioner is not an employee of any Society and therefore, is out of the purview of Section 76CA(1)(f)(vi) of the MCS Act.

(f) The issue of office of profit would not be attracted in the case of the petitioner.

(g) Impugned order of the Returning Officer and the appellate authority deserve to be quashed and set aside and the petitioner deserves to be permitted to contest the elections, scheduled on 1.3.2015, pending issuance of notice and admission in this matter.

(h) Reliance is placed upon the judgment of the Apex Court in the case of K.Venkatachalam Vs. A. Swamikan [AIR 1999 SC 1723(1)].

2. The learned AGP and Shri Shri Naikwade, learned Advocate appearing on behalf of the State and respondent No.5 respectively, submit that the election programme has already been set in motion. The

last date for withdrawal of nominations is scheduled on 20.2.2015 and the elections are posted on 1.3.2015.

3. It is further submitted that a statutory remedy under Section 91 of the MCS Act, in the light of Rule 78 of the Maharashtra Cooperative Societies (Election to Committee) Rules, 2014 ("the 2014 Rules") would entitle the petitioner to raise a grievance as against the impugned order, alleged wrongful rejection of the nomination paper and also question the election of the elected candidate.

4. 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."

5. In the light of the above, I am not inclined to cause any

interference in the election process by entertaining this petition. In view of this, the Writ Petition stands disposed off. Needles to state, the petitioner can avail the remedy in accordance with Rule 78 of the Rules of 2014 and Section 91 of the MCS Act, 1960 and question the validity of the impugned order passed by the Returning Officer, dated 4.2.2015, the impugned order of the appellate authority, dated 13.2.2015 and the election scheduled on 1.3.2015. Since the merits of this petition have not been considered, all contentions of the petitioner are kept open.

(RAVINDRA V. GHUGE, J.)

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