

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 8302 OF 2017**

**PRAKASH RAOSAHEB CHAPKE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**Advocate for Petitioner : Dilip Patil Bankar h/f S.M.Gunjal
AGP for Respondents: A.R. Kale**

**CORAM : S.C.DHARMADHIKARI &
MANGESH S. PATIL,JJ.**

DATE : 30/06/2017

PER COURT :-

1] The petitioner before us claims that at the elections to elect the members of the Managing Committee of the third respondent-sugar factory though securing higher votes than those declared elected against the petitioner's name, result sheet of the elections indicates "defeated".

2] The petitioner submits that there is one constituency viz. "Producer Members Constituency". Within this constituency no compartment or division can be made. Thus when the voters are from a common voters list and entitled to elect anybody, then, while counting the votes no arrangement contrary to the settled democratic principles can be made.

3] According to the petitioner, that such arrangement is made is clear from the election results. The bye-law No.26 (b) has been relied upon so as to make this segregation or division. Within the constituency such a compartment could not have been created and if

that is created with the aid of the bye-law, then, the bye-law must give way to the democratic process. Hence the concerned Clause 1 (b) of bye-law No.26 be declared as ultra-vires the Constitutional Amendment by which the cooperative societies have been given the Constitutional status.

4] The argument is that when such a challenge is posed the election dispute or election petition is not an efficacious remedy. The Tribunal or the authority deciding such a dispute can not declare the bye-law as ultra-vires. That relief can be obtained only by approaching this Court.

5] We are unable to agree with the latter submission of Shri Patil. It is not possible sitting here in judgment as to whether while disputing the electoral process and the results, the election dispute though framed on these lines, based on the averments and pleadings, the issue of applicability of bye-laws and particularly Bye-law 26(1)(b) would definitely arise. Eventually, the Tribunal or the authority before whom the elections are challenged would have to consider whether the bye-laws and framed as above, would enable the Election Officer to declare the results in the above manner. If at all that issue arises and is framed and the results can otherwise be justified in the back-drop of the actions of the Election Officers, then irrespective of any challenge the legality and validity of Bye-law 26(1)(b) may not be necessary to be decided. If at all it is necessary to be decided, the issue is framed but the Tribunal expresses its helplessness in rendering any decision on its legality and validity, then, the petitioner is not remedy-less. The order of the Tribunal to that effect can be challenged by appropriate proceedings in this Court and the issue of validity of the bye-law can be raised. Today, we can not proceed on the assumption that it is the bye-law which

has been applied and invoked to declare the election results.

6] Pertinently it is not clear whether the bye-law which is incorporated after a general body meeting resolution dated 21/04/2013 and brought into effect from 28/10/2014, was ever questioned and equally the resolution. Assuming that it was not necessary to be questioned till this electoral process, still, what we find is that when the election programme, copy of which is at Annexure-B, page-34 was declared, the same was declared in a prescribed format. Rule 19 was invoked. The independent and autonomous election authority while preparing, the program has divided the Producer Members Constituency into groups named after every party. It is in these circumstances, and when it is stated that from each group three directors have to be elected, then, such a program which was circulated on 12/05/2017 was never questioned. The petitioner participated in the same and with the arrangement as made. The petitioner also did not question either the bye-law or the process undertaken until the results were declared but now asserts his right to question it at this stage. It is in these circumstances that if the petitioner is not estopped in law nor has waived his right to raise the challenge, he can raise it before a appropriate forum. We do not see any reason to entertain the Writ Petition on the mere apprehension of the petitioner that if at all the challenge is raised to the legality and validity of the bye-law, the authority before whom election dispute is filed or the Tribunal would be helpless. In such circumstances the Writ Petition is clearly pre-mature. It is also barred by availability of alternate equally efficacious remedy to dispute the election process and the result. The Writ Petition is therefore dismissed. No costs.