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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6551 OF 2015

M/s Mahesh and Brothers
Through its proprietor
Mahesh Pandurang Kothawade
Age - 49 years, Occ - Business,
R/o Pathak Galli, Amalner
Taluka - Amalner, District - Jalgaon

PETITIONER

VERSUS

1. The State of Maharashtra
Through the Secretary for
Co-operation, Marketing and
Textile Department,
Mantralaya, Mumbai
2. The District Deputy Registrar,
Co-operative Societies, Jalgaon
District - Jalgaon
3. The Assistant Registrar and
The Administrator,
Agriculture Produce Market Committee,
Amalner, Taluka-Amalner
District - Jalgaon

RESPONDENTS

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Mr. V. D. Hon, Sr. Advocate i/b Mr. A. V. Hon, Adv. for petitioner
Mr. V. G. Shelke, AGP for respondent State

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 10th JULY, 2015

ORAL JUDGMENT :

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

2. The petitioner is aggrieved by communication dated 9th June, 2015 purportedly declining request to include name of petitioner in the final voters list objection, since his name did not figure in the provisional voters list, from the constituency of voters with reference to section 13 (1) (b) of the Maharashtra Agriculture Produce Marketing (Development and Regulations) Act, 1963. Section 13 (1) (b) of said Act reads thus

“13 (1) Subject to the provisions of sub-section (2), every Market Committee shall consists of the following members, namely-

(a)

(b) two shall be elected by traders and commission agents, holding licences for not less than two years to operate as such in the market area;

3. According to learned senior advocate appearing on behalf of the petitioner, the petitioner is a licence holder for the year 2015-16 and is a licence holder for over two years, albeit, for intervening financial years 2012-13 and 2013-14 he could not secure renewal of licence issued in the year 2011-12. It is contended that reliance being placed by District Deputy Registrar, Co-operative Societies, Jalgaon, upon communication dated 2nd June, 2015 of the Assistant Registrar, Co-operative

Societies, Amalner, which in turn appears to have been based on information supplied by Secretary, Agriculture Produce Market Committee, Amalner on the very day, is misplaced.

4. Learned senior advocate makes reference to Rule 36 (1) of the Maharashtra Agriculture Produce Marketing (Development and Regulations) Rules, 1967 and points out first proviso and further contends that it cannot be said that the petitioner's name would not figure in the register maintained by the market committee of a period for three months before preparation of voters list referred to therein.

5. Though learned AGP has reservations about holding of licence by the petitioner in the year 2015-16, learned senior advocate for the petitioner submits that licence renewal fees for the same has also been deposited way back on 31st March, 2015 and there is no communication about refusal of renewal of licence.

6. Learned AGP, however, submits that having regard to provision appearing under section 13 (1) (b) of the Maharashtra Agriculture Produce Marketing (Development and Regulations) Act, 1963, it implies that a voter is supposed to be a licence holder for preceding two years of the elections. Learned AGP,

however, is not in a position to dispute about the petitioner being holder of licence for the year 2011-12, 2014-15 and 2015-16.

7. Learned AGP has not been able to submit any material by which it can be said that this is an underlying implication. In view of aforesaid, situation emerges that the petitioner appears to be a licence holder for two years and as such, at least at this stage, it *prima facie* does not appear that requirement underlying section 13 (1) (b) of said Act is that one should be licence holder for two preceding years before the elections.

8. In the present case, the situation emerges that the petitioner has been holding licence for the years 2011-12, 2014-15 and 2015-16. It is further to be seen that it is not a case that the petitioner's name does not appear in the respective registers maintained by marketing committee, at least three months before preparation of such list, with reference to proviso to Rule 36 (1) of Maharashtra Agriculture Produce Marketing (development and Regulation) Rules, 1967.

9. In view of aforesaid, I deem it expedient that it would be in the interest of justice to set aside the order impugned and petitioner's name be included in the voters list of ensuing elections of Agriculture Produce Market Committee, Amalner,

since factual scenario is not seriously disputed.

10. As such, writ petition stands allowed. Rule is made absolute in terms of prayer clause "B".

[SUNIL P. DESHMUKH, J.]

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