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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3306/2021

1. Sau Chandatai w/o Prakash Tayade,
Aged a bout 65 years, Occupation: Household,
R/o Hirulpurna, Tq. Chandur Bazar, (ON RA)
District Amravati.
2. Seva Sahakari Sanstha Maryadit (ON RA)
Hirulpurna, through its President,
R/o Hirulpurna, Tq. Chandur Bazar,
District Amravati. PETITIONERS

// VERSUS //

1. The District Co-operative
Election Officer and Divisional
Joint Registrar, Co-operative Societies,
Amravati, Camp Amravati – 444602 (ON RA)
2. Diwakar s/o Purushottamrao Katolkar,
Aged about 55 years,
Occupation : Agriculturist, (ON RA)
R/o Hirulpurna, Tq. Chandur Bazar,
District Amravati RESPONDENTS

 Mr. J. B. Kasat, Advocate for petitoiners.
 Mr. S. D. Sirpurkar, AGP for respondent no.1.
 Mr. K. S. Narwade, Advocate for respondent no.2.

CORAM : AVINASH G. GHAROTE, J.

DATED : 16/09/2021

ORAL JUDGMENT :

Heard Mr. Kasat, learned Counsel for the petitioners, Mr. Narwade, learned Counsel for respondent no.2 and Mr. Sirpurkar, learned AGP for respondent no.1.

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2] **Rule.** Rule made returnable forthwith.

3] Heard finally by consent of the learned counsel appearing for the parties.

4] By this petition the petitioners challenged order dated 9.8.2021 passed by the respondent no.1, whereby the name of the petitioner no.1, which was initially included in the provisional voter's list for elections to the Amravati District Central Co-operative Bank Ltd. has been deleted, on an objection raised by the respondent no.2 that the meeting in which the name of the petitioner no.1 was nominated did not have been requisite quorum, since the total number of members of the Committee were 13 out of which 5 stood disqualified in 2017 itself, leaving 8 members. According to the bye laws, the quorum was one more than 50 % of the persons entitled to vote and considering the total number of members of the Committee being 13, the bye laws gave a figure of 7 members to complete the quorum. The respondent no.1, considering that there were only 6 members were present in the meeting dated 7.7.2021, in which the name of the petitioner no.1 was nominated and further considering the plea that notice of the meeting was not received by the respondent no.2, accepted the contention of the respondent no.2 and by the impugned order deleted the name of the petitioner no.1 from the final voter's list.

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5] Mr. Kasat, learned Counsel for the petitioners submitted that it was not within the jurisdiction of the respondent no.1 to have entered into the decision of a controversy regarding the validity of the meeting dated 7.7.2021. He further submits, that even otherwise, considering the bye laws, specifically bye laws No.5 the requisite quorum was completed, as there were 6 members in the meeting out of total 8 persons, entitled to vote. He further submits that the quorum has to be determined on the basis of the total number of members entitled to vote and not the total number of seats available. He further submits that since any other interpretation would do violation of the bye laws and the quorum would never be permissible to be completed, if it is related to the total number of seats. He, therefore, submits that the impugned order is clearly not sustainable in law and therefore, it is required to be quashed and set aside.

6] Mr. Narwade, learned Counsel for the respondent no.2 submits that the quorum would be dependent on the total number of seats of the Managing Committee and the bye law No. 5 specifically gives a figure of 7, which obviously was absent in the meeting dated 7.7.2021. He further submits that the election programme has already commenced, the preparation of the voter's list being an intermediate stage in the said process, cannot now be interdicted.

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7] The learned Counsel for the respondent no.2 places reliance upon **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another Vs. State of Maharashtra and others, (2001) 8 SCC 509**. In this regard he submits that since now the last date of nomination is already over on 6.9.2021, it would not be permissible, to direct inclusion of the name of the petitioners in the final voter's list, by modifying the same as that would constitute an interference in the election process which is not permissible in law.

8] He also relied upon the judgment of this Court in a bunch of Writ Petitions connected with **Writ Petition No.1062 of 2020 decided on 18.12.2020**, in support of his contention.

