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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3005 OF 2015

Deeliprao Narsingrao Lande
 Age-54 years, Occ – Agriculture
 and Social Work,
 R/o Johrapur, Taluka-Shevgaon,
 District - Ahmednagar

PETITIONER

VERSUS

1. The Regional Joint Director of Sugar
 Ahmednagar, IIInd Floor,
 Trilok Chambers, Laltaki Road,
 Ahmednagar, District – Ahmednagar
2. The Returning Officer,
 Shri Dnyaneshwar Sahakari Sakhar
 Karkhana Limited,
 At and Post Bhenda,
 Taluka - Newasa, District – Ahmednagar
3. Shri Dnyaneshwar Sahakari Sakhar
 Karkhana Limited,
 At and Post Bhenda
 Taluka - Newasa, District – Ahmednagar

RESPONDENTS

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Mr. V. D. Hon, Sr. Advocate i/b Mr. A. V. Hon, Adv. for petitioner
 Mr. S. K. Tambe, AGP for respondent State
 Mr. R. N. Dhorde, Sr. Advocate i/b Mr. V. R. Dhorde Adv. for R-3

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 17th MARCH, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. The petitioner is aggrieved by order dated 2nd March, 2015 passed by Returning Officer – respondent No.2, wherein his nomination to contest elections to the Board of Directors / Managing Committee of respondent No.3 *Karkhana* has been rejected, *inter alia* with reference to disqualification having been incurred pursuant to section 73CA (1) (i) (c) of the Maharashtra Co-operative Societies Act. The petitioner contends that he has been a managing committee member of respondent No.3 *Karkhana* since 1988 and he is also a member of outgoing board of directors of said *Karkhana*. The term of the managing committee had been over in 2013, however, the same had been extended. Petitioner's name had appeared in the final voters list, as a producer member at serial No.1922 in the elections being held for the term 2015-2020. Pursuant to the election programme, the petitioner had filed nomination for contesting elections to the board of directors of respondent No.3 *Karkhana* from producer member constituency. According to the petitioner, though there was no objection by any member / voter of

respondent No.3, yet the Managing Director of respondent No.3 *Karkhana*, at the behest of Chairman of respondent No.3, purportedly objected to the nomination of the petitioner giving an opinion that the petitioner is a defaulter and a defaulter cannot contest the elections and as such, the petitioner is disqualified. The petitioner purportedly denied liability being shown against him and contended that the Managing Director of respondent No.3 had created a record with an ulterior motive and has shown that notice had been issued by respondent No.3 to petitioner's address at Shevgaon, whereas the Managing Director had been aware about the residence of the petitioner at Johrapur and further that all the communications hitherto were being made to him at his Johrapur address. According to him, the Managing Director has manipulated the record that demand notice was issued to the petitioner for recovery of Rs.19,67,309/-. It is apparent that such a notice had never been issued to him at his Johrapur address. According to him, respondent No.2 has mechanically passed orders relying on opinion given by the Managing Director of respondent No.3 *Karkhana* and rejected nomination of the petitioner. The appellate authority too has overlooked the vital aspects involved in the matter and went on dismissing the appeal confirming the

order passed by the Returning Officer and as such, present writ petition.

3. Respondent No.3 has opposed aforesaid contentions of the petitioner on various grounds *inter alia* that the proceedings at the instance of the petitioner were not maintainable for want of necessary affected parties before the appellate forum. So is the case in the present writ petition. It is being contended that huge amount has been due from the petitioner to respondent No.3 *Karkhana* and though it may not be necessary, a notice had been sent to him on 17th January, 2015 and despite notice the petitioner had failed to pay dues and as such, has rendered himself defaulter. It is further being pointed out that a declaration of provisional voters list was given on 21st November, 2014 in daily "*Sakal*", asking the defaulters to pay dues, however, this request under publication had gone unattended from the petitioner. It is submitted that information had been sought by the returning officer in respect of the nominations filed by the candidates and as such, requisite information had been furnished to the Returning Officer. It is being pointed out that notice dated 17th January, 2015 had been issued to the petitioner on the address of Shevgaon, as was appearing in the final voters list and "I" and "J" registers of the *Karkhana*. In view of the

same, no fault can be attributed to respondent No.3. Both the authorities have properly considered the material as had been placed before them and the orders have been passed in accordance with facts and the law and the petition does not deserve any consideration.

