

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 872 OF 2015

Shri Dinkarrao Bhauso Jadhav & Ors.... Petitioners
vs.
The State of Maharashtra & Ors. ... Respondents

ALONG WITH
WRIT PETITION NO. 3774 OF 2015

Shri Keraba Taukaram Khade & Ors. Petitioners
vs.
Shri Dudhganga Vedgangha Sahakari
Sakhar Karkhana Ltd. & Ors. Respondents

Shri A.V.Anturkar, Senior Advocate a/w Shri Tanaji Mhatugade for the
Petitioners in W.P. No.872/2015

Shri Y.S.Jahagirdar, Senior Advocate a/w Shri S.S.Patwardhan for
Respondent No.5

Shri A.I. Patel, AGP, for Respondent Nos. 1 to 4.

Shri P.S.Dani, Senior Advocate a/w I.M.Khairdi for the Petitioners in
W.P.No.3774 of 2015.

Shri A.I.Patel, AGP, for Respondent Nos. 2 to 4.

Shri Y.S.Jahagirdar, Senior Advocate a/w Shri S.S.Patwardhan, for
respondent No.1.

Shri Yogiraj Vasantrao Surve, Regional Joint Director (Sugar), Kolhapur
Region, Kolhapur, present.

CORAM: B.R.GAVAI & A.S.GADKARI, JJ.

DATE : 17th April, 2015.

P.C : (PER B.R. GAVAI, J.

1. Shri Jahagirdar learned Senior Counsel, at the outset, has

raised a preliminary objection to the tenability of the present petitions. As such, it will be first required to be considered. Attention is drawn by the learned Senior Counsel to an earlier Petition, being Writ Petition No. 10685 of 2014 in which a prayer was made for restraining the Respondent Nos. 1 to 4 from holding elections in respect of Respondent No.5. He submits that since the said prayer was made in the said petition and since the same was not pressed into service and, in any case, since the said prayer was not granted by this Court, it is not permissible for the petitioners to file a petition afresh praying for the same relief.

2. It is further contended that the petitioners in Writ Petition No.10685 of 2014 and in the present petition are the same and as such at least at the behest of the present petitioners, the present petition would not be tenable.

3. It would reveal from the material placed on record that earlier petition was filed by the present petitioners with the grievance that the Respondent No.5 was indulging into large scale enrollment of ineligible members so that the directors in power can take political advantage of the same. It appears that this Court vide order dated 10th December, 2014 directed the Director of Sugar to conduct a sample enquiry in pursuance of

the sample enquiry conducted by the Director. It was found that out of 804 members enrolled, one was found to be eligible. The Court vide order dated 12.1.2015 finally disposed of the Petition. The Court, while disposing of the petition, observed that in case the Respondent-director is in receipt of certain material brought to his notice inviting to exercise his powers under the Co-operative Societies Act, then the respondent-authority may invoke such powers in accordance with law. The Court further directed that the inspection carried out under Section 89-A by the Director shall be expeditiously completed without prejudice to the rights of the respondent-Karkhana in the revision petition filed before the State. The Court disposed of the Petition, keeping all issues on merits open to the parties.

4. It would further reveal that in the said case, a prayer for interim relief restraining the respondents Nos. 1 to 4 from declaring any election programme was made. As already observed hereinabove, the petition stood disposed of.

5. The present petition (W.P.No.872 of 2015) has been subsequently filed by the same petitioners contending therein that though the enquiry which was permitted to be conducted by this Court has not been completed, the respondents had started the process of finalizing the voters

list and as such they were in hurry to hold the elections without waiting the report of the enquiry conducted by the Director of Sugar.

6. Since the earlier petition was disposed of by this Court by permitting the Director of Sugar to conduct an enquiry and further directing him to do it expeditiously and as such disposed of the petition, there was no question, at that stage, to consider the request for restraining the respondents from holding the elections. At that stage, even the finalisation of the voters list had not commenced. In any case, the Court had specifically kept open all the issues to be agitated by the parties at an appropriate stage. In that view of the matter, we find that the preliminary objection deserves to be rejected outrightly.

