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

WRIT PETITION NO.14991 OF 2021

Kishor Gangadhar Patil,
Age: 40 years, Occu: Agri.,
R/o : Shirasgaon, Tq. Shrirampur,
Dist. Ahmednagar

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Cooperative and Textile Minister,
Mumbai-32
2. State of Election Authority,
Old Central Building,
Ground Floor,
B. J. Road, Pune
3. The District Cooperative Election Officer
and Regional Joint Director Sugar,
Ahmednagar
4. The Election Officer,
Ashok Sahakari Sakhar Karkhana Limited,
Ashok Nagar, Taluka : Shrirampur,
District Ahmednagar
5. The Managing Director,
Ashok Nagar Sarkari Sakhar Karkhana,
Ashok Nagar, Taluka Shrirampur,
District Ahmednagar

...RESPONDENTS

WITH
40 WRIT PETITION NO.14993 OF 2021

Prabhakar Karbhari Kamble,
Age : 50 years, Occu: Agri.,
R/o. Khirdi, Tq. Shrirampur,
District Ahmednagar

...PETITIONER

VERSUS

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1. The State of Maharashtra,
Through its Secretary,
Cooperative and Textile Minister,
Mumbai-32
2. State Election Authority,
Old Central Building,
Ground Floor,
B. J. Road, Pune
3. The District Cooperative Election Officer
and Regional Joint Director Sugar,
Ahmednagar
4. The Election Officer,
Ashok Sahakari Sakhar Karkhana Limited,
Ashok Nagar, Taluka : Shrirampur,
District Ahmednagar
5. The Managing Director,
Ashok Nagar Sarkari Sakhar Karkhana,
Ashok Nagar, Taluka Shrirampur,
District Ahmednagar

...RESPONDENTS

WITH
45 WRIT PETITION NO.14998 OF 2021

Sarjerao Kisanrao Kapse,
Age: 40 years, Occu: Agri.,
R/o : Ward No.1, Kacheri Road,
Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Cooperative and Textile Minister,
Mumbai-32
2. State Election Authority,
Old Central Building,
Ground Floor,
B. J. Road, Pune

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3. The District Cooperative Election Officer
and Regional Joint Director Sugar,
Ahmednagar
4. The Election Officer,
Ashok Sahakari Sakhar Karkhana Limited,
Ashok Nagar, Taluka : Shrirampur,
District Ahmednagar
5. The Managing Director,
Ashok Nagar Sarkari Sakhar Karkhana,
Ashok Nagar, Taluka Shrirampur,
District Ahmednagar

...RESPONDENTS

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Mr A. B. Kale, Advocate for petitioners;
Mr P. G. Borade, A.G.P. for respondent No.1
Mr S. K. Kadam, Advocate for respondent Nos.2 to 4
Mr R. R. Karpe, Advocate for respondent No.5

CORAM : SMT. BHARATI DANGRE, J.**DATE : 3rd January, 2022****JUDGMENT :**

1. The three writ petitions revolve around the elections to the Managing Committee of Ashok Nagar Sahakari Sakhar Karkhana, Tq. Shrirampur, Dist. Ahmednagar and since the petitions raise a common challenge to the impugned orders, the learned Counsel are permitted to advance their arguments collectively and the three writ petitions are heard and disposed of by a common judgment.

Since the parties have expressed their consensus to argue the writ petitions finally at the stage of admission, issue Rule. Rule is made returnable forthwith.

I have heard the learned Counsel Shri. Ajit Kale for the petitioners in all the three writ petitions, learned Counsel Shri. S. K. Kadam for the respondent Nos.2 to 4, learned Counsel Shri. R. R. Karpe for the respondent No.5 - Karkhana and learned A.G.P. for State of Maharashtra.

2. The last election to the the Managing Committee of the respondent No.5 - Ashok Nagar Sahakari Sakhar Karkhana (hereinafter referred to as "Karkhana") for the term 2015-16 to 2019-20 was held in the year 2015 and on the expiry of it's term of 5 years, the elections were due, however, on account of the Covid-19 pandemic, they could not be held in time, though the term of the Managing Committee expired on 05/03/2020. On account of the wide spread of the pandemic, the State Government had took a decision to postpone the elections of all the Co-operative Societies in the State by issuing an order on 18/03/2020, by invoking the provisions of the Epidemic Diseases Act 1897, however, there was no extension granted to the term of the Managing Committee.

A writ petition came to be filed in the High Court, by some of the members seeking appointment of an Administrator, in light of expiry of the term of the Managing Committee. An interim order came to be passed in the aforesaid writ petitions on 24/08/2021, which

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restrained the Managing Committee to take any major policy decision and the said order was assailed before the Hon'ble Apex Court. During pendency of the said proceedings, amendment was introduced in Section 73 AAA of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as 'the MCS Act'), thereby inserting a proviso, extending the term of the Managing Committee. Resultantly, the term of the Managing Committee of respondent No.5 – Karkhana, was extended from 2019-20 upto 2020-2022.

The elections to the Managing Committee of the Karkhana which postponed in the wake of the decision of the State Government, were declared on 09/12/2021, when the election programme was published by the State Election Authority, Pune, Maharashtra i.e respondent No.2. The election programme so published, staggered the process of the election and stipulated the date for filing of nomination papers for the Constituency slated to be from 13/12/2021 to 17/12/2021. 20/12/2021 was fixed as the date for scrutiny of nomination papers by the Election Officer. The list of the validly nominated candidates was scheduled to be displayed on 27/12/2021 and the period for withdrawal of the nomination papers was prescribed as between 21/12/2021 to 04/01/2022. 05/01/2022 is the date scheduled for publication of list of validly nominated candidates and

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for allotment of symbols to the candidates. The voting day is specified as 16/01/2022 with the result being declared on 17/01/2022.

In the election programme so published, from 21/12/2021 to 04/01/2022, the stage of objections being raised to the candidature or to the rejection of the nomination papers was slated.

3. The three petitioners, in the three writ petitions are agriculturists by profession and are members of the sugar factory, with their names included in the voter list prepared by the Election Officer, for the purpose of elections of the Managing Committee of the Karkhana. On the elections programme being declared, since the petitioners were desirous of contesting the elections, as per the programme notified by the respondent No.4, they filed their nomination papers from the reserved category; petitioners in Writ Petition Nos.14991/2021 and 14998/2021 from Other Backward Class category and in Writ Petition No.14993/2021 from Scheduled Castes category.

The case of the petitioners is, they presumed to be governed by the bye-laws which were made available to them by the Competent Authority from the Election Officer i.e. respondent No.4 and the copy of the bye-laws was obtained by them on payment of Rs.100/-. The petitioners presumed that they are qualified to contest the elections from the Constituency of the reserved category and in accordance with

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the bye-laws, they possessed the necessary qualification prescribed, read with Section 73 (B) of the MCS Act and they expected their nomination paper to be accepted, permitting them to contest the post of Director in the upcoming elections to the Managing Committee of the Karkhana.

However, the petitioners were taken by surprise, when the Election Officer, suo-moto notified an objection, that the petitioners were not qualified to contest the elections in terms of the amended bye-laws dated 15/12/2015, thereby amending Clause No.28 and an opportunity was afforded to the petitioners to submit their say upto 4.00 p.m. It is the case of the petitioners that on 21/12/2021, the notices were issued to them individually and on the very same date, the Election Officer i.e. respondent No.4, by creating a farce of affording of an opportunity of hearing, rejected their nomination paper, by falling back on the amended bye-law No.28 and in particular, the provisions specifying the condition under under bye-law No.26 (1)(a). It was also notified that the order was an appellable one and appeal could be filed within 15 days to the appellate authority.

