

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

WRIT PETITION NO. 3507 OF 2015

Amit s/o Shrikant Deshpande
Age: 35 years, Occu: Legal Practitioner,
R/o. G-34, N-4, Cidco, Aurangabad
Tq. and Dist. Aurangabad.

Petitioner

Versus

- 1] The State of Maharashtra
Secretary, Co-operative Department,
Mantralaya, Mumbai.
- 2] The Election Officer,
Poornawadi Nagrik Sahakari Bank Ltd.,
Beed, And the Assistant Registrar,
Co-operative Societies, Beed,
Tq. and Dist. Beed.
- 3] Poornawadi Nagrik Sahakari Bank Ltd.,
Beed, Head Office, Mali Ves, Subhash Road,
Beed, Through it's Chief Executive Officer.
- 4] Vinayak s/o Eknath Vaidya
Age: 67 years, Occu: Business,
R/o. Adarsh Ganesh Nagar Colony,
Behind Guest House, Nagar Road, Beed,
Tq. and Dist. Beed.

Respondents

WITH
WRIT PETITION NO. 3500 OF 2015

Amit s/o Shrikant Deshpande
Age: 35 years, Occu: Legal Practitioner,
R/o. G-34, N-4, Cidco, Aurangabad
Tq. and Dist. Aurangabad.

Petitioner

Versus

- 1] The State of Maharashtra
Secretary, Co-operative Department,
Mantralaya, Mumbai.

- 2] The Election Officer,
Poornawadi Nagrik Sahakari Bank Ltd.,
Beed, And the Assistant Registrar,
Co-operative Societies, Beed,
Tq. and Dist. Beed.
- 3] Poornawadi Nagrik Sahakari Bank Ltd.,
Beed, Head Office, Mali Ves, Subhash Road,
Beed, Through it's Chief Executive Officer.
- 4] Vaibhav s/o Vivek Swami
Age: 45 years, Occu: Business,
R/o. Manmat Swami Colony,
Nalwandi Road, Beed,
Tq. and Dist. Beed.
- Respondents

WITH
WRIT PETITION NO. 3502 OF 2015

Amit s/o Shrikant Deshpande
Age: 35 years, Occu: Legal Practitioner,
R/o. G-34, N-4, Cidco, Aurangabad
Tq. and Dist. Aurangabad.

Petitioner

Versus

- 1] The State of Maharashtra
Secretary, Co-operative Department,
Mantralaya, Mumbai.
- 2] The Election Officer,
Poornawadi Nagrik Sahakari Bank Ltd.,
Beed, And the Assistant Registrar,
Co-operative Societies, Beed,
Tq. and Dist. Beed.
- 3] Poornawadi Nagrik Sahakari Bank Ltd.,
Beed, Head Office, Mali Ves, Subhash Road,
Beed, Through it's Chief Executive Officer.
- 4] Smt. Shakuntala Prakash Gorkar
Age: 50 years, Occu. Household,
R/o. Indira Apartment, Jawahar Colony,
Nagar Road, Beed,
Tq. and Dist. Beed.
- Respondents

WITH
WRIT PETITION NO. 3503 OF 2015

Amit s/o Shrikant Deshpande
Age: 35 years, Occu: Legal Practitioner,
R/o. G-34, N-4, Cidco, Aurangabad
Tq. and Dist. Aurangabad. Petitioner

Versus

- 1] The State of Maharashtra
Secretary, Co-operative Department,
Mantralaya, Mumbai.
- 2] The Election Officer,
Poornawadi Nagrik Sahakari Bank Ltd.,
Beed, And the Assistant Registrar,
Co-operative Societies, Beed,
Tq. and Dist. Beed.
- 3] Poornawadi Nagrik Sahakari Bank Ltd.,
Beed, Head Office, Mali Ves, Subhash Road,
Beed, Through it's Chief Executive Officer.
- 4] Smt. Mangal s/o Kishor Ubale,
Age: Major, Occu: Household,
R/o. Mali Ves, Beed,
Tq. and Dist. Beed. Respondents

WITH
WRIT PETITION NO. 3504 OF 2015

Amit s/o Shrikant Deshpande
Age: 35 years, Occu: Legal Practitioner,
R/o. G-34, N-4, Cidco, Aurangabad
Tq. and Dist. Aurangabad. Petitioner

Versus

- 1] The State of Maharashtra
Secretary, Co-operative Department,
Mantralaya, Mumbai.
- 2] The Election Officer,
Poornawadi Nagrik Sahakari Bank Ltd.,
Beed, And the Assistant Registrar,
Co-operative Societies, Beed,
Tq. and Dist. Beed.

