

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3634 OF 2017

Shivaji Hanumantrao Hude,
Age 62 years, Occu.Agril.,
R/o Satala (Bk), Tq. Udgir,
District: Udgir.

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through Principal Secretary,
Co-operative Department,
Mantralaya - Mumbai-32
2. The District Deputy Registrar,
Co-operative Societies, Latur,
Latur, Tq. & District Latur.
3. The Returning Officer,
Agricultural Produce Market Committee,
Udgir, Tq. & District Udgir.
4. The Secretary,
Agricultural Produce Market Committee,
Udgir, Tq. & District Udgir.
5. Dhanaji Ganyba Jadhav,
Age Major, Occup. Agri.,
R/o. Village Tondchir, Tq. Udgir,
District Latur.

...RESPONDENTS

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Shri M.S.Deshmukh, Adv., h/f Shri S.G.Jadhavar,
Advocate, for petitioner.
Shri S.R.Yadav-Lonikar, AGP, for respondent State.
Shri A.N.Irpatgire, Advocate, for respondent no.4.
Shri V.D.Hon, Senior Advocate, i/b Shri A.V.Hon, Advocate
for respondent no.5.

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CORAM : P.R. BORA, J.

Dated: March 30, 2017

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PER COURT :-

1. With the consent of the learned Counsel appearing for the respective parties, the Writ Petition is heard finally at the admission stage.

2. By filing the present petition, the petitioner has challenged order dated 28th February, 2017, passed by respondent no.3 as well as order dated 16th of March, 2017, passed by respondent no.2 whereby he has confirmed the order passed by respondent no.3.

3. The petitioner had submitted his nomination for election of the Managing Committee of the Agricultural Produce Market Committee, Udgir, Taluka Udgir, district

Latur (for short, hereinafter referred to as 'the APMC Udgir'), from the 'Societies Constituency'. The Returning Officer (respondent no.3) rejected the nomination of the petitioner holding the petitioner disqualified under Rule 41 (2) (ii) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967 (for short 'Rules of 1967'). Against the order so passed by respondent no.3, rejecting his nomination, petitioner preferred an appeal to the District Deputy Registrar, Cooperative Societies, Latur (respondent no.2), under Rule 51 of the Rules of 1967. Respondent no.2, after hearing the parties to the said appeal, rejected the said appeal vide order dated 16th of March, 2017. Both the aforesaid orders are questioned in the present petition.

4. The election programme for electing the Managing Committee members for APMC, Udgir, was declared on 9th of February, 2017. There are four different constituencies, namely, (i) Societies' Constituency, (ii) Gram Panchayats' Constituency, (iii) Traders' Constituency, and (iv) Hamals' and Women

Constituency. From the Societies' Constituency, 11 members are to be elected. The present petitioner had filed his nomination from the said constituency.

5. As provided under Rule 41(2)(ii) of the Rules of 1967, a person, if his main income is not from agriculture or possesses a trader's, commission agent's, or broker's license, or has an interest in a joint family or a firm which has a trader's or a commission agent's or broker's license, is disqualified from representing the societies constituency. An objection was raised to the nomination of the petitioner from the societies constituency under the aforesaid provision by respondent no.5. The Returning Officer (respondent no.3) upheld the said objection and rejected the nomination of the petitioner on 28th February, 2017. Against the said order, petitioner preferred an appeal under Rule 51 of the Rules of 1967 before the District Deputy Registrar, Cooperative Societies, Latur (respondent no.2) and as mentioned here-in-before, the said appeal was rejected by respondent no.2 vide order dated 16th of March, 2017. Aggrieved by the aforesaid

two orders, the petitioner has approached this Court.

6. Shri M.S.Deshmukh, learned Counsel appearing for the petitioner, assailed the impugned orders on several grounds. Learned Counsel submitted that the impugned orders have been passed on assumptions, presumptions and surmises. Learned counsel further submitted that both the authorities have failed in considering the documentary evidence brought on record by the petitioner in its proper perspective. Learned Counsel further submitted that the authorities have not considered that the petitioner is not having any license of trading with APMC, Udgir. Learned Counsel submitted that in the elections of the APMC, Udgir, held in the year 2011 also, the nomination of the petitioner was objected to on similar grounds but the said objection was rejected by the Returning Officer and the District Deputy Registrar in an appeal confirmed the said order. Learned Counsel submitted that, in fact, the earlier decision was binding on both the authorities and it was not open for them to take any contrary view. Learned Counsel submitted that both

the authorities, however, under some political pressure, have erroneously held the petitioner disqualified for contesting the election from the societies' constituency. Learned counsel submitted that both the authorities have also failed in appreciating that after family partition, which took place way back in the year 2007, the petitioner and his son are residing separately, have their own separate ration cards and the petitioner is noway concerned with the business of his son, or daughter-in-law. Learned Counsel further submitted that at the stage of scrutiny of the nomination, the Returning Officer was not supposed to undertake any detailed enquiry, and was expected to rely upon the documentary evidence placed on record by the petitioner in the form of residence certificate in his favour from the Gram Sevak of village Panchayat Satala (Bk), and a certificate from the Secretary, APMC, Udgir, certifying that there is no trader's license in the name of the petitioner. In support of the submission so made, learned Counsel placed his reliance on an order passed by this Court (Coram: Sunil P.Deshmukh, J.) on 4th August, 2015, in Writ Petition No.7734/2015. Learned Counsel

also cited one another judgment of this Court in the case of Dhrupadabai Laxmanrao Mhaske vs. Additional Commissioner and others (2015 (5) Bom.C.R.308), and the judgment of the Division Bench of this Court in the case of Pruthwiraj Parmeshwarlal Jaiswal and another vs. Shrungas Shivlal Thakare and others (1987 Mh.L.J. 1065).

