



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

WRIT PETITION NO.1244 OF 2024

Devidas S/o Janardhan Niware,
Age: 72 years, Occu: Agril.,
R/o. Nathnagar Paithan, Tq. Paithan,
Dist. Chhatrapati Sambhajanagar. ... petitioner

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Co-operation Department,
Mantralaya, Mumbai-32.
2. The Divisional Joint Director (Sugar),
Kranti Chowk, Chh. Sambhajanagar.
3. The State Co-operative Election Authority,
Maharashtra State, Pune,
Central Administrative Building,
Shivajinagar, Pune.
4. The District Co-operative Election Officer
and The Regional Joint Director of Sugar,
Chhatrapati Sambhajanagar,
Near Kranti Chowk, Chh. Sambhajanagar.
5. The Retuning Officer,
Shri Sant Eknath Sahakari Sakhar Karkhana Ltd.,
Eknath Nagar, Paithan, Tq. Paithan,
Dist. Chhatrapati Sambhajanagar.
6. Shri Sant Eknath Sahakari Sakhar Karkhana Ltd.,
Eknath Nagar, Paithan, Tq. Paithan,
Dist. Chhatrapati Sambhajanagar,
Through its Administrator/ Managing Director.
7. Sachin s/o Vikramrao Ghayal,
Age: 37 years, Occu: Business,
R/o. Pannalal Nagar, Paithan,
Tq. Paithan, Dist. Chh. Sambhajanagar.

8. Aabasaheb s/o Sheshrao More,
Age: 55 years, Occu: Agril.,
R/o. Katpur, Tq. Paithan,
Dist. Chh. Sambhajinagar.
9. Eknath s/o Baban Nawale,
Age: 45 years, Occu: Agril.,
R/o. Wahegaon, Tq. Paithan,
Dist. Chh. Sambhajinagar.
10. Bhaskar s/o Sheshrao More – Deleted.
11. Arefkhan Yusufkhan Pathan – Deleted.
12. Haribhau s/o Bapurao Mapari – Deleted.
13. Vishnu s/o Asaram Bodakhe,
Age: 56 years, Occu: Agril.,
R/o. Jaisingnagar, MIDC, Paithan,
Tq. Paithan, Dist. Chh. Sambhajinagar.
14. Bhagyashree w/o Ravindra Ghayal – Deleted.
15. Santosh s/o Laxman Kharad – Deleted.
16. Tarabai w/o Rameshwar Ghayal,
Age: 45 years, Occu: Agril.,
R/o. Harshi (Kh.), Tq. Paithan,
Dist. Chh. Sambhajinagar.
17. Mahesh s/o Baburao Bombale,
Age: 34 years, Occu: Agril.,
R/o. Pachegaon, Tq. Paithan,
Dist. Chhatrapati Sambhajinagar.
18. Vishal s/o Raosaheb Waghchaure,
Age: 29 years, Occu: Agril.,
R/o. Dhoopkheda, Tq. Paithan,
Dist. Chhatrapati Sambhajinagar. ... Respondents.

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Advocate for the Petitioner : Mr. Ghatol-Patil S. B. with
Mr. Rahul C. Babar, Mr. D. S. Daspute, D. B. Dansode.

AGP for Respondents-State : Mrs. R. R. Tandale.

Advocate for Respondent Nos.3 to 5 : Mr. S. K. Kadam.

Advocate for Respondent No.6 : Mr. D. J. Choudhari.
Advocate for respondent No.7 : Mr. N. B. Khandare h/f Mr. B.
B. Bhise.

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CORAM : S. G. MEHARE, J.
DATE : 07.02.2024

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.

2. The Petitioner is one of the candidates who submitted the nomination for the election from the Constituency of Sugarcane Producers Members of Kavsar Gut (1). Respondent No.7 was also the candidate. His nomination has been allowed, and against the acceptance of his nomination, the petitioner approached this Court.

3. The objection of the petitioner in brief is that respondent No.7 was and is the Director of Sachin Ghayal Sugar Pvt. Ltd. He holds 90% of the share capital of the said company. He is a defaulter of the society. His company runs the society/ respondent No.6 by way of contract. Therefore, he is not qualified to contest the election. He is running a similar type of business. Therefore, he is disqualified under Section 73CA(A1) Sub Clause (1)(f) Sub Clause (v) of the Maharashtra Co-

operative Societies Act, 1960 (In short 'MCS Act'). He has referred to the various documents obtained from the Ministry of Corporate Affairs website and submits that he is the person having an interest in the said company. He could not contest the election of the society. He fairly conceded that the petitioner was not an objector before the Returning Officer. One Mahesh Baburao Bombale (Respondent No.17) was the objector. However, he has been won over. Hence, he did not impugn the order of acceptance of nomination of respondent No.7. He submits that the petitioner, being one of the aspirants of the election and a member of the society, has every right to impugn the acceptance of the nomination of respondent No.7. Therefore, he has a locus to file the writ petition. Referring to the above provisions, he prayed to allow the writ petition.

