

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 4233 OF 2015

Gajanan s/o Vitthalrao Ghuge,
Age 23 years, occup. Agril. &
business, R/o Hingani, Tal. &
Dist. Hingoli

..... Petitioner

versus

1. The State of Maharashtra,
through its Secretary,
Co-operation Department,
Mantralaya, Mumbai.
2. State Co-operative Election
Authority, Maharashtra State,
pune, through its Secretary
3. The Returning Officer for Elections
to Parbhani District Central
Co-operative Bank Ltd., Parbhani
and the Special Land Acquisition
Officer, Collector Office, Parbhani,
Tal. & District Parbhani
4. Tanaji s/o Sakharamji Mutkule,
Age 54 years, occup. Agril.,
R/o Adgaon (Mu), Tal & Dist.Hingoli Respondents

Mr. S. S. Thombre, Advocate for petitioner
Mr. V. G. Shelke, Asstt. Govt.Pleader for respondents no.1 to 3
Mr. Surendra V. Suryawanshi, Advocate for respondent no. 4

CORAM : SUNIL P. DESHMUKH, J.
DATE : 23RD APRIL, 2015

ORDER

1. Rule. Rule made returnable forthwith and heard the
learned counsel for appearing parties by consent.

2. Mr. Thombre, learned advocate appearing on behalf of the petitioner vehemently contends that respondent no. 4 cannot be considered to be eligible and qualified to have nomination for election to the board of directors of the federal society, the Parbhani District Central Co-operative Bank Limited. He submits, respondent no. 4 was not at all a member of the society of which he is trying to be delegate, for a period of two years to be a voter as required under sub section 3(A) of section 27 of the Maharashtra Co-operative Societies Act, 1960. Mr. Thombre submits, respondent no. 4 became member of Umbra multipurpose co-operative society in February, 2013. However, on realization that under the bye-laws he cannot be a member of said society unless possessing some area of land in the areas of operation of said society, he has purchased a piece of land very recently. He, therefore, submits that the certificate annexed by respondent no.4 along with nomination to show him being a member of Umbra multipurpose co-operative society cannot be relied on since it is bogus. He further submits that the fact that respondent no. 4 had on the date of scrutiny purportedly submitted such a certificate of Adgaon multipurpose co-operative society is an indication of the certificate appended along with nomination to be incorrect and vacuous.

3. Mr. Thombre submits that when these things were pointedly made clear, it was the duty of the election officer to go into the same and reject nomination of respondent no. 4.

4. Mr. Thombre relies on decision rendered by this court in *Manchak s/o Shahaji Pawar vs. State of Maharashtra*, reported in 2011 (3) *Mh.L.J.* 833, to highlight that relevant date is the last date for filing nomination and no corrective action thereafter is permissible and since in this case corrective action is sought to be taken by candidate himself on the date of scrutiny, it should be deemed that he was not qualified and eligible under the bye-laws concerned.

5. On the other hand, learned counsel Mr. Suryawanshi appearing on behalf of respondent no. 4 submits that pursuant to bye-laws, a certificate of any society would be sufficient and that in case of respondent no. 4 there is sufficient indication that he possesses requisite experience as required under the bye-law having support of two certificates, one of Umbra multipurpose co-operative society and another of Adgaon multipurpose co-operative society. Merely as an attempt to strengthen the case, an additional certificate was sought to be appended to the nomination. Even if the same is ignored, it cannot be said that respondent no. 4 does not possess requisite certificate as per the

bye-law. Learned counsel further submits that rest of the contentions of petitioner in respect of acquisition of land or membership are disputed questions of facts.

6. Learned Assistant Government Pleader submits that, according to directives issued by election commission from time to time and further that enquiry at the stage of nomination being of summary nature, no fault can be found with the impugned order, for, election officer has gone by the documents and averments on record. He submits that the petitioner did not object to the provisional voters' list which included name of respondent no.4 nor has he filed any proceedings against finalization of voters' list. In such a case, election officer has passed the impugned order correctly.

7. Taking into account that respondent no.4's name appeared in the provisional as well as final voters' list which went un-objected before the concerned authority and that along with nomination, requisite documents showing eligibility have been filed by respondent no. 4 veracity of which though is sought to be disputed by petitioner, gives rise to disputed questions of facts as appearing on record and as such, no fault can be found with the order impugned.

8.

8. In view of above, as well as that the courts have normally been slow in intercepting the election process, I do not deem it appropriate to disturb the impugned order at this stage. The decisions relied on and referred to above, are on different sets of facts and would not contain the present matter.

9. Writ petition, as such, is dismissed leaving it open to the petitioner to file appropriate proceedings at appropriate stage, including an election petition. It is further being made clear that any of aforesaid observations, shall not influence the authorities if the matter comes for decision on merits.

10. Rule discharged.

SUNIL P. DESHMUKH, J.

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