

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

WRIT PETITION NO. 12420 OF 2016

KAKASAHEB BABRUVAN MORE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Shri Irpatgire A.N.
AGP for Respondent 1 : Shri S.P.Tiwari.
Advocate for Respondents 2 and 3 : Shri S.K.Kadam.
Advocate for Respondent 4 : Shri D.J.Chaudhari.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 10th January, 2017

Per Court:

1 The Petitioner is aggrieved by the order dated 03.12.2016 passed by Respondent No.2/ Returning Officer by which his objection/ representation dated 17.11.2016 seeking inclusion of his name in the final voters list, has been rejected. The voting in the election is scheduled on 15.01.2017.

2 The grievance of the Petitioner is that after his father (Babruvan Trimbak More), who was an earlier shareholder and a valid voter, passed away on 25.08.2006, the Petitioner moved an application dated 13.11.2010 and deposited an amount of Rs.50/- towards the charges for transfer of shares. However, Respondent No.4/ Sugar Factory

did not act upon the same and as a consequence, the Petitioner has lost a valuable right of voting on 15.01.2017.

3 The Petitioner then submits that the representation dated 29.10.2012 was also filed by the Petitioner with Respondent No.4/ Sugar Factory requesting it to transfer the shares from his father to the Petitioner. For the past six years, the Sugar Factory failed to do so thereby, causing an irreparable loss to the Petitioner by depriving him of his voting right on 15.01.2017.

4 Respondent No.4/ Sugar Factory has filed it's affidavit-in-reply and has stated that after the Petitioner deposited the money for transferring the shares and paid Rs.1/- towards admission fees on 13.11.2010 as well as made his representation on 29.10.2012, he has failed to comply with Section 30 of the Maharashtra Cooperative Societies Act, 1960 r/w Rules 24 and 25 of the Maharashtra Cooperative Societies Rules, 1961. He is required to submit certain documents under these provisions and only after furnishing such documents, the Sugar Factory can proceed to transfer the shares from his father to the Petitioner.

5 Though Shri Chaudhari, learned Advocate for Respondent No.4/ Sugar Factory, reiterates that the Petitioner was orally informed to

produce the documents, he concedes on the basis of the record that no such communication in writing was served upon the Petitioner informing him as to which were the documents which he was obliged to supply or furnish for necessitating the transfer of shares from his father.

6 Shri Kadam, learned Advocate for Respondent Nos.2 and 3, submits that these Authorities are supposed to decide the issues based on the documents. The dispute of transferring of shares from his father to the Petitioner, is an exercise which is to be undertaken and performed by Respondent No.4/ Sugar Factory. Unless the legal formalities are fulfilled, the name of the Petitioner cannot be entered into the valid voters list and the Returning Officer, in the absence of the above exercise, cannot induct the Petitioner as a valid voter.

7 Considering the above, I have no hesitation in concluding that the act of Respondent Nos.2 and 3 cannot be faulted. If the legal formalities required to be completed for transferring the shares to the name of the Petitioner, have not been completed at the level of Respondent No.4/ Sugar Factory, Shri Kadam is right in submitting that the Returning Officer cannot by himself presume that the shares have been transferred to the Petitioner and induct the name of the Petitioner in the final voters list. As such, I do not find that the impugned order is

perverse. This petition to that extent, therefore, fails.

8 However, it is apparent that there is no legally acceptable evidence of Respondent No.4/ Sugar Factory having informed the Petitioner as to which are the documents that the Petitioner is supposed to supply to the Sugar Factory for enabling the transfer of shares. It is admitted by the Sugar Factory in paragraph 2 of its affidavit-in-reply dated 23.12.2016 that the Petitioner had deposited the amount for transferring of shares, had deposited Rs.1/- towards admission fees on 13.11.2010 and had also made the representation on 29.10.2012 for seeking transfer of shares in his name.

9 In the absence of any communication from Respondent No.4/ Sugar Factory to the Petitioner, it appears that the Petitioner has lost his right to vote in the election scheduled on 15.01.2017 only on account of the laxity on the part of Respondent No.4/ Sugar Factory. To this extent, the Petitioner is not remedy-less and can avail of the remedy, as may be available in law, for compensating him for the loss caused by Respondent No.4 by depriving him of the right to vote on 15.01.2017. Keeping this liberty available, this Writ Petition is disposed of.