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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 805 OF 2020

Narsing Ganpatrao Nikam ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

Mr. Pramod Patil a/w Ajit Hon a/w Ms. Komal Mestry i/b PNP & Associates Advocates, for the Petitioner.

Mr. Y. S. Jahagirdar, Senior Counsel with Sarang Satish Aradhya, Milind Prabhune, for Respondent No. 5.

Mr. Y. D. Patil, AGP for the Respondent – State.

CORAM : C. V. BHADANG, J.

DATE : JANUARY 30, 2020

PC :

1. The challenge in this petition is to the order dated 30th December, 2019 passed by the third Respondent – Regional Joint Director (Sugar) and the District Co-operative Election Officer, Pune Division, Pune, thereby finalising the list of eligible voters for the election of the Board of Directors of the fifth Respondent – Shreeram Sahakari Sakhar Karkhana, Phaltan, district Satara (for short “Karkhana”).

2. It appears that the Election Officer had published a provisional voters’ list on 11th December, 2019, inviting objections, if

any. The Petitioner, who is one of the members of the Karkhana, by his Application No. 10 of 2019 raised objection to the provisional voters' list, on the ground that most of the voters' listed therein, are "non-active members" of the Karkhana. The Election Officer by his impugned order has rejected the objection and has finalised the voters' list.

3. It is a matter of record that the election programme has already been declared on 15th January, 2020 and the period for withdrawal of the nomination is from 22nd January, 2020 to 5th February, 2020.

4. I have heard Mr. Patil, the learned counsel for the Petitioner and Mr. Jahagirdar, the learned senior counsel for the fifth Respondent. I have also heard the learned Assistant Government Pleader for Respondent Nos. 1 and 3. Perused record.

5. Mr. Patil, the learned counsel for the Petitioner has submitted that the Karkhana has, admittedly, not prepared or maintained the list of active and non-active members in Form 'J-1' and 'J-2', as required by law. It is submitted that out of 16,162 members of the Karkhana, about 12,000 members are non-active members, and therefore, there is gross illegality in the preparation and finalisation of

the voters' list. It is submitted that the earlier election to the Board of Directors was held on 23rd April, 2015 and thus, period of the Managing Committee would expire somewhere on 23rd April, 2020. In the submission of the learned counsel for the Petitioner, there is no urgency in holding the election and the manner in which the voters' list has been finalised hurriedly indicates that the present Board of Directors of the Karkhana intends to influence the outcome of the election, inasmuch as substantial number of the voters are non-active members and thus, they are not eligible to be the voters.

6. The learned counsel for the Petitioner has referred to Section 2(19)(a-1), Section 26, 27, and 38 of the Maharashtra Co-operative Societies Act, 1960 (for short the "Act") in order to submit that there is a clear definition of members who are active and non-active members. It is pointed out that Section 26 provides for the rights and duties of the members of the Karkhana, which is a co-operative sugar factory, and it enjoins upon the members to attend the Annual General Meetings (AGMs) and also to take benefit of the various schemes of the Karkhana. The learned counsel was at pains to point out that the Karkhana claims to have granted a blanket exemption / condonation from such attendance in the AGM dated 14th September, 2019.

7. The learned counsel has taken me through agenda of the said meeting in order to submit that there was no such subject, which was scheduled to come up for consideration. It is submitted that there is a one line resolution, allegedly passed in the said meeting, granting exemption / condonation to the members from attending the AGMs, which is not permissible and in any case is against the letter and spirit of the law. The learned counsel has then referred to Rules 9, 10 and 11 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (for short the “Election Rules”) framed under the said Act, in order to submit that the final voters’ list is not in accordance with the Election Rules. The learned counsel also referred to the report of the auditor in order to submit that the total paid up share capital of the Karkhana would indicate that several members have not paid the full share money of Rs. 10,000/-.