4. To bolster his argument, he relied on the case of *Janabai Gondu Mahajan Vs. District Co-operative Election Authority and Divisional Joint Registrar; 2023(3) Mh.L.J. 386*. In the said case, respondent No.3, who was not directly connected with the affairs of the society, had intervened in the process of submission of election expenditure. The Court held that he was not a voter or representative of the said society. However, he can bring it to the notice of the Authority that an elected

candidate does not submit election expenditure. However, he cannot intervene in the process and become a party to the process of submitting and scrutinizing election expenditures. In that case, the present petitioner admittedly was a nominee from the same constituency. However, his objection has been rejected. So, it can be said that he has some interest in the election process. He was from the same constituency for which the nomination of respondent No.7 had been accepted. Considering his interest, this Court is of the view that even if the petitioner was not the objector before the Returning Officer, he would not be expelled from bringing the illegality to the notice of the Court of law. However, the learned counsels for the respondents have correctly pointed out that the objections raised by the petitioners were after the date of raising the objections to the scrutiny. Rule 25 of the Maharashtra Co-operative Societies Election Rules, 2014 (for short 'Rules 2014') provides that not only a member of the society but the Returning Officer at on own motion may consider the eligibility of the candidates at the time of the scrutiny by making a summary inquiry. Sometimes, it may not be possible for the Returning Officer to discover the truth. The voters or the contesting members may know more than the Returning Officer. Every voter or candidate has to assist the

Returning Officer in making an appropriate decision on the eligibility of the candidate to contest the election. Respondent No.17 was one of the contesting candidates who had raised the objection and subsequently did not prefer to impugn the order of the Returning Officer. However, the petitioner has raised a similar objection, which this petitioner has brought to the notice of this Court. To maintain democracy, if any such illegalities have been brought to the notice of the Court, such illegalities cannot be ignored by closing the eyes. Courts are the caretakers of everyone's rights and protectors of the laws. Any illegality committed by anybody which appears on the face of the record must be taken cognizance of. Considering the principle of law and duties of the Court, this Court is of the view that the petitioner, one of the candidates who submitted a nomination for the same constituency, cannot be ineligible to impugn the order. To examine the democratical rule of election, he may be an appropriate person to knock on the door of the Courts. The next objection raised in this petition was that all the contesting members had not been added as party.

5. Learned counsel Mr. Khandare for respondent No.7 has vehemently argued that unless all the candidates have been joined as a party, the petition is untenable.

6. To bolster his argument, he relied on the case of *Vijaysingh Krishnarao Parabat Vs. Returning Officer, Janata Sahakari Bank Ltd and others; 2003(2) Mh.L.J. 485*. In this case, if bylaws No.9, it has been observed by this Court that as rightly submitted by the learned advocates for the respondents, the Division Bench has already held that in order to enable the party to challenge the decision of Returning Officer as regards the rejection of nomination paper, all other candidates are necessary parties to the proceedings and admittedly to the procedure.

7. In reply, the learned counsel for the petitioner would submit that there are various constituencies for the election of respondent No.6. The nomination of respondent No.7 has been accepted for the Sugarcane Producers Members Constituency of Kavsan Gut. All the candidates from that category have already been added as a party. Since there were different constituencies, the Court is agreeable with the argument of learned counsel for the petitioner that since there were

different constituencies, the other contesting members from another constituency are not necessary parties.

8. Learned counsel Mr. Khandare for respondent No.7 has vehemently argued that the documents placed on record show that respondent No.7 is not the Director of the Sachin Ghayal Sugar Pvt. Ltd. He has referred to the documents filed by the petitioner and vehemently argued that presently there are two Directors and the Ministry of Corporate Affairs indicates that two newly Directors have been appointed from 10.07.2022 and 02.12.2022. He also vehemently argued that respondent No.7 had transferred all of his shares. He is not concerned with Sachin Ghayal Sugar Pvt. Ltd. He did not contest the election as a member of the company. He is contesting in his own capacity. He was a member of the society and complied with bylaws 28(2) of the society. He has vehemently argued that all these questions are disputed facts. Therefore, the letter dated 08.03.2023 bears the signature of respondent No.7 addressed to respondent No.6. It requires proof under what capacity he has paid the election expenses. He has vehemently argued that Section 73(CA) does not pertain to the company. It applies only to the societies that give loans to members for purchasing machinery, implements, equipment, commodities or other

goods or that deal in such goods; no member of such society, who or whose member of the family is a dealer in such goods or is a director of a company or partner in a firm carrying on business in such goods, in the area of the operation of the society shall be eligible for being elected or nominated as a member of the committee of such society. He also referred to Sub Section 1 and argued that respondent No.7 was never indulged in any type of the business of the society as provided under Sub Clause A1 and he was never the defaulter. Considering the category of the society contemplated under said Section. If assuming not admitting that respondent No.7 is the Director of the company even then, this Section would not attract. Referring to Sub Clause (f)(iv) of Section 73(CA) Sub Section (1), he vehemently argued that the company in the name of respondent No.7 does not carry on the business of the kind carried on by the society. The said company runs the sugar factory of respondent No.6 on the terms of the contract. Its status is independent. He has no concern with the business of respondent No.6. His company does not carry any business of a similar kind of society/respondent No.6 in the area of its operation. In simple words, he tried to argue that he was not the competitor of the society of respondent No.6. His company, though not the Director, has no concern with the said, who was

just running the sugarcane factory on contract. In that capacity, the election expenses might have been paid. But that does not mean that it was paid in the capacity of the Director of the said company. He prayed to dismiss the writ petition.

