

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

WRIT PETITION NO.248 OF 2023

Smt. Janabai w/o Gondu Mahajan,
Age: 43 Years, Occu.: Agri./household,
R/o.: Ramjipur, Tq.: Raver,
District: Jalgaon **.. Petitioner**

Versus

1. The District Co-operative Election Authority and the Divisional Joint Registrar, Co-operative Societies Nashik Division, Nashik
2. Shri Santosh Bidwai,
The Election Officer, Jalgaon
District Central Co-operative Bank Limited, Jalgaon and the
District Deputy Registrar
Co-operative Societies, Jalgaon
3. Shri Mandar Manohar Patil
Age: Major, Occu.: Agriculture
R/o.: Dhamodi, Tq.: Raver
District: Jalgaon **.. Respondents**

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Advocate for Petitioner:

Mr. V. D. Hon, Senior Advocate h/f. Mr. A. V. Hon
Advocate for Respondent Nos.1&2: Mr. V. H. Dighe
Advocate for Respondent No.3:
Mr. V. D. Salunke h/f. Mr. P. V. Barde

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CORAM:	ARUN R. PEDNEKER, J.
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Reserved on:	24.01.2023
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Pronounced on:	31.01.2023
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JUDGMENT:

1. The Petitioner challenges the impugned order dated 19.12.2022, passed by Respondent No.1 / The District Co-operative Election Authority and the Divisional Joint Registrar, Co-operative Societies Nashik Division, Nashik, whereby he has allowed the application of Respondent No.3 and disqualified the petitioner as managing committee member of the Jalgaon District Central Co-operative Bank Limited, Jalgaon (hereinafter referred to as "Bank") and also disqualified the Petitioner from contesting elections of the Bank for a period of 3 years by exercising of the powers under Rule 66 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (hereinafter referred to as "Election Rules 2014").

2. **Rule.** Rule made returnable forthwith. With consent of parties, the Writ Petition is taken up for final hearing.

3. Heard Mr. V. D. Hon, Senior Advocate holding for Mr. A. V. Hon, learned Advocate for the Petitioner, Mr. V. H. Dighe, learned Advocate for Respondent Nos.1 and 2 and Mr. V. D. Salunke, learned Advocate holding for Mr. P. V. Barde, learned Advocate for Respondent No.3.

4. Brief facts giving rise to the Writ Petition can be summarized as under:-

[i] That the general elections for electing the managing committee members of the Jalgaon District Central Co-operative Bank Limited, Jalgaon for a term of 5 years from 2020-21 to 2025-2026 were held on 21.11.2021.

[ii] The Petitioner contested the said elections and she was declared elected as a member of the managing committee of the said Bank. The Petitioner did not submitted her account within the required 60 days period as contemplated under Rule 67 of the Election Rules 2014. She submitted the election expenses belatedly after a period of about 5 months from the last date of submitting the election expenses.

[iii] Respondent No.3 through an RTI application applied for the list of candidates, along with their election expenses. In the list provided by Respondent No.2 of the expenditure incurred by the candidates, it was noticed that the petitioner had not submitted her election expenditure.

[iv] Respondent No.3, thereafter, filed an application before Respondent No.1 to disqualify the Petitioner for not submitting the election expenditure. Notice was issued in the said application.

[v] Meanwhile, the Petitioner submitted the election expenditure and the explanation to the Returning Officer / Respondent No.2. There is some dispute as regards, whether the expenditure was submitted after the notice being served on the Petitioner. Be that as it may, the Petitioner submitted election expenditure with an explanation for delay in submitting the election expenditure and requested Respondent No.2 authority concerned to condone the delay in filing the election expenditure.

[vi] The authority constituted to receive election expenditure i.e. Respondent No.2 forwarded the request to Respondent No.1 with it's observation that the delay needs to be condoned and explanation be accepted.

[vii] Respondent No.1 – authority, after considering the material forwarded by Respondent No.2 and the application filed by Respondent No.3, and the response of the Petitioner, by the impugned order dated 19.12.2022 disqualified the Petitioner for being an elected member of the Bank and further debarred her from being a member of Board of Directors of the Bank and being a member of Board of Directors of any co-operative society for the period of 3 years.

[viii] Hence, the present Writ Petition challenging the order dated 19.12.2022 of Respondent No.1.

5. Mr. V. D. Hon, learned Senior Advocate for the petitioner raises three fold contentions:-

[I] He submits that the authority, which passed the impugned order has

merely recorded the submissions of the Petitioner and Respondent No.3 and has recorded conclusions without any examination of the material produced with the explanation for delay in submitting expenditure. He further submits that while non suiting an elected candidate, a serious scrutiny is required.

[II] He submits that Respondent No.1 authority proceeded on the basis that there is no power in the authority to condone the delay in submitting the election expenditure.

