

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (STAMP) NO.17871 OF 2015

AND

WRIT PETITION (STAMP) NO.17873 OF 2015

Shri. Balaso Narhari Yedke

.. Petitioner

Versus

Agriculture Produce Marketing Committee,

Tasgaon, Tq. Tasgaon, Dist. Sangli and others

.. Respondents

ALONGWITH

WRIT PETITION (STAMP) NO.17875 OF 2015

AND

WRIT PETITION (STAMP) NO.17878 OF 2015

Shri. Anil Vishwas Patil

.. Petitioner

Versus

Agriculture Produce Marketing Committee,

Tasgaon, Tq. Tasgaon, Dist. Sangli and others

.. Respondents

ALONGWITH

WRIT PETITION (STAMP) NO.17880 OF 2015

Shri. Shamrao Sampatrao Chavan

.. Petitioner

Versus

Agriculture Produce Marketing Committee,

Tasgaon, Tq. Tasgaon, Dist. Sangli and others

.. Respondents

Mr. A. M. Kulkarni, for the Petitioner in all Petitions.

Mr. S. G. Deshmukh a/w Mr. Rakesh Patil, for the Respondent No.1 in

all Petitions.

Mr. U. R. Mankapure, for the Respondent No.3.

Shri. S. D. Rayrikar, AGP for the Respondent Nos.2 & 4 in all Petitions.

CORAM : R.M. SAVANT, J.

DATE : 08th JULY, 2015

PC.

1. The Learned Counsel for the Petitioners seeks leave to amend the above Petitions so as to incorporate an additional ground to challenge the orders passed by the authorities below. A draft amendment is tendered across the Bar and also furnished to the Learned Counsel appearing for the other side. The Learned Counsel have no objection to the Petitions being allowed to be amended in terms of the draft handed in. Amendment to be carried out in the course of the day.

2. The Writ Jurisdiction of this Court is invoked against the orders all dated 03.07.2015 passed by the District Deputy Registrar, Co-operative Societies, Sangli, by which orders the Appeals filed by the Petitioners above named came to be dismissed and resultantly, the orders passed by the Returning Officer i.e. Respondent No.2 herein rejecting the nominations of the Petitioners came to be confirmed. The controversy in the above Petitions is as regards the Petitioner's entitlement to contest the election to the Board of Directors of the Agricultural Marketing Committee

of Tasgaon, District Sangli. The two Petitioners in the first four Petitions were seeking to contest the elections from two constituencies i.e. the Gram Panchayat constituency and the Co-operative Societies constituency. The Petitioner in the last Petition i.e. Writ Petition (Stamp) No.17880 of 2015 was desirous of contesting elections only from the Co-operative Societies constituency. In terms of the election programme and on the day stipulated for the same, the Petitioners filed their nominations for the constituencies from which they desired to contest. The Respondent No.3 herein who is also a member of the Respondent No.1 Marketing Committee raised an objection to the nominations filed by the Petitioners for the said constituencies. The objection was on the ground that the wives of the Petitioners were holders of Traders/Brokers Licence issued by the Respondent No.1 i.e. the Market Committee and therefore, the disqualification under Rule 41(2)(ii) was attracted. The said Rule is for the sake of ready reference reproduced herein under :-

41. Disqualifications of membership.

(1).....

(2) A person shall not be chosen as a member:-

(i)

(ii) representing [the Co-operative Societies' constituency or the Village panchayats Constituency, for agriculturists], if his main income is not from agriculture or possesses a traders, commission agents' or broker licence or has interest in a joint family or a firm which has a trader's or commission agents' or broker licence.”

3. In view of the objection raised by the Respondent No.3 herein, the Returning Officer conducted an inquiry in context of the said Petition. The Returning Officer having regard to the record which disclosed that a licences have been issued to the wives of the Petitioners which have been renewed from time to time and which are lastly renewed in the year 2014 and presently valid, held that the Petitioners stood disqualified to contest the elections and accordingly rejected the nominations filed by the Petitioners. It is required to be noted that before the Returning Officer the Petitioners questioned the renewal of the licenses and it was the case of the Petitioners that the said licenses were got renewed by some persons who are interested in getting the Petitioners disqualified, when in fact the wives of the Petitioners never applied for renewal.

4. The order passed by the Returning Officer was taken exception to by the Petitioners by filing an Appeal before the District Deputy Registrar who is the Appellate Authority. The Appellate Authority in the Appeal tested the case of the Petitioners as regards their case that their wives had never applied for renewal and that the renewal has been got done malafide so as to see that the Petitioners are disqualified. The Appellate Authority in the Appeals filed by the Petitioners did not countenance the said case of the Petitioners. The Appellate Authority

whilst rejecting the Appeals has observed that there are signatures appearing of the wives of the Petitioners on the applications and therefore, it could not be said that they have not applied for renewal. The Appellate Authority has accordingly by the impugned order dated 03.07.2015 dismissed the Appeals.

5. The Learned Counsel appearing on behalf of the Petitioners sought to reiterate the case of the Petitioners before the authorities below namely that the renewal was got done malafide so as to get the Petitioners disqualified as there was no application in fact filed by the wives of the Petitioners. The second submission urged on behalf of the Petitioners Mr. A. M. Kulkarni is that the case of the Petitioners does not fall within Rule 41(2)(ii) of the said Rules, as the objector has not been able to demonstrate that the Petitioners have any interest of the nature contemplated by the said sub clause (ii) of the Rules. In my view, it is not possible to accept the contentions urged on behalf of the Petitioners. In so far as whether the wives of the Petitioners in fact had applied or not, the authorities below have gone by the record which showed that the licenses were standing in the names of the wives of the Petitioners and were renewed and are presently valid. The adjudication of the contention urged by the Petitioners issue would entail an adjudication on facts as the said issue is a contentious issue between the parties, which gives rise to

disputed facts which cannot be gone into by this Court in its Writ Jurisdiction under Articles 226 and 227 of the Constitution of India.

6. In so far as the applicability of Rule 41(2)(ii) is concerned, the disqualification is of a person who has interest in a joint family or a firm which has a Traders, Commission Agents or Brokers Licence. The underlying principle behind the said rule appears to be to see to it there is no conflict of interest between the members of the APMC and the business of the firm. In the instant case, it is an undisputed fact that the licenses are standing in the names of the firms of the wives of the Petitioners and therefore, it cannot be said that the Petitioners have no interest in the said firms. If the interpretation as is sought to be given by the Learned Counsel for the Petitioners is accepted, then it would result in laying a premium on the conflict of interest as then a member who is elected and whose family members are having Traders or Brokers Licence would be sitting on the Board of Directors of the APMC and taking decisions. In my view, therefore, testing the case of the Petitioners from both the angles, the orders passed by the Returning Officer as confirmed by the Appellate Authority do not suffer from any error for this Court to interfere in its Writ Jurisdiction. The Writ Petitions are accordingly dismissed.

[R.M. SAVANT, J]