

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4243 OF 2015

Bharat Tukaram Chamle

...PETITIONER

versus

State of Maharashtra and ors.

...RESPONDENTS

.....

Mr. A.N. Irpatgire , Advocate for Petitioner

Mr. V.G. Shelke, A.G.P. for respondents No. 1 to 3

Mr. V.D. Hon, Senior Counsel along with

Mr. N.P. Patil, Jamalpurkar, Advocate for respondent No. 4

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CORAM : SUNIL P. DESHMUKH, J.

DATED : 23rd APRIL, 2015

Order :-

1. Heard learned counsel for petitioner as well as appearing respondents.

2. Foundation of allegation against acceptance of nomination of respondent No. 4 is that respondent No. 4, being director of Jagruti Sugar & Allied Industries Ltd., is disqualified from contesting the election under the provisions of Section 73CA, (A1) of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "MCS Act" for short), which reads thus:

“73CA (Disqualification of Committee and its members:

[(A1)] In the case of a society, which gives loans to members for purchasing machinery, implements, equipments, commodities or other goods, or which deals with such goods, no member, who or whose member of the family is a dealer in such goods or is a director of a company or a partner in a firm carrying on business in such goods, in the area of operation of the society shall be eligible for being elected or nominated as a member of the committee of such society.

Explanation – For the purposes of this sub-section, the expression “family” shall have the same meaning as explained in the Explanation 1 to sub-section (2) of section 75.”

3. Central thrust of the arguments advanced by learned counsel Mr. Irpatgire appearing for petitioner is on that, respondent No. 5 the Federal Society, elections to the board of directors of which are being held, had advanced loan to *Jagruti Sugar & Allied Industries Ltd.*, (hereinafter referred to as “Industry” for short) for doing business in sugar and allied products. As such, the Industry, is doing business in sugar and allied products. Respondent No. 4 is director of said Industry, and as such, he is doing and shall be deemed to do the business in sugar and allied products.

4. Mr. Irpatgire, learned counsel strenuously urged that respondent No. 4's candidature is hit by the embargo under Section 73CA (A1) of the MCS Act, since loan is advanced to the Industry.

5. In order to buttress his submission, learned counsel Mr. Irpatgire places reliance on decision of division bench of this court rendered in Letters Patent Appeal, in the case of *Amar Sinh S/o Shivajirao Pandit Vs. The State of Maharashtra and others* reported in *2000 Mh. Co.op. J. 155*. Perusal of said decision shows that, that was rendered in different factual scenario, wherein the petitioner was running business of sale of motorcycle under the Agency known as '*Vijay Auto Lines*' being dealer of TVS Suzuki Motorcycles. The federal bank had advanced loan to the borrower for purchasing of motorcycle and the borrower had purchased the motorcycle from the shop of petitioner therein, so he was not considered eligible to contest the election. It was in that context the division bench had upheld the decision of returning officer rejecting nomination of the petitioner therein.

6. Mr. Hon, learned senior Advocate for respondent No. 4 supporting the order impugned submits that decision relied on by learned counsel appearing for petitioner has no relevance in the present matter. Factual context in said case, even remotely, would not be applicable and govern the present factual scenario. He goes on to submit an entity like company has to function through human element, and as such, the company is doing its business through board of directors. It is not a case and not even allegation that respondent No. 4 is doing business in sugar

and allied products, in his own independent capacity, apart from the capacity as member of board of directors.

7. Mr. Hon, learned senior advocate submits that as such, Section 73CA (A1) of MCS Act has no application in the present case and would not be an impediment to candidature of respondent No. 4. The society of which elections are being held does not deal in sugar or allied products.

8. He further submits that the courts have generally been in loath in intervening and causing interception in progress of election programme and even more where the nominations have been accepted, he therefore, urges this court to reject the present petition.

9. Other leg of submissions of Mr. Irpatgire, learned counsel appearing for petitioner is that order of rejection of nomination is absolutely non speaking order and does not reflect application of mind. He further submits that it is rather strange that the order so passed by returning officer is not supported by reasons, by submitting affidavit-in-reply.

10. Be that as it may, the allegations against respondent No. 4 are not that he is doing business in goods as that of respondent No. 5 nor it is an allegation that respondent No. 4 is doing business in his individual capacity. I do not deem it appropriate

to interfere with the impugned order and intercept in the election programme, writ petition as such, stands rejected.

11. However, it would be open for the petitioner to take such proceedings as are advised including election petition for the same reasons as have been agitated in this writ petition. Needless to refer to that above observations in this order shall not influence the decisions on merits by other forum.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK