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

WRIT PETITION NO.2503 OF 2015

Sadik Rahim Siddiqui.

..Petitioner

-Versus-

State of Maharashtra and others.

..Respondents

.....

Mr.V.D.Salunke, Advocate for the Petitioner.

Mr.V.G.Shelke, AGP, for the Respondents/State.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 05th March, 2015

Per Court:

1 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 "X" for identification. Mr.Salunke points out that the Respondent No.4 Society has refused to accept the Advocate's notice.

2 This Writ Petition pertains to the elections of the Respondent No.4, which is a cooperative fishery society.

3 The election programme was declared on 11.02.2015. The objections to the provisional voters list were sought in between 12.02.2015 and 16.02.2015. The objections were to be decided on 18.02.2015 and the final voters list was to be published on 20.02.2015.

The voting is scheduled on 18.03.2015 and the results of the elections pursuant to the counting of votes is also scheduled on the same date after the polling is over.

4 Mr.Salunke, 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 Returning 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 considering objections of the concerned persons like the Petitioner.

5 Mr.Salunke further submits that the objection raised by the Petitioner would clearly indicate that either the concerned Authorities are abdicating their powers to decide the objections and/or are getting involved in petty politics while considering such objections 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**.

6 Mr.Salunke submits that the Petitioner herein had raised objections on three counts, which are as follows:-

(a) The names of 10 dead persons appeared in the provisional voters list and they deserve to be deleted.

(b) 09 members who do not actually indulge in fishing activity, as is required by law and hence are not active members, are still included in the provisional voters list.

(c) One member by name Siddiqui Mukhtab Ahmed is already a member of another society, namely, Janseva Matsya Vyavasay Sahakari Society Limited, Ambehol, Taluka and District Osmanabad, as is evident from the documents placed on record, is yet included in the Respondent No.4 society, namely, Dharashiv Matsya Vyavasay Sahakari Society Limited, despite there being a prohibition to validate the membership of one person in more than one society.

7 Mr.Salunke, therefore, contends that these objections, which could have been easily and rightly dealt with by the Respondent No.3 within the framework of the jurisdiction vested in him by law, have not been done which is purely an act of highhandedness.

8 Mr.Salunke has, therefore, relied upon the judgment of the

Honourable Supreme Court (Three Judges) in *Election Commission of India through Secretary v/s Ashok Kumar and others* reported in **AIR 2000 SC 2977**. He specifically draws my attention to paragraphs 17 and 18, which read as under:-

- “17. That the power of judicial review is a basic structure of Constitution – is a concept which is no longer in issue.
18. Is there any conflict between the jurisdiction conferred on the High Courts by Article 226 of the Constitution and the embargoes created by Article 329 and if so how would they co-exist came up for the consideration of a Constitution Bench of this Court in *N.P.Ponnuswami Vs. The Returning Officer, Namakkal Constituency*, AIR 1952 SC 64. The law enunciated in *Ponnuswami* was extensively dealt with, also amplified, by another Constitution Bench in *Mohinder Singh Gill and Anr. Vs. The Chief Election Commissioner, New Delhi and Ors.*, AIR 1978 SC 851. The plenary power of Article 329 has been stated by the Constitution Bench to be founded on two principles : (1) The peremptory urgency of prompt engineering of the whole election process without intermediate interruptions by way of legal proceedings challenging the steps and stages in between the commencement and the conclusion; (2) The provision of a special jurisdiction which can be invoked by an aggrieved party at the end of the election excludes other form, the right and remedy being creatures of statutes and controlled by the Constitution.”

9 Mr.Salunke has, therefore, strenuously contended that this is a fit case for causing interference notwithstanding the fact that the election programme has already been declared and the voting is scheduled on 18.03.2015.

10 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.”*

11 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.”*

12 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 cause any interference.

13 In the light of the above and in view of the ratio laid down by the Honourable Supreme Court in *Shri Sant Sadguru Janardan Swami (supra)*, I am not inclined to entertain this Writ Petition. 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.

14 Needless to state, since this Writ Petition has not been considered on its merits, 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.

15 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.)