[III] Respondent No.3 – Applicant, who filed a complaint before the authority had no locus to intervene in the process of submissions of the election expenses and be a party to the proceedings before Respondent No.1 authority.

6. The learned Senior Advocate relied upon the following judgments:-

[A] Shakti Balkrishna Mhatre Vs. Returning Officer, Panchayat Vindhane and others, (2015) 3 Mh.L.J. 275.

[B] Raju s/o. Ramdhan Chouthmal Vs. State of Maharashtra and others, (2015) 4 Mh.L.J. 231.

[C] Shaikh Nisar Ibrahim Vs. State of Maharashtra and others, (2019) 5 Mh.L.J. 749.

7. Per contra, Mr. V. D. Salunke, learned counsel appearing for Respondent No.3 submits that there is inordinate delay in filing the election expenses. That the steps are taken by the Petitioner to submit the election expenses were after the objections raised by Respondent No.3. He further submits that the election expenses are not maintained as is required in law and that in any event there is delay in filing the expenses and the explanation is not satisfactory.

8. He further submits that, strictly going by the provisions of the Act and Rules there is no power to condone the delay in filing election expenses in the authorities. For that purpose he relies upon the Judgment in the case of Ganesan representation by its Power Agent G.Rukmani Ganesan Vs. Commissioner, The Tamil Nadu Hindu Religious and Charitable Endowments Board and Others, (2019) 7 SCC 108.

9. The learned counsel for the Respondent submits that there is no power in the authorities to accept the delayed expenditure and the application of the Limitation Act cannot be made applicable to the present proceedings before the authorities, as the authority which has exercised the power is not a Court.

10. Having considered the rival submissions, the undisputed facts that emerged are that there is delay of approximately 5 months beyond the permissible period of 60 days in filing the election expenses. The Petitioner has filed the

election expenses along with explanation that she was unwell at the relevant time due to Covid. The relevant Rules dealing with the filing of election expenses and the scrutiny of the same are Rules 65, 66 and 67 of the Election Rules 2014, as under:-

"65. Account of election expenses

(1) Every candidate at an election shall either by himself or by his Election Agent keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his Election Agent between the date of the order calling the election and the date of declaration of the result thereof, both dates inclusive.

(2) The account shall contain such particulars as are specified in rule 67.

(3) The total of the said expenditure shall not exceed such amount as may be notified by the SCEA.

(4) Every contesting candidate at an election shall, lodge with the District Co-operative Election Officer through the Returning Officer an account of his Election expenses within the time and in the manner in rule 67.

Provided that, the provisions of this rule shall not be applicable to type "D" societies.

66. Disqualification for failure of lodge account of election expenses

(1) If the District Co-operative Election Officer is satisfied that a person,—

(a) has failed to lodge an account of election expenses within the time and in the manner required by the last preceding section, and

(b) has no good reason or justification for the failure, District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer, as the case may be, shall submit report to the Registrar and after receipt of such report, the concerned Registrar after providing an opportunity of being heard shall, by order, declare him to be disqualified for being elected as, and for being, a member of the committee of any society, and any such person shall be disqualified for a period of three years from the date of the order.

67. Particulars of account of election expenses

(1) The account of election expenses to be kept by a candidate or his election Agent under rule 65 shall contain the following particulars in respect of each item of expenditure from day to day, namely:—

(a) The date on which the expenditure was incurred or authorized ;

(b) the nature of the expenditure (as for example, travelling, postage or Printing and the like);

(c) the amount of the expenditure:—

(i) the amount paid;

(ii) the amount outstanding;

(d) the date of payment;

(e) the name and address of the payee;

(f) the serial number of voucher, in the case of amount paid;

(g) the serial number of bills, if any, in case of amount outstanding;

(h) the name and address of the person to whom the amount outstanding is payable.

(1A) Every contesting candidate shall lodge an account of election expenses within the period of 60 days from the date of declaration of the result of the election with the Returning Officer.

(2) All vouchers shall be lodged along with the account of election expenses, arranged according to the date of payment and serially numbered by the candidate or his Election Agent and such serial numbers shall be entered in the account under item (f) of sub-rule (1).

(3) It shall not be necessary to give the particulars mentioned in item (c) of sub-rule (1) in regard to items of expenditure for which vouchers have not been obtained."

11. The bare perusal of the above Rules would indicate that every candidate has to keep a separate and correct account of all the election expenditure as per the particulars provided in Rule 67 and that the expenditure has to be submitted within time (60 days) from the date of the elections. In the event of delay, the Petitioner has to explain satisfactorily to the authority, entitled to receive the explanation on election expenditure, as to why the delay has

occurred. The Returning Officer, to whom the election expenditure was submitted, has submitted a Report, stating therein, that the explanation given by the Petitioner should be accepted. Along with explanation, he has filed the report before Respondent No.1.

