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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3598 OF 2015

Bodhan Nanu Rathod
Age – 55 years, Occ – Chairman of
Jagdamba Machtsya Vyavsaik
Sahakari Sanstha Ltd.,
Bhategon, Taluka – Kalamnuri
District - Hingoli

PETITIONER

VERSUS

1. The State of Maharashtra
Co-operation Department,
Mantralaya, Mumbai
2. Deputy Registrar (Fishery)
Co-operative Society of Maharashtra
State, Mumbai
3. Assistant Registrar,
Co-operative Society(Dairy)
Parbhani
4. Returning Officer / Election Officer,
Jagdamba Machtsya Vyavasaik
Sahakari Sanstha Ltd.,
Bhategon, Taluka – Kalamnuri
District – Hingoli
5. Devidas Laxman Rathod,
Age – 38 years, Occ – Fisherman
6. Shaikh Munna Sheith Amir
Age – 50 years, Occ – Fisherman
7. Shaikh Majid Shaikh Amin
Age – 61 years, Occ – Fisherman
8. Deelip Bansi Chauhan,
Age – 38 years, Occ – Fisherman

RESPONDENTS

9. Manik Fakira Rathod,
Age – 55 years, Occ – Fisherman
10. Shankar Bapurao Chavhan,
Age – 27 years, Occ – Fisherman
11. Deepak Nandu Rathod,
Age – 35 years, Occ – Fisherman
12. Subhash Gaubara Rathod,
Age – 42 years, Occ – Fisherman
13. Devidas Lalji Adhe
Age – 50 years, Occ – Fisherman
14. Dashrath Fulsing Rathod
Age – 45 years, Occ – Fisherman
15. Raju Motiram Chauhan,
Age – 40 years, Occ – Fisherman

All R/o Bhategaon,
Taluka – Kalamnuri, District – Hingoli

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Mr. Subhash V. Mundhe, Advocate for the petitioner
Mr. S. P. Daund, AGP for respondent State
Mr. R. T. Nagargoje, Advocate for respondent No.5

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 20th JULY, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. This court, vide order dated 1st April, 2015, had allowed

respondents No. 5 to 15 to cast their votes, however, had directed to keep their votes in a separate ballot box and had further directed counting of votes and declaration of election result shall not take place until further orders.

3. It would be worthwhile to refer to relevant extract of said order dated 1st April, 2015, which reads thus -

2. Situation is, under resolution dated 8th February, 2015, eleven members of Jagdamba Machtsya Vavasaik Sahakari Sansthi Ltd. Bhategaon, Ta. Kalamnuri, District Hingoli had been expelled. It appears that expelled members had been before division bench of this court in Writ Petition No. 2078 of 2015. The division bench had disposed of said writ petition with liberty to the petitioners - therein to raise objections to the preliminary voters list after declaration of programme for finalization of the voters list.

3. It appears that another Writ Petition bearing No. 2811 of 2015 was filed objecting to the decision taken by the managing committee in respect of expulsion of members, which according to the petitioners, is without following proper procedure as required under law. The Division Bench of this court while deciding said writ petition observed that election programme has reached the stage of publication of final list of validly nominated candidates, and as such in view of decision of the Apex Court in Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dughda Utpadak Sanstha and another Vs. State of Maharashtra and others reported in (2001)8 SCC 509, and had declined to cause interference in the election process, leaving it open to the petitioners to challenge action of expulsion under the remedies as provided under the Maharashtra Co-operative Societies Act, 1960.

4. *Thereafter, it appears that eleven expelled members had been before the Deputy Registrar, Co-operative Societies (Fishery) Maharashtra State, Mumbai, who under order on 07-03-2015 stayed the operation of expulsion of said members. Subsequent to that, the Deputy Registrar, Co-operative Societies (Fishery) Maharashtra State, Mumbai directed under communication dated 27-03-2015 to make report in respect of incorporation of names of these eleven members in the voters list. Said communication appears to have been acted upon and order has been passed by issuing supplementary list of voters on 30-03-2015.*

5. *Various contentions have been advanced by rival parties. Looking at the same, I deem it appropriate that before final decision in the present writ petition is taken, present situation can be resolved by directing the authorities concerned to allow said eleven voters, under supplementary voters list dated 30-03-2015, to vote poll on 02-04-2015. However, their ballot papers be kept in separate ballot box. Counting of all the votes and declaration of result of the election shall not take place until further orders of this Court.*

6. *In the meanwhile, respondent No. 2 may proceed with hearing of appeal filed by expelled eleven members. It is expected that before next date in writ petition, appeal would be decided.*

4. It appears that respondent No.2 has accordingly decided appeal in favour of respondents No.5 to 15.

5. Though learned advocate for the petitioner contends that his client is likely to challenge said order, at this stage, it cannot be gainsaid that expulsion of respondents No.5 to 15 has not

been suspended. As such, restraint on counting of votes and declaration of election results under the order dated 1st April, 2015, would not be required to be continued. The returning officer, as such, may go ahead with counting of votes, including votes cast by respondents No.5 to 15 and declare the result.

6. Under the circumstances, nothing further survives for consideration in the writ petition and the writ stands disposed of. Rule stands discharged.

[SUNIL P. DESHMUKH, J.]

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