On appeal being preferred by the petitioners, against the rejection of their nomination, the Appellate Authority i.e. the District Co-operative Election Officer and Regional Joint Director (Sugar), Ahmednagar, rejected the respective appeals by upholding the orders

passed by the Election Officer, rejecting their nomination to the post of Director in the Managing Committee of the Karkhana, for which the elections were to be held on 16/01/2022.

4. The three petitioners are aggrieved by the concurrent finding recorded by the two authorities being respondent Nos.3 and 4 and the submission advanced, is that the rejection of their nomination papers is illegal, erroneous and mala fide.

The learned Counsel for the petitioners, Shri. Kale would strenuously assert that the whole mechanism adopted by the respondents is mala fide, as the objection was notified to the petitioners on 21/12/2021 and hurriedly the Election Officer ruled on his own objection, despite the fact that none of the contender or voter had raised any objection to their candidature. It is his further submission that copy of the bye-laws which were made available to the petitioners by the Election Officer, which governed the affairs of the Society from 24/09/2014, clearly qualified the petitioners to contest the elections from the respective Constituency and the bye-laws which were placed on record along with the respective petitions and marked as Exh. 'C', would reveal that the qualifications which were prescribed under bye-law No.28, and particularly condition No.2, being, the candidate aspiring to contest the post of Director, in terms of bye-law No.9 must be the one, who has brought/offered the sugarcane

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cultivated by him for crushing to the Karkhana for three crushing seasons, out of the five crushing seasons immediately preceding the elections. It is argued that, at the end of the qualifications set out, a note is set out, which stipulates that the qualification prescribed for the candidates to be elected as Director under bye-law 26 (1)(a) is applicable only to the members from the category of cane growers.

According to the learned Counsel Shri. Kale, since the petitioners are desirous of contesting the elections from reserved Constituency, being Constituency reserved for Scheduled Castes/Other Backward Classes, the requirement specified for bringing the sugarcane crops to the factory for at least three crushing seasons, as stipulated in form of condition (2) is applicable only to the candidates who are aspiring to contest for the post of Director from the Constituency of cane growers. According to the learned Counsel, the qualification set out under bye-law No.28 with a heading as under “qualification prescribed for election of Director as per bye-law 26(1) (a)” set out 8 conditions, which included condition No.2, which is the bone of contention between the contesting parties in these petitions.

The submission advanced on behalf of the petitioner is that the bye-laws did not contemplate that their candidature would require to qualify condition No.2, which was only intended to be applicable to the category of cane growers.

5. It is further argued by Shri. Kale on behalf of the petitioners, that in order to bring an amendment in the bye-laws, procedure prescribed in Section 13 of the MCS Act is imperative and he submits that merely because the society has passed a resolution, it would not result in amendment of the bye-laws, but the amendment will have to be registered in the manner prescribed in the Act and not only this, by placing reliance upon sub-section 2 of Section 13, which contemplates that when the Registrar registers an amendment of the bye-laws of the Society or where an amendment is deemed to have been registered, he shall issue, a certified copy of the amendment to the Society, which shall be conclusive evidence that the same is duly registered.

Advancing the submission that the petitioners who are the members of the society are not aware whether such a procedure has been followed, since a copy of the amended bye-laws is not made available to them, it is contended that in absence of the prescribed procedure adopted in amending the bye-laws, the reliance placed by the Election Officer upon the same while rejecting the nomination of the petitioners, is a mala fide approach.

Assuming for a moment that the bye-laws are validly amended, the learned Counsel Shri. Kale would submit that Section 73 (B) and Section 73 (C) of the MCS Act prescribe for reservation of certain

seats on Committees of the Society and elections thereto and since the said provisions contain a non obstante clause, the reservation of seats in the Committee for Scheduled Castes or Schedule Tribes or Other Backward Classes and De-notified Tribes (Vimukt Jatis), Nomadic or Special Backward Classes/ Women is a mandatory provision, notwithstanding anything contained in the bye-laws of the Society. The inference derived from the aforesaid provisions by Shri. Kale is that the bye-laws may provide for any qualification, but the reservation of seats is the mandate of the MCS Act and therefore, the bye-laws which prescribe qualification for the candidates belonging to the reserved category, for whom the seats are to be mandatorily reserved, is contrary to the provisions in the Parent Statute, i.e. the MCS Act in form of Sections 73 (B) and 73 (C).