7. Rule. Rule returnable forthwith. Heard forthwith with the consent of the parties.

8. Heard Shri Anturkar, learned Senior Counsel appearing for the the Petitioners in W.P. No.872 of 2015, Shri Jahagirdar, learned Senior counsel appearing on behalf of Respondent No.5 and for Respondent No.1 in W.P. No.3774/2015 and Shri Dani, learned Senior Counsel appearing for the Petitioners in W.P.No.3774/2015 and the learned AGP for Respondent Nos. 1 to 4.

9. Shri Anturkar, learned Senior Counsel for the petitioners submits that Respondent No.5 - Karkhana has enrolled 17,563 members who are not eligible. He submits that this has been done only in order to enable the present directors, who are in power can get political mileage in the elections. The learned counsel submits that normally, this Court would not interfere in the election programme. However, it is submitted by the learned counsel that this is a rule of self-restraint and not a hard and fast rule. The learned Senior counsel, relying upon a Judgment of the learned Single Judge of this Court in the case of **Rajan Dinkarrao Pharate & Ors. vs. State of Maharashtra & Ors. 1997 (Supp.) Bom. C.R. 203** and of the Division Bench of this Court in the case of **Eknath Ashiram Alekar & Ors. vs. State of Maharashtra & Ors. 1989 (3) Bom.C.R.165** and submits that when the ineligible members are enrolled in wholesale and when eligible members are deprived of their right to hold in wholesale, this Court would not be powerless in exercise of inherent jurisdiction under Art.226 of the Constitution to restrain the respondents from conducting the elections on the basis of an electoral roll which consists of thousands of ineligible voters.

10. Shri Jahagirdar, learned Senior Counsel, on the contrary, submits that this is not a fit case wherein this Court

should interfere. The learned Senior Counsel relying upon the bye-laws which are amended, submits that since Respondent No.5 Karkhana needed funds for establishment of a Co-generation plant, it required huge funds and therefore, it was decided to enroll new members by increasing the share capital to Rs.10,000/- per member. He submits that by the amended bye-law, it was provided that a person in possession of at least 10 gunthas of land by virtue of ownership, protected tenancy or tenancy and further that he should cultivate the sugarcane in 10 gunthas. He further submits that for example, if a particular family owns an acre of land and it consists of father and 3 sons, then in that event taking into consideration each member of the family is in possession of 10 gunthas, the father and sons were enrolled after each of them paid the subscription amount of Rs.10,000/-. He therefore, submits that the present case is not a case of bogus membership. He submits that for the bonafide object of providing funds for co-power project, the membership base was expanded. He submits that none of the members enrolled are such who are

not eligible as per the amended bye-laws. The learned counsel therefore submits that the contention that the bogus members were enrolled with the object of amending the electoral roll is without substance. The learned counsel therefore submits that the present petition deserves to be dismissed. He further submits that the rights of the enrolled members are at stake in the present petition and as such, no order which prejudice the rights can be passed.

11. Shri Dani, learned Senior Counsel appearing for the petitioners in W.P. No.3774 of 2015 and submits that the petitioners are basically interested in holding elections. He submits that if the new committee is not constituted by 31st May, 2015, then there is risk of an Administrator being appointed which will unnecessarily affect the functioning of the Karkhana. The learned Senior Counsel submits that the present petitioners are not interested in the issue as to whether enrolled members should be permitted to vote or not.

12. No doubt, by now it is a well-settled position of law that this Court would be very slow in interfering with the election process. However, it is equally settled that the said rule is a rule of self-restraint and no hard and fast rule can be made in that regard.

13. We may gainfully refer to the observations of the learned Single Judge of this Court in the case of **Rajan Pharate & Ors. vs. State of Maharashtra and Ors.** (cited supra)

“ No doubt the High Court is always slow and sparingly invokes its jurisdiction under Article 226 of Constitution of India when there is challenge to preparation of voters list but where the exceptional and extraordinary case is made-out that the entire exercise of election would be farce if the process of election is completed on the basis of grossly invalid voters list depriving majority of members of the society from exercising right to vote, in my view, case is made out for invoking extraordinary jurisdiction under Article 226 of Constitution of India and the interference by this Court. The edifice of valid election is built on valid list of voters and where there is wholesale exclusion of members from final list of voters, shockingly to the extent of 97% on unjustifiable grounds, the high Court cannot imprudently refuse to exercise extraordinary jurisdiction and observe that since the election process has started the dispute should be resolved through election petition. The very objective and purpose of rules of 1971 particularly after insertion of sub-rules (5), (6) and (7) in rule 6 that no member be excluded from right to vote unless of course he is disentitled to vote under law would be defeated if this Court refuses to interfere with the erroneous, unjustified and illegal order of Collector defranchising more than 97% of the members of the society on the ground that legality and correctness of such order should be challenged after election is over by way of election petition under section 144T of the Act of 1960. Each case has to be examined in its own facts. A remedy under Article 226 by its nature is extraordinary and is invoked only in deserving cases but it would be too much to say that once the process of election has been set in motion, in no case the high Court can invoke its jurisdiction under Article 226 of Constitution of India.”

