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wp 6321.24 R.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6321 OF 2024

DNYANESHWAR VISHWAMBHAR PATIL AND OTHERS

....Petitioner

VERSUS

STATE OF MAHARASHTRA THROUGH THE SECRETARY AND OTHERS

.....Respondent

.....

Mr. Mahesh S. Deshmukh h/f. Ms. Sarnaik Priyanka Y., Advocate for the
Petitioner

AGP for Respondents : Mr. K.B. Jadhavar

Advocate for respondent Nos. 6 and 8 : Avinash N. Irpatgire

Advocate for respondent No.7 : Mr. Parag V Barde

Advocate for respondent No.5 : Mr. Shailesh S. Gangakhedkar.

CORAM : S.G. CHAPALGAONKAR, J.

DATE :- 29TH JULY, 2024.

FINAL ORDER :-

1. The petitioners have impugned the judgment and order dated 26.6.2026 passed by the District Deputy Registrar, Cooperative Societies, Chhatrapati Sambhajinagar, thereby disqualifying the petitioners under Rule (3) of the Maharashtra Agricultural Produce Marketing Committed (Election of Committee) Rules, 2017 (hereinafter referred to as the APMC Election Rules, for sake of brevity) being Directors of the respondent No.5 – APMC, Udgir.

2. Mr. Mahesh Deshmukh, learned advocate appearing for the petitioners submits that the petitioners are agriculturists as their main source of income is from agriculture. They were entitled to be elected as Directors of respondent No.5 – APMC. The petitioners were accordingly

elected by majority of votes. The political opponents of the petitioners, i.e. respondent Nos. 6 to 8 were defeated. They filed an application under Rule 10(ii) of the APMC Election Rules against the petitioners and respondent No.9, seeking disqualification on the ground that they are not agriculturists, hence, not entitled to continue as Directors of the APMC. The petitioners were served with notice of the proceeding initiated by respondent Nos. 6 to 8. Petitioners on appearance filed a preliminary objection questioning maintainability of the application filed by the respondents no 6 to 8 as well as authority of the respondent No.3 i.e. District Deputy Registrar, Latur to exercise powers under Rule 10(ii) of the Election Rules.

3. Latter on, proceeding was transferred to respondent No.4 – District Deputy Registrar, Chhatrapati Sambhanijagar on application of respondent No.9. On transfer of proceeding, the matter was posted for oral arguments on 16.4.2024. The petitioners requested to hear and decide the preliminary objection raised by petitioner No.3. However, surprisingly, respondent No.4, on 26.6.2024, decided the main proceeding itself and disqualified the petitioners without granting adequate opportunity of hearing.

4. Learned AGP raised strong objection that petitioners have alternate and efficacious remedy of appeal against impugned order, hence writ petition may not be entertained. However, since the petitioners have raised issue as to non-observance of principles of natural justice, particularly, while rendering the final decision, after hearing the parties on preliminary objection, this Court had issued notices and called for the original record so as to ascertain the contention of the parties on

the limited aspect.

5. Mr. Mahesh Deshmukh, learned advocate for the petitioner invites attention of this court to the copy of the Roznama of the proceeding and submits that at various places, there is scoring and overwriting. The Roznama dated 16.4.2024 shows that the petitioners were insisting for hearing on preliminary objection and then pass final orders on main application, if necessary. Accordingly, parties were heard on the preliminary objection. He submits that even on 30th May, 2024 only respondents have made their submissions on main application and it was expected that at first instance decision would be rendered on the preliminary objection.

6. Per contra, learned advocate for the respondents submit that the petitioners adopted various tactics to prolong the proceeding. The preliminary objection was pressed into service since 3rd April, 2024, although there no such provision. On 16.4.2024 the parties were heard on preliminary objection and then matter was adjourned for hearing on the main application. On 30.5.2024, when the respondents advanced submission on main application, the matter was closed for orders.

7. I have minutely examined Roznama of proceeding since 4.3.2024 when the matter was transferred to respondent No.4. It appears that after transfer of the proceeding to respondent No.4, notices were issued to the parties and the matter was posted on 2.4.2024. The Roznama dated 3.4.2024 shows that a preliminary objection was tendered on behalf one on petitioner No. 3 raising objection to the very maintainability of the proceeding before respondent No.4. The Roznama

notes that petitioners shall file their affidavit to the main application.

8. The proceeding dated 16.4.2024 shows that arguments were advanced on behalf of petitioners and others on preliminary objection, contending that respondent No.4 authority is not competent to hear and decide the application. Even the written notes of arguments were filed on this particular issue. Even original applicants/present respondents no 6 to 8 advanced their submissions on preliminary objection accordingly matter was posted for further arguments on 29.5.2024. Thereafter, Roznama dated 30.5.2024 records that during last hearing, arguments on preliminary objections were heard. The respondents no. 6 to 8 argued on main application, whereas, original petitioners submitted written notes on the preliminary objection. It appears that submission was made on behalf of petitioner that they have already submitted their written arguments on preliminary objection and after decision on the same, matter may be considered for disposal of main application . The last 3 lines records as under :-

सबब, वादी आणि प्रतिवादी यांचे विनंतीनुसार आक्षेप
“अजसिह” सदर प्रकरण निर्णयासाठी राखून ठेवण्यात येत
आहे.

8. On careful perusal of these lines, prima facie, it appears that the word “अजसिह” appears to have been amended by scoring the word “अजविह” and by overwriting it by word “अजसिह”.

9. Considering overall contents of the Roznama, it transpires that although Respondent No. 6 to 8 had concluded their submissions on preliminary objection on earlier date i.e. on 16.4.2024, then they

advanced their final submissions on 30.5.2024. The proceeding nowhere depict that petitioners ever made their submissions on main application for disqualification. Roznama nowhere records that proceeding was closed on main application, after hearing arguments from both contesting parties. The matter appears to have been closed for decision on the application on preliminary objection. However, impugned order takes final decision on main application for disqualification without specific indication that Respondent No. 4 was intending to take final decision.

10. In that view of the matter, this Court is of the view that the matter requires to be remitted back to the respondent No.4 at the stage of hearing on main application. As rightly pointed out by the learned advocates for respondents, there is no provision to decide the proceeding of disqualification in a piecemeal manner. It would be, therefore, appropriate that parties shall tender their final written submissions on the date of appearance and after considering the submissions advanced, the respondent No.4 shall render his final decision on the main application including points raised as preliminary objection at a time. Hence, the following order :-

ORDER.

- [a] The writ petition is partly allowed;
- [b] The impugned order dated 26.6.2024 passed by respondent No.4 in Application No. 1148 of 2024 is hereby quashed and set aside;
- [c] The matter is remitted back to respondent No.4, who shall permit the petitioners to file their reply to the original application as well as written notes of arguments if any and after hearing all parties on merit, pass further orders in accordance with law;

- [d] Parties to appear before respondent No.4 on 12th August, 2024 and submit their Reply/written submissions if any
- [e] Respondent No.4 shall hear all parties and pass further orders within a period of four weeks thereafter and communicate his decision to all concerned;
- [f] Writ petition stands disposed of in above terms.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-