

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 2839 OF 2022

Kumbharao Shriram Chaudhary and -- Petitioners
another

Vs.

The State of Maharashtra and others -- Respondents

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.V. Samarth, Senior Advocate for Petitioners
Mr. K.L. Dharmadhikari, AGP for Respondent Nos.1 & 3
Mr. Shantanu Ghate, Advocate for Respondent No.2
Mr. Mohan Turankar, Advocate for Respondent Nos.4 to 7

CORAM : MANISH PITALE, J.

DATE : 06th JUNE, 2022

Heard Mr. Samarth, learned Senior Counsel for the petitioners. The present writ petition seeks relief to the effect that the nomination forms filed by respondent Nos.4, 5, 6 and 7 be rejected in the context of elections to Vividh Karyakari Seva Sahakari Sanstha, Amgaon. Mr. Ghate, learned counsel has appeared on behalf of respondent No.2. Mr. K.L. Dharmadhikari, learned Assistant Government Pleader has appeared on behalf of respondent Nos.1 and 3.

Mr. Mohan Turankar, learned counsel has appeared on behalf of respondent Nos.4 to 7.

2. A preliminary objection regarding maintainability of writ petition has been raised on behalf of respondents. Reliance is placed on the judgments of this Court in the case of **Pandurang Laxman Kadam & Ors. Vs. State of Maharashtra & Ors. 2016 (6) BOM C.R. 75** and **Dattatray Genaba Lole and Ors. Vs. The Divisional Joint Registrar, Co-operative Societies & Ors. (Judgment and order dated 26/11/2021) passed in Writ Petition No. 5878 of 2021.** The preliminary objection is to the effect that since entertaining present writ petition would amount to interference with election process, the writ petition deserves to be dismissed. It is emphasized that as per the aforesaid judgments of the Division Bench of this Court, the remedy of raising dispute under Section 91 of the Maharashtra Co-operative Societies Act, 1960, is available to the petitioners.

3. The learned Senior Counsel appearing for the petitioners submitted that the petitioners had sufficient material to demonstrate that the respondent Nos.4 to 7 stand disqualified and that their nomination forms ought to have been rejected. It is submitted that the limited issue as to whether the said respondents stand disqualified under the

provisions of the aforesaid Act and Rules can certainly be decided in the present writ petition.

4. It is further pointed out by the learned counsel appearing for respondent No.2 – Election Officer that insofar as respondent No.5 is concerned, he has already withdrawn his nomination form and that, therefore, the contest in the present writ petition is restricted to only respondent Nos.4, 6 and 7.

5. This Court has considered the law laid down by this Court in the aforesaid judgments in the cases of **Pandurang Laxman Kadam & Ors. Vs. State of Maharashtra & Ors.** and **Dattatray Genaba Lole and Ors. Vs. The Divisional Joint Registrar, Co-operative Societies & Ors.** (supra). It is clear from the position of law clarified in the aforesaid judgments that all questions, including the acceptance of nomination papers can be raised in an election dispute under Section 91 of the aforesaid Act and that in view of the said remedy available to the petitioners, the present writ petition cannot be entertained.

6. Accordingly, the preliminary objection is upheld and the writ petition is dismissed, as not maintainable.

7. Needless to say, the petitioners would be entitled to avail of aforesaid statutory remedy in accordance with law.

JUDGE