



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8110 OF 2024

Rajendra s/o Shriram Patil & others .. Petitioners

versus

The Presiding Officer/Asstt. Registrar
& others .. Respondents

Mr. B. R. Waramaa, Advocate for the Petitioners.
Mr. A. V. Lavte, AGP for the State.

CORAM : S. G. CHAPALGAONKAR, J.
DATE : 2nd AUGUST, 2024.

PER COURT :

1. The Petitioners approached this court with following prayers :-

A) To quash and set aside the impugned election programme dt. 26/07/2024 issued by R.No. 1 U/R 77 of the MCS (election of Committee) Rules 2014 in pending disqualification proceedings against R-5 and election process for election be held after conclusion of disqualification proceeding notice Exh-C.

B) To quash and set aside unlawful, arbitrary and illegal actions of R. Nos. 2 and 3 appointing presiding officers for conducting meeting scheduled on 3/8/2024 for election of president of R. No. 4 Society

in the light of pending disqualification proceeding as per notice Exh-C.

C) To retrain the R-5 Ramesh Mungu Chavan from participating in election process of President of R-4 Society as per impugned election programme dt. 26/07/2024 issued by R-1.

2. Mr. B. R. Waramaa, learned counsel for the Petitioners submits that Respondent No. 4 is a society registered under MCS Act, 1960 having its head office at Amalner, District Jalgaon. The area of operation is entire district. The society consists of employees of secondary schools. There are more than 800 members of the society. As per the constitution of the society, management board consists of 11 members. On 18.02.2024, the last elected body came in charge of management of the board. Respondent No. 5 is elected as Chairman of the society.

3. On 21.06.2024, the Petitioners came to know that Respondent No. 5 has more than 2 issues, eventually he incurred disqualification in terms of Section 73CA (1)(f)(vii) of MCS Act. Consequently, a complaint is made to Respondent No. 2-DDR, Jalgaon for declaring disqualification of Respondent No. 5. In

pursuance to the complaint made by the Petitioners, Respondent No. 2 issued notice to Respondent No. 5 returnable on 07.08.2024. Apprehending adverse order of disqualification, Respondent No. 5 resigned from post of Chairman.

4. Although Respondent No. 2 himself is adjudicating authority of the complaint and aware about the disqualification proceeding pending against Respondent No. 5 before him, he appointed Presiding Officer to conduct meeting for filling vacant post of President/Chairman of Respondent No. 4-society. Eventually, Respondent No. 1 issued election programme/notice dated 26.07.2024.

5. Learned counsel Mr. Waramaa would submit that as long as disqualification proceeding is pending against Respondent No. 5, Respondent No. 2 could not have appointed the Presiding Officer to conduct the meeting for filling the post of President/Chairman of Respondent No. 4-society. He would therefore urge that the election programme / notice dated 26.07.2024 issued by Respondent No. 1 may be kept in abeyance till disposal of disqualification proceeding and also seeks to restrain Respondent No. 5 from participating in

election process of President of Respondent No. 4- society in pursuance to election programme dated 26.07.2024.

6. I have considered the submissions advanced on behalf of the Petitioners. It is not in dispute that the managing committee of Respondent No. 4 came into power on 18.02.2024 for the term 2024-2029. Respondent no. 5 was elected as Chairman on 03.03.2024 however, he tendered resignation on 19.07.2024. The Petitioners had already initiated proceeding under Section 73CA of MCS Act before Respondent No. 2 seeking disqualification of Respondent No. 5. The resignation of Respondent No. 5 came during the pendency of proceeding instituted by Petitioners. In this background, Mr. Waramaa would submit that till the disqualification proceeding is decided by Respondent No. 2, the process of election to the post of Chairman of Respondent No. 4-society be kept in abeyance. He would allege malafides against Respondent No. 2 while contending that Respondent No. 2 is aware about pendency of disqualification proceeding and still he appointed Respondent No. 1 as Presiding Officer to conduct the meeting to fill up the post of Chairman of Respondent No. 4- society.

7. The provisions contained in MCS Act, 1960 and Rules 1961 nowhere stipulate that in case of pendency of disqualification proceeding against any member of the society, the meeting for election of President or Chairman shall be withheld or kept in abeyance. Mr. Waramaa would fairly admit that no statutory provision supports his contentions. However, he submits that the propriety requires that such election programme be kept in abeyance when disqualification proceeding of the member is under consideration. Section 73 CA of MCS Act empowers Respondent No. 2-DDR to conduct the enquiry in the complaint as regards disqualification of the member. It is trite that as long as the member is not disqualified, he would be entitled to participate in the meetings of society. Respondent No. 2 will have to consider the allegations in the complaint and record evidence of the parties and after giving an opportunity of hearing, pass further orders. Therefore, withholding of the meeting for election of President/Chairman, only because disqualification proceeding is pending against a member would not be justified particularly when no statutory provision contemplates withholding of such meeting. Further, this Court cannot prejudge the disqualification alleged against Respondent No. 5 and assume that he would be disqualified. It would be the matter of evidence to

be led before Respondent No. 2 who is competent to deal with the aforesaid aspect. Consequently, there is no merit in the Writ Petition. Writ Petition stands dismissed.

(S. G. CHAPALGAONKAR)
Judge

dyb