

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

WRIT PETITION NO. 8808 of 2018

Balaji S/o Dhondaji Suryawanshi,
age 45 years occupation agriculture
R/o Mudkhed Taluka Mudkhed Dist. Nanded

...Petitioner

VERSUS

1. The District Collector,
Nanded District Nanded.
2. The Tahsildar/Returning Officer,
The Agricultural Produce Market Committee,
Mudkhed Taluka Mudkhed District Nanded.
3. The Agricultural Produce Market Committee,
Mudkhed Taluka Mudkhed District Nanded
through its Secretary.
4. Suresh S/o Shankarrao Shete,
age 51 years occupation agriculture
R/o Mudkhed Taluka Mudkhed District Nanded.
5. Govindrao S/o Marotrao Suryawanshi,
age 65 years occupation and R/o as above

....Respondents

Mr Avinash A. Khande, Advocate for petitioner.

Mr P.N. Kutti, Asstt. Govt. Pleader for respondents No. 1 and 2.

CORAM : SUNIL P. DESHMUKH, J.

DATE : 3rd August, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally with consent.

2. Heard learned counsel for petitioner. It is the case of petitioner that no due process is followed for elections to Agricultural Produce Market Committee, Mudkhed, District Nanded while those for the first time are being held after 2009. He submits that petitioner is primarily an agriculturist and his principal source of income has also been agriculture, *albeit*, he is holder of trading licence. He further refers to definition of trader which defines a person who does sale and purchase of commodities. Since petitioner has not dealt with buying and selling agricultural produce as a principal or agent, he is indeed not a trader. He submits that under faulty and deficient process undertaken for election coming after long time, his name is stated to have figured in provisional and final lists of voters of agriculturists as well as traders. He submits that under the new rules amended in 2017 a holder of licence to trade is disqualified from being chosen to be a member from constituency of agriculturists. Rule 9(3) of the Agricultural Produce Marketing (Election to Committee) Rules, 2017 refers to that every person whose name is included in voters list prepared under Rules 6 and 7 shall unless disqualified under these Rules be qualified to be elected to the Market Committee from that constituency. He submits that as such, since his name has figured in the voters lists he is qualified to contest the election to the Market Committee.

3. He further submits that immediately after his disqualification order has been passed, communication has been issued to him to choose one of the constituencies to be a voter since his name has figured in lists of both constituencies. He submits, the same could have been brought about before order had been passed. However, such an action is being taken only after disqualification order has been passed in order to deprive him of opportunity of staking claim to membership of Agricultural Produce Market Committee.

4. He submits that in the given circumstances, factual position is that the petitioner is a trading licence holder, yet he has never done any trading business hitherto. Had an understanding been given to him about choice to be made he would have surrendered his licence and could have been considered eligible to contest the election. He submits that some due ought to be given to the petitioner being an agriculturist and, as such, not been as diligent as expected under the Rules.

5. There is no denial of actual position that petitioner is trading licence holder which incurs disqualification. Prima facie, it appears that he incurs disability under Rule 10(2). Although learned counsel persuasively requests to exercise discretion in favour of the petitioner, yet Rule 9(3) stipulates that a person would be qualified unless he is disqualified, while Rule 10

prescribes circumstances of incurring disqualification of committee members. Rule 10(2) specifically refers to that holding a trading licence would be a disqualification. As such, the order impugned in the facts and circumstances and having regard to the rules does not appear to be a case wherein indulgence sought would be able to be given under discretionary jurisdiction of this Court.

6. Writ petition is, thus, not entertained and dismissed, leaving open to petitioner to take up appropriate proceedings as may be available at appropriate stage.

7. Rule stands discharged.

**(SUNIL P. DESHMUKH)
JUDGE.**

Madkar