

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2510 OF 2015

DINKAR RANGNATH PANDARKAR
VERSUS
STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Shri Karpe Rahul R.
AGP for Respondents 1 to 3 : Shri Suryawanshi K.M.
Advocate for Respondent 4 : Shri Gaware Niteen V.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 04, 2015
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PER COURT :-

1. I have heard the learned Advocates for the respective parties.
2. This matter was heard at length on 3.3.2015 and again at great length today.
3. Issue is as regards inclusion of about 600 voters in the provisional voters' list, which has been published on 9.2.2015, pursuant to the programme dated 7.2.2015, declared by the District Cooperative Election Officer-cum-Regional Joint Director (Sugar), Ahmednagar.
4. The society at issue falls in the "A" Type society. The final voters' list is to be declared under Rule 11(4) of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 ("2014 Rules"), framed under the Maharashtra Cooperative Societies Act, 1960 ("MCS Act").

5. The petitioner raised objections before the competent authority - respondent No.2, contending therein that about 600 persons have been surreptitiously included in the provisional voters' list by respondent No.4 Society. Basis of the objection was certain documents which have been issued by the concerned Talathi, indicating that the said 600 persons would not be eligible to become voters in connection with the election of the respondent No.4 - society.

6. The petitioner as well as the respondents have raised several contentious issues and have relied upon voluminous documents, in support of the inclusion and against the inclusion of 600 voters.

7. Shri Karpe, learned Advocate for the petitioner has placed reliance upon the following reported judgments of this Court in the cases of Eknath Ashiram Alekar and others Vs. State of Maharashtra and others [1989 (3) Bom. C.R.165] and Karbhari Maruti Agawan Vs. State of Maharashtra and others [1994 Mh.L.J.1527].

8. He further submits that the learned Division Bench of this Court has passed an order on 3.3.2015, in Writ Petition No.1894 of 2015, whereby the voters' list was directed to be properly prepared and till such preparation was not done, the election programme was not to be published. The said order is, however, passed by consent of the parties.

9. The learned AGP and Shri Gaware, learned Advocate for respondent No.4 have relied upon the judgments of the Apex Court in the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another Vs. State of Maharashtra [2002 (2) Bom.C.R.149], Dhondiba Parshuram Lakade and others Vs. Someshwar Sahakari Sakhar Karkhana Ltd. and others [1979 (O) BCI 43], Pradip Yogeshwar Nimje Vs. State of Maharashtra and others [2005 (5) Bom.C.R.227], Pundlik Chingalaba Kaje Vs. State of Maharashtra [2006 (I) Bom. C.R.368], Bhaiyyaji Sitaram Kannamwar Vs. Assistant Registrar and others [2002 (3) Bom.C.R.631] and Geeta Shirish Chaudhari Vs. State of Maharashtra [2006 (6) Bom.C.R.303].

10. The learned AGP has placed before me an order dated 10.2.2015, passed by the learned Division Bench of this Court (Coram : Naresh H.Patil and A.S.Gadkari, JJ.) in Writ Petition No.1443 of 2015 (Popatrao Punjagi Danghe and others Vs. Kadava Cooperative Sugar Factory Ltd. and others). He submits that an identical issue as is raised in the instant petition, was raised before the learned Division Bench. It was contended that non-producer members were being permitted to participate in voting to elect a producer member. Allegation was that there are about 2000 producer members and 13000 non-producer members, who having no right to vote. Learned AGP, therefore, submits that the said petition was disposed off with liberty to prefer a remedy under Section 91 of the MCS Act.

11. In the instant case as well, I find that several contentious issues have been raised with regard to the alleged wrongful inclusion of about 600

members as voters.

12. It would be apposite to reproduce the order passed by the learned Division Bench on 10.2.2015 in the case of Popatrao (supra) as under:-

" *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."

13. In the light of the above, this petition is disposed off with liberty to the petitioner to resort to the remedy under Section 91 of the MCS Act read with Rule 78 of the 2014 Rules, in the light of the observations of the Apex Court in the case of Sant Sadguru (supra) and the view taken by the learned Division Bench of this Court in the case of Popatrao (supra). Needless to state, all challenges posed and points canvassed in this proceeding are kept open, so as to enable the competent authority to deal with the same, in accordance with law and on their own merits.

(RAVINDRA V. GHUGE, J.)

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