8. In contemplation of an objection about availability of an alternate remedy by raising a dispute under Section 91 of the said Act, challenging, final outcome of the election, the learned counsel submitted that it is not an effective, nor efficacious remedy in the facts and circumstances of the case. On behalf of the Petitioner, reliance is placed on the decision of this Court in the case of ***Vinod Krushnaraoji***

Wankhede & Anr. Vs. Collector¹ and the decision of the Supreme Court in the case of ***Ahmednagar Zilla S.D.V. & P. Sangh Ltd. & Anr. Vs. State of Maharashtra & Ors.²*** in order to submit that in a given case, this Court can interfere even after the commencement of the election process, and there is no absolute rule, preventing this Court in the exercise of its extraordinary and / or supervisory jurisdiction from interfering with the election process, once the same has commenced. In the submission of the learned counsel for the Petitioner, looking to the grave irregularity in the preparation of the voters' list, this is a fit case where this Court should set aside the order of finalisation of the voters' list and direct the postponement of the election, particularly in view of the fact that the tenure of the existing Board of Directors is yet to expire.

9. In the submission of the learned counsel for the Petitioner, after 97th Constitutional Amendment, the concept of a 'specified society' has now been done away with, and therefore, the sugar factories, which were earlier designated as "Specified Society", now there are no rules governing the election petition of such Societies. The learned counsel pointed out that presently, the Karkhana is classified as a Type "A" Society. In the submission of the learned

1 (2006) 6 Bom CR 631

2 (2004) 1 SCC 133

counsel for the Petitioner, Rule 57 which provides for the challenge to the election being raised in the form of a dispute under Section 91 of the Act, does not take into consideration these aspects and in any event in the absence of the grounds, as raised in this petition, being unavailable to be raised in a dispute under Section 91 of the Act, the said remedy cannot be said to be efficacious.

10. Mr. Jahagirdar, learned senior counsel for the Karkhana has raised a preliminary objection about maintainability of the petition on two grounds, viz. (i) with reference to Rule 57 of the Rules, which provides that challenge to the election has to be raised only way way of a dispute under Section 91 of the Act; and (ii) the voters, who according to the Petitioner, are not qualified to be included in the voters' list on account of being allegedly non-active members, have not been made parties as respondents, and therefore, the petition cannot be entertained. For this purpose, reliance is placed on the decision of the Hon'ble Supreme Court in the case of ***Shri sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha & Anr. Vs. State of Maharashtra***³ and the order passed by the Division Bench of this Court in the case of ***Popatrao Danghe & Ors. Vs. Kadava Co-op. Sugar Factory Ltd. & Ors.***⁴ It is

³ (2001) 8 SCC 509

⁴ Writ Petition No. 1443 of 2015, dated 10th February, 2015

submitted that in the meeting dated 14th September, 2019, condonation has been granted to the members from non-attendance at the AGM. The learned senior counsel was at pains to point out that the Petitioner has not challenged the said resolution and thus, now cannot contend that some of the members are non-active members on account of non attendance at the AGM. It is submitted that the election process has already commenced, and therefore, this Court would not interfere in the said election process, inasmuch as the Petitioner has efficacious remedy of challenging the election, if so advised, by raising a dispute under Section 91 of the Act.

11. I have given my anxious consideration to the rival circumstances and the submissions made.

12. As noticed earlier, the election programme is already declared on 15th January, 2020 and currently the withdrawal of the nomination is in process upto 5th February, 2020. It transpired during the course of the arguments at bar, that the Petitioner has filed his nomination and is a contesting candidate at the said election. Normally, this Court would be extremely slow in interfering with the democratic process, once the election programme is declared and the election process has commenced. This has been consistently held in

various decisions of the Hon'ble Supreme Court and the High Courts. In the case of ***Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha (supra)***, Hon'ble Supreme Court has held that the dispute regarding preparation of electoral roll on the ground that it is in breach or non-compliance with the mandatory provisions of the Rules, can be challenged in an election petition. The learned counsel for the Petitioner has submitted that the said legal position has undergone a change after 97th Amendment to the Constitution of India. I do not find that the contention, as raised, can be accepted. The Division Bench of this Court in the case of ***Popatrao Danghe (supra)***, which is a decision rendered after the 97th Amendment, has refused to interfere with the election programme after its commencement, placing reliance on the decision of the Supreme Court in the case of ***Shri sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha (supra)***. The grievance in that petition was that 'non producer members' of the Karkhana would be participating in the voting to elect 'producer members'.

