

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

914 WRIT PETITION NO.11349 OF 2022

MANDAKINI EKNATHRAO KHADSE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND
OTHERS

...
Advocate for Petitioners : Mr V.D. Sapkal, Senior Counsel i/by Mr Sandip
R. Sapkal
GP for Respondent/State : Mr D.R. Kale
Advocate for Respondent Nos. 2 and 3: Mr S.K. Kadam

AND
914 WRIT PETITION NO.11367 OF 2022

SANJAY MURLIDHAR PAWAR
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE SECRETARY AND
OTHERS

...
Advocate for Petitioners : Mr V.D. Hon, Senior Counsel i/by Mr A.V. Hon
GP for Respondent/State : Mr D.R. Kale

CORAM : SANDEEP V. MARNE, J.

DATE : 16th NOVEMBER, 2022

PER COURT :

1. Writ Petition No. 11367/2022, not on Board. Taken on Board at the request of the counsels for the parties.
2. By these petitions, the petitioners are aggrieved by the rejection of their objections to the nomination of respondent No. 4 in each of the petition.
3. At the outset, I put across to Mr Sapkal and Mr Hon, the learned Senior Counsel appearing on behalf of the petitioners as to how the present petitions can be entertained in the light of the Judgment of this Court in ***Dattatray Ganaba Lole and Ors. Vs. Divisional Joint Registrar, Co-operative Societies***

and Ors. 2021 SCC Online Bom 4578. In that judgment, it has been held that writ petition under Article 226 of the Constitution of India is not maintainable in respect of any of the intermediate steps in the election and only remedy available to the aggrieved party is to file election dispute under section 91 of the Maharashtra Co-operative Societies Act, 1960 and the Rule 78 of 2014 Election Rules.

4. Both Mr Sapkal and Mr Hon would rely upon the order of this Court, Bench at Nagpur in **Ankushbhau S/o Juglal Baghele and Ors Vs. The State of Maharashtra** Writ Petition No. 1686/2022 decided on 13th April, 2022. They would also rely upon para Nos. 45 and 46 of the Judgment in **Dattatraya Ganaba Lole** (supra), which read thus -

“45. The legal principles that emerge from the various judgments noted and discussed in detail below is that as a matter of principle, Courts have been reluctant to interfere at an intermediate stage of an election process. It has been held that every allegation of illegality or irregularity and every assertion of rights by persons being excluded from the voters list are not entertained by Court under Article 226 of the Constitution of India at the intermediate stage of the election process. There is a strong public policy reason behind courts being circumspect in entertaining challenges at this stage under Article 226 of the constitution of India. This is because there is a vital public interest in the elections being completed after which various matters can be gone into. A liberal approach to interference at the intermediate stage would frequently result in election processes being halted or become uncertain, which by itself undermines the sanctity of such elections and the democratic object that they seek to achieve.

46. The only circumstance in which the Courts would be inclined to interfere in a challenge to an election process at an intermediate stage would be when the order or action under challenge is patently and demonstrably illegal, such as, for example, by applying a non-existent rule or provision to the election process or failing to adhere to a mandatory provision. The intervention in such cases has been explained as enabling or assisting the process of the election rather than thwarting or stalling it. Also, one of the important aspects to consider is the precise stage of the election process and the delay, if any, in the filing of the petition.”

5. Both the learned senior counsel would therefore contend that if a patent illegality is demonstrated, this Court would be justified in entertaining the present petitions. It is also contended that the grievance raised in the present petitions is such that if the interference is made by this Court, the same would not result in halting the election process in any manner and the same would in fact, subserve the election process.

6. In the light of the submissions so made, it is necessary to *prima facie* examine whether any case of patent illegality made out in the present petitions.

7. The main illegality that is sought to be pointed out in the present petitions is that respondent No. 4 in both the petitions are not members of the society pertaining to the taluka for which they have filed their respective nomination forms. In Writ Petition No. 11349/2022, respondent No. 4 is a member of Pimpalwad Malsa Dudh Utpadak Sahakari Sanstha Maryadit, Tal. Chalisgaon, whereas he has filed nomination from Muktainagar taluka. In Writ Petition No. 11367/2022, respondent No. 4 is a member of a Lohtar Sahakari Dudh Utpadak Society, Pachora, Tal. Pachora whereas he has filed nomination *inter alia* from Ddharangaon taluka.

8. It is the contention of both the learned senior counsel that Bylaw Nos. 14.2 read with 14.8 would indicate that a member of the society from particular taluka can file nomination and contest the election only from that taluka alone. This interpretation is sought to be placed by contending that the entire constituency of the federal society is divided into 15 talukas and one member is required to be elected from each of the taluka. Relying upon Bylaw 14.8, it is submitted that in respect of the candidates belonging to reserved categories, a special dispensation is made where they can contest from any talukas in the district. It is therefore, submitted that the necessary inference which is required to

be drawn on reading of Bylaw 14.8 is that for unreserved category candidates, the election can be contested only from taluka to which they belong. In the orders impugned rejecting petitioners' objections, the Returning Officer has arrived at a finding that there is no specific stipulation in the Bylaws prohibiting candidate belonging to particular taluka from contesting election from another taluka. On perusal of the bylaws, it is apparent that there is no such specific provision. However, an inference of such prohibition is sought to be drawn by interpreting the provisions of Bylaw Nos. 14.2 and 14.8 by both the learned senior counsel.

9. There could be a possible argument by interpreting the provisions of Bylaw Nos. 14.2 and 14.8 about prohibition for candidate to contest elections from another taluka. However, the same cannot be treated as a patent illegality in the election process. In the appropriate proceedings, if filed by the petitioners at the end of the elections, this issue can be examined. I am not expressing any opinion about the issue raised by the petitioners in this regard. However, I am of the view that there is no patent illegality so as to interfere in the election process in Writ Petitions filed under Article 226 of the Constitution of India.

10. Mr Hon, the learned senior counsel appearing in Writ Petition No. 11367/2022 has raised several other objections and submits that the election officer has proceeded to ignore those objections passed in the impugned order. In my opinion, none of those objections point out any patent illegality in the election process.

11. The following the Judgment of Division Bench of this Court in **Dattatray Ganaba Lole** (supra), I am of the view that the present petitions cannot be entertained and deserve to be dismissed.

12. Needless to say that the petitioners shall avail appropriate remedy of filing the dispute under section 91 of the Act of 1960, and Rule 78 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014.

13. With these observations, the writ petitions are dismissed.

[SANDEEP V. MARNE, J.]

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