

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4341 OF 2015

Gangadhar Govindrao Rathod,
age 39 years, occup. Agril. And
service, R/of Kamalewadi, Tq.
Mukhed, Dist. Nanded.

... Petitioner

versus

1. The State of Maharashtra,
Secretary, Co-operative
Department, Mantralaya, Mumbai
2. The Election Officer,
District Central Co-operative
Bank Ltd., Nanded.
3. The Nanded District Central
Co-operative Bank Ltd., Nanded
Dist. Nanded, Head Office near
Shivaji Statue, Station Road,
Nanded, Dist. Nanded, through
it's Chief Executive Officer/
Managing Director
4. Bhausaheb s/o Khushalrao Patil,
Age 47 years, occup. Agril.
R/o Mandalapur, Tq. Mukhed,

... Respondents

.....

Mr. D. J. Choudhari, advocate for Petitioner
Mr. S.K. Tambe, Asstt. Govt. Pleader for respondent No. 1 and 2
Mr. K. J. Suryawanshi, Advocate for respondent no.3
Mr. R.S. Deshmukh, Advocate for respondent no. 4

.....

CORAM : SUNIL P. DESHMUKH, J.
DATE : 24th APRIL, 2015

Oral judgment:

- 1.** Rule. Rule made returnable forthwith and heard finally with consent of learned counsel for the parties.
- 2.** Heard learned counsel for petitioner, as well as learned Assistant Government Pleader Mr. Tambe for respondent no. 1 and 2 and Mr. R. S. Deshmukh learned advocate for respondent no.4. Indisputable position emerging is that under the election programme the last date for filing nomination was 08-04-2015 and it was only on 09-04-2015 which is the date of scrutiny, respondent no. 4 had paid the dues of the bank and no dues certificate was issued on the very same day.
- 3.** Learned counsel for the petitioner Mr. Chaudhari submits that petitioner and respondent no. 4 had filled in nominations against the seat from society constituency. He vehemently submits that respondent no. 4 being a defaulter under section 73CA (1) (i) (f) (i) and (ii) of the Maharashtra Co-operative Societies Act, 1960, the payment and no dues certificate of 9-4-2015 are inconsequential and would not alter or wipe out the status of respondent no. 4 as defaulter as was subsisting on the last date of filing nomination on 08-08-2015. He further contends that this is an indisputable position.
- 4.** There is lot of force in the submissions of the learned counsel Mr. Choudhari appearing for the petitioner since he has placed reliance on various reported judgments, particularly 2011 (3) Mh.L.J. 833, paragraphs 27 to 29 thereunder which read thus;

27. *The express language of Section 73FF(1)(i) states that a person can be a defaulter of any Society if he defaults in repayment of crop loan on due date or then he defaults in repayment of loan installment on the date on which the installment was due. This is apparent from explanation (a) and (b) appearing after said Clause (i) of Section 73FF(1). Explanation (c) is not germane here. If the arguments of learned Counsel for respondent no.4 are to be accepted, one has to read into said explanation words which require service of notice of demand upon such member who has not paid the amount on due date. Arguments also imply that, if he fails to effect payment thereafter, then only he can be said to be a defaulter. That is not the scheme of Section 73FF(1)(i)(a). Explanation (a) & (b) can not be construed on same line as explanation (c). It is settled principle of interpretation that words cannot be read into any statute when it is workable and does not lead to any absurd results.*

28. *The defaults by respondent no.4 here have been committed on 28-5-2010 i.e. date on which the crop-loan ought to have been repaid. Admittedly, the loan was not repaid then. 7-1-2011 was the last date prescribed for filing of nominations. Even till that date, the crop loan were not cleared by the respondent 4. The loan arrears have been cleared on 8-1-2011, while scrutiny has been undertaken on 10-1-2011. Hence, on the relevant date i.e. last date prescribed for filing of nomination papers, the said respondents were disqualified. Payment after last date does not wipe out the non - eligibility. The situation is considered by me in the judgment reported in the case of Ravi Amrutrao Bagde Vs. Commissioner & others (supra). Hence, it is not necessary for me to labour more on this aspect. The opportunity to show that they were not defaulter on the relevant date i.e. 7-1-2011 is already extended to respondent no.4 in the matter. Hence, there is no breach of principles of natural justice.*

