

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

989 WRIT PETITION NO.1538 OF 2021

- 1 Mohanrao Vitthalrao Sadaphal,
Age 70 yrs., Occ. Agri.,
R/o Rahata, Tq. Rahata,
Dist. Ahmednagar.
- 2 Eknath Bhagchand Gondkar,
Age 56 yrs., Occ. Agri.,
R/o Shirdi, Tq. Rahata,
Dist. Ahmednagar.
- 3 Pandurang Bajirao Gadhave,
Age 80 yrs., Occ. Agri.,
R/o Ranjangaon (Bk), Tq. Rahata,
Dist. Ahmednagar.
- 4 Nanasaheb Khushal Gadhave,
Age 76 yrs., Occ. Agri.,
R/o Akurkha, Tq. Rahata,
Dist. Ahmednagar.

... **Petitioners**

... **Versus** ...

- 1 The State of Maharashtra,
Through it's Secretary,
Co-operation Department,
Mantralaya, Mumbai.
- 2 The Commissioner of Sugar,
Maharashtra State,
Sakhar Sankul, Shivaji Nagar,
Pune.
- 3 The Regional Joint Director (Sugar),
Ahmednagar, Dist. Ahmednagar.

- 4 Shri. Ganesh Sahakari Sakhar Karkhana Ltd.,
Ganeshnagar, Through it's Chairman,
Mukundrao Dadasaheb Sadafal,
Age 52 yrs., Occ. Agri.,
R/o Ganeshnagar, Tq. Rahata,
Dist. Ahmednagar.
- 5 Padmashri Dr. Vitthalrao Vikhe Patil
Sahakari Sakhar Karkhana Limited,
Through it's Managing Director,
Pravara Nagar, Tq. Rahata, Dist. Ahmednagar.

... **Respondents**

...

Mr. A.B. Kale, Advocate for petitioners

Mr. D.R. Kale, GP for respondent Nos.1 to 3

Mr. V.D. Hon, Senior Counsel i/b Mr. A.V. Hon, Advocate
for respondent Nos.4 and 5

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WITH

WRIT PETITION NO.7037 OF 2021

- 1 Arun Punjaji Kadu,
Age 45 yrs., Occ. Agri.,
R/o Satral, Tq. Rahuri,
Dist. Ahmednagar.
- 2 Balasaheb Kerunath Vikhe,
Age 47 yrs., Occ. Agri.,
R/o Loni (Bk), Tq. Rahata,
Dist. Ahmednagar.
- 3 Eknath Chandrabhan Ghogre,
Age 46 yrs., Occ. Agri.,

R/o Loni (Kh), Tq. Rahata,
Dist. Ahmednagar.

... **Petitioners**

... **Versus** ...

- 1 The State of Maharashtra,
Through it's Secretary,
Co-operation Department,
Mantralaya, Mumbai.
- 2 The Commissioner of Sugar,
Maharashtra State,
Sakhar Sankul, Shivaji Nagar,
Pune.
- 3 The Regional Joint Director (Sugar),
Ahmednagar, Dist. Ahmednagar.
- 4 Padmashri Dr. Vitthalrao Vikhe Patil
Sahakari Sakhar Karkhana Limited,
Through it's Managing Director,
Pravara Nagar, Tq. Rahata, Dist. Ahmednagar.
- 5 Shri. Ganesh Sahakari Sakhar Karkhana Ltd.,
Ganeshnagar, Through it's Chairman,
Mukundrao Dadasaheb Sadafal,
Age 52 yrs., Occ. Agri.,
R/o Ganeshnagar, Tq. Rahata,
Dist. Ahmednagar.

... **Respondents**

...

Mr. A.M. Hajare, Advocate for petitioners

Mr. D.R. Kale, GP for respondent Nos.1 to 3

Mr. V.D. Hon, Senior Counsel i/b Mr. A.V. Hon, Advocate
for respondent Nos.4 and 5

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CORAM : SMT. VIBHA KANKANWADI AND
Y.G. KHOBRAGADE, JJ.

DATE : 19th OCTOBER, 2022

ORDER : [PER : SMT. VIBHA KANKANWADI, J.]