13. Reliance placed on the decision of the Hon'ble Supreme Court in the case of ***Ahmednagar Zilla S.D.V. & P. Sangh Ltd. (supra)***, and of this Court in the case of ***Vinod Wankhede (supra)***, to

my mind is misplaced, inasmuch as, the aforesaid decisions turned on their own facts. In the case of **Ahmednagar Zilla S.D.V. & P. Sangh Ltd. (supra)**, the electoral roll was prepared in view of certain amendments in the bye-laws, which amendment was struck down by the appellate authority. The Supreme Court found that the preparation of the voters' list on the basis of "non-existent Rules" would be illegal. The Supreme Court found that in the case of **Shri sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha (supra)** the voters' list was prepared in terms of extant rules but certain irregularities were committed therein unlike in the case of **Ahmednagar Zilla S.D.V. & P. Sangh Ltd. (supra)** where the electoral roll was found to be prepared on the basis of non-existent rules. In my considered view, the present case would be similar to the factual situation, as in the case of **Shri sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha (supra)** than the case of **Ahmednagar Zilla S.D.V. & P. Sangh Ltd. (supra)** where the bye-laws on the basis of which voters' list was prepared were struck down by the appellate authority.

14. In the case of **Vinod Wankhede (supra)**, the Respondent No. 2 got herself elected as mayor of the Amravati Municipal Corporation claiming to be a permanent resident of Amravati. On the

basis of that status, she also got elected on the Board of Directors of Jijao Commercial Co-operative Bank Ltd., Amravati. On facts, it was found that Respondent No. 2 had failed to bring on record any material to show that she was permanent resident of village Suregaon. In that case, Respondent No. 2 had produced a communication dated 31st March, 2006 before this Court, issued by the Manager of the said co-operative bank stating that her resignation from the Directorship of the Bank was accepted on 26th May, 2006. This Court found that the said fact was not pointed out to the election officer when the impugned order was passed. It is in these special circumstances, that this Court found that Respondent No. 2 was trying to abuse process of law, and is trying to force herself in the Wardha district, though she was not permanent resident of the said district. In my considered view, the case clearly turned on its own facts.

15. Now, coming to the present case, *prima facie* there is no objection raised qua individual voter, which could have then be decided as to whether any such voter is a non-active member within the meaning of Section 2(19)(a-1) of the Act. *Prima facie, at this stage*, there is a resolution dated 14th September, 2019 granting condonation from attendance at the AGM. It is necessary to note that the Petitioner has not challenged the resolution adopted in the meeting

dated 14th September, 2019. Rule 51 of the Rules clearly provides that the challenge to any such election has to be by way of dispute under Section 91 of the said Act. Considering over all circumstances, I do not find that any case for interference is made out.

16. The additional reason why I decline to entertain the petition is that the persons, whom the Petitioner claims to be non-members and who, according to the Petitioner have been included in the voters' list, are not before this Court. The learned counsel for the Petitioner submitted that these persons were not parties before the election officer, and therefore, they are not necessary parties in this petition. I am afraid this contention cannot be accepted. Once there is an order and there is an inclusion of these voters in the voters' list, if any order has to be passed holding that they are ineligible to be the voters on the ground that they are non-active members, in my considered view, such a prejudicial order cannot be passed behind their back. For this purpose, useful reliance can be placed on the decision of this Court in the case of ***Shree Adinath Sahkari Sakhar Karkhana Ltd. Vs. State of Maharashtra***⁵ In that view of the matter, no case for interference is found. The petition is without merit, and is accordingly, dismissed with no order as to costs.

5 (2006) 6 BomCR 268

. The observations herein on merits are only for the purpose of deciding the present petition, and shall not influence the Co-operative Court, in the event there is a dispute raised challenging the final outcome of the election under S. 91 of the Act.

Vinayak
P.
Halemath

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by Vinayak P.
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C. V. BHADANG, J.