

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4234 OF 2015

Bhagwan S/o Wamanrao Patil,
(Representative of Sindhi Kamath)
VKSS Society Ltd., Tq. Devani,
District Latur)
Age: 50 years, Occu. Agril.,
R/o Goundgaon (Vijayanagar)
Tq. Devani, Dist. Latur.

... Petitioner

versus

1. The State of Maharashtra
Through its Secretary,
Co-operation and Textile
Department, Mantralaya,
Mumbai -400 032.
2. The District Cooperative
Election Officer, Elections
to Managing Committee of
DCC Bank Ltd., Latur.
3. Returning Officer,
Election to DCC Bank Ltd.,
Latur District deputy Registrar,
Co-operative societies,
Latur.
4. Bhagwan S/o Ramchandra Patil,
Age: 53 years, occu., Agril.,
R/o Talegaon (Bk) Tq. Devani,
District Latur.

(Representative of VKSS Society
Talegaon, Tq. Devani,
District Latur.)

... Respondents

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Mr. N.P. Patil, Jamalpurkar, Advocate for Petitioner
Mr. V.G. Shelke, Asstt. Govt. Pleader for respondents No. 1 to 3
Mr. A.N. Irpatgire, Advocate for respondent No. 4.

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CORAM : SUNIL P. DESHMUKH, J.

DATE : 24th APRIL, 2015

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally with consent of learned counsel Mr. N.P. Patil, Jamalpurkar, for petitioner, Mr. Shelke, learned Assistant Government Pleader for respondents No. 1 to 3 and Mr. A.N. Irpatgire, learned counsel for respondent No. 4.

2. Mr. Jamalpurkar, learned counsel for petitioner submits that fraud being played by respondent no. 4 is apparent, for, according to him, respondent No. 4 was office bearer of concerned society viz VKSS society, Talegaon till 27-01-2015 and further that in the meeting held of federal body, it has been shown that respondent No. 4 had resigned on 10-04-2014. He submits that for acceptance of his resignation certain procedure has to be followed by the managing committee, however, the record does not depict following up of such procedure.

3. Mr. Jamalpurkar further submits that even after the meeting, respondent No. 4 has ventured to file writ petition bearing No. 3701 of 2015 in the capacity of the chairman of the concerned society. He submits that, in such a scenario, respondent No. 4 is disqualified from contesting the election to federal body under section 73CA (1) (i) (f) (ii) of the Maharashtra Co-operative Societies Act, 1960. He

further submits that the society and respondent No. 4 himself are defaulters.

4. Mr. Irpatgire, learned counsel for respondent No. 4, however, points out that the petitioner has taken objection to the nomination of respondent No. 4 on the ground of him being defaulter of said society and for said purpose refers to written objection at page no. 20. Mr. Irpatgire, further submits that resignation tendered by respondent No. 4 had been duly accepted and argument about procedure of acceptance of resignation had never been advanced before the election officer. Resignation though questioned, is a fact, and as such, the election officer who went on to reject the objection by petitioner as submitted before him, was right in accepting nomination of respondent No. 4. He asserts that neither the society or respondent No. 4 are defaulters. There is no material placed by petitioner in this regard to substantiate said claim.

5. Learned Assistant Government supports the arguments advanced on behalf of respondent No. 4.

6. Looking at aforesaid, basic thrust of allegation of fraud being played by respondent No. 4, is a matter to be proved in appropriate proceedings. Nature of proceeding of scrutiny of nomination, being summary, the election officer is not supposed to make investigation at said stage and has to go by the record placed before him.

Therefore, it cannot be said that the election officer had committed any error in passing the impugned order.

7. Though, Mr. Jamalpurkar tries to contend that the order impugned is a non speaking order and without application of mind, however, instructions appear to be that such an order is not expected while accepting nomination as would be required while rejection of a nomination.

8. Taking into account that lot of disputed questions arise in writ petition, I am not inclined to interfere with order impugned.

9. Writ Petition, as such, is not being entertained and stands dismissed. Rule stands discharged.

10. However, it would be open for the petitioner to take up appropriate proceedings against rejection of his objection to nomination of respondent No. 4 at proper stage including election petition.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK