

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

WRIT PETITION NO. 4558 OF 2023

Navandar Nandlal Hiralal,
Age: 60 years, Occ. Agri.,
R/o. Gangapur,
Tq. Gangapur, Dist. : Aurangabad. .. **PETITIONER**

VERSUS

- 1] The District Election Officer,
(APMC)/District Deputy Registrar
Cooperative Societies, Aurangabad.
- 2] The Returning Officer,
Agricultural Produced Market
Committee, Gangapur,
Tq.Gangapur, Dist:Aurangabad.
- 3] Sheikh Jafar Sheikh Ismail
Age : 60 yrs. Occ : Business,
R/o. Mansoor Colony, Gangapur
Tq.Gangapur, Dist. Aurangabad. .. **RESPONDENTS**

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Mr.K.J.Suryawanshi, Advocate for the petitioner.
Mr.S.K.Kadam, Advocate for the respondent nos.1 and 2
Mr.A.K.Shingare, Advocate holding for Mr.K.F.Shingare,
Advocate for the respondent no. 3

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CORAM : ARUN R. PEDNEKER, J.

DATE : 21.04.2023

ORAL JUDGMENT :

1] By way of present Writ Petition, the petitioner is challenging the order dated 17.04.2023 passed by the respondent no. 1 – The District Election Officer (APMC) / District Deputy Registrar, Co-operative Societies, Aurangabad in Appeal No.6/2023 and the order dated 05.04.2023 passed by the respondent no. 2 -The Returning Officer, Agricultural Produce Market Committee, Gangapur, thereby rejecting the nomination form of the petitioner to contest the election of APMC, Gangapur from Trader Constituency.

Brief facts of the present Writ Petition is as under:

2] The election to the Agricultural Produce Market Committee, Gangapur was due, and as such, election programme was published on 27.03.2023. The last date for submission of the nomination form was on 03.04.2023. The petitioner filed his nomination form on 03.04.2023 to the

election of the Agricultural Produce Market Committee, Gangapur from traders constituency. The respondent no. 3 raised objections to the nomination form of the petitioner on the ground that the proposer of the petitioner, namely, Mahesh Navandar is disqualified to be a proposer of the petitioner, and as such, the nomination of the petitioner be rejected.

3] On consideration of the objections raised by the respondent no.3, the nomination form of the petitioner was rejected by the Returning Officer on 05.04.2023 on the ground that proposer of the petitioner is disqualified as per the order dated 16.07.2019 passed by the District Deputy Registrar, Co-operative Societies, Aurangabad under Section 45 (2A) of the Maharashtra Agricultural Produce Marketing [Development and Regulation] Act, 1963 [for short '1963 Act']. Thereafter, the petitioner filed an appeal against the order passed by the Returning Officer before the District Deputy Registrar, Co-operative Societies and the same was also rejected by the appellate Authority on the same ground

that the proposer of the petitioner was a Committee member in last Committee, which was superseded by order dated 26.07.2019 under Section 45 (2A) of the 1963 Act and the disqualification runs for a period of 6 years from the date of order. Since the proposer was not qualified and competent to give proposal, the petitioner's nomination was rejected. The petitioner has filed the present Writ Petition, challenging the order passed by the Returning Officer, so also, the appellate authority.

4] Undisputed facts in the matter are that the proposer of the petitioner was a Committee Member in the earlier Committee of the Agricultural Produce Market Committee. The said Committee was superseded by order dated 26.07.2019 under Section 45 of the 1963 Act and the order was also passed under Section 45 (2A) of the 1963 Act, disqualifying individual members of the Committee for the period of six years.

5] It is the contention of the petitioner that the proposer of the petitioner is disqualified under Section 45

(2A) of the 1963 Act to be an elected as a member of the Committee for a period of six year from the date of the order under Section 45 (2A). However, the proposer is not disqualified to be a voter so also a proposer or a seconder and the disqualification incurred is only for being a Committee member and thus the rejection of the nomination of the petitioner is illegal.

6] *Per contra*, the learned counsel for the respondent no. 3, so also, the learned counsel appearing for the respondent nos.1 and 2 – Election Authorities submit that disqualification incurred under Section 45 (2A) of the 1963 Act is for being elected as Committee member so also being proposer of a candidate for the election to the Committee of the APMC.

7] In order to appreciate controversy at hand, the following section and rules are relevant for consideration. Section 45 (1) & (2A) of the Maharashtra Agricultural Produce Marketing [Development and Regulation] Act, 1963 and Rule 8 (1) proviso, Rule 20 (3), Rule 21 (2) and

Rule 25 (2) (b) of the Maharashtra Agricultural Produce Market Committee (Election to Committee) Rules, 2017, are relevant and are as under :

45. Supersession of Market Committee, etc.

(1) If, in the opinion of the State Government, a Market Committee or any member thereof, is not competent to perform or persistently makes default in performing the duties imposed on it or him by or under this Act, or abuses its or his powers or wilfully disregards any instructions issued by the State Government or any officer duly authorized by it in this behalf arising out of audit of accounts of the Market Committee or inspection of the office and work thereof, the State Government may, after giving the Committee or member, as the case may be, an opportunity of rendering an explanation, [by an order in writing with reasons therefore] superseded such Market Committee, or remove the member as the case may be; and where a member is removed, the State Government shall appoint any person as a member of such Committee in his place for the remainder of his term of office :

[**Provided** that, no Market Committee shall superseded without the [State Marketing Board] referred to in section 44 being previously consulted.]

