

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 3034 OF 2015

GANGADHAR PARAPPA KERALE  
VERUS  
THE STATE OF MAHARASHTRA AND OTHERS

...  
Shri V.P.Golewar, Advocate for the petitioner and  
Shri V.H.Bhogale, AGP for respondents 1 to 4.

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

1. Shri Golewar, learned Advocate has circulated this matter today and expressed grave urgency. Prayer was made to take the matter on production board for passing orders. Circulation was hence granted.

2. The contention of the petitioner is that respondent Nos.6 to 14 have illegally filed their nomination papers for contesting the election to the respondent No.5 Society. Election programme has been declared on 23.2.2015 and the polling date is scheduled on 2.4.2015.

3. Objections raised by the petitioner have been rejected by respondent No.4 Election Officer. The respondents 6 to 15 are indulging in business of money lending and their family members have obtained loans from private credit societies, they have incurred disqualification under the bye-laws and Section 73CA of the Maharashtra Cooperative Societies Act, 1960. Yet, their nomination papers have been accepted.

4. Learned AGP for respondents 1 to 4 submits that the election process has been put in motion by the declaration of the election programme, dated 23.2.2015. This Court should not cause an indulgence in such a matter at this stage since an efficacious remedy under Section 91 of the Act read with Section 78 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 is available to the petitioner.

5. I have considered the submissions of the learned Advocate for the petitioner and the learned AGP.

6. 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 6<sup>th</sup> 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 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."*

8. 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. 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 in an appropriate proceeding. In the event, such proceedings are preferred, the competent authority shall decide the same on its own merits.

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

( RAVINDRA V. GHUGE, J. )

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