

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

WRIT PETITION NO. 4954 OF 2016

Shri Dilip Ramdas Bhandarkar

.. Petitioner

vs

The District Deputy Registrar,
Co-operative Societies, Nandurbar and ors.

.. Respondents

Shrikant S. Patil, Advocate for petitioner

Mr. S. K. Tambe, Asstt. Govt. Pleader for respondents no. 1 to 3

CORAM : SUNIL P. DESHMUKH, J.

DATE : 2nd May, 2016

ORDER :

1. Heard learned counsel for petitioner and learned Assistant Government Pleader for respondents no. 1 to 3.

2. Petitioner purports to have been aggrieved by order passed on 26-04-2016 by the returning officer in the elections to managing committee of respondent no. 4 - Janmangar Co-operative Housing Society, Shahada, turning down petitioner's objection to the nominations by respondents no. 5 to 11 that they have incurred disqualification to contest the election and/or for that matter their inclusion in the voters list having regard to section 73 CA (1) (vi) of the Maharashtra Co-operative Societies Act, 1960 ["MCS Act" for brevity]

3. Learned counsel refers to clause (vi) of sub-section (1) of section 73CA of the MCS Act which reads thus;

“ 73 CA. Disqualification of committee and its members.

(A1)

(1) Without prejudice to the other provisions of this Act, or the rules made thereunder in relation to the disqualification of being member of a committee, no person shall be eligible for being appointed, nominated, elected, co-opted or; for being a member of a committee, if he-

(i)

(ii)

(iii)

(iv)

(v)

(vi) is a salaried employee of any society (other than a society of employees themselves) or holds any office of profit under any society, except when he holds or is appointed to the office of a Managing Director or any other office declared by the State Government by general or special order not to disqualify its holder or is entitled to be or is nominated as functional director on the committee of a society under sub-section (2) of section 73A. "

4. It is contended that respondents no. 6 to 10 are the employees of Satpuda Tapi Parisar Sahakara Sakhar Karkhana Limited and respondent no. 11 is employee of Agricultural Produce Market Committee, Shahada.

5. Learned counsel for the petitioner submits that primary reason for which objection of the petitioner is overruled by the authority is that the society of sugar factory is registered not under

the MCS Act, but is a co-operative society registered under the Multi-State Cooperative Societies Act, 2002.

6. After hearing learned counsel, it appears that the word 'society' has been defined under sub-section (27) of section 2 of the MCS Act which reads as under;

" 2 (27) " society " means a co-operative society registered, or deemed to be registered, under this Act which is an autonomous association of persons, united voluntarily to meet their common needs and aspirations through a jointly owned and democratically controlled enterprise and adhering to the co-operative principles and values. "

7. The returning officer while deciding objection has referred to that provisions which have been referred to in the order do not cover the multi state co-operative sugar factories and, therefore, the objection has been over ruled.

8. Having regard to aforesaid provisions under section 73 CA (1) (vi) and definition under sub-section (27) of section 2 of the MCS Act, prima facie, it does not appear to be a case wherein it can be considered that there is any error committed by returning officer which calls for interference and the issue arising could not have been decided by returning officer at this stage.

9. Writ petition thus gets reduced to only academic discussion and as such, is not being entertained and stands rejected. It

would, however, be open for petitioner to prosecute the remedy as may be available in law including election petition, in case of election of respondents no. 4 to 11.

10. The observations hereinabove are only to the extent of rejection of writ petition and shall not influence and/or affect the decision making by the authorities in any other matter.

SUNIL P. DESHMUKH,
JUDGE

pnd