

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 15561 OF 2022

Shivraj Vamanrao Mohod and Ors.

... Petitioners

Versus

The State of Maharashtra and Ors.
(6. Vinayak Somaji Burde)

... Respondents

Mr. Suryajeet Chavan for the Petitioners

Ms. Kavita Solunke AGP for Respondent Nos. 1 and 2.

Mr. Deelip Patil-Bankar, Chief Standing Counsel, SCEA for
Respondent Nos. 3 and 4.

Ms. Savita Yadav for Respondent No. 6

CORAM: M.M.SATHAYE J.

DATE : 28th DECEMBER 2022

(Vacation Court)

PC. :-

1. By this petition, the Petitioners who have their own milk producing society, are challenging the order dated 30th November 2022 passed in Appeal No. 38 of 2022, by Joint Registrar, Co-operative Societies (Milk), State of Maharashtra (Mumbai) (hereinafter referred to as “the Appellate Authority” for short). This impugned Order is passed by exercising power u/s. 152A of the Maharashtra Co-Op. Societies Act, 1960 (hereinafter “the said Act” for short). The said appeal was filed by Respondent No. 6 (having

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his own milk producing society) challenging rejection of his nomination for contesting election of managing committee of Respondent No. 5, under Order dated 23rd November 2022 passed by Respondent No. 4 – the Election Officer.

2. Brief background of the present dispute is that Respondent No. 5 is an apex body of the milk producing Co-operative Societies in the State of Maharashtra, known as “Mahanand”. Election for Managing Committee of Respondent No. 5 is declared. Petitioners with their milk producing Society as well as Respondent No. 6 with his milk producing Society are desirous of contesting said election.

3. It is to be noted at the outset that, there is no dispute about the fact that all the three Petitioners have filed their nomination for contesting the said election, which are accepted. It is also not disputed that the election program of the said election was declared on 15.11.2022 which is now modified by program dated 15.12.2022. According to the said program, the last date for withdrawing nomination is tomorrow i.e. 29th December 2022 till 3.00 pm. This is the reason why this petition was hard-pressed for immediately taking

on board in vacation and heard.

4. Heard learned counsel Mr. Chavan for the Petitioners, learned AGP Ms. Solunke for Respondent Nos. 1 and 2 State, Mr. Deelip Patil-Bankar, Chief standing Counsel SCEA for Respondent Nos. 3 and 4 and Ms. Yadav for Respondent No. 6.

5. All the parties present before me are ad-idem that this petition under Article 226 and 227 of the Constitution of India filed challenging the impugned Order u/s. 152A of the said Act passed by the Appellate Authority at Mumbai, can be heard and entertained by a single Judge of this Court at Bombay.

6. Mr. Chavan, Learned counsel for the Petitioners argued the matter at length and in great detail. He invited this Court's attention to the order dated 23.11.2022, by which nomination of Respondent No. 6 was rejected for breach of bye-law No.7.2.4 (a) of Resp. No. 5. He further invited the attention of the Court to bye-laws No. 4.2 which makes provision for active members of the society who are required to supply 2% of the milk collected by them to Respondent

No. 5. He further invited the attention of the Court to the bye-laws No. 7.2.4 contending that on the ground that Respondent No. 6 had not supplied required 2% milk out of its collection, the nomination of Respondent No. 6 was rejected. He contended that for the reason of not being active member, the Respondent No. 6 is actually disqualified based on bye-laws No. 7.2.4.(c). Mr. Chavan, further contended that the impugned Order is passed allowing appeal, apparently because the Appellate Authority was of the opinion that Respondent No. 6 has supplied requisite milk to Respondent No. 5. He invited the attention of the Court to the documents compilation (stated to be submitted before the Appellate Authority) and particularly on the contract between Respondent Nos. 5 and 6 for supply of the milk. He further contended that based on material available, the Appellate Authority could not have come to the conclusion that Respondent No. 6 has supplied required milk to Respondent No. 5, so as to bring him within compliance of bye-law nos. 7.2.4. He further contended that in fact the appeal of Respondent No. 6 could not have been even entertained as there was delay of 3 days in filing the same.

8. On the other hand, learned counsel Mr. Patil-Bankar appearing for the Election Officer / Authority relied on the reply filed by Respondent No. 4. He contended that the process of the election is already started. Final list of the contesting candidates would be published on 30.12.2022 and polling is scheduled on 08.01.2023. He further contended that as per the settled position of law, it would not be appropriate to interfere in the election process, more particularly in view of the Rule 78 of the Mah. Co-Op. Societies (Election to Committee) Rules, 2014. He also contended that in any case the Petitioners have remedy of challenging result of election, under Section 91 of the Maharashtra Co-operative Societies Act, 1960. In support of his case, he relied upon the Judgment of the Hon'ble Supreme Court in case of **Shaji K. Joseph Vs. V. Viswanath and Others, (2016) 4 SCC 429** and contended that the High Court should not interfere, after the process of election has commenced. He invited attention of this Court to paragraph nos. 15 and 16 of the said Judgments, which read thus :

