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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4227 OF 2015

Pandit Pandurangrao Munde

PETITIONER

VERSUS

The State of Maharashtra & others

RESPONDENTS

.....

Mr. V. D. Salunke, Advocate for the petitioners

Mr. D. R. Kale, Government Pleader for respondent No.1

Mr. R. N. Dhorde, Sr. Advocate i/b Mr. V. R. Dhorde for R-3

Mr. Deelip Patil-Bankar, Advocate for respondent No.4

.....

WITH

WRIT PETITION NO.4232 OF 2015

Dhananjay Panditrao Munde

PETITIONER

VERSUS

The State of Maharashtra & others

RESPONDENTS

.....

Mr. S. S. Thombre, Advocate for the petitioner

Mr. D. R. Kale, Government Pleader for respondents No.1 to 3

Mr. Deelip Patil-Bankar, Advocate for respondent No.5

Mr. D. J. Choudnary, Advocate for respondent No.6

Mr. R. R. Mantri, Advocate for respondent No.10

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WITH

WRIT PETITION NO.4242 OF 2015

Pandit Pandurangrao Munde

PETITIONER

VERSUS

The State of Maharashtra & others

RESPONDENTS

.....

Mr. V. D. Salunke, Advocate for the petitioners

Mr. D. R. Kale, Government Pleader for respondent No.1
Mr. V. D. Hon, Sr. Advocate i/b Mr. V. B. Anjanwatikar, for R-3
Mr. Deelip Patil-Bankar, Advocate for respondent No.4
Mr. A. B. Girase, Advocate for respondent No.5
Mr. R. R. Mantri, Advocate for respondent No.9

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WITH

WRIT PETITION NO.4247 OF 2015

Dhananjay Panditrao Munde

PETITIONER

VERSUS

The State of Maharashtra & others

RESPONDENTS

.....
Mr. S. S. Thombre, Advocate for the petitioners
Mr. D. R. Kale, Government Pleader for respondent No.1
Mr. Deelip Patil-Bankar, Advocate for respondent No.5
Mr. R. N. Dhorde, Sr. Advocate i/b Mr. V. R. Dhorde for R-6
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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 16th APRIL, 2015

ORAL ORDER :

1. This group of writ petitions challenge two concurrent orders passed by election officer, rejecting nominations of the petitioners and the orders affirmed by the appellate authority.

2. Election to Board of Directors of *Vaidyanath Sahakari Sakhar Karkhana Limited*, Pangari, Taluka-Parli, District-Beed for the term 2015 to 2020 is under progress. According to election programme declared, last date of submission of nominations was

27th March, 2015, scrutiny was to take place on 30th March, 2015, date of withdrawal of nominations was 1st April, 2015, date for allotting symbols and declaration of list of candidates is 16th April, 2015, the polling is scheduled on 26th April, 2015 and the results are to be declared on 28th April, 2015.

3. Pursuant to the election programme, the petitioners had submitted their nominations and on 30th March, 2015 objections by the contesting candidates to the nominations of the petitioners have been taken, primarily on two grounds - that them being defaulters, with reference to a litigation and a compromise decree under the same in respect of one *Jagmitra Sahakari Soot Girni* and the other objection to the nominations of the petitioners was on the ground that one Mrs. Rajashri Dhananjay Munde, who happens to be family member of the petitioners, being director of Jagmitra Sugar Mills Limited, is engaged in carrying on a business in goods similar to the ones as those of the *Vaidyanath Sahakari Sakhar Karkhana Limited*.

4. Undisputed facts, as they emerge are - said Mrs. Rajashri Munde is director of Jagmitra Sugar Mills Limited and that she is wife of Dhananjay Munde, petitioner in writ petitions No. 4232 of 2015 and 4247 of 2015 and daughter in law of Panditrao Munde

petitioner in other two writ petitions *viz.*, writ petition No. 4227 of 2015 and 4242 of 2015. Further, it is not disputed that the aim and object of said Jagmitra Sugar Mills Limited *inter alia* is to manufacture and sale of sugar and allied products, in the areas, including the area of operation of *Vaidyanath Sahakari Sakhar Karkhana Limited*.

