

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 9254 OF 2015

Babruwan s/o Sidhu Nikam .. Petitioner

versus

The Election Officer,
Vividh Karyakari Seva Sahakari
Sanstha Ltd., Wanwada and ors. .. Respondents

Mr. Shailesh P. Katneshwarkar, Advocate for petitioner
Mr. V.G. Shelke, Asstt. Govt. Pleader for respondents no.1 and 2
Mr. N.P. Patil Jamalpurkar, Advocate for respondent No. 3.

CORAM : SUNIL P. DESHMUKH, J.
9th September, 2015

ORDER:

1. Petitioner is aggrieved by dismissal of his appeal bearing No. 7 of 2015 by appellate authority under order dated 01-09-2015.
2. Heard Mr. Katneshwarkar, learned counsel for petitioner, learned Assistant Government Pleader for respondents no. 1 and 2 and learned advocate Mr. Jamalpurkar for respondent no. 3.
3. Mr. Chapalgaonkar learned advocate appearing for petitioner vehemently submits that respondent no. 3 has been found to be in arrears to the tune of ₹ 5,82,491/- as on 18-08-2015 and that he is 'C' class member of Sant Shiromani Maroti Maharaj Co-operative Sugar Factory Ltd., Maulinagar, Belkund, Tq. Ausa, District Latur.

He submits that having regard to this position, taking into account objection by petitioner the election officer had rejected the nomination of respondent no.3. He contends that the appellate authority has reversed the decision rendered by the election officer on altogether different considerations which would not stand to the test of law and the facts.

4. Mr. Jamalpurkar, learned counsel appearing for respondent no. 3 submits that respondent no. 3 being in arrears is a fact disputed one and as a matter of fact, a dispute has already been raised before the co-operative court for recovery of the amount. That dispute is pending and has yet not been finally decided. He submits, in the face of said dispute, respondent no. 3 cannot be said to be falling in arrears. He further submits that lot of questions are involved in the matter, such as, whether respondent no. 3 can be said to be a defaulter and further that arrears for the default claimed is subject to the comments by the auditor. According to him, in such a situation, the decision rendered by the appellate authority cannot be faulted with.

5. Learned Assistant Government Pleader in addition to supporting the appellate order further points out that almost all the stages of elections save polling are over and therefore and in the face of disputed questions of facts, no interference be caused.

6. Having regard to aforesaid position and the fact that the arrears / default has been alleged against respondent no. 3 and the matter in respect of the same is being litigated over, a dispute has arisen about the status of respondent no. 3 being defaulter as alleged by present petitioner and further having regard to the observations in the operative portion of the impugned order passed by the appellate authority, lot of questions arise in the matter.

7. In view of the same as well as having regard to the stage at which challenge is being posed by petitioner wherein except polling all other stages are over, I do not think it appropriate to interfere with the impugned order.

8. Writ petition, as such, is not being entertained and is disposed of accordingly. However, it would be open for the petitioner to make an appropriate approach, including an election petition if occasion for the same arises. It is further clarified that the observations made hereinbefore are only for the purpose of rejection of writ petition and have no efficacy any further.

SUNIL P. DESHMUKH, J.

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