

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2941 OF 2015

VISHNU KADUBA BHALERAO AND ANOTHER
VERSUS
ASSISTANT REGISTRAR COOPERATIVE SOCIETIES AND OTHERS

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Advocate for Petitioners : Shri Gaikwad Dnyaneshwar B.
AGP for Respondents: Shri Bhogle U.H.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 13, 2015

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PER COURT :-

1. The petitioners are challenging the acceptance of the nomination form of respondent No.3. Their objections raised before respondent No.2 - Returning Officer were rejected on 24.2.2015. Their appeal before the Assistant Registrar, Cooperative Societies has been rejected on 26.2.2015. The election programme has been declared on 10.2.2015 and the polling is scheduled on 20.3.2015.

2. The learned 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."*

3. The learned Division Bench of this Court (Coram : R.M.Borde & Sunil P. Deshmukh, JJ.) in Writ Petition No. 1753 of 2015 (Maroti Ganpatrao Shinde Vs. State of Maharashtra & others), dated 13.2.2015, 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 learned Division Bench observed thus:-

" Since process of election has commenced, in view of the judgment of the Supreme Court in the matter of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs.State of Maharashtra and Others [(2001) 8 SCC 509], no interference is called for in the present Writ Petition. In view of this, Writ Petition stands disposed off, keeping open option for the petitioner to raise challenge to the election in accordance with the provisions of Maharashtra Co-operative Societies Act, 1960."

4. In the light of the above, I am not entertaining this petition since the process of election is in motion. However, the petitioners are at liberty to raise all grounds and avail of an appropriate remedy for the redressal of their grievance, inclusive of the remedy under Section 91 of the Maharashtra Cooperative Societies Act, 1960 read with Rule 78 the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014.

5. Since this Court has not dealt with the contentions of the petitioners and has not considered the merits in this petition, the petitioner will be at liberty to raise all grounds as are set out in this petition, along with others, as may be raised in an appropriate remedy. In the event, such proceedings are preferred, the competent authority shall decide the same on its own merits.

6. With the liberty granted as above, this Writ Petition is disposed off.

(RAVINDRA V. GHUGE, J.)

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