The gist of the submissions advanced on behalf of the petitioners is that the bye-laws were not duly notified and even the Election Officer was not armed with the amended bye-laws, though he has declared the petitioners to be ineligible to contest the elections, by relying upon amended bye-laws. In absence of bye-laws being adequately notified, the submission is, the petitioners were taken by surprise and lacked an opportunity to deal with the suo-moto objection raised by the Election Officer, which he is not competent to notify on his own, in absence of any objection being raised to their candidature.

6. Per contra, the learned Counsel Shri. Kadam representing the State Election Authority and the Election Officer would rely upon Section 73 of the MCS Act, in support of his submission that the Management of every Society vest in a committee, constituted in accordance with the Act, the Rules and the Bye-laws and such Committee is empowered to exercise such powers and perform such duties as may be conferred or imposed under the Act, Rules and the Bye-laws. Shri. Kadam would thus argue that bye-laws of the Society is an integral part of the MCS Act and the Managing Committee of the Society is to be constituted in accordance with the provisions contained in the Act as well as the bye-laws and when the bye-laws prescribes the qualification for the members to be elected to the Managing Committee, a candidate must necessarily qualify himself in terms of the bye-laws. Shri. Kadam has placed on record the copy of the amended bye-laws under the signature of the Regional Joint Director (Surgar) cum Joint Registrar Co-operative Society, Ahmednagar, dated 15/12/2015. It is under this order, the Regional Joint Director has accorded his approval to the amendment proposed by the respondent No.5 - Co-operative Society/Karkhana vide Resolution No.13 passed in its meeting held on 19/09/2015 and according to the learned Counsel, approval has been granted to amendment of bye-law No.28, by which, the qualification prescribed

under bye-law No.26 (1) (a) has been clarified, to the exclusion of the qualification prescribed under bye-law No.26 (1)(C).

On reading of the said bye-laws, the submission is, substantial change has been effected in the qualification criteria for the Constituency of reserved candidates and the earlier restriction of applicability of qualification criteria No.2, namely, bringing sugarcane crop for crushing to the Karkhana for at least three crushing seasons is now even made applicable to the aspirants of other Constituencies, other than cane growers Constituency, as contemplated under the bye-laws No.26 (1) (a). In the wake of the aforesaid amended bye-laws, the submission of Shri. Kadam is that the Election Officer has rightly rejected the candidature of the petitioners since they failed to qualify the said criteria and the said order has been validly upheld in an appeal before the respondent No.3.

7. The learned Advocate Shri. Karpe representing the Karkhana/Society supports the submission of Shri. Kadam and he advances his argument opposing the case of the petitioners, by submitting that the bye-laws came to be amended by a resolution passed by the Society and the said amendment has been registered with the Registrar, by following the process stipulated under Section 13 of the Act. The learned Counsel do not agree with the submission of learned Counsel Shri. Kale, that there is procedural infraction before

the bye-laws are notified and he would submit that it is an incorrect submission that the Society was not notified of the amendment and it is not expected for the Registrar or even the Society to notify each and every member, about the amendment to the bye-laws and rather it was imperative on part of the petitioners, who were desirous of contesting the election to the Managing Committee to have apprised themselves of the current/prevaling bye-laws which prescribed the eligibility for their nomination as member. Having failed to do so, it is argued that the blame cannot be put on the Society or on the Election Officer.