Thus it can be seen that the learned Single Judge of this Court (His Lordship then was) in unequivocal terms held that the non-exercise of jurisdiction in the electoral matters is a rule of jurisprudence and not a rule of jurisdiction. It has been held that where the exceptional and extraordinary

case is made out that the entire exercise of election would be farce if the process of election is completed on the basis of the same the case is made out for invoking extraordinary jurisdiction under Article 226. In the said case, by an order of the Collector, almost 97% of the members who were eligible were held to be ineligible. In that view of the matter, this Court found that the case was a fit case wherein interference of this Court was warranted.

14. A Division Bench of this Court in the case of **Eknath Alekar & Ors.** (cited supra) has observed thus :-

“35. On the question of relief to be granted, much arguments were advanced on both sides. It was contended on behalf of the Respondents that if this Court cannot embark upon an enquiry of such nature by itself, there are no provisions in the Act by which this Court can direct the officers of the State Government, and particularly the officers of the Co-operation Department, to make an enquiry into the question of memberships. The provisions of section 89-A of the Act, in our opinion, are sufficient to direct the authorities of the Co-operation Department to hold an enquiry in the matter. Section 89-A of the Act provides that it shall be competent for the Registrar to inspect or cause to be inspected the working of any society to ensure that (a) the provisions of the Act, the Rules and the bye-laws of the society are being properly followed by the society. So also, Clause (d) of said section 89-A provides that the Registrar is required to ensure that the society is following the co-operative principles and the directives or directions given by the State Government in accordance with the provisions of the Act, and the Rules made thereunder. In present case, as already stated, the provisions of the Act, the Rules and the bye-laws are not followed by the sugar factory while granting new membership to more than

3000 persons. Not only that, but the directions given by the authorities in this regard were overlooked.”

“38. The Joint Director of Sugar should give notice to all those persons, who are not members of the sugar factory and who have supplied sugar-cane in the past, and consider the question of eligibility as per the provisions of the Act, the Ruels and the Bye-laws, including any preferences required to be given to any class of persons in the matter of membership. The applications shall be invited from such of the persons. They should also be given opportunity to meet the deficiencies, if any, regarding the conditions, whichever, are applicable. The Joint Director of Sugar, while granting membership, shall bear in mind the provisions of section 23 (4) of the Act. After holding enquiry, the list of new members of the sugar factory shall be forwarded to the sugar factory to make the corrections in the registers to enable them to include the names of these persons as members of the sugar factory. All those who would be directed by the Joint Director of Sugar to be enrolled as members of the sugar factory shall be deemed to be members as on 30-6-1988. The enquiry shall be completed, as far as possible, within, six months.”

In the said case also, a dispute was regarding enrolling of the members who were not eligible. This Court, therefore, directed an enquiry to be conducted under the provisions of Section 89-A of the said Act.

15. We find that the facts of the present case also somewhat similar. However, in the present case, an enquiry has already been conducted by the Committee appointed by the Director of Sugar. Perusal of the report dated 4.3.2015, submitted by the committee to the Director, would reveal that there are gross irregularities in the enrollment of the

members who are enrolled after 25.6.2012. The Committee by the said date has examined the claims of 11,049 members. It has been found that out of 10,998 members, 2484 members have claimed in the printed application form that they were in possession of the requisite area of land. However, they had not submitted any document in support of their claim for being in possession of 10 gunthas of land for cultivating sugarcane on the said land as is required by the law. 3338 members have given a consent letter of a member of the family, wherein it is stated that the other member who is applicant, also possesses the land owned by the concerned. However, no document pertaining to the possession of the land of cultivation of sugarcane is submitted by these members. 1747 members have only been enrolled with consent of other members. However, the documents pertaining to the concerned showing that he is in possession of the land and that he is cultivating the sugarcane were not submitted. 3419 members have only submitted their application form. However, no documents either in the nature of 7 x 12 extract and 8A extract have been placed on record. Out of 10,989 members, only 10 members have submitted either 7 x 12 extract or 8A extract. As already discussed hereinabove, for being eligible to become a member, a person must have possess 10 gunthas of land either as an owner or protected tenant or a tenant and he shall cultivate sugarcane

