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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3510 OF 2015

Dr. Arun s/o Govindrao Nirantar
 Age-68 years, Occ-Medical Practitioner,
 R/o Subhash Road, Beed
 Taluka and District - Beed

PETITIONER

VERSUS

1. The State of Maharashtra
 Secretary, Co-operative Department,
 Mantralaya, Mumbai
2. The Election Officer,
 Poornawadi Nagrik Sahakari
 Bank Ltd., Beed,
 and the Assistant Registrar,
 Co-operative Societies, Beed
 Taluka and District - Beed
3. Poornawadi Nagrik Sahakari Bank Ltd.,
 Beed, Head Office, Mali Ves,
 Subash Road, Beed
 Through its Chief Executive Officer
4. Ravindra Sudhakar Rao Deshmukh,
 Age-44 years, Occ-Legal Practitioner,
 R/o "Maitraiya", Krantinagar,
 Behind Tahsil Office,
 Beed, Taluka and District - Beed

RESPONDENTS

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Mr. D. J. Choudhary, Advocate for the petitioner
 Mr. S. K. Tambe, AGP for respondent State
 Mr. Abhijit Choudhary, Advocate for respondent No.3
 Mr. S. S. Thombre, Advocate for respondent No.4

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 7th APRIL, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. The petitioner has moved this Court invoking its powers under Articles 226 and 227 of the Constitution of India against an order dated 24th March, 2015 whereunder nomination of respondent No.4 has been purportedly accepted, for the reason that respondent No.4 has tendered resignation as legal adviser of respondent No.3 Bank on 24th March, 2014 around 2.28 pm and as such, the cause of disqualification pursuant to bye-law No. 45 (h) stands removed.

3. Mr. Thombre, learned advocate appearing for respondent No.4 submits that bye-law No. 45 (h) refers to retention and employment of legal practitioner, whereas services of respondent No.4 were engaged as legal adviser.

4. Along with writ petition various documents have been annexed showing appointment of respondent No.4 as legal adviser to respondent No.3 Bank, upon an application / request by respondent No.4. There had been a request of respondent No.4 to restructure fees being fixed. Respondent No.4 had also

been issued a certificate on 24th March, 2015 engaging his services as legal adviser.

5. The election programme, as has been annexed to the writ petition, shows that the last date of filing nomination was 23rd March, 2015. Respondent No. 4 has tendered his resignation as legal adviser of respondent No.3 Bank on 24th March, 2015. In this scenario, it appears that the election officer had been oblivious of the legal position that the last date of filing nomination would be crucial in the matter. This Court, in a decision rendered in 2011 (3) Mh.L.J. 833 "*Manchak Shahaji Pawar V. State of Maharashtra and Others*", has already considered that relevant date is the last date prescribed for filing nomination papers.

6. There are documents, annexed to the petition, about retention and engagement of respondent No.4, as a legal adviser by respondent No.3 Bank, in addition the bank has also issued a certificate of appointment, as being legal adviser and him being so continued as legal adviser on 23rd March, 2015 is further strengthened by the fact of resignation by respondent No.4 on 24th March, 2015. These factual aspects are not disputed.

7. The acceptance of nomination of respondent No.4, for the reason as is given under the impugned order that since

resignation has been tendered on 24th March, 2015 by respondent No.4, is not in consonance with the legal position, since respondent No.4 appears to be ineligible for filing nomination on 23rd March, 2015, as disqualification referred to under bye-law No. 45 (h) was subsisting.

8. In such a situation, the impugned order passed by the election officer is unsustainable. As such, writ petition stands allowed in terms of prayer clauses "C" & "D" and rule is made absolute accordingly. However, it is open for respondent No.4, if so advised, to challenge the elections at appropriate stage before appropriate forum.

[SUNIL P. DESHMUKH, J.]