

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

WRIT PETITION NO. 2294 OF 2015

Shri Vyankat Vishwanath Gund ... Petitioner

Versus

The State of Maharashtra
& others ... Respondents

.....
Mr. A.B. Kale , Advocate for petitioner
Mr. D.R. Korde, A.G.P. for respondent Nos. 1 & 2
Mr. V.D. Salunke, Advocate for respondent No. 4

.....
WITH
WRIT PETITION NO. 2295 OF 2015

Anil S/o Ashok Sawant ... Petitioner

Versus

The State of Maharashtra
& others ... Respondents

.....
Mr. S.Y. Mahajan , Advocate for petitioner
Mr. D.R. Korde, A.G.P. for respondent Nos. 1 & 2
Mr. V.D. Salunke, Advocate for respondent No. 4

.....
CORAM : RAVINDRA V. GHUGE, J.

DATED : 5th MARCH, 2015

PER COURT :

1. I have heard the learned Advocates for the respective sides.
2. On 26-02-2015, I had passed the following order :-

1. Contention of the petitioner is as follows :-

- (a) The elections for respondent No.3 Sugar Factory are scheduled on 08/03/2015.
- (b) Election programme is declared on 04/02/2015.
- (c) Respondent No.4 has filed his nomination papers from Society Constituency 1/6 as well as from Constituency Ter 1/5, on 09/02/2015.
- (d) The petitioner has objected to the nomination form filed in relation to Society Constituency 1/6.
- (e) Objection is under Bye-law 28(5) and Rule 21 of The M.C.S. (Election to Committee) Rules, 2014, both of which are in relation to the mandate that the proposer and seconder should be member of the same Constituency.
- (f) The objections dated 10/02/2015 were allowed by the Returning Officer by passing a detailed order on 10/02/2015 after hearing respondent No.4.
- (g) Respondent No.4 preferred an Appeal No.7/2015 before the Regional Joint Director (Sugar), Nanded, which was allowed by the impugned order dated 21/02/2015.
- (h) Respondent No.4 therefore is allowed to contest the election from the Society Constituency 1/6 and there is no other candidate contesting from the said Constituency.

2. The petitioner, therefore, prays for an ex-parte ad-interim order, which I am not inclined to grant today since I had specifically ordered while granting circulation on 23/02/2015 that the petitioner should serve all the respondents. Respondent No.4 /contesting candidate is not served.

3. Issue notice before admission to the respondents, returnable on 03/03/2015. Learned A.G.P. waives service for respondent Nos.1 and 2. *Hamdast* allowed. Besides Court service, petitioner shall serve respondent Nos. 3 and 4 through Advocate's notice by Speed Post and produce the tracking report. Respondent No.4 to note that if he chooses to remain absent on the returnable date, this matter will be considered without his assistance.

3. Shri Salunke, learned Advocate appearing on behalf of respondent No. 4 has shown the communication dated 26-02-2015 issued by the Returning Officer which indicates that the fourth respondent has already been declared elected unopposed. Both the petitioners are challenging the acceptance of the nomination papers of respondent No. 4 from the Society constituency 1/6. In view of result of the election of respondent No. 4 having been declared, these petitions are rendered infructuous.

4. The learned Division Bench of this Court (**Coram: N.H. Patil and A.S. Gadkari, JJ**) in **Writ Petition No.1443/2015** (*Mr.Popatrao Punjaji Danghe v/s Kadava Cooperative Sugar Factory*) passed an order dated 10.02.2015 refusing to entertain the said petition. In the said case, the issue as regards wrongful inclusion of about 13,000 voters in comparison to the existing 2000 members was raised. The Division Bench, therefore, passed the following order:-

"1. The petitioners' grievance is that non-producer members of the respondent Karkhana would be participating in the voting to elect producer member. It is alleged that there are about 2,000 producer members and 13,000 non-producer members of the Karkhana. In view of the amendments brought to the Maharashtra Cooperative Societies Act, 1960 ("said Act" for short) and

in view of amended bye-laws, specific constituency of producer members is carved out. The members contesting elections from the said constituency have to be producer members and likewise the members casting votes to be producer members.

2. *Learned counsel appearing for the respondent Karkhana submits that in accordance with the amended bye-laws the members, as approved by the concerned authority, of the Karkhana, shall participate in the election process. Learned counsel has referred to the provisions of the amended provisions of section 26 of the said Act.. It is further submitted that the proceedings under section 11 of the said Act will have to be initiated against such members. According to the election programme, final list of the voters is to be published on 11th February 2015. It is informed that elections are being held to constitute managing committee of the respondent Karkhana. Reliance has been placed on the judgment of the Supreme Court in the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra, (2001) 8 SCC 509. We have perused the said judgment. We have also perused the order passed by the Reporting Officer dated 6th February 2015 which is impugned herein.*

3. *The election process is set in motion. The petitioners have efficacious statutory remedy which they may avail, if they so desire. The issue raised by the petitioners at this stage cannot be gone into in exercise of writ jurisdiction. Without expressing any opinion on merits of the contentions raised, petition is disposed of with liberty."*

5. Similarly, the learned Division Bench of this Court (**Coram : R.M. Borde and S.P. Deshmukh, JJ**) has refused to entertain a petition on similar set of facts by their order dated 13.02.2015 passed in **Writ Petition No.1753/2015** in the matter of *Maroti Ganpatrao Shinde vs. State of Maharashtra and others*. The Division Bench observed thus:-

“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.”

6. In the light of the above, both these petitions are disposed off by granting liberty to the petitioners to avail of such legal remedy as may be permissible in law for the redressal of their grievance, inclusive of the remedy under Section 91 of the Maharashtra Co-operative Societies Act, read with Rule 78 of the 2014 Election Rules.

7. Since this Court has not considered the petitions on their merits, all contentions and averments set out in this petition are kept open for the petitioners to raise before the appropriate authority which shall be considered in accordance with law on their own merits.

(RAVINDRA V. GHUGE, J.)