

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2669 OF 2015
(RAJENDRA PANDIT TAYADE VS.THE STATE OF MAHARASHTRA
AND OTHERS)

WITH

WRIT PETITION NO.2670 OF 2015
(MADHUKAR SITARAM PAITHANKAR VS.THE STATE OF
MAHARASHTRA AND OTHERS)

WITH

WRIT PETITION NO.2672 OF 2015
(GULABSING DEVSING PATIL VS.THE STATE OF MAHARASHTRA
AND OTHERS)

WITH

WRIT PETITION NO.2671 OF 2015
(DILIP SHANTILAL RAJPUT VS.THE STATE OF MAHARASHTRA AND
OTHERS)

WITH

WRIT PETITION NO.2673 OF 2015
(DILIP SHANTILAL RAJPUT VS.THE STATE OF MAHARASHTRA AND
OTHERS)

Mr.D.B.Thoke, Advocate for the petitioners.

Mr.D.R.Korde, AGP for respondent/State in WP No.2669/2015 and
WP No.2673/2015.

Mr.V.G.Shelke, AGP for respondent/State in WP No.2670/2015 and
WP No.2671/2015.

Mr.K.M.Suryawanshi, AGP for respondent/State in WP
No.2672/2015.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 09/03/2015

PER COURT :

1. I have heard Mr.Thoke, learned Advocate on behalf of the
petitioners in all these petitions. In the first 3 petitions, the issue

pertains to the respondent/candidate not being equipped with cast certificate so as to contest the election to the respondent No.6 / Co-operative Society.

2. In the 4th petition, the issue is as regards respondent No.6 being a defaulter and therefore rendered ineligible for contesting the election to the respondent No.5 / Co-operative society.

3. In the 5th petition, the grievance is as regards respondent No.6 being an “inactive member and therefore ineligible to contest the election of respondent No.5 Society.

4. Mr.Thoke has vehemently contended that these instances of ineligible and undeserving candidates contesting elections to the Co-operative Societies needs to be curbed and prevented. He submits that if such instances are disregarded either by the Returning Officer or by the Appellate Authority, which is respondent No.4 / Assistant Registrar of Co-operative Societies, would result in such undeserving and ineligible candidates contesting such elections.

5. The whole purpose and object of causing representation to

various categories to the co-operative societies would be rendered redundant and those persons who are otherwise not eligible to represent the various constituencies, would succeed in getting elected thereby rendering no representation to such constituencies, which otherwise deserve to be represented on the Co-operative Society.

6. Mr.Thoke, therefore, relies upon the judgment delivered by this Court (Coram : S.S.Shinde, J.) in the matter of Narsanna Naganna Arge Vs. Assistant Registrar, Co-operative Societies and others, 2011(1) Bom.C.R.573. He specifically draws the attention of this Court to paragraph Nos. 7, 8, 9, 10 and 11 which read as under :-

“7. Upon perusal of the order passed by the Returning Officer, it clearly emerges that the nomination of the respondent No.3 for contesting the election from OBC category has been rightly rejected by the Returning officer after proper scrutiny. The reason which is given for rejecting the nomination form of respondent No.3 is that the subcaste “Golla” comes under N.T. Category and not OBC and, therefore, respondent No.3 cannot contest the election from OBC category.

8. Upon perusal of the order of the appellate authority, it clearly appears that the appellate authority has not set aside the order of the Returning Officer rejecting nomination form of respondent

No.3. The appellate authority has not given any reasons whatsoever or has not properly adverted to the reasons given by the Returning Officer and relying on some other certificate submitted by the respondent No.3 herein, in which subcaste is mentioned as "Gollear" from OBC category, accepted the said certificate and directed the Returning Officer to allow the respondent No.3 to contest the election from OBC reserved category. In my opinion, the Respondent No.1 Assistant Registrar either has not properly applied his mind or for extraneous consideration, accepted the contention of the respondent No.3 and placed reliance on the other certificate submitted by the respondent No.3 showing that he belongs to Gollear subcaste under OBC category.

9. The basic questions which falls for consideration is that as to how the respondent No.3 can have two caste certificates, one showing subcaste "Golla" from N.T. Category and another showing subcaste "Gollear" from OBC category. It is pertinent to note that both these certificates have been issued by the same authority i.e.Taluka Executive Magistrate, Biloli on 15.7.1990 and 27.7.1990 respectively, hardly with a gap of 11 days. Prima facie, I am of the opinion that the respondent No.3 has played fraud on the authorities and the appellate authority – respondent No.1 Assistant Registrar, Cooperative Societies, Dharmabad has succumbed to the said fraud. In my opinion, the appellate authority should have questioned the respondent No.3 about having two different caste certificates belonging to

“Golla” from N.T. Category and “Gollearwar” from OBC category.

