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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3632 OF 2022

Annasaheb Bhujang Dhakane and Another PETITIONERS

VERSUS

The State of Maharashtra and Others RESPONDENTS

Mr. R.R.Karpe h/f Mr. S.D. Munde, Advocate for petitioners

Mr. P.N. Kutti, AGP for respondent - State

Mr. Vitthal H. Dighe, Advocate for respondents No. 2 to 4

Mr. Datta A. Madke, Advocate for respondent No. 5

Ms. Pradnya Talekar h/f Mr. A.S. Khedkar, Advocate for R No. 6 & 7

Mr. V. N. Shelke, Advocate for respondents No. 8 to 10, 12 to 18

Mr. Prasad B. Kadam, Advocate for respondent No. 11

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 22nd APRIL, 2022

ORDER :

1. The petitioners, by this writ petition, filed under Articles 226 and 227 of the Constitution of India, seek the following reliefs.

“A. *This petition may kindly be allowed.*

B. *Hold and declare that, the present petitioners are rightly being declared elected being committee members of respondent No.*

5 society in the election for the year 2021-22 to 2026-27 by the respondent No.4 Returning Officer on 05.03.2022 by giving such declaration on Index-E-17 as per Rule 64 of Election Rules of 2014.

C. Issue writ of certiorari or any other writ or direction in the like nature thereby kindly quash and set aside the subsequent / modified election result sheet dated 05.03.2022 (Exhibit-D) issued by the respondent No.4 Returning Officer in respect of election of respondent no. 5 society.

D. Pending hearing and final disposal of instant writ petition, in the extreme circumstance emerges in the instant petition the respondent No. 6 and 7 respectively be precluded being availing the status as elected member of respondent No. 5 society.

E. Pending hearing and final disposal of instant writ petition, the further programme of election of Chairman and Vice Chairman published by the respondent No. 5 society and which is scheduled on 21.03.2022 may kindly be stayed.

OR

F. Pending hearing and final disposal of instant writ petition, the respondent No. 6 and 7 be precluded from participating in the process of selection of chairman and vice-chairman election scheduled on 21.03.2022 being elected candidate and the present petitioners may kindly be permitted to caste the vote in the said election of Chairman and Vice Chairman.”

2. It is the case of the petitioners that polling for the elections of managing committee members of respondent No.5 society was held on 5th March, 2022. Petitioner No.1 contested the elections from borrower members constituency and petitioner

No.2 contested from woman reserved constituency. After counting of votes, the petitioners were shown to have secured highest number of votes from their respective constituencies and the votes secured by all the contesting candidates were entered in Index E-16 and 17 of Rules 51 and 63 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (hereinafter for short "said Rules of 2014") and the petitioners were declared to be elected along with other candidates from their respective constituencies.

3. According to the petitioners, thereafter, recounting of votes was sought at the instance of a stranger. The returning officer – respondent No.4 erroneously conducted recounting of votes after declaration of result and after recount, declared respondents No. 6 and 7 to be elected from the respective constituencies, instead of the petitioners. The petitioners are aggrieved by the same.

4. Heard learned advocate for the petitioners and learned advocates for the respondents and learned Assistant Government Pleader.

5. Learned advocate for the petitioners, by relying on Rules 63 and 64 of the said Rules of 2014, submits that once the election result is declared by the returning officer, he has no

authority in law to conduct recounting of votes and change the election result. He submits that after declaration of the election result, the returning officer becomes *functus officio* and he cannot alter or modify the election result. He submits that in view of the proviso to Rule 62 of the said Rules of 2014, unless there is valid ground mentioned in the application seeking recount of votes, the returning officer cannot, mechanically, direct recount of votes. By referring to the application filed for recount of votes, he submits that there is absolutely no ground mentioned in the said application and only one line application seeking recount of votes is filed. The returning officer – respondent No.4, therefore, ought to have rejected the said application. He submits that since the recount of votes and declaration of election result, thereby declaring respondents No. 6 and 7 as elected members, in the place of the petitioners, is without jurisdiction and, therefore, this petition needs to be entertained in the exercise of extraordinary writ jurisdiction of this Court. In support of his submissions, he placed reliance on the decision in the case of "***Sarla Sopan Bopale V/s State of Maharashtra and Others***" 2001 (1) ***Mh.L.J. 543*** and a co-ordinate bench decision of this court dated 3rd May, 2018 in writ petition No. 13823 of 2017 (***Vaishali Nitin Kamble V/s The State of Maharashtra and Others***)

6. Per contra, learned advocate Ms. Talekar, appearing for respondents No. 6 and 7 strenuously opposed the petition contending that the petition raises several disputed questions of facts, which cannot be gone into in exercise of extraordinary writ jurisdiction. She submits that the judgments relied on by the learned advocate for the petitioners are rendered in different facts. In both the judgments, the returning officer himself, in absence of any application for recount of votes, conducted recount of votes and changed the election results. According to her, therefore, since both these judgments are rendered in different facts, would not help the case of the petitioners. She further contends that the petitioners have alternate efficacious remedy of filing election petition under Section 91 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter for short "the said Act") and Rule 78 of the said Rules of 2014.

