

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2891 OF 2015

DIPAK SHRIMANT KOTHALE AND ANOTHER PETITIONERS
VERSUS
STATE OF MAHARASHTRA AND OTHERS RESPONDENTS

Mr.V.P.Golewar, Advocate for the petitioners.
Mr.U.H.Bhogle, AGP for respondent/State.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 12/03/2015

PER COURT :

1. I have heard Mr.Golewar for quite some time. Grievance is as regards the Voters' List prepared in relation to the election of respondent No.4 / society as well as the acceptance of the nomination form of respondent No.5.

2. The petitioners submit that the election programme has been declared on 23/02/2015 and the polling is scheduled on 29/03/2015.

3. Mr.Golewar refers to bye-law No.D.1(1) which prescribes the eligibility criteria for being a member of the society and thereby acquire the right to vote and to contest elections. D.1.1 mandates

that the member of the society has to be a permanent employee of the society.

4. Mr.Golewar then points out bye-law D.1.1(6) which provides nominal membership for the superannuated employees who shall not have the right to vote. He, therefore, points out the list placed on record from page No.117 upto 160 to indicate the names of retired/deceased employees. He mentions that several of such members have been included in the final voters list.

5. Mr.Golewar further takes exception to the acceptance of the nomination form of respondent No.5 who is also a retired employee and therefore cannot be even a voter, much less contest the elections. The nomination form of respondent No.5 has been accepted despite the objections of the petitioners.

6. This Court (Coram : Naresh 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, which is as under :-

“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.”

7. The 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.”*

8. The election programme has therefore set the election process in motion. In the light of the view taken by the Division Bench of this Court by relying upon the judgment of the 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 **(2001) 8 SCC 509**, I am not inclined to entertain

this petition at this stage.

9. This petition is, therefore, disposed of. Needless to state, the petitioners shall be at liberty to take recourse to any such remedy as may be available in law including the remedy under section 91 of the M.C.S.Act, 1960 r/w rule 78 of the 2014 Election Rules. All contentions and grounds set out in this petition are kept open to enable the petitioners to raise all grounds in an appropriate proceeding. In the event the petitioners initiate such proceedings, the appropriate authority shall decide the same in accordance with Law and on its own merits.

(RAVINDRA V. GHUGE, J.)