1 The petitioners in both writ petitions are the members of Padmashri Dr. Vitthalrao Vikhe Patil Sahakari Sakhar Karkhana Limited (hereinafter referred to as “PDVVPSSK Ltd.”) i.e. respondent No.5 in Writ Petition No.1538 of 2021 and respondent No.4 in Writ Petition No.7037 of 2021. The challenge in the petitions is the agreement between the PDVVPSSK Ltd. and Shri. Ganesh Sahakari Sakhar Karkhana Limited (hereinafter referred to as “Ganesh Karkhana”) on 26.05.2014, which is stated to be under Section 20 of the Maharashtra Co-operative Societies Act, 1966. The said agreement was approved by the Co-operation Department of Government of Maharashtra on 26.02.2014 and amended by letter dated 16.04.2014. By the said agreement, certain conditions and responsibilities were imposed for the payment of dues/liabilities of respondent Ganesh Karkhana on respondent PDVVPSSK. The agreement was executed for initial period of 8 sugar crushing seasons with a clause to extend the same from time to time for the approval of the State Government after ascertaining the

Sales Tax dues and liabilities of Ganesh Karkhana.

2 Heard learned Advocate Mr. A.B. Kale for petitioners in Writ Petition No.1538 of 2021, learned Advocate Mr. A.M. Hajare for petitioners in Writ Petition No.7037 of 2021 and learned GP Mr. D.R. Kale for respondent Nos.1 to 3 as well as learned Senior Counsel Mr. V.D. Hon instructed by learned Advocate Mr. A.V. Hon for respondent Nos.4 and 5 in both petitions.

3 It has been pointed out by the learned Advocates for the petitioners that the object of the agreement was to exploit full potential of Ganesh Karkhana and to see that it is operated efficiently for the parameters within and members of the said Karkhana. By the said agreement, PDVVPSSK Limited was given exclusive authority and power to run, manage and operate Ganesh Karkhana by bringing necessary resources, financial assistance etc. Section 20 of the Maharashtra Co-operative Societies Act deals with partnership of societies and if we consider the provision of Section 20-A of the said Act, then, it can be said that it is a collaboration by the societies. Interest of the members of the societies should be the paramount interest while arriving at such agreements. It is clear from those provisions that the society who is willing to execute the partnership/collaboration should be financially sound and should have capacity to provide better

administration and management to the other society. The learned Advocates for the petitioners have taken us through the history of Ganesh Karkhana as well as PDVVPSSK Limited. It was then pointed out from the voluminous documents, those have been attached, that even PDVVPSSK Limited was in fact, indebted/running in losses when the collaboration/agreement was entered into. The State Government ought not to have in fact approved such collaboration. An exhaustive submissions were made on the basis of the documents those have been produced as to how the proposals were put and they came to be accepted. It was then submitted that by communication dated 25.11.2013 the Sugar Commissioner had disclosed it to the Secretary (Co-operative) that there are shortcomings in the proposal that was submitted by PDVVPSSK Limited. It has been then demonstrated on the basis of audited accounts as to how PDVVPSSK Limited is running in losses; yet, it has been tried to be posed by way of incomplete information to its members that the financial position of the Karkhana is sound. This all has been done only on the count of the chairman of the said Karkhana. Further, it can also be seen that certain amounts which were due to the labour from Ganesh Karkhana were not paid and, therefore, they were required to approach Sugar Commissioner about gratuity payment, salary, bonus and other amounts which were withheld of about 100-110 employees. Even along with the affidavit-in-reply filed on behalf of the respondent No.4, intentionally

extract from un-audited accounts have been produced. It has been then pointed out that from 2014-15 till the end of 30.06.2022, that is, for a period of 8 years, huge amount has been spent by PDVVPSSK Limited. However, till the stage of argument also they have not sought to rely upon the audited accounts. Both the factories are running into losses and it cannot be said that it is in any way beneficial to either of them. Lastly, it has been submitted that the said agreement ended in June, 2022, however, the Government would consider the new proposal that was sent for continuation of the said agreement and, therefore, it is necessary to issue directions/writ to the Government to cancel the said agreement executed between respondent Nos.4 and 5 on 26.05.2014 and also the State Government should be directed to hold inquiry by appointing a committee as to who is responsible for the losses and to recover the amount due from respondent No.5 as per the agreement.

