

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

WRIT PETITION NO. 5415 OF 2017

Rajabhau Shrirang Phad

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

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Mr. S.G. Jadhavar, Advocate for petitioner.

Mr. S.R. Yadav, A.G.P. for respondent – State.

Mr. S.G. Munde, Advocate for Respondent No.5.

Mr. V.D. Salunke, Advocate for Respondent No.8.

Mr. M.S. Karad, Advocate for Respondent No.43.

Mr. S.B. Munde, Advocate for Respondent Nos. 11, 18, 20, 29, 52, 61, 62, 65, 66 and 73.

Mr. S.D. Munde, Advocate for Respondent Nos. 19, 20, 21, 23, 25, 27, 28, 32, 58, 63, 64 and 72.

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**CORAM : M.S. SANKLECHA, J.
DATED : 05th MAY, 2017**

ORDER :

1. This petition challenges the order dated 19th April, 2017 passed by Respondent No.2 – District Deputy Registrar, Co-operative Societies, Beed. The impugned order allowed an appeal filed by Respondent No.6 – Mr. S.H. Munde under Rule 51(A) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967 (Rules) framed under the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 from the order dated 10th April, 2017 of the

Returning Officer rejecting his nomination form to contest the election to the board of directors of Agriculture Produce Market Committee (A.P.M.C.) Parali (V), Dist. Beed.

2. Briefly, the facts leading to this petition are that Respondent No.6 had filed his nomination for election to the board of directors of A.P.M.C. to be held on 14th May, 2017 from the co-operative societies constituency which is open only to the agriculturists. The petitioner objected to the nomination of Respondent No.6, before the Returning Officer. By an order dated 10th April, 2017, the Returning Officer found that the petitioner's wife and son were having traders licence. Therefore in terms of Rule 41(2)(ii) of the Rules 1967, the petitioner was disqualified from contesting the election to A.P.M.C. Scheduled on 14th May, 2017.

3. Being aggrieved, Respondent No.6 filed an appeal under Rule 51 of the Rules, 1967 to Respondent No.2 – District Deputy Registrar of Co-operative Societies. In the appeal, it was contended by Respondent No.6 that there has been separation between his wife and sons on the one hand and him on the other. On consideration of the evidence which was placed before him to Respondent No.2 concluded that Respondent No.6 would not be hit by provision of Rule 41 (2)(ii) of the Rules 1967 as his wife and son

who held a trader's licence were separated and residing separately from Respondent No.6.

4. The grievance of the petitioner who is one of the contesting candidates to the election be held to board of directors of A.P.M.C. is that on the basis of the evidence available before him, Respondent No.2 – District Deputy Registrar, Beed could not have come to an conclusion that Respondent No.6 is not disqualified from contesting election. In the above view, it is prayed that the impugned order dated 19th April, 2017 be set aside and Respondent No.6 be restrained/prohibited from contesting elections to the A.P.M.C.

5. The issue which arose for consideration before the authorities are disputed questions of fact whose resolution would depend upon leading of evidence and appreciation thereof. This coupled with the fact that election programe has already been notified and symbols also have been allotted to the candidates including Respondent No.6 and now only polling remains to be held on 14th May, 2017. It would not be appropriate to interfere in the election process as observed by the Supreme Court in *Shaji K. Joseph Vs. V. Vishwanath and Others 2016(4) SCC 429* after relying upon various decisions to the effect, that once process of election starts, the Court should

not normally interfere with the process of election. Moreover, the petitioner is not remediless and in terms of Rule 88 of the Rules 1967, the petitioner could challenge the election of Respondent No.6 by filing election petition where there would ample opportunity available to the petitioner to prove his case. Therefore the present facts would not warrant interference in my supervisory jurisdiction under Section 227 of the Constitution of India.

6. Needless to mention, I had no occasion to examine contentions of the petitioner on merits. Therefore, if and when election petition is filed, it would be considered on its own merits.

7. In the above view, petition is dismissed. No order as to costs.

(M.S. SANKLECHA, J.)

SSD