5. *Jagmitra Sahakari Soot Girni Limited* - a spinning mill is a member of Beed District Central Co-operative Bank Limited and had been a borrower of said bank. The spinning mill had fallen in arrears and as such, litigation ensued. It is not disputed that both the petitioners in these four petitions were on the managing committee of said *Jagmitra Sahakari Soot Girni Limited*. The litigation had culminated into a compromise and a decree according to which came to be passed by the co-operative court in March, 2014. One of the term of compromise indicates that for the amount due to the District Central Co-operative bank Limited, the spinning mill as well as members of its managing committee are jointly and severally liable.

6. With reference to section 73CA (A1) and (1) (i) of the Maharashtra Co-operative Societies, objections came to be taken to the nominations of the petitioners on the ground that they are

defaulters of Beed District Central Co-operative Bank Limited, covered by expression in section 73CA (1) (i) clause (f) and Mrs. Rajashri Munde being their family member, engaged in similar business in the area of operation of Vaidyanath Sugar Factory, their candidature is hit by section 73CA (A1). Since they are defaulters of Beed District Central Co-operative Bank Limited as well as Mrs. Rajashri Munde being their family member, who is engaged in parallel business, the petitioners have incurred disqualification under the aforesaid provisions. The objector had supplemented the objections by placing on record the compromise deed and the decree so also a certificate of Beed District Central Co-operative Bank Limited.

7. With reference to the objections, the election officer considered that pursuant to the decree which has not been stayed, the petitioners and the society have been held to be jointly and severally liable for the dues of the bank as well as Jagmitra Sugar Mills Limited is doing business under the directorship of Mrs. Rajashri Munde in the area of operation of *Vaidyanath Sahakari Sakhar Karkhana Limited*, and, therefore, they are not qualified to contest the elections and has disqualified both the petitioners. Additionally, one of the nomination of petitioner Panditrao Munde from society

constituency has also been rejected for want of seconder to his nomination.

8. Said decision was taken in appeal before the Regional Joint Director (Sugar) Aurangabad, who has confirmed the decision given by the election officer. The appellate authority considered that the petitioners are defaulters as well as hit by disqualification under section 73CA (A1) of the Maharashtra Co-operative Societies Act. Thus questioning propriety and legality of these orders petitioners are before this Court.

9. It is vehemently submitted by Mr. S. S. Thombre, learned advocate leading arguments on behalf of the petitioners in these four petitions that the petitioners cannot be termed as defaulters at all, for explanation under section 73CA (1) (i) does not cover the petitioners' case. According to him, expression "any society" has to be read in restricted sense and for said purpose he relies on a decision of this Court reported in 1987 (3) *Bombay Cases Reporter* 550 "*Murlidhar Bhaulal Malu V Sudhakar Honaji Patil & Another*". That was a case dealing with the then subsisting provision 73 (FF) (1) (i) (c) of the MCS Act. Head note "A" of said judgment reads thus -

“(A)Maharashtra Co-operative Societies Act, 1960, Sec. 73-FF (1) (i) (c) – Provisions of section 73 FF (1) (i) (c) – Construction of – Scope of clause (c) – Held, scope of clause (c) of Explanation of

section 73 FF (1) (i) is clear. If it is read harmoniously and together with other sub-clause it is neither ambiguous nor unreasonable or unworkable. This clause is applicable to all the co-operative societies registered in the State of Maharashtra other than those referred to in Clauses (a) (b) (d) and (e) of the Explanation.