4 Per contra, the learned Senior Counsel Mr. V.D. Hon appearing for respondent Nos.4 and 5 vehemently submitted that the petitions are not maintainable in view of the fact that the petitioners are the members of the factories, which are in fact Co-operative Societies, registered under the Maharashtra Co-operative Societies Act. If they have any dispute within the society, then, as per Section 91 of the Maharashtra Co-operative Societies Act,

they should approach the Co-operative Court. The petitioners have not knocked the doors of such Court, but have directly come to this Court. He further relied on the decision in **Daman Singh vs. State of Punjab, AIR 1985 SC 973**, wherein it has been observed in respect of member of a cooperative Society that *“Once a person becomes a member of a cooperative society, he loses his individuality qua the society and he has no independent rights except those given to him by the statute and the by-laws. He must act and speak through the society or rather, the society alone can act and speak for him qua rights or duties of the society as a body.”*

He further submitted that the respondent PDVVPSSK has spent around Rs.7,757.53 lacs for the upkeep of and maintenance of Ganesh Karkhana. They were able to minimize the losses though they may not have been successful in negating the losses. Since the period of the agreement has now come to an end, if the cancellation tried to be now sought of the said agreement in anticipation that it would be continued, then, the petition is premature as no decision has been yet taken.

5 Learned GP Mr. D.R. Kale has referred to the affidavit-in-reply filed on behalf of the respondent Nos.1 to 3 by one Balasaheb Kisanrao Bendre, working as 3rd Special Auditor Class-1 of Cooperative Societies

(Sugar) and submitted that the demonstration in respect of sugarcane crush at Ganesh Karkhana would speak for itself except for the Covid-19 pandemic period. All the legal aspects were considered before giving sanction to the said collaboration and the activities are closely monitored. No doubt, the respondent Nos.4 and 5 have given proposal to the respondent No.2 for extension of total six more years after completion of sugar season 2021-22, yet that would be decided on merits.

6 At the outset, we would like to make it clear that under the constitutional powers under Article 226 and 227 of the Constitution of India this Court may not go into the disputed facts. Here, in this case, it is accepted position that an agreement was entered into between respondent Nos.4 and 5 on 26.05.2014 and thereby PDVVPSSK Limited took Ganesh Karkhana, which was running into losses, for its management. If at all the petitioners were aggrieved by the said decision of the Government of Maharashtra to accord approval, they ought to have agitated it in the past. However, the present petitions appear to have been filed at the fag end of the season. The petitions were tendered on 23.10.2020 and 18.06.2021 respectively. Therefore, as regards the prayer for direction to respondent Nos.1 and 2 to cancel the said agreement dated 26.05.2014 is concerned, it suffers from delay and laches. The petitioners could not have then waited till

the losses. No doubt, at that time it could not have been accepted that there would be losses to both the factories in future. However, if there was any legal flaw/lacuna, then, the petitioners ought to have approached this Court much earlier.

7 The position as on today deserves to be taken into consideration. The period as agreed in the said agreement dated 26.05.2014 has ended by June, 2022. Under such circumstance, its cancellation cannot come in picture. No doubt, the proposal on behalf of PDVVPSSK Limited for continuation of the said agreement for the seasons was made prior to the period of agreement and it is still pending with the Government. Definitely, the Government would take into consideration the factual as well as legal aspect before dealing with the said proposal. Under such circumstance, in fact, the petitions have become infructuous also.

8 Now, coming to another main objection, which has been raised on behalf of the respondent Nos.4 and 5, is that when alternative efficacious remedy is available, rather it is more appropriate than even the writ petition, then, this Court cannot exercise that power. Petitioners in both the petitions are coming with a case that they are the members of PDVVPSSK. Under such circumstance, the observations from **Daman Singh** (supra) would come to the

help of those petitioners, in view of the fact that being the members the petitioners cannot challenge those actions by preferring a writ petition. Section 91 of the Maharashtra Co-operative Societies Act deals with disputes and it is then stated that a member can approach cooperative societies if he has any objection with regard to the affairs of his society. The disputes those can be referred to Cooperative Court are by the society with its members, the members *inter se*, members with past members, a surety of a member. Therefore, taking into consideration these aspects without going into the merits of the case, we feel that these petitions are not the petitions, in which the constitutional powers of this Court can be exercised. We refrain ourselves from making any statement in respect of factories running into losses and whether the extension would be in the interest of members of a particular factory or not; when the application to that effect is pending before the State Government.

9 For the above said reasons, both the writ petitions stand dismissed.

(Y.G. Khobragade, J.)

(Smt. Vibha Kankanwadi, J.)