in the said 10 gunthas. The requirement of the bye-law to show possession must be on the basis of some documents either in the nature of revenue records or title documents. The communication dated 4.3.2015, which is annexed by the members scrutiny committee to the Joint Director is placed on record and marked "X" for identification. Perusal of the report would reveal that Respondent No.5 has indulged into enrollment of ineligible members on a large scale. Out of 11,049 members whose applications have been so far scrutinized, only 10 members have been found to be eligible. A categorical statement made by the learned Asstt. Govt. Pleader appearing on behalf of the authorities that after scrutiny of the aforesaid 11,049 applications, the respondent No.5 Karkhana has given the rest of the applications for scrutiny by the Committee.

16. To a pertinent question to Shri Jahagirdar, learned Senior Counsel appearing for Respondent No.5 as to why the remaining applications have not been given for scrutiny by the Committee, the learned Senior counsel fairly states that many of the members have informed Respondent no.5 Karkhana that their applications should not be sent for scrutiny to the Committee and the Karkhana is not in a position to send their application forms for scrutiny against the wishes of such members.

Shri Jahagirdar submits that only 14,563 members who were found to be eligible in accordance with bye-laws have been enrolled as members though initial proposal was for 17,563 members.

17. Perusal of the report from an independent authority it is apparently clear that the committee has examined the cases of 11,049 members out of 17,563 members who have been allegedly to be illegally enrolled. Out of the said 11,049 only 10 members are found to be eligible.

18. We may state that a proposal was given to the Respondent No.5 Karkhana that if the Respondent no.5 agrees to hold the elections for electing members to the Committee, when the said 17,563 members being included in the voters list, Shri Jahagirdar submits that that would be adversely affecting the rights of the members who are enrolled in a legal manner and that cannot be done.

19. Had the Respondent No.5 agrees to this suggestion, there would have been no difficulty in proceeding with the election. At this stage, we may point out that it was a contention of Shri Jahagirdar that the enrolment of the aforesaid members is not with the purpose of having an

eye on the election but only for the purpose of increasing the share capital so that funds are available for co-power project.

20. We find that promoting such large number of ineligible members, to participate in the election would be permitting the elections to be held on the basis of the electoral roll which consists of a huge members and ineligible persons. We find that this is an exceptionally deserving case wherein this Court needs to exercise its powers under Article 226 of the Constitution.

21. We make it clear that we are compelled to interfere in the present matter since we have come to the considered conclusion that the Respondent no.5 Karkhana has indulged into enrollment of ineligible members on a wholesale basis de hors the provisions of the bye-laws. We would have also not entertained had the Karkhana accepted the fair proposal of holding the elections, keeping away the members who found to be ineligible by the Committee consisted of Respondent No.3. However, the Karkhana is not agreeable to the same. We have no option, but to allow the petition in the following terms :-

(i) Respondent No.5 Karkhana is directed to submit the application forms of the remaining members, whose applications have not been scrutinized by the Respondent No.2 so far within a period of 7 days from today.

(ii) The Respondent no.3 or the Committee appointed by him shall scrutinize the application forms of such members and decide regarding their eligibility within a period of 4 weeks thereafter.

(iii) After the scrutiny is complete, Respondent Nos. 1 to 4 are directed to hold elections of Respondent No.5 by preparing the electoral roll of the eligible members including the members who are found to be eligible in the scrutiny conducted by Respondent No.3. Needless to mention that the members who have been found to be ineligible by Respondent No.3 under the provisions of Section 89 of the said Act would not be included in the voters list.

(iv) Needless to state that the process of preparation of the electoral roll (except the aforesaid disputed members i.e. 17,563) shall not be stalled on account of the orders passed by this Court shall proceed in

accordance with law.

(iv) We further make it clear that this shall be without prejudice to the rights of the parties available to them under Section 11 of the said Act.

Rule is made absolute in the aforesaid terms No order as to costs.

(A.S.GADKARI, J.)

(B.R.GAVAI, J.)