“15. In our opinion, the High Court was not right in interfering with the process of election especially when the process of election had started upon publication of the election program on 27-1- 2011 and more particularly when an alternative statutory remedy was available to Respondent 1 by way of

referring the dispute to the Central Government as per the provisions of Section 5 of the Act read with Regulation 20 of the Regulations. So far as the issue with regard to eligibility of Respondent 1 for contesting the election is concerned, though prima facie it appears that Respondent 1 could contest the election, we do not propose to go into the said issue because, in our opinion, as per the settled law, the High Court should not have interfered with the election after the process of election had commenced. The judgments referred to hereinabove clearly show the settled position of law to the effect that whenever the process of election starts, normally courts should not interfere with the process of election for the simple reason that if the process of election is interfered with by the courts, possibly no election would be completed without court's order. Very often, for frivolous reasons candidates or others approach the courts and by virtue of interim orders passed by courts, the election is delayed or cancelled and in such a case the basic purpose of having election and getting an elected body to run the administration is frustrated. For the aforesaid reasons, this Court has taken a view that all disputes with regard to election should be dealt with only after completion of the election.

16. *This Court, in N.P. Ponnuswami v. Returning Officer (supra) has held that once the election process starts, it would not be proper for the courts to interfere with the election process. Similar view was taken by this Court in Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra (supra)".*

9. He also relied upon Judgment of Hon'ble Supreme Court in case of **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj)**

Sahakari Dugdha Utpadak Sanstha and Anr. Vs. State of Maharashtra and Ors. (2001) 8 SCC 509 and invited the attention of the Court to paragraph no. 12 of the said Judgment contending that once the process of election is set in the motion, this Court should not stay the continuation of the election process for any reason, even though there may be some illegality or breach of rules while preparing the electoral rolls.

10. Learned AGP Ms. Solunke supported the impugned order passed by the Appellate Authority under section 152A of the Maharashtra Co-operative Societies Act, by which the nomination of Respondent No. 6 is accepted.

11. Learned Counsel Ms. Yadav appearing for Respondent No. 6 vehemently opposed and contended that the Petitioners have no locus to challenge the impugned order passed in favour of her client. She contended that the impugned order is an order by which powers under Section 152A of the Maharashtra Co-operative Societies Act, has been exercised and findings given in the impugned order are based on material available before the Authority. She contended that

the real intention behind the present petition is to reduce the contest in the election, which his client wishes to contest. She submitted that since the Petitioners' nominations are also accepted, they will be able to participate in the election and, therefore, this petition is nothing but an attempt to stall a democratic process. She also supported the argument of Respondent No. 4 that once process of election is set in motion, this Court should not interfere with it, specially when nominations are accepted. She relied upon certificates which were part of compilation placed on record, more specifically certificate dated 23.11.2022 and contended that requisite supply of the milk has been done by Respondent No. 6. She submitted that so far as arguments of delay in filing the appeal is concerned, the impugned order itself would show that the order of rejection of nomination was communicated to her client on 24.11.2022 by Whatsapp and 26th and 27th November, 2022 were govt. holidays and as such there is no delay in filing appeal. She therefore urged that the said order should be read on merits and not on technical ground of delay.

12. I have considered the submissions of learned counsels

carefully, perused the record and heard both sides at length.

13. The contentions of the Petitioners about non compliance of the bye-laws of Respondent no. 5 in as much as the Respondent No. 6 has not supplied the requisite quantity of 2% of his milk collection to Resp. No. 5 – Mahanand and whether Respondent No. 6 has followed the terms of contract, whether there was technical delay in filing appeal, is something that would require evidential scrutiny. These contentions are within the realm of “disputed questions of fact” and can not be gone into in writ jurisdiction of this Court. These contentions can always be taken in dispute u/s. 91 of the said Act, if such occasion arises and the Petitioners challenge the result of election. In such peculiar facts of the matter, this Court can not exercise jurisdiction under Article 226 r/w 227 of the Constitution of India, to adjudicate upon any disputed questions of fact as aforesaid.

14. Perusal of the Judgments of the Hon’ble Supreme Court relied upon by Respondent No. 4, Election Officer, shows a clear and settled position, as clear as sunshine, that this Court should not interfere in any part of the election process (including preparation of

voters list and nomination process) once the election program is declared and set in motion. I am in respectful agreement with the said Judgments of the Hon'ble Supreme Court. In the present matter, the election program is declared and modified as on 15.12.2022 and according to said program, tomorrow is the last date for withdrawal of the nomination and election is due for polling on 08.01.2023. It is therefore not possible to interfere with the democratic process already set in motion, in any manner.

15. In view of the aforesaid facts and settled legal position, this Court is not inclined to grant any relief, either interim or final in this petition. The writ petition is accordingly dismissed. No order as to costs.

16. It is however made clear that, this Court has not expressed any opinion about the contentions, raised above by both sides. After the said election is over, the Petitioners will be at liberty to challenge the result of the election including that of Respondent No. 6, if occasion so arises, as provided u/s. 91 of Maharashtra Co-operative Societies Act, 1960. All contentions of the parties on merits, including those

raised before this Court and as may be raised at that time, are specifically kept open.

[M.M.SATHAYE,J.]