9] Mr. S. D. Sirpurkar, learned AGP for respondent no.1 supports the submission of Mr. Narwade, learned Counsel of respondent no.2.

10] Mr. Kasat, learned Counsel for the petitioners in rebuttal, invites my attention to the judgment in **Election Commission of India through Secretary Vs. Ashok Kumar and others, (2000) 8 SCC 216**, and specifically in para 32 where the Hon'ble Apex Court has clarified the position regarding the parameters of interference in an election process and specifically paras 32(2) and (4), in which, it is held that a decision

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would not amount to calling in question an election if it subserves the progress of the election and facilitates the completion of the election and without interrupting or delaying the progress of the election proceeding, and the same would be permissible.

11] The learned Counsel for the petitioners also places reliance upon **Wamanrao Satpute and Ors. Vs. Collector Nagpur and others, AIR 1999 Bombay 103**, to contend that as indicated in the said case, the petitioner no.1 herein also is pressing his claim only as regards his right to vote in election and nothing more and therefore, the same was permissible. Further reliance is placed on **Gautam s/o Kacharu Jagtap and others Vs. Assistant Registrar Co-Operative Societies (Milk), Ahmednagar and others, 2011 (4) Mh. L.J. 655**, to contend that interference is permissible.

12] In the instant matter, the election to the Amravati District Central Co-operative Bank has been directed, in pursuance of order dated 18.2.2021, passed by the Hon'ble Apex Court in SLP No. 6 of 2021. The programme for finalizing the voter's list was first published on 24.4.2021 and was to commence from 26.4.2021 and ended on 28.6.2021, which was extended by the Notification dated 23.6.2021 till 13.8.2021.

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13] The election programme has also been published on 26.8.2021, and has commenced on 31.8.2021, from which date onwards till 6.9.2021, the nomination forms were to be accepted. The scrutiny of the nomination forms was to be conducted on 7.9.2021 and the list of valid nominations was to be published on 8.9.2021. The period for withdrawal of nomination commenced from 8.9.2021 and would end on 22.9.2021 and the polling has to be done on 4.10.2021.

14] In the case of **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha** (supra) it has been held that the preparation of a voter's list is a part of the election process and the election process having been set in motion, it was held that the High Court could not interfere under the Article 226 of the Constitution, so as to stall the election.

15] Without going into the merits of the impugned order even if presuming that the impugned order may be incorrect, and is now corrected the consequences thereto would be the correction of the final voter's list, which has already been published before 31.8.2021 and that would clearly amount to interfere in the process of election which has now gone too far and is at the stage of withdrawal of the nominations. Any correction in the final voter's list, presuming the acceptance of the contention of the petitioners, cannot be termed as an action which

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would subserve the progress of the election as held in **Ashok Kumar** (supra) and for the same reason **Wamanrao Satpute** (supra) would also not be applicable.

16] This position has been considered also by this Court in **Pandurang Laxman Kadam Vs. State of Maharashtra, 2015 SCC OnLine Bom 5840** and in the case of **Raju V. Gawade and anr., Vs. The District Co-op. Election Officer and the Regional Joint Director (Sugar) Pune Region, Pune and Ors, 2016 SCC OnLine Bom 2467**, wherein the plea of inclusion of the names of the persons in the voters list, was turned down. In the case of **Basawraj and Ors. Vs. The State of Maharashtra and Ors, MANU/MH/0830/2015** the situation was different inasmuch as it was held, that if the election process was not in conformity with the relevant statutory provisions interference was permissible, which was so found which however is not the case in the present matter.

17] In view of the above position, I find that any plea or claim, which the petitioner no.1 may have, in respect of the impugned order depriving him of a right to vote can always be made the subject matter of an election petition and considering the stage at which, the election is at present, the matter needs no interference and also for the reason that

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any adjudication of the matter on merits, would also involve disputed questions of facts. The Writ Petition is, therefore, dismissed.

Rule is discharged.

(AVINASH G. GHAROTE, J)

Sarkate.