4. Mr. V. D. Hon, learned senior advocate places reliance on 1987 (3) Bom. C. R. 550 "*Murlidar Bhaulal Malu V. Sudhakar Honaji Patil & Another*". With reference to said decision it is being sought to be contended that in absence of notice of demand to the petitioner, the petitioner cannot be termed as a defaulter and in the present case, record has been created to show that the petitioner has been served at his address at Shevgaon and not at Johrapur, where all the communications hitherto were being made to the petitioner. He, therefore, submits that such an act on behalf of respondent No.3 smells foul and shall be considered as such. It is being vehemently submitted by him that since 1988 till date, he has been continuously on the board of directors / managing committee of respondent No.3 and it should be properly taken into account as to why only on this occasion communication has been made to Shevgaon. He submits that in such a case, in a deliberate and calculated move, the petitioner is sought to be dubbed as a defaulter, which is not proper. The election officer as

well as the appellate authority ought to have given consideration to these aspects involved in the matter. Relying on *1987 (3) Bom. C. R. 225 "Keshaorao Narayanrao Patil V. District Deputy Registrar & Others"*, it is submitted that disqualification would not be automatic and unless such an order is passed, it cannot be considered that the petitioner is a defaulter. He also places reliance on *2002 (4) Bom. C. R. 438 "Vinodchandra H. Doshi & Another V. Echjay Forgings Private Limited & Others"*, for the purpose that for want of notice, the petitioner cannot be held to be defaulter. He also relies on an order dated 11th March, 2015 passed in writ petition No. 2491 of 2015 at Principal Seat of this Court. The order appears to have been passed on the premise that the rules of natural justice had been breached wherein it appears that to the list published objection had been taken by the objectors and without giving any opportunity to the persons concerned, drastic action of deletion of their names had been taken. Facts in said case appear to be quite different. Mr. Hon, learned senior advocate submits that the procedure as required under the Maharashtra Co-operative Societies Act, with reference to section 78 read with section 73 FF (1) has not been followed and nomination has been rejected at the behest of erstwhile member whom petitioner had not supported in assembly elections.

5. Whereas, on the other hand, Mr. R. N. Dhorde, learned senior advocate for respondent No.3, along with learned Assistant Government Pleader, submits that due procedure, as required under the relevant provisions, has been followed. The petitioner had been given notice on an address which has been appearing in the records of respondent No.3 *Karkhana*. The amount due to respondent No.3 is huge and had not been cleared from quite some time. It is further submitted that non payment of amounts to respondent No.3 constitutes a default. It is not a case of removal of membership or cessation of membership from the managing committee. To render a person defaulter no particular procedure is required and is incurred by operation of law. The authorities being relied upon on behalf of the petitioner would hardly contain present situation. It is not the case that the petitioner is not a defaulter. Under the statutory provisions, he has incurred disqualification wherein he is disabled from running for contest to the elections of managing committee of respondent No.3, him being a defaulter. The disqualification has been incurred under the provisions of the Maharashtra Co-operative Societies Act. The election officer as well as the appellate authority have decided the eligibility of the petitioner to contest as a candidate for election to managing

committee of respondent No.3 on the basis of record as has been made available to them. The nature of inquiry contemplated at the stage of scrutiny of nominations is summary. The respondents rely on *AIR 1988 SC 1796 "Birad Mal Singhvi V. Anand Purohit"* to support their submission that the Returning Officer must satisfy himself that the candidate possesses necessary qualification. The inquiry is of summary nature, the decision has been taken on the basis of record available before him. A deeper probe is not envisaged at this stage. The respondents also rely on *2003 (2) ALL MR 523 "Vijaysingh Krishnarao Parbat V. Returning Officer & Others"* to support their submissions that all other candidates are necessary parties and non-joinder of necessary parties engenders dismissal of appeal. They also refer to quite a few orders of this Court wherein this Court had declined to interfere with the election programme, including the Apex Court's decision in *"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*

6. The petitioner faces a situation wherein he is not in a position to deny that notice dated 17th January, 2015 being issued to him at the address at Shevgaon is not his address, nor is he in a position to deny that record of respondent No.3 bears

said address. In such a case, it cannot be said that he is not aware of said notice. It is further not being disputed that respondent No.3 had published a notice / communication way back in 2014 requiring defaulters to pay up the dues in order to enable them to be eligible to vote and contest the ensuing elections. Further, respondent No.3 appears to have placed material on record indicating that there are dues from the petitioner to respondent No.3.

7. Though the petitioner contends that no details and particulars have been given as to how the figure represents the default, it is not the case by the petitioner that no amount is due to respondent No.3 from him nor there is absolute and firm denial of liability or about that he has borrowed amount or taken advance from respondent No.3 nor of that notice for recovery was served. However, at the stage of scrutiny of nomination, nature of inquiry, as referred to herein above, being summary and based on the material before the election officer and the appellate authority, both the authorities concurrently held that the petitioner is a defaulter. Here, respondents as well consistently contend that the petitioner is a defaulter. As such, it appears to be a disputed question of fact. In such a case, the impugned orders can hardly be flawed.

8. Having regard to aforesaid, this is not a fit case wherein this court should grant indulgence to the petitioner, particularly having regard to nature and scope of inquiry at the stage of scrutiny and the petition, challenging said orders, stands dismissed. Rule stands discharged. No order as to costs.

[SUNIL P. DESHMUKH, J.]

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