10. Taking overall view of the matter, in my opinion, if such undeserving persons are allowed to contest election, that will create hindrance in democratic set up to have proper and fair elections. Therefore, this is a fit case in which not only the order of the appellate authority is required to be set aside but, the Superintendent of Police, Nanded is required to be directed to investigate into the matter through the concerned Police Station about the fraud played by the respondent No.3. It is also impossible to digest as to how the authority can issue two different certificates within a span of 11 days to one and the same person mentioning in one certificate that he belongs to “Golla” from N.T. Category and in another certificate showing that he belongs to “Gollearwar” from OBC category. In my opinion, this is a fit case, not only to investigate the conduct of the respondent No.3 but, even the authority who has issued two different caste certificates in favour of respondent No.3. Since the appellate authority has passed the order as quasi judicial authority, it may not be proper to direct investigation against the appellate authority. However, in the facts of this case, it would be just and proper to direct the Superintendent of Police, Nanded to enquiry into the matter and if necessary, after giving opportunity to respondent No.3 and the concerned Officer who has issued two different certificates, to register FIR and proceed further with the investigation.

11. In the above background, writ petition is allowed. The impugned order dated 24th November, 2010 passed by the respondent No.1 – Assistant Registrar, Cooperative Societies, Dharmabad, Dist. Nanded in Appeal preferred by Respondent No. 3 is hereby quashed and set aside. As a result, the respondent No.3 will not be entitled to contest the election of the Seva Sahakari Sanstha Maryadit, Yetale, Tq. Dharmabad, Dist. Nanded.

In due course, the Superintendent of Police, Nanded to make enquiry into the matter of respondent No.3 having got two different caste certificates and after giving opportunity to the authority who has issued said caste certificates dated 15.7.1990 and 27.7.1990 (Annexure “B” & “E”, respectively to this petition), should take appropriate steps and if necessary, register criminal case against the said officer who has issued said certificates and also against the respondent No.3 herein.

It is made clear that the Superintendent of Police, Nanded should do so only after giving full opportunity of hearing to the respondent No. 3 and the concerned authority who has issued two different caste certificates to the respondent No.3. The Superintendent of Police, Nanded to submit report to this Court within three months from today.

7. Mr.Thoke, therefore, submits that this Court in the case of Narsanna Naganna (supra) had interfered with the order passed by the Assistant Registrar and thereby had rejected the nomination

papers of respondent No.3 and disallowed respondent No.3 from contesting the elections to the Sewa Sahakari Sanstha Maryadit, Yatale, Tal.Dharmabad, Dist.Nanded. He, therefore, prays that a similar order deserves to be passed in this matter. He has placed on record the service affidavit to indicate that the respondents have been served.

8. Learned AGP's Mr.Suryawanshi, Mr.Korde and Mr.Shelke submit that the Division Bench of this court as well as the Division Bench at Bombay have concluded that in the matters, where election programmes have been declared and the issue involves either inclusion or non-inclusion of voters and/or rejection of acceptance of nomination papers, there should be no interference by the Court in the light of the remedy available u/s 91 of The Maharashtra Co-operative Societies Act and Rule 78 of The 2014 Election Rules.

9. They rely upon the judgment of the Hon'ble Supreme Court in the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Another V. State of Maharashtra and Others reported in 2002 (1) Mh.L.J. 659. It is not disputed that the election programmes in all these matters have been

declared and the polling date has been declared as 15/03/2015 in first 3 matters and 18/03/2015 in the remaining two petitions.

10. The Division Bench of this Court (Coram : Naresh H.Patil and A.S.Gadkari, JJ) in the matter of Popatrao Punjaji Danghe Vs.Kadava Cooperative Sugar Factory in Writ Petition No.1443/2015. have passed an order on 10/02/2015, which reads thus :-

- “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. The Division Bench of this Court (Coram : R.M.Borde and S.P. Deshmukh, JJ.) in the matter of Maroti Ganpatrao Shinde Vs. State of Maharashtra and others, in Writ Petition No.1753/2015, have passed an order on 13/02/2015, which reads 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. In the light of the above, I am not inclined to interfere in these petitions at this stage.

13. Needless to state, the petitioners would be at liberty to resort to any such remedy as is permissible in Law after the elections are concluded, inclusive of the remedy u/s 91 of The Maharashtra Co-operative Societies Act and Rule 78 of The 2014 Election Rules.

14. Since this court has not dealt with the merits of these petitions, all contentions and causes of action as set out in these petitions are kept open for the petitioners to canvass in the proceedings which they may resort to. In the event, the petitioners

resort to any such remedy as is available in law, all contentions and averments set out in this petition are kept open for the said authority to consider on their own merits and in accordance with Law.

15. Writ petitions are, therefore, disposed of by granting liberty as stated above.

(RAVINDRA V. GHUGE, J.)