

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.989 OF 2022

SHIVAJI SOPAN JADHAV
VERSUS
THE STATE CO-OPERATIVE ELECTION OFFICER
MAHARASHTRA STATE, PUNE AND OTHERS

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Advocate for Petitioner : Mr. A. T. Ghute
Advocate for Respondents No.1 and 2 : Mr. S. K. Kadam
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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 18-01-2022.

ORDER :

1. The controversy relates to elections to the Managing Committee of 'Vivid Karyakari Seva Sahakari Sanstha M. Bhagwati, Taluka Sengaoon District Hingoli'. Respondent No.1 had published the election program of the election to the Managing Committee of above said Vivid Karyakari Society (Hereinafter referred to as the "society"), and as per the said program, the nomination forms were to be submitted between 27-12-2021 to 31-12-2021. The scrutiny was to be done on 03-01-2022. It would be published on 04-01-2022 and the period in which the candidature can be taken back, would be from 04-01-2022 to 18-01-2022. Copy of the election program has been annexed with the petition as Exhibit 'A'. Respondent No.2 was Returning Officer and

respondent No.3 through its secretary, is the society. Respondent No.4 is the candidate who submitted her nomination in the said election from the reserve constituency for ladies. While scrutinizing the nomination papers of respondent No.4; respondent No.2 had invalidated her form on the ground that respondent No.4 is having three children after the cut off date of 2001. Thereafter, respondent No.4 had filed appeal under Section 152-A of the Maharashtra Co-operative Societies Act before respondent No.2. Respondent No.2, by his order dated 04-01-2022, set aside the said appeal. In fact, the said appeal was not maintainable. Respondent No.2 was not empowered to entertain the appeal as he himself had passed the order on 04-01-2022 rejecting the nomination of respondent No.4. In spite of the fact that Section 152-A of the Societies Act, does not empower respondent No.2 the said appeal has been allowed, and therefore, the order that has been passed, is illegal and the petitioner submits that Writ of Certiorari or any other appropriate writ be issued for quashing and setting aside the order passed by respondent No.2 on 12-01-2022.

2. Heard learned Advocate Mr. A. T. Ghute for petitioner and learned Advocate Mr. S. K. Kadam for respondents No.1 and 2.

3. It has been vehemently submitted on behalf of the petitioner that if we consider the election program, then the person who had issued the said program and the person who had passed the order on 04-01-2022, rejecting the nomination paper of respondent No.4, is the same. Thereafter, he is the same person who had allowed the appeal under Section 152-A of the Societies Act filed by the respondent No.2. The same person cannot entertain the appeal against his own order, and therefore, the said order dated 12-01-2022 deserve to be set aside. Respondent No.4 should not be allowed to contest the election.

4. Per contra, the learned Advocate for respondents No.1 and 2 strongly opposed the petition as well as took preliminary objection about the maintainability of the writ petition. It was submitted that when there is specific provision in Maharashtra Co-operative Societies Act giving a procedure, then this Court cannot exercise the powers under Section 226 and 227 of the Constitution of India. The petition has been filed only to stall the election process. He relied on the decision in Writ Petition No.12006 of 2021 with companion matters, decided by this Court on 05-11-2021. Though, in that case the elections were in respect of a co-operative bank, the act which

could be applicable for those elections was also under the Maharashtra Co-operative Societies Act. Relying upon the Full Bench decision of this Court at the Principal Seat in *Karmaveer Tulshiram Autade and Ors. Vs. State Election Commission, Mumbai and Ors.*, reported in 2021 (2) Mh.L.J. 349, it was observed that :-

“Though the said case before the Full Bench was in respect of Village Panchayat Act, yet provisions in respect of filing Election Petition are *pari materia* with the provisions contained in Maharashtra Co-operative Societies Act, 1960, by which a right or liability is created by a Statute which provides a special remedy for enforcing it.”

When all controversial questions and issues are arising in the case was require evidence, they cannot be so decided, and therefore, respondent No.2 was right in allowing the appeal filed by respondent No.4. The objection was in respect of third child. The evidence that was produced by respondent No.4 was that the third child i.e. son Rushikesh was born to respondent No.4 on 05-11-2000, which was prior to the cut off date. Though there was school admission record showing that son's birth date, shown therein was 05-11-2002, the birth certificate showed a different date and taking into consideration this controversy which could not have been gone into by the

Returning Officer, the appeal was allowed. The petitioner is at liberty to file Election Petition but cannot stall the election process which has already began.

5. At the outset, this Court in Writ Petition No.12006 of 2021 has given a detailed order and had take a note of the earlier decisions by the Hon'ble Apex Court as well as the Full Bench decision of this Court in *Karmaveer Autade (Supra)*. Definitely when the election form filled by the respondent No.4 was invalidated, she had every right to file an appeal. Now as regards the objection that the same person had decided the appeal is concerned, it does not appear to be correct. The Election Officer who passed the order dated 04-01-2022, has not given his designation as such, and at this stage no documentary evidence has been provided that he is the same person. The designations which have been reflecting on the order dated 04-01-2022 and 12-01-2022 are different. In the order dated 04-01-2022 it is stated as, 'Nivadnuk Nirnay Adhikari Vivid Karyakari Seva Sahakari Sanstha M. Bhagwati, Taluka Sengaon District Hingoli,' whereas on the order dated 12-01-2022 the designation is, 'Taluka Sahakari Nivadnuk Adhikari Tatha Sahayak Nibandhak Sahakari Sanstha, Taluka Sengaon District Hingoli.' Therefore, there

is *prima facie* substance in the said point.

6. As aforesaid, the provisions in respect of Election Petition in village Panchayat Act are *pari materia* to the provisions in Maharashtra Co-operative Societies Act, 1960. There is separate provision for Election Petition under the Maharashtra Co-operative Societies Act also. When alternative efficacious remedy is available, then there is less scope to exercise the constitutional powers under Article 226 and 227 of the Constitution of India. Everything would be subject to the outcome of the election petition, if it is filed. Under this circumstance, when the writ petition involves disputed questions of fact and at the cost of repetition alternative efficacious remedy is available, no case is made out to exercise those powers, and therefore, by keeping all the contentions open, the writ petition is disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-