8. The Election to the Co-operative Societies are governed by the Maharashtra Co-operative Societies (Election to Committee) Rules 2014, formulated by the Government of Maharashtra in exercise of powers conferred by the sub-section (J) and (2) of Section 165 of the MCS Act. The elections are to be conducted under the aegis of the State Co-Operative Election Authority constituted by the State Government under Section 73 (C) (B) and the Rules govern the process of election to elect a Committee/Committee member, an office bearer of the Co-operative Society. Undisputedly, the respondent No.5 Karkhana is governed by the Rules of 2014 and the procedure adopted by respondent Nos. 2 to 4 is the one contemplated under the aforesaid Rules.

The part V of the Rules of 2014 govern the conduct of elections and Rule 18 contemplate the declaration of the election programme. Rule 20 provide for nomination of candidates which include nomination to the seats which are reserved in the Committee as provided under Section 73 (B) and 73 (C) of the MCS Act. Rule 21 prescribe the manner of presentation of nomination papers and the requirement of a valid nomination, whereas Rule 25, set out the procedure for scrutiny of nomination form and it cast a duty on Returning Officer to examine the nomination form and decide all the objections which may be raised to any nomination or on his own motion, after conducting a summary enquiry, he may reject any nomination, on the grounds set out in the said Rules, viz; that the candidate is disqualified for being chosen to fill the seat by or under the Act, the Rules and the Bye-laws.

Perusal of the Rule 25, provide an answer to the objection raised by the petitioner. The objection of the learned Counsel for the petitioners that, it is not permissible for the Returning Officer to notify the deficiencies in the nomination paper, as no objection was raised to their nomination, stand nullified. Rule 25 sub-rule 2 contemplate scrutiny of the nomination, in the backdrop of an objection or an objection being noted by the Returning Officer, on his own, in respect

of qualification of a candidate, as prescribed under the Rules and the bye-laws.

In the wake of the aforesaid provision, contained as above, the qualification set out in the bye-laws assume significance.

9. Bye-laws of the respondent No.5 - Society provide for constitution of the Board of Director as set out, in bye-law No.26. The existing bye-laws of the Society/Karkhana, contemplate 6 distinct Constituencies, from which the members would be elected to the Managing Committee and 15 members are to be elected from Constituency No.1, being the Constituency of the 'Cane Growers'. Constituency No.2, described under bye-law No.23 (1)(c) comprised of the Cane Growers Co-operative Society, Non-Growers Society and Marketing Society. The other Constituencies, being Constituency Nos.3, 4, 5 and 6 comprising of one representative from Scheduled Castes or Scheduled Tribes, one representative from Other Backward Classes (OBC), one representative from VJNT and SBC and two women representatives. The Managing Committee of the Karkhana is thus divided into six, the cane growers Constituency, being listed as Constituency No.1 and described within bye-law No.26 (1) (a) and (b).

The qualification to be prescribed for the candidates to contest election for the post of Director from the aforesaid category, is set out

under bye-laws No.28, which contemplate the qualification to be fulfilled as prescribed in bye-law No.17 (a) (1-2-3), which are the general qualifications to be possessed by the candidates.

Qualification No.2, contemplated in terms of bye-law No.9, specify that a member who is cultivating sugarcane in the jurisdiction of the Karkhana, must have brought his crop for crushing in the Karkhana, in three crushing seasons out of the five crushing seasons preceding the election to the Managing Committee. Other qualifications are also set out, for being elected from the Constituency No.1 being under bye-law No.26 (1) (a). The criteria set out under the said caption prescribed qualification for being elected from the Constituency No.1 under Section 26 (1) (a) and it ended with a Note clarifying that the criteria so prescribed, shall be applicable only to the members to be elected from the Constituencies of cane grower under bye-law No.26 (1) (a). Bye-law No.28 also set out the qualification for the election to the post of Director from the category of bye-law No.26(1)(c) i.e. Constituency No.2, which do not impose any condition, of the sugarcane being brought to the Karkhana for crushing in three crushing seasons, preceding the elections.