3] Poornawadi Nagrik Sahakari Bank Ltd.,
Beed, Head Office, Mali Ves, Subhash Road,
Beed, Through it's Chief Executive Officer.

4] Udaykumar s/o Govindrao Shelmohkar
Age: 45 years, Occu. Business,
R/o. Chapkhana Galli, Beed,
Tq. and Dist. Beed.

Respondents

WITH
WRIT PETITION NO. 3505 OF 2015

Amit s/o Shrikant Deshpande
Age: 35 years, Occu: Legal Practitioner,
R/o. G-34, N-4, Cidco, Aurangabad
Tq. and Dist. Aurangabad.

Petitioner

Versus

1] The State of Maharashtra
Secretary, Co-operative Department,
Mantralaya, Mumbai.

2] The Election Officer,
Poornawadi Nagrik Sahakari Bank Ltd.,
Beed, And the Assistant Registrar,
Co-operative Societies, Beed,
Tq. and Dist. Beed.

3] Poornawadi Nagrik Sahakari Bank Ltd.,
Beed, Head Office, Mali Ves, Subhash Road,
Beed, Through it's Chief Executive Officer.

4] Nandkumar s/o Ganpatbua Ramdashi,
Age: Major, Occu: Agri./Business,
R/o. Ankush Nagar, Old Charhata Road,
Beed, Tq. and Dist. Beed.

Respondents

WITH
WRIT PETITION NO. 3506 OF 2015

Amit s/o Shrikant Deshpande
Age: 35 years, Occu: Legal Practitioner,
R/o. G-34, N-4, Cidco, Aurangabad
Tq. and Dist. Aurangabad.

Petitioner

Versus

- 1] The State of Maharashtra
Secretary, Co-operative Department,
Mantralaya, Mumbai.
- 2] The Election Officer,
Poornawadi Nagrik Sahakari Bank Ltd.,
Beed, And the Assistant Registrar,
Co-operative Societies, Beed,
Tq. and Dist. Beed.
- 3] Poornawadi Nagrik Sahakari Bank Ltd.,
Beed, Head Office, Mali Ves, Subhash Road,
Beed, Through it's Chief Executive Officer.
- 4] Raghunath s/o Narayan Gole
Age: 40 years, Occu: Business,
R/o. Jijamata Chowk, In front of
Model English School, Beed,
Tq. and Dist. Beed.

Respondents

WITH
WRIT PETITION NO. 3508 OF 2015

Amit s/o Shrikant Deshpande
Age: 35 years, Occu: Legal Practitioner,
R/o. G-34, N-4, Cidco, Aurangabad
Tq. and Dist. Aurangabad.

Petitioner

Versus

- 1] The State of Maharashtra
Secretary, Co-operative Department,
Mantralaya, Mumbai.
- 2] The Election Officer,
Poornawadi Nagrik Sahakari Bank Ltd.,
Beed, And the Assistant Registrar,
Co-operative Societies, Beed,
Tq. and Dist. Beed.
- 3] Poornawadi Nagrik Sahakari Bank Ltd.,
Beed, Head Office, Mali Ves, Subhash Road,
Beed, Through it's Chief Executive Officer.
- 4] Suresh s/o Sadashiv Baride
Age: 60 years, Occu: Pensioner,
R/o. Tilak Road, Dhondipura, Beed,
Tq. and Dist. Beed.

