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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4232 OF 2019

Sudarshan Manik Misal

..Petitioner.

V/s.

State of Maharashtra & Ors.

..Respondents.

Mr.Sushant Prabhune for the petitioner.

Mr.S.D.Rayrikar, AGP for respondent Nos.1 to 3 & 6.

CORAM: NITIN W.SAMBRE, J.

DATE : JUNE 13, 2019

P.C.:-

A motion is made by the learned counsel for the petitioner for deletion of respondent nos. 7 and 8. The prayer is accepted. Petitioner is permitted to delete respondent Nos.7 and 8.

2. The case of the petitioner is, he preferred an application seeking disqualification of certain directors before the Registrar pursuant to provisions of Section 73CA of The Maharashtra Co-operative Societies Act, 1960 Act. (hereinafter referred to as 'the said Act' for the sake of brevity) The said application according to him is disposed of by the Competent Authority thereby relegating him to

alternate remedy of filing the Election Dispute as the said Authority viz. Registrar was of the view that the issue can be looked into in an Election Dispute before the Co-operative Court. As such, this petition.

3. Learned counsel for the petitioner made following submissions:

(a) The powers to disqualify a person being member of a Committee of a Co-operative Society vest with the Registrar in view of provisions of 73CA of the said Act. Registrar as such is required to exercise the said powers in accordance with law.

(b) That before passing the order impugned, neither the petitioner was put to notice nor an opportunity of hearing was offered.

4. *Per contra* the learned AGP appearing for respondent Nos. 1 to 3 and 6 would urge that the petitioner before election of respondent No.5-sugar factory has approached this Court questioning the qualification of the candidates from contesting the election. According to him, since the petition was disposed of, the Authority was justified in passing the order impugned. The learned AGP would further urge that since the complaint preferred involves disputed questions, the Authority was right in relegating the petitioner to alternate remedy.

5. Having delve upon the controversy brought before this Court, this Court thought it fit to dispense with the notice to respondent Nos.4 and 5 as the order passed is innocuous.

6. The least that was expected of respondent No.2-authority who is armed with the powers under Section 73CA of the said Act to hear the petitioner and pass appropriate order in accordance with law.

7 What is noticed from the order impugned is the petitioner was neither put to notice nor he was heard. The respondent Authority has not passed a reasoned order in the matter so as to justify the view expressed by it. That being so, in my opinion, the order impugned dated 15/01/2019 passed by respondent no. 2 is hereby quashed and set aside. The petitioner is relegated to said Authority viz. respondent no. 2 who is directed to decide the complaint/application of the petitioner preferred under section 73CA of the said Act in accordance with law after hearing the concerned parties.

8 The petition stands partly allowed in the above terms.

(NITIN W.SAMBRE, J.)