

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

WRIT PETITION NO. 8195 OF 2016

Vitthal s/o Chinana Kudmulwar,
Age 59 years, occup. Agriculture,
R/o Kundalwadi, Tal. Biloli,
District Nanded

.. Petitioner

versus

01. The State of Maharashtra,
through its Principal Secretary,
Co-operation Department,
Mantralaya, Mumbai
02. The Secretary,
State Co-operative Election Authority,
Maharashtra State, Pune
03. The District Deputy Registrar,
Co-operative Societies, Nanded.
04. The Returning Officer for Elections
to V. K. S. S. Kundalwadi, Ta. Biloli,
Dist. Nanded
05. Sainath s/o Govind Uttarwar,
Age 48 years, occup. Agril.,
R/o Kundulwadi, Tal. Biloli,
District Nanded
06. The Vividh Karyakri Seva Sahakari
Sanstha Ltd., Kundalwadi,
Tq. Biloli, Dist. Nanded, through its
Manager/Secretary

.. Respondents

Mr. S. S. Thombre, Advocate for petitioner
Mr. B. A. Shinde, Asstt. Govt. Pleader for respondents no. 1 and 3
Mr. S. K. Kadam, Advocate for respondents no. 2 and 4
Mr. V. D. Salunke, Advocate for caveator-respondent no. 5
Mr. A. N. Nagargoje, Advocate for respondent no. 6

CORAM : SUNIL P. DESHMUKH, J.
DATE : 2nd August, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally, by consent.

2. Petitioner is before this court against an order passed by appellate authority - respondent no. 3 on 27-07-2016, validating nomination of respondent no. 5 in the election to managing committee of Vividh Karyakari Seva Sahakari Society, Kundalwadi, Taluka Biloli, District Nanded – respondent no. 6 herein, which was rejected by returning officer under order dated 18-07-2016 pursuant to objection raised by the petitioner.

3. Learned counsel Mr. Thombre appearing on behalf of the petitioner contends that the petitioner had taken objection to nomination of respondent no. 5 on the ground that respondent no. 5 has incurred disqualification in view of section 73CA (A1) of the Maharashtra Co-operative Societies Act, 1960 ("MCS" Act) since respondent no. 5 as well as respondent no. 6 are dealing with similar goods in market area since the two licencees from Agricultural Produce Market Committee are carrying on business of *aadat* and business in fertilizers being carried on in the name

of wife of respondent no. 5 and as such they stand disqualified. It is further pointed out that the licences would expire sometime in 2017. He purports to rely on documents as are annexed to writ petition at pages 56 and 57, to contend that both, respondent no. 5's family member (M/s Yogesh Krishi Seva Kendra) as well as respondent no. 6 are still dealing in similar goods and as such section 73CA (A1) is attracted pursuant to which they stand disqualified. He further goes on to submit that even going by resolution which is likely to be relied on by respondent no. 5, according to him, it would indicate that the society had decided to stop the business and shows that the business is to be carried on till its licence lasts. He submits that while returning officer had rejected nomination of respondent no.5, said order had been reversed by appellate authority and that too on the material which had not been made available before the returning officer. He, therefore, submits that the appellate authority has committed grave error in reversing the order of returning officer and requests this court to give indulgence into the request made in writ petition, by setting aside decision of the appellate authority.

4. Learned counsel Mr. Salunke appearing for respondent no. 5 countering aforesaid submissions, contends that as a matter of fact, as far as allegation with regard to respondent no. 5

indulging into *aadat* business is concerned, that is a matter beyond the controversy as it would emerge that the business had been stopped long back and necessary resolution with regard to cancellation of licence for the same had taken place well before declaration of election programme.

5. As regards allegation that wife of respondent no. 5, who is a member of family of respondent no.5 and runs business in the name and style M/s Yogesh Krushi Seva Kendra, learned counsel submits that respondent no. 5 cannot be disqualified on that ground, referring to resolution dated 10-06-2016 of Respondent No.6 - Vivid Karyakari Sahakari Society which shows that fertilizers stock is lying unsold for over three years and running business had not been viable and as such basic intention is reflected in the resolution that the society had resolved to stop the business. Exhaustion of stock, according to him, would not after the resolution be amenable to be considered as dealing with the goods. He contends that matter having regard to intention reflected under the resolution, the society had amply made it clear that it does not intend to deal with in said goods any longer and proper treatment to the same has been received at the end of the appellate authority to said resolution.

6. He submits that receipt sought to be relied on as has been appended at page 56, is not a credible document and it appears to be manufactured one since it has taken birth during progress of election programme in order to see that the complainant's purpose would be facilitated by such creation. He submits, even otherwise it is unconscionable that three year old stock is being purchased almost at the prevailing market rate which would be fetched by fresh stock.

7. He submits that the society, particularly the person representing it, is influenced by the complainant and thus has caused appearance in the present matter while for service of notice on him is a matter, awaiting procedural compliance. He further submits that the petition raises a lot of disputed questions of facts as well as law.

8. Mr. Nagargoje, learned counsel appearing on behalf of respondent no. 6, states that resolution as has been placed on record is self-explanatory and its purpose is evident and further goes on to submit that since the society had been approached, it appears that the receipt had been issued and to quite a long extent, the intention underlying the resolution depicts that the stock, as far as possible, should be exhausted.

9. Learned counsel Mr. Kadam, appearing for State election commission, states that the appellate authority has taken into account various facets involved in the matter particularly that whether the society and respondent no. 5 were dealing in similar goods is a mixed question of fact and law and in the circumstances, it appears that respondent no. 5 has received its benefit. He further submits that the elections have reached almost last stage since save voting, counting and declaration of results, rest of the stages are already over and further that having regard to disputed position, a meddlesome approach may be avoided.

10. Having heard learned counsel for the parties and considered their submissions as aforesaid, there is allegation that respondents no. 5 and 6 are dealing in similar goods and there is contention that the business has been stopped and whatever activity has been carried out is in furtherance of the resolution and would not take colour of carrying on business and that document sought to be relied on is manufactured. Further, as far as effect of the resolution stopping the business is concerned, at appellate stage it has received a treatment, beneficial to respondent no. 5. Proceedings are of summary nature. That apart, a lot of disputed questions of facts also appear to be emerging in the matter. The submission by learned

counsel for State election commission appear to carry a lot of force. It is pointed out by learned counsel Mr. Kadam, almost all stages of elections save polling, counting and declaration of result appear to be over. Under the circumstances, it would not be appropriate to cause interlude in the election programme.

11. In view of aforesaid, writ petition is dismissed, leaving it open to the petitioner to take recourse to such other remedies as may be available in facts and in law.

12. Rule stands discharged.

SUNIL P. DESHMUKH,
JUDGE

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