12. In this case, the Limitation Act is not made applicable, since, the Election Rules 2014 itself provides that the expenditure, if, submitted belatedly, can be accepted, if, it is supported by good reasons.

13. The Judgment of Ganesan (supra) relied upon by Respondent No.3 is not applicable in the instant case as Rule 66(1)(b) of the Election Rules 2014 specifically provides for the acceptance of election expenditure after the stipulated period if good reason is shown for submitting the expenditure beyond the stipulated period.

14. As regards the next contention of the Petitioner, that the authorities did not examine the reasons for submitting delayed expenditure, the bare perusal of the impugned order passed by Respondent No.1 indicates that in first heading he has noted the Introduction, in the second heading he has noted the application of the Applicant No.1 and argument, in the third heading he has noted the Written Say of the Applicant No.2, in the forth heading he has noted the written argument of sole Respondent, in the fifth heading he has noted the conclusion and in the sixth heading final order / impugned order is passed as under:-

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विभागीय सहनिबंधक, सहकारी संस्था, नाशिक विभाग,
नाशिक यांचे समोर
(महाराष्ट्र सहकारी संस्था (समिती निवडणूक) नियम २०१४ चे नियम ६५ व ६६)

चौ. अर्ज क्र. / २०२२

वाचावे — १) महाराष्ट्र सहकारी संस्था (समितीची निवडणूक) नियम
२०१४ मधील तरतूद
२) मा. सचिव, राज्य सहकारी निवडणूक प्राधिकरण,
महाराष्ट्र राज्य, पूणे यांचेकडील अधिसूचना दिनांक
२०/०५/२०२०

१) श्री.मंदार मनोहर पाटील, रा.धामोडी ता.रावेर जि.जळगाव

२) श्री.संतोष बिडवई, निवडणूक निर्णय अधिकारी, दि.

जळगाव जिल्हा मध्यवर्ती सहकारी बँक लि.
जळगाव तथा जिल्हा उपनिबंधक, सहकारी संस्था,
जळगाव

वादी

विरुद्ध

१) श्रीमती जनाबाई गोंडू महाजन, रा. रमजीपूर ता. रावेर प्रतिवादी
जि. जळगाव

नियुक्त अधिवक्ते

१. वादी क्र. १ यांचे वतीने अधिवक्ता :- अॅड. श्री. टी. डी. पाटील
२. वादी क्र. २ यांचे वतीने अधिवक्ते :- कोणीही नाही
३. प्रतिवादी यांचे वतीने अधिवक्ते :- अॅड. विक्रम अ. पवार

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प्रस्तावना

.

वादी क्रं. १ यांचा अर्ज, युक्तिवाद

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वादी क्रं. २ यांचे लेखी अभिप्राय—

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प्रतिवादी यांचे लेखी अभिप्राय—

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निष्कर्ष :-

१. महाराष्ट्र सहकारी संस्था (समितीची निवडणूक) नियम २०१४ (यापुढे निवडणूक नियम असा उल्लेख असा केला आहे.) नियम ६५ नुसार निवडणूकीस उभे राहणाऱ्या प्रत्येक उमेदवाराने किंवा त्याच्या प्रतिनिधीने निवडणूक प्रक्रिया सुरू झालेपासून निवडणूकीचा निकाल जाहीर होईपर्यंत विहीत नमुन्यात निवडणूकीचा खर्च ठेवायचा आहे. नियम ६७ (१—अ) अनुसार निवडणूक लढविणाऱ्या प्रत्येक उमेदवाराने निवडणूकीचा निकाल जाहीर झाल्यापासून ६० दिवसांच्या आत निवडणूक निर्णय अधिकारी यांचेकडे खर्चाचा हिशोब सादर करावयाचा आहे. निवडणूक नियम ६६ अनुसार जिल्हा सहकारी निवडणूक अधिकार्याची ज्यावेळेस खात्री होईल की, एखादी व्यक्ती—
- अ. निवडणूक खर्चाचा तपशिल नियमात नमूद केल्याप्रमाणे ठरवून दिलेल्या रितीने व मुदतीत देण्यास कसूर केला आहे आणि.,