7. In support on her submissions, learned advocate for respondents No. 6 and 7 has placed reliance on ***"Jyoti Basu and Others V/s Debi Ghosal and Others"* (1982) 1 SCC 691**; ***"Pandurang Laxman Kadam and Others V/s State of Maharashtra and Others"* (2016) AIR Bom. R. 336** and a decision of this Court dated 11th February, 2022 in Writ Petition No. 1741 of 2022 (***Ashok Dashrath Sarpate V/s The State of Maharashtra and***

Others).

8. She further submits that the application for recount was filed by election agent of respondents No.6 and 7. According to her, in the present case, Assistant Co-operative Officer was the returning officer and hence the District Co-operative Election Officer was not the election officer, therefore, in terms of Rule 64 of the said Rules of 2014, the returning officer – respondent No. 4 after the recount of votes had sent the list of elected candidates to the District Co-operative Election Officer – respondent No. 3 and then, respondent No. 3 – the District Co-operative Election Officer, published a notification declaring names of the elected candidates. In this view of the matter, according to her, reliance placed by the petitioners on the declaration of the election result in Forms No. 16 and 17 is inconsequential and is of no help to the case of the petitioners. She, on instructions, makes a statement that election dispute (CCA/101/2022) is already filed by one of the candidates who contested elections of respondent No.5 society. Therefore, according to her, the petitioners should file election dispute.

9. Mr. Dighe, learned advocate for respondents No.2 to 4 submits that no objection was raised by the petitioners at the time of recounting of votes, though they were present. Only

after the recount was complete, the petitioners started raising objection, however, since the recount was already over, the objection of the petitioners was rightly not considered by the returning officer – respondent No.4 and the voting chart was prepared, after completion of the recount. Learned advocate pointed out statements made by respondent No.4 in the affidavit in reply that inadvertently, the list of elected candidates was published before recount of votes and along with the list of elected candidates after the recount of votes, both the lists were inadvertently published at the same time.

He placed reliance on Rule 64 of the said Rules of 2014 to contend that the returning officer – respondent No.4 after recount of votes has forwarded the list of elected candidates to respondent No. 3 – District Co-operative Election Officer. In the said list, since respondents No. 6 and 7 had secured highest votes from borrower and women reserved constituencies, they were shown to have been elected from the said constituencies. The District Co-operative Election Officer – respondent No.3 published the notification declaring names of the elected candidates on 7th March, 2022. According to him, there is no substance in the writ petition and the writ petition be dismissed.

10. This writ petition raises several disputed questions of facts.

Whether in terms of rule 64 of the said Rules of 2014, the petitioners are justified in claiming that they were declared elected by respondent No.4, when the District Co-operative Election Officer – respondent No.3 was not the election officer; at what point of time the recounting of votes was sought and conducted; whether the petitioners were present at the time of recount of votes: whether they failed to raise objection at that point of time and whether proper procedure was followed at the time of granting recount etc, is matter of evidence.

11. Taking into consideration the rival submissions and the provisions of Rule 64 of the said Rules of 2014 and the disputed questions of facts involved in the present petition, this Court, at this stage, is not inclined to entertain the writ petition.

12. In view of the ratio laid down by division bench of this Court in Writ Petition No. 5878 of 2021 (*Dattatraya Genaba Lole and Others V/s The Divisional Joint Registrar Co-operative Societies, Pune and Others*), the petitioners have alternate efficacious remedy of filing election petition under Section 91 of the said Act and Rule 78 of the said Rules of 2014.

13. In "*Sarla Sopan Bopale*" (*supra*), the returning officer had declared election result and thereafter, on his own, conducted

recounting of votes and on that basis, declared the result, by modifying the earlier result, by invoking section 29 of the Bombay General Clauses Act. It is, therefore, held : *“the officer could not go beyond powers vested in him by statute i.e. Village Panchayats Act and Eules. But remedy against it would be by way of election petition under section 15 of the Act and not a writ petition.”*

14. Learned advocate for respondents No.6 and 7 was right in submitting that in both the citations relied on by the petitioners, the returning officer had modified the election results on his own.

15. For the aforestated reasons, the writ petition is dismissed with liberty to the petitioners to avail alternate remedy. All the contentions of the petitioners are kept open.

16. At this stage, learned advocate for the petitioners seeks continuation of interim relief granted in terms of prayer clause “C”, as the petitioners intend to challenge this order before the Hon’ble Supreme Court.

17. Learned advocate for respondents No. 6 and 7 strongly opposed the said prayer. She argued that as the sowing season is approaching, the members of respondent No.5 society are in need of crop loans. The crop loans cannot be disbursed to the

members in absence of Chairman and Vice Chairman. Therefore, the election of Chairman and Vice Chairman is necessary.

18. In view of the fact that the members of respondent No.5 society should not be deprived of crop loans and for the reasons stated in this order, the request for continuation of interim relief stands rejected.

[NITIN B. SURYAWANSHI]
JUDGE

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