Respondents

WITH
WRIT PETITION NO. 3511 OF 2015

Amit s/o Shrikant Deshpande
Age: 35 years, Occu: Legal Practitioner,
R/o. G-34, N-4, Cidco, Aurangabad
Tq. and Dist. Aurangabad. Petitioner

Versus

- 1] The State of Maharashtra
Secretary, Co-operative Department,
Mantralaya, Mumbai.
- 2] The Election Officer,
Poornawadi Nagrik Sahakari Bank Ltd.,
Beed, And the Assistant Registrar,
Co-operative Societies, Beed,
Tq. and Dist. Beed.
- 3] Poornawadi Nagrik Sahakari Bank Ltd.,
Beed, Head Office, Mali Ves, Subhash Road,
Beed, Through it's Chief Executive Officer.
- 4] Subhash s/o Maroti Kshirsagar
Age: 65 years, Occu: Agri.,
R/o. Near Maruti Temple,
Vidya Nagar East, barshi Road, Beed,
Tq. and Dist. Beed. Respondents

WITH
WRIT PETITION NO. 3512 OF 2015

Amit s/o Shrikant Deshpande
Age: 35 years, Occu: Legal Practitioner,
R/o. G-34, N-4, Cidco, Aurangabad
Tq. and Dist. Aurangabad. Petitioner

Versus

- 1] The State of Maharashtra
Secretary, Co-operative Department,
Mantralaya, Mumbai.
- 2] The Election Officer,
Poornawadi Nagrik Sahakari Bank Ltd.,
Beed, And the Assistant Registrar,

Co-operative Societies, Beed,
Tq. and Dist. Beed.

3] Poornawadi Nagrik Sahakari Bank Ltd.,
Beed, Head Office, Mali Ves, Subhash Road,
Beed, Through it's Chief Executive Officer.

4] Rohidas s/o Namdeo Taur,
Age: Major, Occu: Agri.,
R/o. Kalegaon, Post. Hivra,
Tq. Majalgaon, Dist. Beed.

Respondents

Mr. V. D. Hon, Senior Advocate h/f Mr. B. B. Bhise, Advocate for
petitioner in Writ Petition No. 3507 of 2015

Mr. D. J. Choudhary, Advocate for petitioner in Writ Petitions
No. 3500,3502,3503,3504,3505,3506,3508, 3511, and 3512 of
2015

Mr. S. K. Tambe, Asstt. Government Pleader for respondent
No.1

Mr. Abhijit Chaudhari, Advocate for respondent No.3

Mrs. M. A. Kulkarni, Advocate for respondent No.4 in Writ
Petition No. 3507 of 2015

Mr. S. S. Thombre, Advocate for respondent No.4 in Writ
Petitions No.3500, 3502, 3503, 3504, 3505, 3511 and 3512 of
2015.

CORAM : SUNIL P. DESHMUKH, J.
DATE : 7TH APRIL, 2015

Oral judgment

1. Rule. By consent, rule made returnable forthwith and
heard the parties finally.

2. In this batch of petitions, petitioner questions legality and propriety of the orders dated 24-03-2015 passed by election officer overruling objections taken by petitioner to nomination of respondents no. 4 in respective writ petitions on the ground that said respondents do not qualify to eligibility criteria as contained in bye-law no.40 of model bye-laws of a primary (urban) co-operative bank (State of Maharashtra) adopted by respondent no. 3-bank. (hereinafter, for brevity, 'model bye-laws' are referred to as "the bye-laws").

3. According to petitioner, by depositing amounts in the savings accounts, respondents no.4 cannot be said to have complied with the criterion as contained in bye-law no.40 requiring holding of minimum shares of ₹ 10,000/- for category of respondent no.3-bank. Petitioner contends that purported payments towards the share capital are during the period from 17-03-2015 to 20-03-2015.

4. Mr. V.D. Hon, learned senior advocate, leading the arguments, submits that the impugned order suffers non application of mind to the objections taken by the petitioners to nomination of respective respondents no. 4. Respondents no. 4's share holding on the relevant date i.e. 23-03-2015 is far below the requirement of holding minimum shares of ₹

10,000/- . He takes support of the affidavit filed by respondent no.3-bank referring to that at the end of 23-03-2015, share holding of respondents no. 4 was less than ₹ 10,000/-. He submits, 23-03-2015 being the relevant date as per the election programme and on that date respective respondents no. 4 having not met with criterion of being holders of minimum shares, acceptance of their nominations is not only defective but is also illegal and untenable.