7. Shri V.D.Hon, learned Senior Counsel, appearing for respondent no.5, opposed the submissions made on behalf of the petitioner. Learned Senior Counsel submitted that the Returning Officer has rightly rejected the nomination of the petitioner by giving sound reasons therefor. Learned Senior Counsel further submitted that the order so passed by the Returning Officer has been confirmed by the appellate authority and both these authorities have concurrently held the petitioner disqualified from contesting the election of APMC, Udgir, from the societies constituency. Learned Senior Counsel further submitted that since the process of election has now reached to its final stage and casting of votes is scheduled on 2nd of April, 2017, no interference can be

caused even if the petitioner may have a very good case. To support his contention the learned Senior Counsel, relied upon the judgment of the Honourable Apex Court in the case of Shaji K.Joseph vs. V.Viswanath & ors in Civil Appeal No.1629 of 2016, arising out of S.L.P. (Civil) No.22902/2011, decided on 22nd of February, 2016.

8. Learned Senior Counsel further submitted that, even on merits, the petitioner does not have any case. Learned Senior Counsel submitted that from the material which has come on record during the proceedings before the authorities below, prima facie, there is reason to believe that the agriculture is not the main source of income for the petitioner, and further that, he is interested in the firm of his son and the daughter-in-law which have a traders' license. Learned Senior Counsel further submitted that the evidence which has come on record indicates that the license, which is in the name of the petitioner, is still in existence, and has not been cancelled, or discharged by the petitioner. Learned Senior Counsel further submitted that, the addresses on the Adhar Card

pertaining to the petitioner and his son, show that both are residing on the same address which leads to a reasonable inference that there is a joint family and the so called document of partition is just a camouflage. Learned Senior Counsel further submitted that the evidence has also come on record indicating that warehouse license is in the name of wife of the petitioner and the said fact has not been clearly denied by the petitioner. Learned Senior Counsel further submitted that while filing an appeal under Rule 51 of the Rules of 1967, the petitioner must have made all the validly nominated candidates as party to the appeal filed by him before the District Deputy Registrar. Since the petitioner has not joined them as party to the appeal filed by him, in fact, the appeal was liable to be dismissed on the ground of non joining of necessary parties alone. In support of his said contention, learned Counsel placed his reliance on the judgment of this Court in the case of Vijaysingh Krishnarao Parbat vs. Returning Officer (2003(2) Mh.L.J. 485). Learned Senior Counsel, therefore, prayed for dismissal of the petition.

9. Shri S.R.Yadav-Lonikar, learned A.G.P., appearing for respondent State, supported the impugned orders. Shri A.N.Irpatgire, learned Counsel appearing for respondent no.4, also supported the impugned orders. Learned A.G.P. brought to my notice that Shri Rishikesh s/o Baburao Katale, Assistant Returning Officer, has filed an affidavit, denying therein that he had endorsed any remark on the copy of memo of appeal filed by the petitioner, acknowledging receipt of 82 copies of the memo of appeal. Learned A.G.P. submitted that Shri Katale has candidly stated that the remark appearing on the memo of appeal was not made by him and he did not receive 82 copies of the memo of appeal, as contended by the petitioner.

10. After having considered the submissions advanced by the learned counsel appearing for the respective parties, and on perusal of the material on record, apparently, there appears no scope for any indulgence by this Court at this stage firstly, for the reason that the election process pertaining to APMC, Udgir, has

not only commenced but is at its final stage. As is revealing from the record, the casting of votes is scheduled on 2nd of April, 2017. It is, thus, evident that the period of less than three days is left for casting of votes in the election of APMC, Udgir. It has been brought to my notice by the learned A.G.P. as well as learned Senior Counsel that the ballot papers for the said election have already been printed. In the affidavit in reply filed by respondent also, the said fact has been stated. In the judgment relied upon by the Senior Counsel Shri V.D. Hon, in the case of Shaji K.Joseph vs. V.Viswanath & ors (cited supra), the Honourable Apex Court has clearly laid down that the process of election shall not be interfered with after it has commenced. The Honourable Apex Court has observed that whenever the process of election starts, normally, the Courts should not interfere with the process of election for the simple reason that if the process of election is interfered with by the Court, possibly, no election would be completed without Court's orders. In the aforesaid matter, though the Honourable Apex Court has observed that "prima facie it appears that respondent

no.1 could contest the election", restrained itself from going into the said issue and held that the High Court should not have interfered with the election after the process of election had commenced. The Honourable Apex Court, in the aforesaid judgment, has also referred to the earlier judgments on the issue in the case of N.P.Ponnuswami v. The Returning Officer, Namakkal Constituency, Namakkal, Salem Dist. and others, (AIR 1952 SC 64) and Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another v. State of Maharashtra and others (2001 (8) SCC 509).

11. Having regard to the fact that now less than three days are left for casting of votes in the election to be held for the APMC, Udgir, in view of the law laid down by the Honourable Apex Court in the case of Shaji K.Joseph vs. V.Viswanath & ors (cited supra), I am not inclined to cause any interference in the impugned orders at this stage. Moreover, since the facts relating to candidature of the petitioner are seriously disputed not only by an

individual complainant but also by the Government authorities, even otherwise this Court could not have gone into the said disputed questions of facts.

12. For the reasons stated above, the writ petition is dismissed. It is clarified that this Court has not entered into the merits of the contentions raised by the parties to the petition. It would be open for the petitioner, if he so desires, to raise all of his objections, raised in the present petition, at appropriate stage in an appropriate proceeding before appropriate forum. No order as to the costs.

(P. R. BORA)
JUDGE

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