[(2A) The member of the Committee, who has been removed under sub-section (1) shall not be eligible for being re-elected, re-appointed, re-nominated, co-opted or re-co-opted as a member of the Committee, till the expiry of a period of six years from the date of

the order by which he has been so removed.]

8. Right to vote

(1) Every person whose name is entered in the final voters list of respective constituency shall be entitled to vote in that constituency :

[Provided that, no person shall vote at any election in any constituency, if he is subject to any disqualification under the law for the time being in force.]

20. Nomination of Candidates

(3) Any person whose name is entered in the list of voters shall be a proposer or seconder, as the case may be, for nominating a candidate at election.

21. Presentation of nomination paper and requirements for valid nomination

(2) Any person who is not subject to any disqualification as a voter under these rules and whose name is entered in the list of voters for the constituency for which the candidate is nominated, may subscribe as proposer or seconder. He shall not subscribe as proposer for more than one nomination paper.

25. Scrutiny of nominations

(2) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any

nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds, this to say :-

(b) that the proposer or seconder is disqualified from subscribing a nomination paper;

8] Perusal of Section 45 (1) and (2A) of the 1963 Act would indicate that the member of the Committee being removed under sub-section (1) shall not be eligible for being re-elected, re-appointed, re-nominated, co-opted or re-co-opted as a member of the Committee, till the expiry of a period of six years from the date of the order by which he has been so removed. However, there is no indication in sub-section (2A) of Section 45 of the 1963 Act that the person who has been removed as the member of the Committee shall not be eligible to cast vote and to be a proposer or a seconder to nominate a candidate.

9] Rule 8 (1) provides that every person whose name is entered in the final voters list of respective constituency shall be entitled to vote in that constituency.

Proviso to sub-rule (1) of Rule 8 of the Maharashtra Agricultural Produce Market Committee (Election to Committee) Rules, 2017 [for short 'Election Rules, 2017'] provides that no person shall vote at any election in any constituency, if he is subject to any disqualification under the law for the time being in force. Thus, there is bar on voting even if the name of the voter is on the final list, if the voter incurs disqualification under the law for the time being in force.

10] Rule 20 (3) of the Election Rules, 2017 provides that any person whose name is entered in the list of voters shall be a proposer or seconder, as the case may be, for nominating a candidate at election.

11] Rule 21 (2) of the Election Rules, 2017 provides that any person who is not subject to any disqualification as a voter under these rules and whose name is entered in the list of voters for the constituency for which the candidate is nominated, may subscribe as proposer or seconder. However, he shall not subscribe as proposer for more than

one nomination paper. It logically follows that any person who is in the voters list and has not incurred any disqualification as a voter can be a proposer or seconder to a candidate.

12] On conjoint reading of Section 45 (2A) of the 1963 Act read with Rule 8 (1) proviso, Rule 20 (3) and Rule 21 (2) of the Election Rules, 2017 it cannot be said that a Committee member against whom the order under Section 45 (2A) of the 1963 Act is passed although disqualified for being an elected member for a period of six years from the date of order, is disqualified to vote and being a proposer to a candidate. Disqualification is restricted only to being a Committee member and the disqualification is not of a voter or a proposer or a seconder to a candidate.

13] The disqualification provided in proviso to Rule 8 (1) read with rule 21 (2) of the 2017 Election Rules, would not take within its sweep, and disqualify a committee member against whom an order under Section 45 (2A) is passed to be disqualified to be a voter and as a proposer.

The disqualification under Section 45 (2A) is limited only for being elected as a Committee member, and the disqualification cannot be expanded to include disqualification as a voter, or a proposer or a seconder to the nomination of a candidate.

14] As per Rule 25 (2) (b) of the Election Rules, 2017, the Returning Officer shall then examine the nomination papers and shall decide all objections on its own motion or summary enquiry and can reject nomination on the ground that the proposer or seconder is disqualified from subscribing a nomination paper.

15] Thus, the order passed by the Election Authority so also the order passed by the Appellate Authority are patently illegal. The interference in the election process at this stage would not dis-stabalize the election.

16] In view of the same, the order dated 17.04.2023 passed by the respondent no. 1 – The District Election Officer (APMC) / District Deputy Registrar, Co-operative

Societies, Aurangabad in Appeal No.6/2023 and the order dated 05.04.2023 passed by the respondent no. 2 -The Returning Officer, Agricultural Produce Market Committee are quashed and set aside. It is hereby directed that the petitioner's name be included in the final list of nominated candidates.

17] Accordingly, the Writ Petition is allowed and same stand disposed of.

[ARUN R. PEDNEKER]
JUDGE

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