5. Mr. Hon, to buttress his aforesaid submission, takes support of decision rendered by a learned single judge of this court in the case of *Manchak Pawar vs. State of Maharashtra*, reported in 2011 (3) *Mh.L.J.* 833, particularly with reference to head note (a) which reads thus;

"(a) Maharashtra Co-operative Societies Act (24 of 1961) S.73-FF
(1)(i)(a)- *General election of co-operative society-Eligibility of the candidate contesting the election-Relevant date is the last date prescribed for filing nomination papers-Respondent no. 4 was defaulter of crop-loan payable on 28-5-2010 which was not paid till 7-1-2011 the last date prescribed for filing nominations and loan arrears were cleared on 8-1-2011-Hence, on the relevant date i.e. last date prescribed for filing of nomination papers, the said respondent was disqualified-Held, payment after last date does not wipe out the non-eligibility. "*

6. Learned senior advocate further relies on decision of another learned single judge in *Sambha s/o Gangaram Pikale vs. State of Maharashtra*, reported in 1996 (2) *Mh.LJ* 182, to contend that the registered bye-laws are binding on the members of the society.

7. Mr. Hon goes on to submit that in appropriate cases, this court had in order to avoid over-stretching litigation has intervened in the matter and for said purpose he relies on judgment of division bench of this court in *Dalsing Shamsing Rajput vs. State of Maharashtra*, reported in 2006 (3) *Mh.LJ* 592, wherein the court appears to have considered that when respondent is not eligible to contest election of managing committee of the society and if the court can prevent him from the contest without disturbing election programme, the court felt that such prevention would serve the interest of justice and therefore had not considered it being obstructed by availability of alternate remedy. In the facts of that case, court held that alternate remedy may not be an efficacious remedy.

8. Mr. Hon refers to a decision of the supreme court in the case of *Ahmednagar Zilla S D V and P. Sangh Ltd. vs. State of Maharashtra*, reported in 2004 (5) *ALL MR* 236, delivered on 05-11-2003, wherein the supreme court had refused to interfere with the order passed by the high court, for, the amended bye-laws

were not considered to be legal since the conditions precedent for amending the bye-laws were not complied with. The supreme court while dismissing the appeals had under paragraphs no. 4 and 5 observed that voters' list prepared on the basis of non existent rules would be illegal and as such ratio in *Sant Sadguru Janardan Swami v. State of Maharashtra and others* [2001 (8) SCC 509] which has been laid down under different set of facts with reference to voters' list, did not contain the situation in that case and as the amendment to the bye-laws was considered not to be legal, the electoral rolls prepared on the basis of the same were struck down. The authority in the case of *Ahmednagar Zilla S D V and P. Sangh Ltd. (supra)* has been cited in order to buttress the submission that ratio in *Sant Sadguru Janardan Swami (supra)* would not prevent this court from passing necessary orders in the matter.

9. Learned senior advocate further submits that the orders impugned show consideration of petitioner's objections to nominations of respondent no. 4 in respective petitions had been without reference to the facts of the case. He, therefore, submits that as in the case of *Dalsing Shamsing Rajput vs. State of Maharashtra (supra)*, this court should prevent undeserving candidates from contesting the election and requests to allow

the writ petitions.

10. Learned Assistant Government Pleader Mr. S.K. Tambe appearing on behalf of respondents no. 1, however, has a different version. He submits that the decision impugned has been rendered by the election officer with reference to the information as had been supplied to him and as such the orders are not at all liable to be interfered with.

11. Learned counsel Mr. Chaudhari, Mrs. Kulkarni and Mr. Thombre, appearing for respondents no. 3 and 4 in respective writ petitions, submit that the court should be wary of and would seldom cause interference in the acceptance of nominations of the concerned respondents. They place reliance on *Sant Sadguru Janardan Swami's* case (supra) and contend that indisputably stage of acceptance of nomination being intermediate stage, ratio of said case applies on all fours to present cases and the court shall on that very ground decline to intervene in the impugned orders.