10. The existing bye-laws underwent an amendment with the approval of the Regional Joint Director (sugar) cum Joint Registrar Co-Operative Societies, Ahmednagar on 15/12/2015, wherein bye-law

No.28 underwent a change. Now, the qualification prescribed under bye-law No.28 applicable to the Constituency of cane growers has been made applicable to all the Constituencies covered by bye-law No.26 (1) by making an exception in respect of Constituency covered by bye-law No.26(1)(c).

The result of the amendment being, that the candidates should be elected from Constituency No.1 to Constituency No.6 are governed by the common qualification prescribed for Constituency No.1, as per the bye-law No.28 except the Constituency No.2 specified by bye-law 26 (1)(c). Meaningfully read, the amended bye-laws provided that the candidates desirous of contesting as members from cane growers category from Scheduled Castes or Scheduled Tribes Constituency, Other Backward Classes Constituency, VJNT and SBC and Women Constituency, will be governed by the same qualification prescribed under bye-law No.28, prescribed for the member of cane grower Constituency, including qualification No.2 prescribed therein, being the condition of, the cultivators of sugarcane taking their sugarcane crop to the Karkhana, for three out of five seasons, preceding the elections.

11. With the result of the aforesaid amendment, being brought into effect w.e.f. 15/12/2015, the petitioners though desirous of contesting the seat reserved for Other Backward Classes/Scheduled Castes, are

also required to be abide with qualification No.2, which was not the qualification prescribed prior to the amendment of the bye-law on 15/12/2015. In the wake of the aforesaid qualification being inserted by the amendment to the bye-laws w.e.f. 15/12/2015, the petitioners are not qualified to contest for the post of Member of the Managing Committee from the category of Other Backward Classes/Scheduled Castes unless they meet the requirement in form of the criteria prescribed as qualification No.2.

The learned Counsel for the petitioners do not dispute that the petitioners do not qualify themselves on the said ground as they have not taken their sugarcane for crushing to the Karkhana for three crushing seasons out of five, preceding the elections to be held to the Managing Committee in the year 2021.

In the wake of the above fact not being in dispute, since the petitioners do not qualify themselves as per the bye-laws governing their election, the decision of the Election Officer do not suffer from any illegality as sought to be canvassed on behalf of the petitioners.

12. The argument of the learned Counsel for the petitioners, as regards the mandate of election as contemplated under Section 73 (B) and 73 (C) of the MCS Act, may be a valid argument since it is sought to be canvassed that the reservation as prescribed under Section 73 (B)

and 73 (C) is mandatory and by qualifying the aforesaid reservation by prescribing a criteria, in form of the condition imposed, that a cane grower who is desirous of contesting the seat reserved for a reserved category, must also meet the requirement of taking his crop to the Karkhana for crushing and therefore, it travel beyond Section 73 (B) and 73 (C) can only be tested if a challenge is raised to the amended bye-law on the said ground. Since this is not a challenge before me, I need not delve deep into the said argument canvassed before me by the learned Counsel for the petitioners. Needless to state that it is open for the petitioners to stake a challenge to the bye-laws on the ground that the provision in the amended bye-laws is ultra-vires / travel beyond the provisions contained in the Parent Statue in form of 73 (B) and 73 (C).

However, in absence of the condition in the bye-laws being held invalid, it bind the parties i.e. the petitioners as well as the Election Officer. The decision of the Election Officer in not qualifying the petitioners on the said premise, therefore, cannot be faulted with.

13. Noting that the bye-laws have been amended by following the procedure prescribed under Section 13 of the MCS Act and since the elections to the Managing Committee of the Karkhana are to be conducted as per the Election Rules 2014, which contemplate adherence to the Act, Rules and Bye-laws, the impugned order cannot be said to be flawed, as the Returning Officer has noted that the

petitioners do not qualify in terms of the amended bye-laws and has rightly rejected their candidature and the appellate authority too, has followed the same pursuit.

Finding no legal infirmity in the impugned orders, the writ petitions do not warrant any consideration and by upholding the orders impugned, the three petitions are dismissed by discharging the Rule. No orders as to costs.

(SMT. BHARATI DANGRE, J.)

sjk