

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

WRIT PETITION NO. 5935 OF 2015

Onkar s/o Vitthal Warke,
age 60 years, occup. Agriculture,
R/o Gojare, Taluka Bhusawal,
District Jalgaon ... Petitioner

versus

1. State of Maharashtra,
through Co-operative Election
Authority, Maharashtra State,
Pune
2. District Election Officer and
District Deputy Registrar,
Co-operative Societies,
Jalgaon, District – Jalgaon
3. Sanjay s/o Waman Savkare,
age 45 years, occup. Business,
R/of 7F, Salony, Rajeshwar Nagar,
Phase II, Bhusawal,
Taluka Bhusawal, District – Jalgaon
4. Smt. Savita w/o Mahesh Pithale,
Age 32 years, occup. Household,
R/o Methaji Mala,
Behind Rane Building, Bhusawal,
Taluka Bhusawal, District Bhusawal,
5. Fekri Vividh Karyakari Seva Society Ltd.
Fekri, Taluka Bhusawal, Dist. Jalgaon Respondents

Mr. N. B. Suryawanshi, Advocate holding for
Mr. Amarjeet V. Patil, Advocate for petitioner
Mr. V. G. Shelke, Asstt. Govt. Pleader for respondents no. 1 & 2
Mr. Swapnil S. Patil, Advocate for respondents no. 3 and 4
Mr. S.B. Yawalkar, Advocate for respondent no. 5

CORAM : SUNIL P. DESHMUKH, J.
14TH JULY, 2015

ORDER:

1. Rule. Rule made returnable forthwith. Heard the parties finally, by consent.

2. Petitioner purports to be aggrieved by order dated 09-06-2015 passed by Respondent no. 2 whereunder his objection to inclusion of names of respondents no. 3 and 4 in the provisional voters' list of Agriculture Produce and Market Committee, Bhusawal has been turned down. The main thrust of the submissions of the petitioner is, while the members of the managing committee had been initially elected, respondents no. 3 and 4 did not figure in the same, however, subsequently, by deleting two names from the managing committee, respondents no. 3 and 4's names were illegally included in the same.

3. According to learned counsel for the petitioner although it is being contended that under inadvertence list of thirteen managing committee members had been prepared on the pretext of non availability of the secretary, no credible material in respect of the same is made available. He, therefore, submits that the list of managing committee members could not have been altered by including names of respondents no. 3 and 4 by deleting two subsisting names. He submits that the record with regard to

meetings for nominations and subsequent communication is a manufactured record and no credence can be given to the same. Learned counsel further submits that inclusion of respondents no.3 and 4's names is not with reference to section 73B (4) of the Maharashtra Co-operative Societies Act, 1960, for, it cannot be said that said seats are filled up from reserved category candidates.

4. Mr. Patil, learned advocate appearing for respondents no. 3 and 4 points out that it is an indisputable position that while the elections had taken place, only eleven members to the managing committee had been elected and as such, preparation of list containing thirteen members apparently was incorrect. Having realized that vacancies in respect of reserved category candidates were available, respondents no. 3 and 4 by resolution were nominated on the managing committee. He, therefore, submits that the basic contention gives rise to disputable questions of fact and as such interference in the order impugned is not called for.

5. Mr. Shelke, learned Assistant Government Pleader refers to section 73B (4) as well as rule 74 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 and also to observations of the election officer, particularly to that respondents no. 3 and 4 have been nominated with reference to section 73B(4) of the Act which provides for nomination from eligible candidates to said vacant seats. It is not in dispute that respondents no. 3 and 4

are otherwise eligible candidates to the seats they are nominated. He points out that on 10-03-2015, a communication had been made to S.C.E.A. and as such, requisite procedure has also been complied with.

6. Taking into account aforesaid, it emerges that the requisite procedure under the Act and the concerned rule has been followed. It is not that respondents no. 3 and 4 are not qualified to be elected to the posts with reference to section 73B (4) of the Act. Rest of the questions about preparation of managing committee list and subsequent manufacturing of record being disputed questions of fact, I do not deem it appropriate to meddle with the order passed by the election officer dated 09-06-2015.

7. Writ petition as such is dismissed. Rule discharged.

SUNIL P. DESHMUKH, J.

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