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

WRIT PETITION NO.10849 OF 2015

Yogeshwar Nagri Sahakari Patpedhi Ltd.,
Galli No. 4, House No. 14/13,
Kholgalli, Dhule,
Through its Manager,
Mahendra Pandit Gore,
Age: 39 years, Occu: Service,
R/o. Sakri Road, Dhule,
District Dhule

....PETITIONER

VERSUS

1. State of Maharashtra,
Through its Secretary for
Co-operation Department,
Mantralaya, Mumbai
2. The District Co-operative
Election Officer, and
the District Deputy Registrar,
Co-operative Societies, Dhule,
District Dhule
3. Jagdish Chintaman Khodke,
Age: 40 years, Occu: Service,
R/o. Plot No. 8, J.B. Badgujar Colony,
Opp. G.T.P. Stop, Deopur, Dhule,
District Dhule

....RESPONDENTS

Mr V. D. Hon, Senior Advocate i/b Mr Ajinkya Deshmukh, Advocate for
petitioner;
Mr A. V. Deshmukh, Asstt. Govt. Pleader for respondent Nos. 1 and 2;
Mr R. J. Godbole, Advocate for respondent No. 3

WITH

WRIT PETITION NO.11644 OF 2015

Jagdish Chintaman Khodke,
Age: 32 years, Occu:
R/o. 8, J.B. Badgujar Colony,
Deopur, Dhule,
Tq. & District Deopur

....PETITIONER

(2)

VERSUS

1. The State of Maharashtra,
Through Secretary for
Co-operation Department,
Mantralaya, Mumbai-32
2. The Addl. Registrar Co-operative Sanstha, Pune,
Sakhar Sankul, Pune
3. Election Officer,
Yogeshwar Nagri Sahakari Patpedhi Ltd.,
Tq. & Dist. Dhule
4. Yogeshwar Nagri Patpedhi Ltd.,
Dhule, Galli No. 4, House No. 14/13,
Kholgalli, Dhule,
Through its Manager,
5. Pradeep S/o Hari Amrute,
Age: Major, Occu: Business,
R/o 32/K, Tulshiram Nagar,
Deopur, Dhule,
Tq. & Dist. Dhule
6. Arun S/o Barku Kele,
Age: Major, Occu: Business,
R/o. 41, Reuinagar, Nakane Road,
Deopur, Dhule, Tq. & Dist. Dhule
7. Dattatraya Wanaji Kothavade,
101, Sai Dham Apartment, Jamnagiri Road,
Dhule, Tq. & Dist. Dhule
8. Sanjay Gopalrao Naik,
Age: Major, Occu: Business,
R/o 45/1, Subhash Nagar, Govindpura,
Old Dhule, Tq. & Dist. Dhule
9. Jitendra Dharmraj Songire,
Age: Major, Occu: Business,
R/o 86, Jaihind Colony, Deopur,
Dhule, Tq. & Dist. Dhule

....RESPONDENTS

Mr R. J. Godbole, Advocate for petitioner;
Mr A. V. Deshmukh, Asstt. Govt. Pleader for respondent Nos. 1 to 3;
Mr V. D. Hon, Senior Advocate, instructed by Mr Ajinkya Deshmukh,
Advocate for respondent No. 4;
Mr A. D. Shinde, Advocate for respondent Nos. 5 to 9

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CORAM : N.W. SAMBRE, J.
DATE : 3rd December, 2015

ORAL ORDER :

Impugned in the present petitions is the order dated 20th October, 2015, passed in exercise of powers under sub-rule (3) of Rule 8 of the Elections Rules, framed by the State Government, under the Maharashtra Co-operative Societies Act, 1960 (for short "Act"), which empowers Deputy Registrar, Co-operative Societies, to decide the objection in relation to the provisional voters list, so as to include the names of the voters and as such, the name of respondent no.3 was ordered to be included in the final voters list.

