

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8874 OF 2015

SHIVAJI DEORAO MORE AND OTHERS
VERSUS
SHESHERAO SHANKARRAO PATIL AND OTHERS

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Advocate for Petitioners : Shri Salunke V.D.
Advocate for Respondent 1 : Shri Dhorde R.N. Sr. Advocate
i/b Shri Kute R.L.

Advocate for Respondents 2 to 4 : Shri Patil Pradip R.

Advocate for Respondents 7,9,10,15 : Shri Patil B.N.

AGP for Respondents 11 to 14 : Shri Korde D.R.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: September 04, 2015

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PER COURT :-

1. Heard learned Advocates for the respective parties at length.
2. Shri Salunke, learned Advocate has assailed the ex-parte ad-interim order dated 3.1.2012 passed by the learned Joint Charity Commissioner, Latur ("the learned JCC") in Appeal No.1 of 2012 preferred by respondent Nos.1 to 6.
3. Shri Salunke has strenuously contended as under:-
 - (a) The 23 petitioners were added as members of the respondent No.15 - Trust, in the meeting held on 18.4.2008.
 - (b) Elections were held on 7.3.2010, in which these petitioners had cast their votes.

- (c) Change Report No. 233 of 2010 was filed before the Assistant Charity Commissioner in accordance with the procedure.
- (d) A counter Change Report No.268 of 2010 was filed by a rival group opposing the petitioners.
- (e) By the judgment dated 23.12.2011, delivered by the learned Assistant Charity Commissioner ("learned ACC"), both the Change Reports were rejected and it was concluded that the petitioners have become valid members of the said trust.
- (f) Appeal No.1 of 2012 was preferred by respondent Nos.1 to 6 before the learned Joint Charity Commissioner ("learned JCC") on 3.1.2012.
- (g) By an ex-parte ad-interim order dated 3.1.2012, the learned JCC stayed the findings arrived at by the learned ACC in the judgment under Appeal to the extent of upholding the validity of the membership of the petitioners and further directed that the petitioners shall not participate in any meeting of the trust until further orders. Notices were, thereafter, issued.
- (h) By an order dated 3.11.2012, the learned JCC noted that the arguments of the litigating sides were heard long time ago, but orders could not be passed as the authority was busy in old and time bound matters. He, therefore, ordered rehearing on the application for interim relief.
- (i) The learned JCC thereafter has been adjourning the matter on several dates.
- (j) For sometime there was vacancy as the Presiding Officer was not appointed.

(k) Even today the appeal is still pending, despite the respondents in the appeal having filed their written statements with promptitude in 2012 itself.

(l) Election programme has been declared by respondent No. 13 and 7.9.2015 has been declared to be the date for filing nomination papers.

(m) The elections be stayed by issuing appropriate directions to respondent Nos.13 and 14 or they be directed to allow the petitioners to participate and vote in the ensuing elections.

(n) Directions be given to the learned JCC for deciding appeal No.1 of 2012.

4. Shri Dhorde, learned Sr. Advocate has narrated a long history of the dispute between these two factions. He submits that respondent No.7 - Dinkar Shankarrao Patil, who claims to be presently the President of the respondent No.15 Trust, had fraudulently inducted members in the Trust. In a separate proceeding before the learned JCC, it was concluded that only 10 persons are valid members, by order dated 15.2.2010. On 16.2.2010, the said Dinkar Patil sought a stay to the order of the learned JCC dated 15.2.2010 on the pretext of seeking time to file an appeal. No appeal was filed by him.

5. Another faction preferred an Appeal, which was decided by judgment and order dated 3.1.2012 by the learned District Judge. Shri Dhorde further submits that pursuant to the judgment of the learned District Judge, which

permitted the consideration of the petitioners as members of the trust, respondent No.1 preferred a Review Application, which has been subsequently allowed by order dated 13.3.2015.