- आ. कसूरीबाबत कोणतेही समाधानकारक किंवा योग्य समर्थन नाही तर जिल्हा सहकारी निवडणूक अधिकारी शासकीय राजपत्रात आदेश प्रसिध्द करून तो कोणत्याही संस्थेचा संस्थेचा समिती सदस्य म्हणून निवडून येण्यास आणि कोणत्याही संस्थेचा समिती सदस्य म्हणून राहण्यास आणि अशी कोणतीही व्यक्ती आदेश प्रसिध्द झाल्याच्या तारखेपासून ३ वर्ष अपात्र ठरविली जाईल.
२. निवडणूक नियम ६६ मध्ये उपनिर्दीष्ट प्रमाणे असलेली तरतुद व त्यानुषंगाने निर्णय घेण्याचे अधिकार हे प्रस्तुत बँकेचे जिल्हा सहकारी निवडणूक अधिकारी यांना आहे. त्यामुळे सदर प्रकरणी अर्जदार क्र. १ यांना प्रतिवादी यांचे विरूध्द अर्ज करण्याचा अधिकार नाही अथवा सदर प्रकरणात स्थान नसल्याचा युक्तीवादाचा मुद्दा अविधीमान्य असल्यासह प्रतिवादी याबाबत दाखल केलेले न्यायनिर्णय प्रस्तुत प्रकरणी लागू होत नसल्याचे अनुमान नोंदविण्यात येते.
३. प्रतिवादी यांनी निवडणूक खर्च उशीराने सादर केल्याच्या पृष्ठयर्थ नमुद केलेली वैद्यकीय कारणे व त्यासोबतच्या कागदपत्रांवरील अर्जदाराने उपस्थित केलेल्या मुद्द्यांचे अर्जदाराने निर्विवादपणे खंडन केले नसल्याचे अनुमान नोंदविण्यात येते.
४. निवडणूक खर्च दाखल करण्यास झालेला उशीर माफ करण्याबाबत कोणतीही तरतुद निवडणूक नियमामध्ये नाही. त्यामुळे या प्राधिकरणाने विलंब माफ करणे विधीमान्य ठरत नाही. याबाबत प्रतिवादी यांनी दाखल केलेले न्याय निर्णय हे अन्य प्राधिकरणाचे कायद्यामधील तरतुदी संदर्भात असून निवडणूक नियमामध्ये विलंब माफ करण्याची तरतूद नाही म्हणून प्रस्तुतचे न्यायनिर्णय या ठिकाणी लागू होत नसल्याचे अनुमान नोंदविण्यात येते.
५. निवडणूक नियम ६५ अन्वये निवडणूक लढविणाऱ्या प्रत्येक उमेदवाराने निवडणूक निकालाचे तारखेपासून ६० दिवसांमध्ये निवडणूकीचा खर्च सादर करणे बंधनकारक असून प्रतिवादी यांनी विहीत कालावधीत निवडणूक खर्च सादर करणेस कसुर केल्याचे अनुमान नोंदविण्यात येते.

६. सबब निवडणूक नियमामधील उपरोक्त नमुद तरतुदी विचारात घेता प्रतिवादी यांची निवडणूक निकालापासून ६० दिवसांनंतर निवडणूक खर्च सादर केला असलेमुळे निवडणूक नियम ६६ अन्वये जाब देणार यांना महाराष्ट्र सहकारी संस्था, निवडून येण्यास आणि कोणत्याही सहकारी संस्थेच्या संचालक मंडळाचा सदस्य म्हणून राहण्यास ३ वर्षे अपात्र ठरविणे विधिमान्य ठरते.
७. महाराष्ट्र सहकारी संस्था अधिनियम १९६० चे कलम ७३ कअ मध्ये खालील प्रमाणे तरतुद आहे.

कलम ७३ कअ (समितीची आणि तीच्या सदस्यांची निरर्हता)

[(अ१) ..

- (१) या अधिनियमाच्या अन्य तरतुदींना किंवा समितीच्या सदस्यत्व विषयक निर्हतेसंबंधी त्याखाली केलेल्या नियमांना बाध न येता, कोणतीही व्यक्ती पुढील बाबतीत समितीचा सदस्य म्हणून नेमणुक होण्यास, नामनिर्दिष्ट *होण्यास, निवडून येण्यास, स्वकृत केली जाझ्यास किंवा सदस्य म्हणून राहण्यास पात्र असणार नाही, जर—

(एक) ते (ई)

(फ) जिल्हा मध्यवर्ती सहकारी बँक किंवा राज्य सहकारी बँक यांच्या बाबतीत सदस्य जर—

(एक) ते (तीन)

(चार) जर त्या व्यक्तीवर या अधिनियमाखाली किंवा त्या खाली केलेल्या नियमांखाली कोणतीही निरर्हता ओढवली असेल तर., किंवा

(पाच) ते (नऊ).....

(२) पोटकलम (१) अन्वये कोणतीही निरर्हता ओढवली असेल तर, तो सदस्य समितीचा सदस्य असण्याचे बंद होईल आणि त्याची जागा त्यानंतर रिकामी झाल्याचे मानण्यात येईल.