2. It is required to be noted here that the order impugned was passed on 20th October, 2015 and thereafter the same came to be challenged at the behest of the petitioner – co-operative society by way of writ petition, in which this Court has ordered issuance of notice on 28th October, 2015.

3. There is another petition preferred by respondent no.3 to this petition bearing Writ Petition No.11644 of 2015, questioning the legality and validity of the order passed on 26th November, 2015 by the appellate authority, in exercise of powers under Rule 25 (2) of the Election Rules, dismissing the appeal against the order of the Returning Officer rejecting the nomination form of the petitioner therein on 10th November, 2015.

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4. Both these petitions were heard at considerable length.

5. Mr Hon, learned Senior Counsel appearing on behalf of the petitioner, raised a preliminary submission that, in view of commencement of the election programme, particularly the date of poll is scheduled on 12th December, 2015 and the fact that the procedure for the election is already complete, this Court should not interfere in the matter and relegate the parties to both these petitions to the remedy of raising an election dispute. In addition, he would submit on merits, as regards exercise of powers by the authority in terms of Rule 8, sub-rule 3 of the Election Rules, in the matter of making observations as regards “no dues” from respondent no.3 – an aspirant candidate to the election. According to him, the same was done by the office bearers, so as to keep respondent no.3 away from the elections in question.

6. While resisting the said submissions, Mr Godbole, learned Counsel appearing on behalf of respondent no.3, by trying to agitate the *mala fides* on the part of the petitioner and its office bearers, would urge that till 2006 the loan account of respondent no.3 was dormant, as no amount of loan was outstanding against him, which speaks volumes about the conduct of the office bearers of the petitioner. According to him, the same was done by the office bearers of the petitioner, so as to keep respondent no.3 away from the elections in question. Similar submissions are adopted by him so as to canvass that the candidature of respondent no.3 ought not to have been rejected, once there is finding that there is no outstanding dues

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against him and as such, his name be included in the final voters list.

7. Mr Godbole has relied upon the judgments of this Court, in the matter of **Dalsing Shamsing Rajput vs. State of Maharashtra & ors.**, reported in **2006 (5) Bom. C.R. 691** and **Mayaraju Ghavghave vs. Returning Officer & anr.**, reported in **2004 (5) Bom. C.R. 146**, so as to canvass that, looking to the mala fide conduct on the part of the office bearers of the petitioner credit co-operative society and in the interest of justice, respondent no.3 be permitted to contest the election, subject to outcome of the present writ petitions.

8. Having considered the stage at which the election process is advanced as on today, it is required to be noted that the election programme commences from the date of enrollment and date of preparation of provisional voters list. The nomination forms were to be submitted from 3rd November, 2015 and the date of voting is fixed as 12th December, 2015. The stage of allotment of symbols is already over on 27th November, 2015. In view thereof, this Court takes note of the fact that the election programme has advanced considerably. Apart therefrom, this Court is also required to be alive of the law laid down by the Apex Court in the matter of **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and anr. vs. The State of Maharashtra & ors.**, reported in **2001 AIR SCW 3959**. The Apex Court, while dealing with the submissions as were canvassed before it, has already observed that preparation of electoral roll is an intermediate stage

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in the process of election.

9. In view of above, it is required to be held that the election programme, in the present matter, has already progressed at advance stage. The interference by this Court, in exercise of extraordinary jurisdiction, in my opinion, is uncalled, particularly in the light of the law laid down by the Apex Court in the matter of Shri Sant Sadguru Janardan Swami (supra).

10. It is also required to be noted that the parties hereto are having appropriate remedy of raising dispute before the competent authority, after the elections are over.

11. In view thereof, this Court declines to interfere with the election programme in exercise of writ jurisdiction, particularly having heard the matter at length and noticed that there are certain disputed questions of fact. In the result, the writ petitions stand dismissed, with liberty to the respective parties to canvass their grievance before the appropriate forum, after the elections are over.

(N.W. SAMBRE, J.)

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