9. Per contra, learned counsel Mr. Choudhari for respondent No.6 has vehemently argued that the objections which have been raised here were not before the Returning Officer. Hence, in view of the ratio laid down in the case of *Sanjay @ Raosaheb Yadavrao Waghchaure Vs. State of Maharashtra and others (Writ Petition No.15083 of 2023) with other writ petitions dated 08.01.2024*. The new objections could not be raised before this Court. Further referring to the judgment of *Jagdish Lahu Badhe Vs. State Co-operative Election Authority and others in Writ Petition No.11684 of 2022*. He vehemently argued that no additional document would be allowed in this writ petition for the first time. If such documents were not before the Returning Officer, such documents could not be considered. He also prayed to dismiss the petition.

10. The most important question to be determined in this written petition is, “Whether Section 73(CA) would disqualify respondent No.7”?

11. The vehement argument of the learned counsel for the petitioner indicates that he has a direct concern with Sachin Ghayal Sugar Pvt. Ltd. It appears that he had a connection with the said company. However, there is no dispute that the company is running the business of respondent No.6 on contract. The latest list of Director reveals that he is not the Director of the said company. However, there is no evidence before the Court that he has transferred his 90% share to somebody else. The Article of association of the said company shows that the number of Director shall not be less than two and not more than fifteen. Now there are two Directors working.

12. Learned counsel for the petitioner has argued that he has appointed his driver as a Director. This dispute has no concern with who has been appointed as a Director of the Company. It is the job of the Company Secretary to examine whether the person appointed as a Director is qualified to be appointed as a Director. So, this appears to be irrelevant argument. There is

no quarrel that Sachin Ghayal Sugar Pvt. Ltd. has no independent sugarcane business in the operational area of respondent No.6. The Petitioner also did not dispute that the said company was running the sugar factory under the contract.

13. As observed above, the crucial question is to be decided in the disqualification of respondent No.7 under Section 73(CA). The election program indicates that there are different constituencies for the election of respondent No.6 society. The Act 1960, read with Rules of 2014, is a complete Code as regards the election, membership, qualification and disqualification of the members and managing committee. This Act seems divided into parts, taking care of each type of voter and society. Reading Section 73(CA)(A1), there appears a substance in the argument of learned counsel for respondent No.7 Mr. Khandare, that it is a disqualification for the Director of a company or a partner of the firm of a peculiar type of the society which gives loans to its member for purchasing machinery, implements, equipment, commodities or other goods. This seems to be a specific type of society, and any member or Director or partner in a firm who carries on such business in such goods in the area of the operation of society is

eligible for being elected or nominated as a member of such society. Sub-clause (i) is in continuation of Sub-clause (1-a) i.e. a default clause. Admittedly, respondent No.7 does not run any similar business as contemplated under sub-section A1 of the said Section. Clause (f)(v) is about carrying on the similar business carried on by such society in the area of the operation of the society. It is the question of fact whether the original objector Mr. Mahesh Bombale, had placed all these documents before the Returning Officer. Though he is made as respondent, he did not prefer to enter and put his appearance in this petition. So, the inference could be drawn that the documents placed on record before this petition have been placed for the first time. Therefore, the ratio laid down in the case of *Jagdish Lahu Badhe (supra)* assists respondents Nos.6 and 7. In a nutshell, it could be said that any documents the parties want to rely upon should be before the first Authority unless the law provides for admitting such documents before the Appellate Authority or the Court of writ jurisdiction. On substantial ground, the petitioner failed to prove or satisfy the Court that respondent No.7, the Director of the sugar factory other than respondent No.6, has possessed the disqualification on the ground mentioned under Section 73CA of the Act of 1960, and he does the similar business like the society mentioned therein.

Apart from that, there is nothing on record to show that he has a contract with the Sugar factory that incurs disqualification. Discussing the facts and the law in detail, this Court concludes that the acceptance of the nomination of respondent No.7 is legal and valid and does not warrant interference with the impugned order.

14. As a result, the writ petition stands dismissed.

15. Rule stands discharged.

16. The remedy to the petitioner to impugn the election under Section 91 of the MCS Act, 1060 has not been taken away by this judgment. He may file the election petition, if he desires.

(S. G. MEHARE, J.)

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