उपनिर्दिष्ट निदर्शनास येणारी वस्तुस्थिती विचारात घेवून हे प्राधिकरण खालील प्रमाणे आदेश पारीत करित आहे

आदेश

१. महाराष्ट्र सहकारी संस्था (समितीचे निवडणूक) नियम २०१४ मधील नियम ६६ मधील तरतुदीनुसार दि. जळगाव जिल्हा मध्यवर्ती सहकारी बँक लि. जळगाव ता.जि. जळगाव या बँकेच्या संचालिका

श्रीमती जनाबाई गोंडू महाजन यांना प्रस्तुत बॅकेचे संचालक मंडळ सदस्य म्हणून निवडून येण्यास आणि कोणत्याही सहकारी संस्थेच्या संचालक मंडळ सदस्य म्हणून राहण्यास तीन वर्षाकरिता अपात्र ठरविणेत येत आहे.

२. श्रीमती जनाबाई गोंडू महाजन यांचेवर महाराष्ट्र सहकारी संस्था (समितीचे निवडणूक) नियम २०१४ मधील नियम ६६ मधील तरतुदीनुसार निरर्हता ओढवलेचे कारणाने महाराष्ट्र सहकारी संस्था अधिनियम १९६० चे कलम ७३ (कअ) (२) मधील तरतुदीनुसार श्रीमती जनाबाई गोंडू महाजन हे प्रस्तुत बॅकेचे समिती सदस्य असण्याचे बंद झाल्याचे व त्यांचे संचालक पद रिक्त झाल्याचे घोषित करत आहे.

३. खर्चाबाबत आदेश नाहीत.

सदरचा आदेश आज दिनांक १९/१२/२०२२ रोजी माझे सही व कार्यालयीन मुद्रेसह दिला आहे.

(विलास गावडे)
जिल्हा सहकारी निवडणूक अधिकारी,
ठिकाण :- नाशिक, तथा विभागीय सहनिबंधक,
दिनांक :- १९/१२/२०२२ सहकारी संस्था, नाशिक विभाग,
नाशिक. ”

The english translation of the same reads
thus:-

***“BEFORE THE DIVISIONAL JOINT REGISTRAR, CO-OPERATIVE
SOCIETIES, NASHIK DIVISION, NASHIK.***

**[Rules 65 and 66 of the Maharashtra Co-operative
Societies [Election to Committee] 2014]**

Inquiry Application No.: .../2022.

READ :

1. Provisions in the Maharashtra Co-operative Societies [Election to Committee] Rules, 2014.
2. Hon'ble Secretary, State Co-operative elections Authority, Maharashtra State, Pune, Notification dated 20-5-2020.

1. Mandar Manohar Patil, R/o Dhamodi, Tq. Raver,
Dist. Jalgaon
2. Shri. Santosh Bidwai, Election Returning Officer,
The Jalgaon District Central Co-operative Bank
Limited, Jalgaon cum District Sub-Registrar, Co-
operatives, Jalgaon. ... Complainants

VERSUS

1. Smt. Janabai Gondu Mahajan, R/o Ramjipur, Tq.
Raver, Dist. Jalgaon. ... Respondent.

Advocates:

1. Adv. T D Patil for the Comp. 1
2. Nil for the the Complainant 2.
3. Adv. Vikram A Pawar for the Respondent.

...

Introduction:-

..

Application of the Applicant No.1, argument

..

Written say of the Applicant No.2

..

Written argument of the Respondent

..

CONCLUSION

1. As per the Rule 65 of the Maharashtra Co-operative Societies [Election of the Committee] Rules, 2014 [hereinafter referred as the 'Election Rules'], every candidate contesting the election or his/her Agent is required to maintain the account of expenses of the election from the date of commencement of election process till the declaration of the results. As per the Rule 67 [1-A] every candidate, such contesting the election is required to submit the accounts of expenses before the Returning Officer within 60 days from the date of declaration of results. As per the Rule 66, when the District Co-operative Elections Officer is convinced that, a person:

A. has failed to furnish the details of the election expenses in the prescribed manner and period as provided in the Rule, and;

B. has not made a reasonable or satisfactory answer regarding the failure, then the Dist. Co-operative Election Officer shall publish the order in the Government Gazette and such a person shall be disqualified for getting elected as a member of the Committee of any Society or to remain as a member of

any of the Societies and shall be disqualified for the period of 3 years from the date of publication of the order.

2. Pursuant to the provision made under the Election Rule No. 66 and the powers to decide are vested in the District Co-operative Elections Officer of said Bank. Therefore, whether the applicant no.: 1 in the matter has no right to make application against the respondent or the submission that the applicant no. 1 has no locus in the matter being invalid and the citations made in support of arguments, it is concluded that the judgments are not applicable to the present matter.

3. It is concluded that, the medical grounds mentioned by the Respondent for submitting the election expenditure lately and the objections raised by the present applicant over the documents filed in support of the medical grounds are not rebutted by the applicant [respondent] beyond doubt.

4. There is no provision in the Election Rules for condoning the delay in filing the election expenditure. Therefore, condoning the same by this Authority will not be valid. The citations filed by the Respondent are related to the different provisions of law for a different authority and as there is no provision to condone the delay in the Election Rules, therefore, it is concluded that present citations are not applicable to this case.