29. *In order to show that a notice of demand was essential, Advocate, Shri Salunke, had at the fag end of the arguments, invited attention to Bye-law No.60 and Bye-law No. 70 of the model bye-laws which govern the affairs of respondent no.3 Society. Bye-law No.60 stipulates that date of repayment of a short term loan extended for crop should be within one*

year from the date of disbursement. But it should not be during the period when crops are still growing. For mid-term loans, the number of installments is specified to be not more than five annual installments. Bye-law No.70 stipulates that after the expiry of period specified for repayment of loan, if there is no repayment and there is no postponement of recovery, borrower and his guarantor shall be given a notice calling upon them to make repayment within specified time. It state that ultimately proceedings for recovery under Section 101 of the Act of 1960 can be instituted. Thus, this Bye-law No.70 is a mechanism of recovery of loan which is outstanding after due date. Hence, Bye-law No.60 or Bye-law No.70 have no bearing on the issue of "defaulter" or then provisions of Section 73FF(1)(i) of the Act of 1960. Reliance upon these bye-laws is, therefore, unwarranted. The Hon. Apex Court in the judgment reported at (1991) 2 SCC 423, in the case of Pundalik Vs. District Deputy Registrar, Cooperative Societies, Chandrapur and others, has dealt with very provision with which I am concerned here. Hon. Apex Court has held that failure to pay on due date results in default and it continues from day-to-day till the loan is repaid. There the default in repayment of loan prior to coming into force of amended S.73FF but continuing thereafter & subsisting on the date of election, is held sufficient to vitiate the election. These observations apply even in the present facts. Here the defaults which occurred on 28-5-2010 continued thereafter and were in existence even on 7-1-2011 i.e. the last date prescribed for filing of nomination papers and relevant for the present dispute. This judgment of Hon. Apex Court is also relied upon by the Full Bench of this Court in Narayan Gujabrao Bhoyar Vs. Yeotmal Zilla Parishad Karmachari Sahakari Path Sanstha Maryadit & another (supra) .

5. Mr. Choudhari relies on bye-laws no. 8, 9 (2) (b) (3) to contend that one should also not be a defaulter of any other society. He further relies on various other judgments, including the order dated 7-4-2015 in writ petition no.3510 of 2015 [Dr. Arun s/o Govindrao Nirantar vs.

The State of Maharashtra and others], particularly on paragraphs no. 5, 6 and 7 which read as under;

“5. The election programme, as has been annexed to the writ petition, shows that the last date of filing nomination was 23rd March, 2015. Respondent No. 4 has tendered his resignation as legal adviser of respondent No.3 Bank on 24th March, 2015. In this scenario, it appears that the election officer had been oblivious of the legal position that the last date of filing nomination would be crucial in the matter. This Court, in a decision rendered in 2011 (3) Mh.L.J. 833 “Manchak Shahaji Pawar V. State of Maharashtra and Others”, has already considered that relevant date is the last date prescribed for filing nomination papers.

6. There are documents, annexed to the petition, about retention and engagement of respondent No.4, as a legal adviser by respondent No.3 Bank, in addition the bank has also issued a certificate of appointment, as being legal adviser and him being so continued as legal adviser on 23rd March, 2015 is further strengthened by the fact of resignation by respondent No.4 on 24th March, 2015. These factual aspects are not disputed.

7. The acceptance of nomination of respondent No.4, for the reason as is given under the impugned order that since resignation has been tendered on 24th March, 2015 by respondent No.4, is not in consonance with the legal position, since respondent No.4 appears to be ineligible for filing nomination on 23rd March, 2015, as disqualification referred to under bye-law No. 45 (h) was subsisting.

6. Mr. Deshmukh, learned counsel for the respondent no. 4 is at pains to explain as to how it should be considered that deficiency is not of substantial nature and is curable and nor he could in support of the submission, find any material.

7. Learned Assistant Government Pleader Mr. Tambe appearing for respondents no. 1 and 2 strenuously urges that having regard to advanced stage of election, no interference be caused in the same.

8. The period of nomination is yet to expire. Further, it may be noted that otherwise also, respondent statutorily stands disqualified under section 73CA (1) (i) (f) of the Maharashtra Co-operative Societies Act, 1960 which reads ;

“73CA. Disqualification of committee and its members.

(A1)

(1) Without prejudice to the other provisions of this Act or the rules made thereunder 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-

(i) is a defaulter of any society;

(a to e)

(f) in the case of District Central Co-operative Bank or the State Co-operative Bank, a member, if he,-

(i) is a person who represents a society other than a primary agricultural credit co-operative society on the board of a District Central Co-operative Bank or the State Co-operative Bank, if the society to whom he represents has committed a default towards the payments of such Bank for a period exceeding ninety days;

(ii) is a person who is defaulter of a primary agricultural credit co-operative society or is an office bearer of a defaulting primary agricultural co-operative credit society. ”

9. Facts as those emerge from the submissions show that respondent no. 4 is a defaulter on the date of filing nomination.

Consequently, statutory provisions and the bye-laws render the impugned order passed by the election officer unsustainable and is required to be set aside.

10. Writ petition, as such, is allowed in terms of prayer clauses (C) and (D) and disposed of. The impugned order dated 09-04-2015 passed by respondent no.2-election officer is set aside and the nomination of respondent no. 4 to contest election of respondent no. 3 stands rejected. Rule is made absolute in aforesaid terms.

11. Parties to act on authenticated copy of the order. Learned Assistant Government Pleader to orally communicate this order passed in respect of respondent no. 4 to the concerned authority – election officer. Election officer to take appropriate steps.

(SUNIL P. DESHMUKH, J.)

pnd