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

WRIT PETITION NO. 245 OF 2019

Marotrao s/o Nagorao Shinde
Age: 65 years, Occ: Agri.,
R/o. Manatha, Tq. Hadgaon,
District Nanded.

..PETITIONER

VERSUS

1. The State of Maharashtra
Through Director (Marketing)
Maharashtra State Pune.
2. The District Collector,
Nanded.
3. The Sub Divisional Officer
Hadgaon/Election Officer
For APMC, Hadgaon
District Nanded.
4. The District Deputy Registrar
Cooperative Societies, Nanded
District Nanded.
5. Nagorao s/o Vithalrao Naik,
Age: 40 years, Occ: Agri.,
R/o. Taroda, Tq. Hadgaon,.
District Nanded.

..RESPONDENTS

Mr N.P. Patil Jamalpurkar, Advocate for petitioner;
Smt R.P. Gour, A.G.P. for respondent/State

**CORAM : PRASANNA B. VARALE
AND
S.M.GAVHANE, JJ.**

DATE : 8th JANUARY, 2019

ORAL ORDER :

Heard Mr. Patil, learned Counsel appearing for the petitioner.

2. Mr. Patil, learned Counsel appearing for the petitioner, by inviting our attention to the documents placed on record, submitted that there is extreme urgency in the matter, and as such, the petitioner is before this Court with prayer that respondent No.2 the District Collector, Nanded be directed to decide the application submitted by the petitioner on 2nd January, 2019. He then submitted that respondent No.5 Nagorao Vithalrao Naik was contesting election against the petitioner and stood elected. On 27th December, 2018 the petitioner by submitting representation to the District Collector, Nanded raised objection against respondent No.5, in view of provisions of Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1967 and more particularly Rule 41(1)(g).

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3. It is submitted by Mr. Patil, learned Counsel that language employed in the provisions and particularly Rule 41(1)(g) is clear and transparent. He then submitted that the provision disqualifies a person holding the post in Panchayat Samiti, if the person is servant of Government or Local Authority or of Market Committee. He then submitted that respondent No.5 is admittedly working as Prerak in the service of Education Department under the scheme of the State Government known as "Sakshar Bharat Abhiyan". It is also submitted that respondent No.5 is receiving certain monetary benefits against the post being occupied by him as Prerak under the State Government scheme.

4. Mr. Patil, learned Counsel then submitted that as there was no decision on the representation dated 27th December, 2018, the petitioner again submitted representation to the District Registrar of Co-operative Societies on 29th December, 2018 apprising the Registrar this very factual aspect.

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He also invited our attention to the certificate issued by Taluka Agriculture Officer dated 26th September, 2018 in support of his submission that respondent No.5 along with one Smt. Jijabai Vitthal Naik was working under the scheme known as "Ekatmik Panlot Vyavasthapan Karyakram" and then to the certificate issued by Gramsevak dated 26th December, 2018 to submit before us that on the very day when the certificate was issued, respondent No.5 Mr Nagorao Vitthalrao Naik was in the service of Grampanchayat Taroda.

5. Mr. Patil, learned Counsel then submitted that during pendency of the application submitted by the petitioner, the petitioner received notice issued by the appointed election officer for the Hadgaon Agriculture Produce Market Committee elections scheduled for the year 2018-2019. He then submitted immediately representation to the Collector on 2nd January, 2019 reiterating submission that respondent No.5 incurred disqualification in view of the provisions of the

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Act and if the authority failed to follow the provisions, the purpose for approaching this Court would be frustrated. He then, by inviting our attention to the copy of representation dated 2nd January, 2019 submitted that the petitioner also requested respondent No.2 District Collector to stay the election on the backdrop of representation submitted by the petitioner and Mr. Patil, learned Counsel submitted that if election proceeds further permitting respondent No.5 to participate in the process when respondent No.5 incurred disqualification, the conduct of such election would be bad in law.

6. It is now admitted position that the representation/application is submitted to the Collector on 2nd January, 2019. There is considerable merit in the submission of Mr. Patil, learned Counsel that if the authority fails to take decision immediately, purpose of approaching this Court would be frustrated and the petitioner only wants a decision on the representation dated 2nd January, 2019 on the merits of the representation

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seeking disqualification of respondent No.5.

7. In view of this fact-situation, we direct respondent No.2 District Collector, Nanded to decide the representation dated 2nd January, 2019 tomorrow itself, needless to state on merits of the representation and if the authority is of the opinion of granting opportunity of hearing to the parties, the authority, namely, the District Collector, Nanded may hear the parties tomorrow itself and pass appropriate orders on the representation dated 2nd January, 2019.

8. With this direction, the petition is disposed of.

Learned A.G.P. to communicate this order forthwith to the District Collector, Nanded.

Authentic copy of this order be supplied to the learned A.G.P.

(S.M.GAVHANE)
JUDGE

(PRASANNA B. VARALE)
JUDGE