5. As per the Rule 65 of the Election Rules, every candidate contesting the election is required to submit the expenses for the election within 60 days from the date of result and it is concluded that the Respondent has failed to submit the election expenses within prescribed period.

6. Hence, considering the provisions of the Election Rules as cited above, the respondent has submitted the expenses for election after 60 days from the date of result, declaring the Respondent ineligible to get elected for remain a member of the board of directors of any co-operative society is valid under the Maharashtra Co-operative Societies Act.

7. The Section 73 [C][A] ...

Section 73 A [Disqualification of the Committee and its Members]

A1

1. Without prejudice to other provisions of this Act or the rules in relation to the disqualification of being member of a Committee, no person shall be

eligible for being appointed, nominated, elected, co-opted or for being a member of a committee, if he :-

One to [E]

F- In the case of District Central Co-operative Bank or the State Co-operative Bank , if a member:

[One] to [Three]

[Four] has incurred any disqualification under this Act or the rules made thereunder

[Five] to [Nine]

[2] A member who has incurred any disqualification under sub-section [1], shall cease to be a member of the committee and his seat shall thereupon be deemed to be vacant.

Taking into consideration the facts as appeared supra, this Authority is passing the following order:

O R D E R

1. As per the provision made in the Rule 66 of the Maharashtra Co-operative Societies [Election of the Committee] Rules, 2014, Smt. Janabai Gondu Mahajan, a director of the Jalgaon District Central Co-operative Bank Ltd., Jalgaon, Tq. Dist. Jalgaon is held disqualified for the period of three years to become elected as a member of the Board of Directors of said Bank and a member of Board of Directors of any Co-operative Society.

2. As Smt. Janabai Gondu Mahajan has been subjected to disqualification under the Rule 66 of the Maharashtra Co-operative Societies [Election of the Committee] Rules, 2014, Smt. Janabai Gondu Mahajan has been ceased to be a member of the Committee of the Bank under the provisions of the section 73 [] [] [2] of the Maharashtra Co-operative Societies Act, 1960, her post is declared to be vacant.

3. No orders as to cost.

This order is passed by me on today 19-12-2022 under my signature and seal of this Office.

Signed/-

V I L A S G A W A D E

Dist. Co-opertive Elections

Officer Nashik - cum - Divisional

Jt. Registrar, Co-opertives,

Nashik Division,

Nashik "

Nashik
19-12-2022

15. Bare perusal of the order of Respondent No.1 shows that there is absolutely no discussion for either accepting or rejecting the evidence of delay in submitting election expenditure. Further, the authority has proceeded on the basis that there is no power in the authority to condone the delay. On examination of the relevant Rule 66(1) (b), as above, it would be clear that the authority has the power to examine the reasons for delay and that the authority needs to examine it in the background and context, which has resulted in delay in submitting the election expenditure.

16. In the case of Shakti Balkrishna Mhatre Vs. Returning Officer, Panchayat Vindhane and others, (2015) 3 Mh.L.J. 275, at Paragraph No.8, observed as under:-

"8. Insofar as the cause shown is concerned, normally, it is not for this Court to interfere, unless perversity and non application of mind is demonstrated. The respondents have placed reliance upon certain medical certificates which indicate that they were unable to lodge the account of election expenses within the prescribed period. One of the respondents has pointed out that her husband's brother expired on 18th

January, 2014 and this circumstance along with her ill health disabled her from lodging the account of election expenses within the prescribed period. The medical certificates were not challenged by the petitioner, though in respect of one of the respondents, certificate had been produced by the petitioner that the said respondent was attending the duties throughout the said period. Upon overall consideration of the material, however, it cannot be said that there is any perversity or non-application of mind on the part of the Additional Collector in accepting the cause shown. The delay, in the present case is also not of any significant magnitude, particularly, in the context that the disqualification would overturn the will of the majority and unseat the democratically elected candidates."

17. In case of Shaikh Nisar Ibrahim Vs. State of Maharashtra and others, (2019) 5 Mh.L.J. 749, it is held that explanation given has to be scrutinized.

18. In view of the judgment in the case of Shakti Balkrishna Mhatre (supra), and Rule 16(1) (b) it was obligatory for Respondent No.1 to examine the evidence that the Petitioner has given qua her sickness of Covid in the context of Covid

pandemic, which was prevalent at that relevant time.

19. I do not wish to enter into the arguments made that there was no good reason to accept the expenditure statement belatedly as the same has to be decided by Respondent No.1. I hold that Respondent No.1 authority has proceeded on the basis that he has no power to accept election expenditure beyond the stipulated period as provided in the Election Rules 2014 and further the authority has consequently not examined the reasons for late submission of election expenditure and thus I set-aside the impugned order dated 19.12.2022, passed by Respondent No.1 (The District Co-operative Election Authority and the Divisional Joint Registrar, Co-operative Societies, Nashik Division, Nashik).

