

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6831 OF 2015

Subhadrabai Vyankatrao Dabade,
Age : 55 years, Occu. Labour,
R/o: Shirur-Shikara, Tq. Mukhed,
Dist. Nanded.

...PETITIONER

versus

1. The State of Maharashtra,
Through Secretary Co-operative
Department, Mantralaya, Mumbai.
2. District Deputy Registrar,
Co-operative Societies, Nanded.
3. The Returning Officer,
Nanded District Labour Contract
Co-operative Societies Federation
Ltd. Nanded.
4. Gangadhar S/o Digambar Patil,
Age: 52 years, Occ: Agri.,
R/o : Ambulga Tq. Mukhed,
Dist Nanded.

...RESPONDENTS

.....

Mr. Shrikant T. Veer, Advocate for Petitioner
Mr. S.G. Sangle, A.G.P. for respondents No. 1 and 2
Mr. Abhijit Chaudhary, Advocate holding for
Mr. D.J. Choudhari, Advocate for respondent No. 4.

.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 15th JULY, 2015

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard the learned counsel for the parties finally, with consent.
2. Petitioner claims to be aggrieved by order dated 29-06-2015 passed by Returning Officer, Nanded District Labour Contract Co-

operative Societies Federation Ltd. Nanded, turning down her objection to the candidature of respondent No. 4 annexed to the petition at Exhibit-C (Page No. 27). Objection was on the ground that the place Ambulga (Bk), Taluqa Mukhed, District Nanded does not fall within area of operation of Shivshankar Labour Co-operative Societies Ltd. Lonal, Tq. Mukhed, District Nanded. This appears to be the solitary ground objecting to candidature of respondent No. 4 in the objection application.

3. The objection by petitioner is said to be defended by respondent No. 4 by engaging advocate. Petitioner contends that respondent No. 4 is, in fact, an agriculturist and not labourer, for, his occupation as shown in the *Vakalatnama* is agriculturist.

4. According to learned counsel for petitioner, under the circumstances, oral submissions with respect to the same had been advanced before the returning officer. Learned counsel further places reliance on bye-laws of Shivshankar Labour Co-operative Society Ltd. Lonal and refers to clause No. 9 and note thereunder depicting that livelihood of member of the society shall be earned by 'Manual Labour' and his earning would depend principally on said source. He further refers to clause No. 11 under said by-law No. 9 and submits that for being member of the society, the person concerned shall be doing manual labour work. Having regard to occupation as is appearing in the *vakalatnama* and requirement under bye-law no. 9, it cannot be said that respondent No. 4 possesses qualification and is eligible for being member of the labour society. Thus, according to him, this is

sufficient to decline candidature to respondent No. 4. He contends that, however, these submissions do not find place in the order although those were advanced while objections were being considered.

5. Learned counsel for petitioner produces 7/12 extracts in respect of alleged land holding by respondent No. 4. Submission of learned counsel for respondent No. 4 is that the same had not been produced before the returning officer. The 7/12 extracts are produced for the first time before this court in writ petition.

6. Learned Assistant Government Pleader and learned counsel for respondent No. 4, on the other hand, contend that relevant bye-laws concerning geographical jurisdiction of area of operation of Shivshankar Labour Co-operative Society Ltd. Lonal does include village Ambulga Ta. Mukhed, District Nanded which is evident from bye-laws produced before the returning officer. Objection on that count is absolutely unsustainable and has been appropriately dealt with by returning officer. It is further being contended that objection on the ground of occupation of respondent No. 4 had, in fact, not been addressed to at all before the returning officer.

7. Learned counsel for respondent No. 4 refers to affidavit-in-reply of respondent No. 4 and states that such a ground which was not raised before the returning officer is being raised for the first time in writ petition. According to learned counsel for respondent No. 4, it is evident from the objection appearing at Page No. 27 of writ petition and from the order passed by returning officer that there is no

substance in the allegations being hurled. He asserts that respondent No. 4 is a labourer. He further requests having regard to advanced stage of elections no indulgence be given to petitioner.

8. Learned Assistant Government Pleader submits that respondent No. 4 continues to be member of Labour Co-operative society and it shall be presumed unless his name from membership has been struck down by following due procedure, that he qualifies to be a member of the society with reference to eligibility criteria referred to in bye-law No. 9. He further submits that elections are at advanced stage. List of valid candidates has been displayed. He further submits that writ petition raises disputed questions of fact and hence, it would not be a proper stage to consider the questions of fact.

9. Having regard to aforesaid submissions and looking at the stage at which elections have reached, as only voting/polling is to take place and further looking at the nature of dispute raised, submissions by learned counsel for respondents carry lot of substance. Writ petition may not be a proper avenue to adjudicate upon questions being raised by the petitioner, which are contended to be raised for the first time in writ petition. Under the circumstances, claims made by either side and submissions in respect of occupation of respondent No. 4 would not be appropriate to be considered in writ petition. Order impugned does not require any interference at this stage.

10. As such, writ petition stands dismissed. Rule stands discharged. However, it would be open for the petitioner to take up appropriate

proceedings against acceptance of nomination of respondent No. 4 at proper stage, including an election petition. It is made clear that observations made hereinbefore are limited only for rejection of writ petition and shall not have bearing on the merits of the case before the appropriate fori.

Sd/-
(**SUNIL P. DESHMUKH, J.**)

MTK

...