

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

**WRIT PETITION NO. 4363 OF 2016
WITH
CIVIL APPLICATION STAMP NO. 13462 OF 2016**

Bhaskar S/o Mukundrao Danve,
Age : 46 Years, Occu. : Agriculture,
R/o Chanegaon, Tq. Badnapur,
District Jalna.

.. Petitioner

Versus

1. The State of Maharashtra,
Through the Secretary for
Co-operation Department,
Mantralaya, Mumbai.
 2. The Collector Jalna,
District Jalna.
 3. The District Deputy Registrar,
Co-operative Societies, Jalna,
District Jalna.
 4. The Assistant Registrar,
Co-operative Societies,
Badnapur, Tq. Badnapur,
District Jalna.
 5. Chanegaon Vividh Karyakari Seva
Sahkari Society Limited at Chanegaon,
Tq. Badnapur, District Jalna,
Through its Secretary.
- .. Respondents

Shri V. D. Hon, Senior Advocate i/by Shri A. V. Hon, Advocate for the Petitioner.

Shri B. A. Shinde, A.G.P. for Respondent Nos. 1 to 4.

Shri Umakant U. Wagh, Advocate h/f Shri V. B. Jadhav, Advocate for the Respondent No. 5.

**CORAM : S. V. GANGAPURWALA AND
K. K. SONAWANE, JJ.**

DATE : 21ST APRIL, 2016.

ORAL JUDGMENT (*Per S. V. Gangapurwala, J.*) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. Mr. Hon, the learned senior counsel for the petitioner submits that the communication dated 11.04.2016 of the respondent No. 3 is erroneous and not in consonance with the provisions of the Statute, so also facts on record. According to the learned senior counsel, the petitioner was co-opted as member of the respondent No. 5 society on 14.08.2013. The respondent No. 5/society had also communicated the said fact to respondent Nos. 3 and 4, however, no cognizance was taken. The petitioner on 09.03.2016 filed an application for including his name in the voters list. The said application was filed as per Rule 36(12) of the A. P. M. C. Rules. The learned senior counsel further submits that, the respondents erroneously vide order dated 11.04.2016 rejected the same. The learned senior counsel further submits that, the amended rules came into force with

effect from 30th August, 2014. The same would not be applicable to the case of the petitioner and the petitioner would be governed as per the rules prevailing on the date on his co-option. There was no bar for co-opting the petitioner and the society has rightly co-opted. According to the learned senior counsel the nomination paper was filled in and the same is also erroneously rejected.

3. The learned counsel for the respondent No. 5 accepts that the petitioner was co-opted as member of the Managing Committee of the respondent No. 5/society on 14.08.2013 in place of one Mr. Nivrutti Shewale and the said fact was also communicated to the respondent authorities. According to the learned counsel, the petitioner was rightly co-opted.

4. Mr. Shinde, the learned Assistant Government Pleader submits that, Sec. 73(CB) of the Maharashtra Co-operative Societies Act has been amended with effect from 13.08.2013 and the said provision would apply. The learned A. G. P. further submits that, the respondent No. 5/society has not forwarded the list of members of the Managing Committee. The name of the petitioner was not included. The order has been rightly passed. There is no provision for co-option of members. As the petitioner's name was not appearing in the voters list, his nomination form is rightly rejected.

5. We have considered the submissions canvassed by the learned counsel for respective parties.

6. Rules prevailing as on the date of co-option will have to be considered on the date of co-option. Rule 56-A(34) and 56-A(35) of the Maharashtra Co-operative Societies Rules were holding the field. As per the contention of the parties, there was no provision which states that co-option is not permissible. The society has clearly stated that the petitioner was co-opted on 14.08.2013. The learned counsel for the society has accepted that the petitioner was co-opted. Even the list under the signature of the Secretary of the society is submitted, which shows that the petitioner was co-opted as member of the Managing Committee in place of Shri Nivrutti Shewale.

7. As per Rule 36(12 to 15) of the A. P. M. C. (Development and Regulation) Rules 1967 even after publication of list of voters an application can be made to the authority seeking amendment in the list and the said list can be amended prior to three days of the last date of filing nomination. Scheme of said Rule 12 to 16 of Rule 36 of the Maharashtra Agricultural Produce Marketing Rules makes this amply clear.

8. The petitioner had applied well in advance. The last date for filing nomination as per election programme was 20th April,

2016. The petitioner applied for inclusion of his name in the voters list on 09.03.2016, more than a month prior to the last date of filing nomination. The application of the petitioner is rejected on 11.04.2016 and the petitioner has approached this Court on 13.04.2016 that is much prior to the last date of filing nomination.

9. Considering the aforesaid aspects of the matter, the petitioner has made out case for inclusion of his name in the voters list, so also rejection of his nomination on the ground that the name of the petitioner not being in the voters list is erroneous.

10. In the light of the above, we pass following order.

11. The impugned communication dated 11.04.2016 is quashed and set aside. The order rejecting the nomination of the petitioner dated 20th April, 2016 on the ground that name of the petitioner does not appear in the voters list is set aside. The name of the petitioner be included in the voters list. Rule accordingly is made absolute in above terms. No costs.

12. The civil application also stands disposed of.

Sd/-

[K. K. SONAWANE, J.]

bsb/April 16

Sd/-

[S. V. GANGAPURWALA, J.]