20. Coming to the locus of Respondent No.3, Respondent No.3 has submitted at Paragraph No.4 of the Reply as under:-

"4) Answering respondent states and submits that the respondent is a member and Director of Dhamodi Vividh Karyakari Seva Sahakari Sanstha Ltd., Dhamodi, Tq. Raver, District Jalgaon. The elections of Jalgaon District Central Co-operative Bank Ltd., were conducted in which the petitioner has contested from Raver taluka Constituency wherein Dhamodi Vividh Karyakari Seva Sanstha Ltd., Dhamodi, Tq. Raver District Jalgaon is a voter. On 22.11.2021, the petitioner is declared as returned candidate from the said Raver constituency of the Jalgaon District Central Co-operative Bank Ltd. ..."

As per Respondent No.3, he is a Member and Director of Dhamodi Vividh Karyakari Seva Sahakari Sanstha Ltd. The Dhamodi Vividh Karyakari Seva Sahakari Sanstha Ltd. is the voter of the Jalgaon District Central Co-operative Bank Ltd. to which the Petitioner is elected and thus Respondent No.3 submits that he has the locus to intervene and challenge the petitioner's election, at every stage including the present stage of disqualification for late submission of election expenses.

21. On the aspect of locus this Court in the case of Raju s/o. Ramdhan Chouthmal Vs. State of

Maharashtra and others, (2015) 4 Mh.L.J. 231, at

Paragraph Nos.9, 10 and 11, observed as under:-

"9. The right to contest election and to challenge the same is purely a statutory right. The same is governed by the relevant provisions of the concerned statute and the right to challenge the election of a returned candidate is not a common law right. Such challenge has to be made in a manner prescribed. In *Jyoti Basu v. Debi Ghosal*, (1982) 1 SCC 691, the Supreme Court in paragraph 8 of its judgment observed as under:

"8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. An election petition is not an action at common law, nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the stature creating it. Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied. A Court has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down."

10. In the present case, while the returned candidates were held disqualified by the Additional Commissioner under section 10(1E) of the said Act, said disqualification has been removed by the State Election Commission in exercise of powers under section 10(1F) of the said Act. Hence the locus of the petitioner who was not a candidate at the concerned election will have to be first examined. In *Ravi Yashwant Bhoir v. District Collector, Raigad*, (2012) 4 SCC 407, the question of locus with regard to electoral matters was considered by the Supreme Court. In paragraphs 59 and 60 thereof, it was observed thus:

"59. The complainant has to establish that he has been deprived of or denied of a legal right and he has sustained injury to any legally protected interest. In case he has no legal peg for a justiciable claim to hand on, he cannot be heard as a party in a lis. A fanciful or sentimental grievance may not be sufficient to confer a locus standi to sue upon the individual. There must be injuria or a legal grievance which can be appreciated and not a stat pro ratione voluntas reasons i.e. a claim devoid of reasons.

"60. Under the garb of being a necessary party, a person cannot be permitted to make a case as that of general public interest. A person having a remote interest cannot be permitted to become a party in the lis, as the person who wants to become a party in a case, has to establish that he has a proprietary right which has been or is

threatened to be violated, for the reason that a legal injury creates a remedial right in the injured person. A person cannot be heard as a party unless he answers the description of aggrieved party. (Vide *Adi Pherozshah Gandhi v. Advocate General of Maharashtra*, *Jasbhai Motibhai Desai v. Roshan Kumar*, *Maharaj Singh v. State of U.P.*, *Ghulam Qadir v. Special Tribunal* and *Kabushiki Kaisha Toshiba v. Toshiba Appliances Co.*) The High Court failed to appreciate that it was a case of political rivalry. The case of the appellant has not been considered in the correct perspective at all."

11. From the aforesaid, it is clear that it is necessary for the petitioner to establish that a legal injury was caused to him on account of the orders passed by the State Election Commission setting aside the orders passed by the Divisional Commissioner. Except for stating that he was a socially committed person, there is no other basis for the petitioner to challenge the impugned order. The petitioner not having contested the election in question, he had no locus to challenge the election of the returned candidates. Being a voter whose name was included in electoral roll gave him right to file an election petition under section 16 of the said Act. Said right to file an election petition cannot be extended to such an extent that would give the petitioner locus to challenge the election of various returned candidates without having been a candidate at the concerned election. It is therefore clear that the said Act does not give any right whatsoever to

challenge election of the returned candidates or for that matter the locus to challenge the orders passed by the State Election Commission. Right to challenge orders setting aside disqualification of returned candidates not being a common law right and there being no statutory provision whatsoever in the said Act enabling the petitioner to challenge said orders, it is amply clear that the petitioner has no locus whatsoever to challenge the impugned orders."

