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

WRIT PETITION NO.2506 OF 2015

Vijay Narayan Chavan.

..Petitioner

-Versus-

State of Maharashtra and others.

..Respondents

.....

Mr.A.N.Irpatgire, Advocate for the Petitioner.

Mr.D.R.Korde, AGP, for the Respondents/State.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 05th March, 2015

Per Court:

1 The Petitioner is aggrieved for the reason that the persons, who are not members of the Respondent No.5 Society, have been included in the final voters list.

2 The Petitioner submits that the programme for considering the provisional voters list and to be transformed into a final voters list, has been published by the Respondent No.3 Authority on 31.01.2015. The provisional voters list was filed before the concerned Authority by the Respondent No.5 on 02.02.2015. The objections to the provisional voters list were to be raised in between 02.02.2015 and 10.02.2015.

3 The Petitioner has raised objections on 09.02.2015 which is within the said period. The said programme indicates that the Respondent No.3 was to decide the objections on 20.02.2015 and finally declare the final voters list under Rule 8(4) of the Maharashtra Cooperative Societies (Election to Committee) Rules, 2014 on 24.02.2015.

4 The Petitioner submits that though it is made to believe that the order on the objections of the Petitioner was passed on 20.02.2015, the Respondent No.4 has suspended the Secretary of the Respondent No.5 Society on 24.02.2015. Ex-parte charge was handed over to the Respondent No.4, who has been arrayed by the Petitioner by name in the cause title of this petition. In violation to the bye-laws and Rules, the Respondent No.4 collected membership fees from several members on 24.02.2015 and thereafter, instead of publishing the final voters list on 24.02.2015, he included the names of such persons in the final voters list and published it on 25.02.2015.

5 The Petitioner, therefore, submits that the Respondent No.4 has personally involved himself in the above narrated acts which are illegal. The Petitioner has, therefore, specifically set out prayer clauses (D) and (F) in this petition as against Respondent No.4, which read as under:-

“D) *The respondent No.1 and 2 may kindly be directed to*

conduct the inquiry about the action taken by respondent Nos.3 and 4 in the affairs of the Election of respondent No.5 and further be directed to take disciplinary and penal action against respondent Nos.3 and 4 by issuing writ of mandamus or any other appropriate writ in the nature of writ of mandamus.

- F) Pending hearing and final disposal of this writ petition, the respondent no.2 may kindly be directed to withdraw the charge of District Election Officer, Latur from the respondent No.4 and further be directed not to entrust any powers as contemplated under the Maharashtra Cooperative Societies Election to Committee Rules, 2013.”

6 The 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) has 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.”*

7 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.”

7 As such, since preparation of the voters list is considered to be an intermediate stage in conducting the elections, I am not inclined to entertain this Writ Petition.

9 Hence, this Writ Petition is disposed of with liberty to the Petitioner to avail of such remedy as is available in law inclusive of a remedy under Section 91 of the Maharashtra Cooperative Societies Act, 1960 r/w Rule 78 of the Maharashtra Cooperative Societies (Election to Committee) Rules, 2014.

10 Needless to state, since this Writ Petition has not been considered on its merits in the light of the view taken by the Division Benches of this Court and the ratio laid down by the Honourable Supreme Court in the case of *Shri Sant Sadguru Janardan Swami (supra)*, all

contentions raised by the Petitioner in this Writ Petition inclusive of the contentions in relation to prayer clauses (D) and (F) are kept open for being considered by an appropriate authority before whom the Petitioner may raise a grievance.

11 In the event, the Petitioner prefers any such proceeding for the redressal of his grievance, the same shall be considered by the concerned Authorities in accordance with law and on it's own merits.

(RAVINDRA V. GHUGE, J.)