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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7783 OF 2016

Govind Tukaram Birajdar
Age – 62 years, Occ – Agriculture
R/o Salegaon, Taluka – Lohara,
District – Osmanabad

PETITIONER

VERSUS

1. The State of Maharashtra
Through Secretary,
Department of Co-operation,
Mantralaya, Mumbai
2. The Returning Officer,
For the election of
Vividh Karyekari Seva Sahakari Sanstha Ltd.,
Salegaon, Taluka – Lohara
District – Osmanabad
3. The Vividh Karyekari Seva Sahakari Sanstha Ltd.,
Salegaon, Taluka – Lohara
District – Osmanabad
Through its Secretary,
4. Vyankat Vasantryao Vadure
Age – Major, Occ – Agriculture
R/o Salegaon, Taluka – Lohara
District – Osmanabad

RESPONDENTS

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Mr. V. D. Salunke, Advocate for the petitioner
Mr. S. K. Tambe, AGP for respondent-State
Mr. S. K. Kadam, Advocate for respondent No.2
Mr. G. J. Kore, Advocate for respondent No.4
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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 26th JULY, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the appearing parties.

2. Mr. Salunke, learned advocate for the petitioner contends that in the face of indisputable position emerging that respondent No.4 is a defaulter of Shetkari Sahakari Sakhar Karkhana Limited, Killari, Taluka – Ausa, District – Latur of an amount of Rs.3798.15, the impugned order passed at appellate stage by Assistant Registrar, Co-operative Societies, Lohara is unsustainable.

3. Mr. Salunke submits that elections to the managing committee of Vividh Karyekari Seva Sahakari Sanstha Ltd., Salegaon, Taluka – Lohara, District – Osmanabad are in process in which respondent No. 4 has put in his candidature. On 7th July, 2016 he had received a communication from aforesaid sugar factory referring to that an amount of Rs. 3798.15 is due from respondent No. 4 to the sugar factory towards harvesting and transportation of sugarcane. The same had been purportedly considered by the returning officer and had rejected the nomination of respondent No. 4. However, in appeal therefrom at

the instance of respondent No. 4, the appellate authority-Assistant Registrar, Co-operative Societies has got swayed into an issue which was not germane from the consideration of point that had arisen since it glaringly emerges that respondent No. 4 is a defaulter and as such, not eligible to contest the election. He submits that the appellate authority has unnecessarily got entangled into consideration that there does not appear to be any demand as required under section 73CA (1) (c) (ii) of the Maharashtra Co-operative Societies Act, overlooking other requirements under the very same clause that in case services are availed, its dues are not paid within thirty days, in such a case it ought to have been considered that respondent No. 4 is a defaulter. He further submits that over and above this, the fact of default appears to be an admitted one, for on the very next day, respondent No. 4 had paid the amount to the sugar factory. He submits that over and above this, nothing further was required to show that respondent No. 4 is a defaulter. Learned advocate further refers to a division bench judgment of this court, which according to him shows, a subsequent payment merely removes the dues and not the disqualification, since disqualification has been incurred in law. According to him, it was a grave error committed by the appellate authority in

allowing appeal. He further purports to refer to an order passed by this court on 10th June, 2016 in writ petition No.5834 of 2016 wherein this court had taken into account division bench order in writ petition NO.7670 of 2004 in which respondent No.3 had been considered to have three children, third having born after the cut off date and this court had considered that in such a case, respondent No.3 could not be eligible to contest election, and as such, had passed an interim order.

4. In response to aforesaid submissions, learned advocate Mr. Kadam for respondent No.2, returning officer, states that the order at appellate stage is the final order as far as election commission is concerned and will have to abide by the same. He submits that veracity or otherwise of the claims would be a question of fact and as such, no meddlesome approach be taken up in the present writ petition. He further refers to that elections have reached almost the final stage, wherein save voting all other stages are over and as such, requests not to intervene in the election process, which has reached the stage of polling.

5. Mr. G. J. Kore, learned advocate for respondent No.4 submits that the appellate authority has considered the matter appropriately. He submits that reliance being placed on the

communication procured at the instance of the petitioner is highly misplaced, for, the communication has been issued at eleventh hour, without letting any opportunity to respondent No.

4. He submits that respondent No. 4 is not a defaulter of the society, elections of which are being contested. He further draws attention to the averments as are appearing in the affidavit in reply stating that respondent No.4 is not a defaulter, the amount, which is claimed to be due by the sugar factory under the communication cannot be relied on. He submits that such an amount is to be recovered from payment which is due to respondent No. 4 from the sugar factory and as such, respondent No. 4 cannot be dubbed to be a defaulter. This contention is being advanced without prejudice to his basic contention that he is not a defaulter. He further submits that no particulars of the amount due have been given, period for which the default has been made has also not been mentioned. There is no demand notice as is required under the provisions. There is no reference as to who is responsible for payment or otherwise to recover the amount allegedly due from him. He purports to rely on a decision of this court in the case of "*Ravindra Bhaurao Patil Shishode V/s State of Maharashtra and Others*" reported in 2010 (5) *Mh.L.J.* 410, which according to him, clearly clarifies law that a

default should be in respect of the society of which elections are being contested and default of another society may not be a relevant consideration. He further purports to rely on two other judgments one in the case of *“Murlidhar Bhaulal Malu V/s Sudhakar Honaji Patil and Another”* reported in 1987 Mh.L.J. 944 and the other in the case of *“Narayan Gujabrao Bhoyar V/s Yeotmal Zilla parishad Karmachari Sahakari Pat Sanstha Maryadit Yeotmal and Another”* reported in 2009 (6) Mh.L.J. 500.

6. Taking into account aforesaid submissions, the position as on the date obtaining is, the petitioner purports to rely on a communication from a sugar factory about respondent No. 4 being a defaulter, whereas respondent No. 4 disputes veracity of the communication, making reference to certain other aspects involved in the matter in accordance with law as well as the facts. Having regard to that the petition ultimately gives rise to disputed aspects, it would not be appropriate for high court, which generally is slow to interfere with the matters wherein nominations have been accepted and in this case, particularly having regard to that the elections have reached almost in the last lap of the programme.

7. As such, writ petition is not being entertained and is

dismissed, leaving it open to the petitioner to take up appropriate recourse to the remedies as may be available in law, including an election petition. Rule stands discharged.

[SUNIL P. DESHMUKH, J.]

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