12. Mr. Thombre, learned advocate places reliance on orders passed by various division benches of this court, namely, the cases of *Rama s/o Mukharu Wakhare vs. Kashinath Antaram Gahane and others*, 1996 (2), Bom.C.R. 463, *Farook Ali Khan s/o Ilyas Khan and others vs. Maharashtra State Election Commission and others*, and *Suresh Anantrao*

Choudhari (Dr.) vs. State of Maharashtra and others, 2012 (5) Bom.C.R. 593

facts in which, according to him, are similar to those in present matters. He submits, in the cited cases for want of requisite notice under the relevant provisions of law, the court had reversed the decisions rendered by the two authorities below and considered the petitioners therein to be eligible to contest the elections. It is contended that in the present cases as well, before the election process, no notices for payment towards increased share capital had ever been issued to concerned respondents no. 4 as required under second proviso to sub-section (1) of section 26 of the Maharashtra Co-operative Societies Act, 1960. It is, therefore, submitted that respective respondent no. 4 shall be deemed not to have incurred any disqualification and would continue to be eligible to contest the election for managing committee.

13. Respondents further rely on various orders passed by other division benches of this court a compilation of which has been submitted across the bar which, more or less, refer to that once the election process is set on, no interference be caused in the same at any intermediary stage having regard to various decisions of the supreme court and high courts, including *Sant Sadguru Janardan Swami's* case (supra). They

submit, requirement for eligibility is payment towards share capital, for general category, of ₹ 10,000/- and of ₹ 5,000/- as far as reserved category is concerned. According to learned counsel for respondents no.4, that requirement stands satisfied with the deposit of requisite amounts in their savings accounts with specific instructions for appropriation of the same towards share capital.

14. For said purpose, learned counsel refer to applications so submitted by respondents. It is also contended that respondents no.4 are not supposed to do anything further. Appropriation of such amounts towards share capital is within the control of respondent no. 3. It cannot be said that respondent no. 3 has power, authority and jurisdiction to refuse such appropriation.

15. It is submitted on respondents no.4's behalf that, it cannot be said that they would be rendered ineligible after the payment has been so deposited by them. According to them, even otherwise they cannot be held to be ineligible for want of compliance of requirement of second proviso to section 26(1) of the Maharashtra Co-operative Societies Act. The payment has been deposited well before expiry of the relevant date as referred to in the decision relied on by learned senior advocate

for petitioners, namely, *Manchak Pawar vs. State of Maharashtra, 2011 (3) Mh.L.J. 833 (supra)*.

16. Learned counsel for respondents contend, grievance of the petitioners about payments tendered by respondents no. 4 will have to be decided in appropriate proceedings.

17. The returning officer appears to have considered that respective respondents no.4 had held shares in respect of the amounts as have been referred to in the respective writ petitions and have made payments in respect of the shortfall by depositing the same in the savings bank accounts for its appropriation towards share capital and thus complied with criterion. In such a case, it appears to have been considered that the respondents fulfill the requisite criterion.

18. In such a position, at the stage at which the challenge is sought to be posed to acceptance of nominations, it would not be worthwhile to enter into controversy as is being sought to be raised under the writ petitions, for, the petitioners would always have an efficacious remedy taking care of their grievance, including remedy of election petition.

19. As has been submitted by learned counsel for respondents, high courts have normally been loath to interfere

with acceptance of nominations. In the facts of the cases, I do not deem it appropriate to intervene under article 226 of the constitution of India in the orders passed by the authority.

20. Writ petitions as such fail and stand rejected with no order as to costs.

21. Observations made in this order shall not be taken as observations on merits of the contentions about payments towards share capital and it is open for the parties to contest its legality or otherwise in appropriate proceedings and these observations shall not influence the decision that may be rendered by the authority.

22. Rule stands discharged.

SUNIL P. DESHMUKH, J.

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