

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR

Writ Petition No.296of 2015

(Jitendrasingh s/o Bhupendrasingh Goramnagar v. Returning Officer and  
Assistant Co-operative Officer, Pandharkawada, Dist. Yavatmal, and others)

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Office Notes, Memoranda of Coram,  
appearances, Court's orders or directions      Court's or Judge's orders  
and Registrar's order

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Shri A.M. Ghare, Advocate for Petitioner.

Shri R.L. Khapre, Advocate for Respondent Nos.2 to 10.

Ms P.D. Rane, AGP for Respondent No.11.

**Coram : R.K. Deshpande, J.**

**Dated : 29<sup>th</sup> January, 2015**

The nomination forms submitted by the respondent Nos. 2 to 10 for the posts of Members of Executive Committee of the Co-operative Society have been accepted by the Returning Officer, and this is the subject-matter of challenge in this petition. Basically, two grounds are raised – (i) that the proviso to sub-rule (3) of Rule 21 of the Maharashtra Co-operative Societies Rules, 1961 contemplates that the nomination paper shall be accompanied by an affidavit, specified by SCEA, wherein the candidate is not disqualified under section 73CA of the Act and the attested copies of caste certificates, and (ii) that the proposer and seconder in the nomination forms of the respondent Nos.2 to 10 have proposed and seconded multiple candidates.

The objection regarding affidavit was not raised at the time when the nomination form was accepted. The questions are whether the affidavit is required to be sworn-in before the competent authority, and whether it was in fact so sworn-in. Both these questions raised by the learned counsel for the petitioner require a detailed adjudication, which can be done only in the election petition, which can be preferred under Section 91 of the Maharashtra Co-operative Societies Act, 1960.

The learned counsel for the petitioner has relied upon the decisions of this Court in the cases of (i) *Dalsing s/o Shamsing Rajput v. State of Maharashtra and others*, reported in 2006(3) *Mh.L.J.* 592; and (ii) *Manchak s/o Shahaji Pawar v. State of Maharashtra and others*, reported in 2011(3) *Mh.L.J.* 833. The propositions laid down in both these decisions cannot be disputed. However, these decisions have held that each case has to be decided on the facts and circumstances of that case. Ultimately, it is a discretionary remedy under Articles 226 and 227 of the Constitution of India and the Court may refuse to entertain the petition where the questions are required to be considered in detail.

The petition is, therefore, dismissed. All questions are kept open.

Judge.

Lanjewar