22. Paragraph No.58 of the Judgment of Ravi Yashwant Bhoir reported in (2012) 4 SCC 407, and considered in the case of Raju s/o. Ramdhan Chouthmal (supra), is also relevant for our purpose and is quoted below:-

"58. Shri Chintaman Raghunath Gharat, ex-President was the complainant, thus, at the most, he could lead evidence as a witness. He could not claim the status of an adversarial litigant. The complainant cannot be the party to the lis. A legal right is an averment of entitlement arising out of law. In fact, it is a benefit conferred upon a person by the rule of law. Thus, a person who suffers from legal injury can only challenge the act or omission. There may be some harm or loss that may not be wrongful in the eye of the law because it may not result in injury to a legal right or legally protected interest of the complainant but juridically harm of this description is called damnum sine injuria."

23. As Noticed from the affidavit of Respondent No.3, he is an elected member of the society, which is a voter of the society to which the Petitioner is elected. Respondent No.3 has not filed the objections as a representative of the society of which he is an elected member. Thus, Respondent No.3, is not directly connected with the affairs of the society to which the Petitioner is elected. Respondent No.3 is not a voter or a representative of a society, which is a voter of the Bank to which the Petitioner is elected.

24. In view of the law laid down in the case of Raju s/o. Ramdhan Chouthmal (*supra*) only the aggrieved party who's rights are directly affected i.e. candidates who have contested the elections has the locus to challenge the orders passed by the election authorities. The submission of an election expenditure is between, the election authority and the candidate submitting the election expenses and thus Respondent No.3, who is not even a voter cannot intervene in the said process. Applying the law laid down in the case of

Ravi Yashwant Bhoir (supra), Respondent No.3 can bring it to the notice of Respondent No.1 that election expenditure is not submitted by an elected candidate. However, he cannot intervene in the process and become a party to the process of submitting and scrutiny of the election expenditure. The cause title of the impugned order indicates that Respondent No.3 is one the Petitioner in the proceedings before Respondent No.1 and in view of the law laid down in the case of Ravi Yashwant Bhoir (supra), Respondent No.3 would not be entitled to claim the status of a litigant in the matter.

25. Any party qualified in terms of Section 91 of the Maharashtra Co-operative Societies Act, 1960 can challenge the election of the Petitioner by an Election Petition for violations of Rules 65 to 67 of the Election Rules 2014, but cannot intervene in the process of submission and scrutiny of election expenditure, as an adversarial litigant unless the party has also contested the elections, and is directly affected

by the outcome of the orders passed by the election authorities.

26. The order passed by Respondent No.1 authority dated 19.12.2022 is set-aside and Respondent No.1 authority is directed to examine the submission of election expenditure of the Petitioner and to decide whether to accept it in terms of the explanation given or issue notice to the Petitioner and take further action. However, Respondent No.3 cannot be a party to the Lis and participate in the process of scrutiny of explanation for late submission of election expenditure. Respondent No.3 cannot claim the status of an adversarial litigant.

27. A bare reading of Section 91 of the Maharashtra Co-operative Societies Act, 1960 would indicate prima facie that Respondent No.3 cannot even file an Election Petition as he is not one of the enumerated person in Section 91 of the Maharashtra Co-operative Societies Act, 1960, who

can file an election dispute. However, I have not finally decided this issue i.e. whether Respondent No.3 can file an Election Petition, since in view of the law laid down by this Court in case of Rajus/o. Ramdhan Chouthmal (*supra*), only the aggrieved party can challenge the orders of the election authority on the disqualification of a candidate i.e. only if the person has himself contested the election. As such, to challenge the orders of the election authority or to intervene in the proceedings before the election authorities, the intervenor will have to be qualified in terms of Section 91 of the Maharashtra Co-operative Societies Act, 1960 as also should have a further qualification of being an aggrieved party i.e. should be one of the candidates who has contested the elections and Respondent No.3 having not contested the elections is not permitted to intervene in the process of submission of election expenditure by a candidate and further to challenge the orders passed by the election authorities in the disqualification proceedings.

Respondent No.3 is not permitted to be a adversarial litigant in the disqualification proceedings as the Petitioner before Respondent No.1 authority.

28. Rule is made absolute in above terms.

29. In view of this, the Writ Petition is partly allowed and disposed of with the above directions.

[ARUN R. PEDNEKER, J.]

30. The learned Advocate for Respondent No.3 seeks stay to the order passed by this Court, so as to enable him to approach the Hon'ble Supreme Court to challenge the present Judgment.

31. As I have held in this Judgment that Respondent No.3 has no locus to intervene as a party in the proceedings before the election authority, I decline the request of Respondent No.3 to stay my Judgment.

[ARUN R. PEDNEKER, J.]