

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

BDP-SPS

**WRIT PETITION NO. 8160 OF 2022  
WITH  
WRIT PETITION NO. 8161 OF 2022  
WITH  
WRIT PETITION NO. 8234 OF 2022**

Shivaji Bapurao Shelar and Ors.

...Petitioners

Vs.

State of Maharashtra and Ors.

...Respondents

Sr. Adv. Anil Anturkar a/w. Adv. Surel Shah a/w. Adv. Ajinkya Udane for the Petitioners in all Writ Petitions.

Sr. Adv. Vineet B. Naik i/b. Adv. Ajit V. Alange, for the Respondent No. 5 in W.P. No. 8161/2022 & W.P. No. 8234/2022.

Sr. Adv. Y. S. Jahagirdar a/w. Mr. S. S. Kanetkar i/b. Adv. Ajit V. Alange, for the Respondent No. 5 in W.P. No. 8160/2022.

Mr. A.I.I. Patel, Addl. G. P. a/w. Mr. C.D. Mali, AGP for Respondent Nos. 1 to 3 in all Writ Petitions.

Mr. Sagar A. Rane, for the Respondent No. 6 in all Writ Petitions.

Mr. Deelip Patil Bankar, Chief Standing Counsel, SCEA a/w. Adv. Pooja Patil a/w. Adv. Suhas Rohile for the Respondent No. 4 in all Writ Petitions.

**CORAM : NITIN W. SAMBRE, J.**

**DATED : 15<sup>th</sup> July, 2022**

**PC.:**

1] By consent, all these Petitions are tagged and heard together finally. Order impugned is dated 4<sup>th</sup> July, 2022 passed by Respondent

No.4 – Returning Officer, whereby objection raised by the Petitioner to the nomination of Respondent No.5 came to be rejected.

2] Facts necessary for deciding all these Writ Petitions which involve a common issue are as under:-

3] Petitioner and other private Respondents are members of Respondent-Sugar Factory. Since elections of Respondent-Sugar Factory were due, election programme came to be declared, thereby prescribing the date of nomination as 24<sup>th</sup> June, 2022 to 30<sup>th</sup> June, 2022. Scrutiny of the nomination papers was on 1<sup>st</sup> July, 2022, whereas list of validly nominated candidates was published on 4<sup>th</sup> July, 2022 and the distribution of symbol was on 19<sup>th</sup> July, 2022. The election was on 31/07/2022.

4] Petitioner claims that the objection was raised to the nomination of Respondent-private candidate as the said Respondent is defaulter and as such has incurred disqualification under Section 73-CA of the Maharashtra Co-operative Societies Act, 1960. Said objection was

rejected vide order impugned. As such, this Petition.

5] Heard Mr. Anturkar, learned Senior Counsel for the Petitioner. It is the contention of Mr. Anturkar that there is palpable illegality in the order impugned passed by the Returning Officer, thereby rejecting objection raised by the Petitioner and in case if interference is caused, election programme is not going to be interfered with. According to him, this Court is armed with powers of undoing injustice to the concerned party. He would urge that approach of the Respondent-Returning Officer which is reflected in the order impugned shocks conscience of the common man. In that view of the matter, contentions are, in view of law laid down by this Court in the matter of *Ankush Baburao Nangare and Ors vs. Sangli Zilla Prathmik Bank Shikshak Sahakari Bank Ltd.*, decided on 21<sup>st</sup> June, 2022 in Writ Petition No.6261 of 2022, and also having regard to the order of Nagpur Bench of this Court in Writ Petition No.1686 of 2022 decided on 13<sup>th</sup> April, 2022, order impugned is liable to be quashed and set aside.

6] Mr. Vineet Naik, learned Senior Counsel appearing on behalf of

contesting Respondents would oppose the prayer and submit that the impugned order is just and proper and Writ Petition is liable to be rejected in view of consistent law laid down by the Supreme Court in the matter of *Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi & Ors* reported in (1978) 1 SCC 405 and in the matter of *N.P. Ponnuswami vs. The Returning Officer, Namakkal Constituency, Namakkal, Salem Dist. & Ors.*, reported in AIR 1952 SC 64 since the election programme has already commenced and travelled at an advance stage.

7] I have appreciated the submissions.

8] Perusal of the election programme depicts that same has travelled at an advance stage i.e. name of allegedly nominated candidates are already published on 4/7/2022 and distribution of symbol and final list of validly nominated candidates is to be published on 19<sup>th</sup> July, 2022. In the aforesaid backdrop, it cannot be said that election programme has not travelled at an advance stage. Though learned Single Judge of this Court at Nagpur Bench has shown indulgence in the matter of

*Ankushbhau S/o Jugal Baghele and Ors. vs. State of Maharashtra and Ors* decided on 13/4/2022 in Writ Petition No.1686 of 2022, same was in relation to right of the parties who were seeking right to contest the election with an intention to exercise their right to vote. As such, said judgment will be hardly of any assistance in the matter since this Court is of the view that order if any causing interference in supervisory jurisdiction in the Writ Petition will not result into interfering with the election process. As election programme has travelled at an advance stage, this Court refrains from exercising its jurisdiction.

9] The issue as regards the interpretation of provisions of Section 73CA is already looked into by this Court in the matter of *Sambhaji Shivaji (Laxman) Pharate Vs. The State of Maharashtra and Ors. in Writ Petition No.8312 of 2022 decided on 15<sup>th</sup> July, 2022.*

10] In the said judgment also this Court has refused to interfere in the election process as programme has reached at an advanced stage.

11] All the above Writ Petitions are accordingly dismissed.

12] However, it is clarified that in case if Petitioner takes up election dispute same be considered and decided in accordance with its own merit without being influenced by dismissal of the present Writ Petitions.

**(NITIN W. SAMBRE, J.)**