6. Shri Dhorde further submits that Appeals from Order Nos. 29 of 2015 and 30 of 2015 along with certain Civil Applications were filed before this Court assailing the order under review. By order dated 10.8.2015, this Court dismissed both the Appeals from Orders, along with the Civil Applications, by observing in paragraph Nos.4,5 and 6 as under:-

“4. It cannot be disputed that such direction could have been given even by the Joint Charity Commissioner. On this point, the learned counsel for the applicant placed reliance on case reported as 2007 (O) BCI 156, Aurangabad Bench (Dattatraya S/o Mahadeo Hiware and others V/s Arjun S/o Sambhaji Shinde and others). In that case, in view of the facts, it was observed that it was necessary that inquiry was made about the eligibility of voters before declaring the program of election. The facts of the present matter are altogether different and the issue of validity of the membership is already decided and that decision has become final. If this issue is again allowed to be opened, the dispute will not come to an end. The circumstance that the subsequent membership was also challenged by other side and that matter is still pending cannot come in the way of holding of the elections in view of the aforesaid facts and circumstances. This Court, therefore, sees no reason to interfere in the order made by the District Court.

5. *In the result, both the Appeals from Order stand dismissed. The pending civil applications are also disposed of.*

6. *Learned counsel for the Appellant requested for stay of eight days. In view of the aforesaid facts and circumstances of the case, it is not a fit case to further stay the elections which need to be held and so the stay is refused.”*

7. Shri Dhorde submits that, thereafter, the matter was carried to the Honourable Supreme Court in Special Leave to Appeal Nos.24021 and 24022 of 2015. These petitions were dismissed by order dated 25.8.2015 and instantly this petition was filed in this Court on 26.8.2015.

8. Shri Dhorde submits that there is no difficulty in directing the learned JCC to decide the pending Appeal No.1 of 2012 within a time frame as may be ordered by this Court. He, however, opposes the prayers seeking a direction to either stay the election process or to permit the petitioners to vote in the elections.

9. Shri Patil, learned Advocate appearing on behalf of respondent Nos.2 to 4, joins Shri Dhorde in his submissions. He submits that there was no persuasion on the part of the petitioners in insisting before the learned JCC to decide either the stay application or the entire Appeal. The roznama indicates that most of the times the Advocates were absent. The petitioners were not diligent. In the event, they had a grievance that the learned JCC was not deciding the Appeal, they could have initiated such steps so as to ensure that the Appeal was decided. He opposes the prayer put forth by the petitioners that the elections be stayed or the petitioners be permitted to vote.

10. Shri Salunke has contradicted the statement made by the learned Advocates for the respondents that the petitioners have not been diligent and have not taken steps for hearing on the appeal. He submits that in fact, it is the petitioners who are aggrieved the most by the matter getting delayed and had on various occasions moved the in-charge learned JCC at Aurangabad for seeking a hearing on the appeal. He further submits that no loss would be caused to the respondents if the petitioners are permitted to cast their votes in a separate ballot box till the appeal is decided and restrain respondent Nos.13 and 14 from declaring the elections of respondent No.15, which are scheduled on 15.9.2015.

11. I have considered the submissions of the learned Advocates as have been recorded herein above. It is quite astonishing as to why Appeal No.1 of 2012 is kept pending before the learned JCC Latur. It is beyond comprehension that even the Stay Application on which an ex-parte ad-interim order was passed on 3.1.2012, has still not been decided by the learned JCC.

12. Disputed questions as to whether the petitioners or the original appellants can be said to be guilty of indulging in delaying tactics, may not be considered or gone into by this Court at this stage in the matter. However, to say the least, the learned JCC Latur, in my view, has failed in his duties in not deciding the application for stay, when an ex-parte ad-interim order has been passed.

13. Nevertheless, I am unable to accept the prayers made by the petitioners. The Apex Court in the matter of Shri Sant Sadguru Janardan Swami Vs. State of Maharashtra [AIR 2001 SC 3982], pertaining to election matters has observed as under:-