The use of words and expressions such as on credit charges are payable, fails to repay the full amount, or pay the price of goods etc., clearly indicate that the clause applies only to such cases where the price of goods or charges for services or the amount of anamat or advance are payable or refundable in cash. In other words, if the payment of charges are to be adjusted in a manner other than payment in cash this clause will have no application. It is well settled rule that in interpreting the provision of a statute the Court will presume that legislation was intended to be intra vires and also reasonable. The rule followed is that the section ought to be interpreted consistent with the presumption which imputes to the legislature an intention of limiting the direct operation of its enactment to the extent permissible. The reading down of a provision of a statute puts into operation the principle that so far as it is reasonably possible to do so, the legislation should be construed as being within its power. It should be read as a whole and a provision of the Act, should be construed with reference to other provisions in the same Act, so as to make a consistent enactment of the whole statute. Further sub-sections must be read as parts of an integral whole, as being interdependent. Many times one sub-section throws light on another. It should be read harmoniously, together with other provisions of the Act, to make it consistent and reasonable. Further it is recognized principle of construction of penal statutes that its language should be so construed that no case shall be allowed to fall within its import, which does not fall within it, on reasonable construction of the enactment. Therefore, the

section calls for a reasonable construction to avoid absurd results, or undue and unforeseen hardship. The provisions of sub-sections 73 FF (1) (c) and (vi) will have to be read in the light of these well settled principle.”

10. The division bench had ruled that the question as to whether the person is defaulter or not must depend on the facts and circumstances of each case and no general rule can be laid down. The division bench further considered that sub sections (v) and (vi) of section 73-FF (1) deal with different disqualification. The activities therein involve conflict of interest and duty. The court, therefore went on to further observe in paragraph No. 10 that sub section (vi) of section 73 FF of said Act there is inherent evidence to indicate that word "any" has been used in said sub-section in restrictive sense. Mr. Thombre also relies on a decision reported in *“Narayan Gujabrao Bhoyar V. Yeotmal Zilla Parishad Karmachari Sahakari Pat Sanstha Maryadit”* 2009 (6) *Bombay Cases Reporter* 277 to contend that disqualification would not automatically incur unless a specific order has been passed in respect of the same. He places reliance on head note “B” which reads thus -

“(B) Maharashtra Co-operative Societies Act, 1960, Secs. 73-FF (1), (2) and 78 – Maharashtra Co-operative Societies ruels, 1961, R.58 – Disqualification – For membership of committee- Whether

cessation of membership automatic- Procedure – Held, provisions of section 73-FF (2) would come into play automatically by deemed fiction of law once declaration of member being defaulter as contemplated under section 73 FF (1) made in accordance with law and due compliance to basic principles of natural justice in terms of Rule 58 of Rules.”

11. The impugned orders appear to have been passed with reference to disqualification incurred under section 73CA (1) (i) and the head note “B”, being relied on is in respect of cessation of membership to be not automatic.

12. Opposing submissions advanced on behalf of the petitioners, learned advocates for the respondents contend that lot of disputed questions, particularly of facts, arise in the matters.

13. It is vehemently contended by Mr. Thombre that Jagmitra Sugar Mills Limited, has not began its operation and hence cannot be said to create any impediment for the petitioners to run for the contest in the elections to the board of directors of *Vaidyanath Sahakari Sakhar Karkhana Limited*, whereas the respondents have different version altogether, placing reliance on a document, which according to them is a profit and loss account submitted by Jagmitra Sugar Mills Limited.

14. As such, the parties appear to be at issue with regard to Jagmitra Sugar Mills Limited being in operation or not, which apparently is a disputed question of fact.

15. In view of aforesaid, position emerges that there is a dispute with regard to factual position about commencement of operation of Jagmitra Sugar Mills Limited and it being not in dispute that Mrs. Rajashri Munde, a family member of the petitioners, is director of said Sugar Mills, I do not think this is a matter, which could be considered in writ petition.

16. As such, it may not be appropriate, at this stage, to deal with correctness or otherwise of the decisions rendered by two authorities below, in respect of disqualification with reference to section 73CA (1) (i).

17. In view of aforesaid, I do not think it would be appropriate to intercept the decision taken by the election officer and affirmed by appellate authority, as the position emerges that the petitions raise disputed questions of fact, in respect of commencement of operation by Jagmitra Sugar Mills Limited. Writ petitions, as such, stand dismissed.

18. However, it would be open for the petitioners to take

appropriate measures and remedies as would be available in law, including election petitions. It is further being made clear that the authorities before which proceedings may be taken shall not be influenced by aforesaid observations and shall decide the proceedings on its own merits.

[SUNIL P. DESHMUKH, J.]

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