

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

WRIT PETITION NO. 3336 OF 2022

Vilas s/o Ganeshrao Nistane

Vs.

State of Maha. Thru. Secretary, Dept. of Co-operation, Mumbai and Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. Pushkar Ghare, Advocate for petitioner.
Ms. T.H. Khan, AGP for respondent Nos.1 & 3.
Mr. S.S. Ghate, Advocate for respondent No.2.
Mr. Bhushan Dafle, Advocate for respondent No.4.
Mr. U.J. Deshpande, Advocate for respondent No.6.

CORAM : MANISH PITALE J.

DATE : 08.07.2022.

By this writ petition, the petitioner has challenged orders dated 13.06.2022 passed by the respondent No.3 - District Co-operative Election Officer, whereby the nomination of respondent No.6 to represent the respondent No.5 - Society for election of the respondent No.4 - Federation has been accepted and that of the petitioner has been rejected. Thus, the dispute sought to be raised by the petitioner is, as to who is entitled to vote in the election of respondent No.4 - Federation as a nominee of the respondent No.5 - Society.

2. The material on record shows that while the petitioner has relied upon a Resolution dated 25.04.2022, claiming that he was validly nominated by the respondent No.5- Society, the claim of respondent No.6 has been upheld on the basis of a Resolution dated 23.03.2022 of the said Society. According to the petitioner, the Resolution dated 23.03.2022, apart from being false and bogus, was allegedly passed by the respondent No.5 - Society, even before the respondent No.3 had called for such Resolution and identification of the nominee to represent the respondent No.5 – Society.

3. In the face of the competing claims made by the petitioner and respondent No.6, the respondent No.3 considered the claims and passed the impugned orders. Certain specific findings of facts were rendered by the respondent No.3, while rejecting the claim of the petitioner and accepting that of respondent No.6.

4. It is an admitted position that the election programme has been now declared and the filing of nomination papers has started from today.

5. Mr. Ghare, learned counsel for the petitioner submitted that the respondent No.3

committed an error in accepting the claim of respondent No.6, while rejecting that of the petitioner. A number of grounds were raised before this Court to contend that the Resolution dated 23.03.2022, in favour of respondent No.6 was false and bogus and that findings rendered against the petitioner in the context of Resolution dated 25.04.2022, were unsustainable. It was submitted that in a similar situation, in the case of ***Sushil Suresh Rewadkar and anr. Vs. State of Maharashtra and Ors. AIR Online Bom. 584***, this Court had held that the concerned Society would go unrepresented and the nominations of both the competing claimants were to be ignored. It was further submitted that the remedy on Section 91 of the Maharashtra Co-operative Societies Act, 1960, was not available in the facts and circumstances of the present case and therefore, this Court ought to exercise the writ jurisdiction in the matter.

6. On the other hand, Mr. U.J. Deshpande, learned counsel appearing for respondent No.6 submitted that number of disputed questions of facts were being raised on behalf of the petitioner, which could not be resolved in writ jurisdiction and that in such a situation Section 91 of the said Act was the

only remedy available, because it includes dispute regarding conduct of meeting, management and business of the Society. It was further submitted that the view adopted by the respondent No.3 while passing the impugned order was a reasonable view, based on the material on record and the glaring defect in the Resolution upon which the petitioner was placing reliance. The learned counsel placed reliance on the judgment of this Court in the case of *Kirti w/o Mahendra Deshmukh and anr. Vs. The District Co-operative Election Officer and Ors.* (order dated 06.09.2021 passed by this Court in Writ Petition No.3052/2021).

7. Ms. T.H. Khan, learned AGP appeared on behalf of respondent Nos.1 & 3 and supported the impugned orders. Mr. Ghate, learned counsel appeared on behalf of respondent No.2. Mr. Dafle, learned counsel appeared on behalf of respondent No.4 – Federation and Mr. Deshpande, learned counsel appeared on behalf of respondent No.6. None appeared on behalf of respondent No.5 - Society.

8. This Court has considered the rival submissions. The nature of disputes raised on behalf

of petitioner undoubtedly raises disputed questions of facts. This is evident from the manner in which the two Resolutions were sought to be analysed on behalf of the learned counsel appearing for the petitioner and respondent No.6. The respondent No.3-Election Officer, in the facts and circumstances of the present case, took a reasonable view in the matter on the basis of the material available on record. It cannot be said that proper opportunity was not granted to the parties to canvass their cases.

9. This Court is of the opinion that considering the nature of disputes sought to be raised by the petitioner, it is clearly covered under Section 91 of the aforesaid Act, and that no case is made out for interference in writ jurisdiction, particularly when the election process has been already initiated.

10. In the case of *Pandurang Laxman Kadam Vs. State of Maharashtra and Ors., 2016 (6) Bom.C.R. 75*, a Division Bench of this Court has held that when the election process is initiated, such disputes, particularly those involving disputed questions of facts, ought to be relegated to Section 91 of the said Act and the Writ Court would not

exercise jurisdiction. The same course has been followed in the judgment on which the learned counsel for respondent No.6 has placed reliance i.e. *Kirti w/o Mahendra Deshmukh (supra)*.

11. Insofar as the case of *Sushil Suresh Rewadkar and anr. (supra)* is concerned, upon which the learned counsel for the petitioner placed reliance, to contend that in such a situation the concerned Society ought to go unrepresented in the election of the Federation, this Court is of the opinion that the said petition was disposed of in its peculiar facts and circumstances. In any case, a Society, being a member of the Federation, going unrepresented in the election is not in tune with the ends of the co-operative movement or the basic tenets of democracy. Therefore, the said contention is rejected.

12. In view of the above, the writ petition is dismissed.

13. Needless to say that the petitioner would be at liberty to invoke Section 91 of the said Act, if so advised.