“7. In the light of the afore-stated provisions of Chapter XIA of the Act and the Rules, we will examine as to whether preparation of electoral rolls is an intermediate stage in the process of election. The provisions referred to above shows that Chapter XIA was enacted and the rules were framed specially to deal with the election of the specified societies under Section 73G of the Act. Section 144X provides that various stages of election shall also include preparation of the list of voters. Once the statute provides that the preparation of the voters' list shall be part of the election process, there is no reason to hold that the preparation of the electoral roll is not an intermediate stage in the process of the election of a specified society. This matter can be examined from another angle. A perusal of the Rules discloses that the preparation of provisional list of voters, filing of objection against the provisional list of voters, consideration of the objection by the Collector and finalising the list of voters, all occur in the Rules which cover the entire process of the election. The Rules framed for election of specified societies are complete code in itself providing for the entire process of election beginning from the stage of preparation of the provisional voters list, decision on the objection by the Collector, finalisation of electoral rolls, holding of election and declaration of result of the election. In view of the scheme of the Act and Rules, the preparation of voters' list must be held to be part of the election process for constituting managing committee of a specified society. In Someshwar Sahakari Sakhar Karkhana Ltd., Someshwarnagar vs. Shriniwas Patil, Collector, Pune & Ors. - 1992

Maharashtra Law Journal, 883, it was held that in the scheme of the provisions of the Act and the Rules, the preparation of the list of voters for election to the managing committee of a specified society is an intermediate stage in the process of the election. Similar view was taken in Shivnarayan Amarchand Paliwal vs. Vasantrao Vithalrao Gurjar and Ors. - . However, in Karbhari Maruti Agawan and Ors. vs State of Maharashtra and Ors. AIR 1994 Bom 304 *Maharashtra Law Journal*, 1527, although it was held that the preparation of the list of voters is an intermediate stage in the process of election, but that does not debar the High Court to entertain a petition under Article 226 of the Constitution challenging the validity of the electoral roll. It appears that the consistent view of the Bombay High Court on the interpretation of Chapter XIA of the Act and the Rules framed thereunder is that the preparation of electoral roll is an intermediate stage of the election process of the specified societies. This being the consistent view of the High Court on the interpretation of provisions of a State Act, the same is not required to be disturbed unless it is shown that such a view of the High Court is palpably wrong or ceased to be good law in view of amendment in the Act or any subsequent declaration of law. We are, therefore, of the view that the preparation of the electoral roll for election of the specified society under Chapter XIA and the Rules framed thereunder, is an intermediate stage in the process of election for constituting managing committee of a specified society.

12. In view of our finding that preparation of the electoral roll is being an intermediate stage in the process of election of the managing committee of a specified society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been

stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellant to challenge the election of returned candidate, if aggrieved, by means of an election petition before the election tribunal.”

14. 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 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."*

15. The learned Division Bench of this (Coram : R.M.Borde & Sunil P. Deshmukh, JJ.) has also refrained from interfering in election process in its observations in Writ Petition No. 1753 of 2015 (Maroti Ganpatrao Shinde Vs. State of Maharashtra & others), by order dated 13.2.2015, which are as follows:-

" 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."

16. It is informed that Appeal No.1 of 2012 is in connection with Change Report No.233 of 2010 and Appeal No.2 of 2012 is in connection with the Change Report No. 368 of 2010, both of which have been dismissed by a common order dated 23.3.2011, which is subject matter of both the Appeals.

17. In the light of the above and in the light of the fact that the membership of the petitioners has been stayed for last about three years and nine months and considering the undesired manner in which the learned JCC has kept the Appeal Nos. 1 and 2 of 2012 pending, I am inclined to direct the learned JCC to decide the said Appeals as expeditiously as possible and in any case on/or before 6.11.2015. So also, I am inclined to subject the result of the elections of respondent No.15, scheduled on 15.9.2015, to the result of Appeal Nos.1 and 2 of 2012.

18. Hence, this petition is disposed off by directing the learned JCC to decide Appeal Nos.1 and 2 of 2012 on/or before 6.11.2015. The result of the elections, scheduled on 15.9.2015, shall be subject to the result of the Appeals and no equities would be created in favour of the elected members. The learned JCC shall be at liberty to reject any request for adjournment by the litigating sides, if it is found that the said request is on an unreasonable ground and trivial reasons / cause. The learned JCC shall

decide Appeal Nos.1 and 2 of 2012 on its own merits and without being influenced by its observations in the order dated 3.1.2012 on the application for stay.

(RAVINDRA V. GHUGE, J.)

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