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

WRIT PETITION NO.2516 OF 2015

Ajit Shivaji Bhosale.

..Petitioner

-Versus-

Assistant Registrar, Cooperative Societies,
Ahmednagar and others.

..Respondents

.....

Mr.S.V.Deshmukh, Advocate for the Petitioner.

Mr.V.G.Shelke, AGP, for the Respondent Nos.1 and 2.

Mr.N.V.Gaware, Advocate for the Respondent No.3.

Mr.D.R.Markad, Advocate for the Respondent Nos.4 and 5.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 05th March, 2015

Per Court:

1 Mr.Deshmukh, learned Advocate appearing for the Petitioner, has placed on record a certified copy of the nomination form of the Petitioner. The same is taken on record and marked "X" for identification.

2 The Petitioner was directed to serve notices on all the Respondents when this Court granted urgent circulation on his motion dated 02.03.2015. The Petitioner has placed on record the service affidavit which is marked as "Y" for identification.

3 This Writ Petition pertains to the elections of the Respondent No.3, which is a cooperative society.

4 As per the election programme declared for the Respondent No.3 Society, the nomination forms were to be submitted between 12.02.2015 to 16.02.2015, the scrutiny of the nomination forms was to be conducted on 18.02.2015, the valid nomination forms were to be declared on 20.02.2015, the withdrawal of nomination forms was between 21.02.2015 to 07.03.2015, the voting is scheduled on 20.03.2015 and the results of the election pursuant to the counting of votes is also scheduled on the same date after the polling is over.

5 Mr.Deshmukh, learned Advocate appearing for the Petitioner, has strenuously submitted that since the Courts are not interfering with illegal and/or malafide actions in the election matters at the hands of the Retuning Officers, who are the Assistant Registrars of Cooperative Societies under the Maharashtra Cooperative Societies Act, 1960, the said Authorities are now getting emboldened and are resorting to blatant violations of jurisdiction vested in such Authorities by law while preparing the final voters list, considering objections at different levels, accepting and rejecting the nomination forms, etc..

6 Mr.Deshmukh submits that the record would clearly indicate that either the concerned Authorities are abdicating their powers and/ or are getting involved in petty politics while functioning as Returning Officers purely on the belief that this Court may not interfere with their actions in the light of the ratio laid down by the Honourable Supreme Court in the case of *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another Vs. State of Maharashtra and others*, reported in **2002 (1) Mh.L.J. 659**.

7 Mr.Deshmukh, therefore, submits that the issue raised in this petition is yet another example of highhandedness of the Returning Officer, who is the Assistant Registrar of Cooperative Societies. He points out that the Petitioner's nomination form was filed within the prescribed period on 13.02.2015. The Petitioner's nomination paper was subjected to scrutiny on 18.02.2015. The valid nomination forms were declared on 20.02.2015. The withdrawal of nomination forms was scheduled on 21.02.2015.

8 Mr.Deshmukh, by placing on record a copy of the Petitioner's nomination form, certified copy of which he has obtained from the concerned Authority, submits that the form was accepted in the light of no objection and the concerned Respondent No.2 Authority recorded his

conclusion as “Manjoor” (Approved). Despite the same, in a surreptitious manner the Respondent No.2 encircled the remark “Manjoor” and in front of the same, has written the remark “Namanjoor” (Disapproved).

9 The contention is that the Petitioner was neither issued notice on the said aspect nor was he heard. Even on the third page of the nomination paper, earlier the word “Phetalale” (Rejected) was scored out thereby indicating that the remark “Swikarale” (Accepted) was the conclusion of the Respondent No.2. Behind the Petitioner, both these Marathi words “Swikarale” and “Phetalale” have been scored out and in front of that it has been handwritten “Phetalale Ahe” (Rejected).

10 Mr.Deshmukh further submits that the nomination form is rejected in view of the alleged dues towards the Respondent No.5 Society which has nothing to do with the Respondent No.3 Society. As such, the Petitioner's nomination form could not be rejected as he was not a defaulter of the Respondent No.3 Society, whose election he had sought to contest.

11 Mr.Deshmukh points out from the judgment of the learned Judicial Magistrate First Class in Criminal Proceedings No.945/2008 dated 13.01.2010 that the case of dishonouring of cheque was rejected and the

Petitioner was acquitted of the alleged offence punishable under Section 138 of the Negotiable Instruments Act.

12 Mr.Deshmukh further points out that Case No.1954/2010 under Section 101 of the Maharashtra Cooperative Societies Act, 1960 was also rejected on 23.02.2012.

13 In the light of the above, Mr.Deshmukh submits that as on date, there is no iota of evidence of being a defaulter with any society much less the Respondent No.3 Society.

14 Mr.Deshmukh, therefore, makes a serious grievance about the Respondent No.2 who has been arrayed by name Mr.K.S.Gawande, that had he called upon the Petitioner to explain his position, such an order would not have been passed. Mr.Deshmukh has complained about the behaviour of Mr.Gawande.

15 The learned AGP appearing for the Respondent Nos.1 and 2, submits that the Respondent No.2 has rightly passed the impugned order. He is, however, unable to comment as to whether, the Petitioner was heard by the Respondent No.2 or not. He has given a glance to the copy of the nomination form and he does not dispute the remark set out on the top

portion of the first page and the observations of the Respondent No.2 on the third page. He, however, states that since the election process is in motion, this Court should refrain from causing any interference.

16 Taking into account the serious grievance of Mr.Deshmukh and the submissions of the learned AGP, prima facie, it appears that Respondent No.2 (Mr.Gawande) ought to have acted impartially and should have adhered to the basic principles of natural justice and the Rules applicable while passing an order of rejecting the nomination paper. 18th February 2015 was the date on which the Respondent No.2 was to hear the Petitioner, if at all there were any objections on his nomination paper. It was, therefore, expected that the Respondent No.2 should have followed the due procedure.

17 Mr.Gaware, learned Advocate appearing on behalf of the Respondent No.3 Society, places reliance upon the view taken by the Honourable Supreme Court in the case of *Shri Sant Sadguru Janardan Swami (supra)* and submits that all the contentions of the Petitioner can be gone into in an appropriate proceeding. He further submits that the conduct of the Respondent No.2 can also be scrutinized and he could be given an opportunity of holding out an explanation, in an appropriate proceeding.

18 In the light of the above, so far as the grievance as against Respondent No.2 (Mr.Gawande) made by the Petitioner in this petition is concerned, my observations are only at a prima facie stage. All disputed questions are required to be gone into by an appropriate authority in an appropriate proceeding.

19 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*) 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.”*

20 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.”

21 Thus, placing reliance upon the judgment of the Honourable Supreme Court in the case of *Shri Sant Sadguru Janardan Swami (supra)*, the Division Benches of this Court declined to interfere with the matter.

22 In such circumstances and in view of the election programme having been set in motion and the voting having been scheduled on 20.03.2015, that I do not wish to entertain this Writ Petition.

23 In the light of the above, this Writ Petition is disposed of with liberty to the Petitioner to avail of such remedy as is permissible 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.

24 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 and averments raised by the Petitioner in this Writ Petition are kept open for being considered by an appropriate authority before whom the Petitioner may raise a grievance. 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 its own merits.

(RAVINDRA V. GHUGE, J.)