

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5747 OF 2015

Mr. Nandkumar Anandrao Walanju,)
Aged 54 years, Residing at 34 C Ward,)
Shivaji Chowk, Kolhapur.).. Petitioner

Versus

1. The State of Maharashtra,)
Through the Department of)
Cooperation, Textiles and Marketing,)
Mantralaya, Mumbai.)
2. The Collector,)
Officer of the Collector, Kolhapur.)
3. Ms. Monica Singh)
Election Officer,)
Kolhapur Agricultural Produce)
Market Committee, Kolhapur.)
4. The Kolhapur Agricultural Produce)
Market Committee, Kolhapur.)
5. District Deputy Registrar,)
Co-operative Society Kolhapur,)
Near Hotel Pearl, Kolhapur.)
6. Shri. Rajendra Vishwambhr Shete)

- R/o 2104/3, Ruikar Colony, Kolhapur.)
7. Shri. Sandeep Pandurang Patil,)
R/o 2104/3, Ruikar Colony, Kolhapur.)
8. Shri. Nilesh Chandrakant Patel,)
R/o Plot No.372, Kharedi Vibhag,)
Shri. Shahu Market Yard, Kolhapur.)
9. Shri. Vaibhav Milkanth Savardekar)
R/o Rajarampuri, 6th Lane,)
Rajni Terraces, Near Sai Hospital,)
Kolhapur.)
10. Shri. Sameer Noormohammad Bagwan)
R/o House No.1764, C Ward,)
Somwarpath, Kolhapur.)
11. Shri. Atul Gunvantlal Shah)
R/o 1159, E Ward, Parshvakrupa)
Bungalow, Near Appa's Complex,)
Kolhapur.)
12. Shri. Powar Deepak Namdev,)
R/o 2100 D.W. Ward, Mahadik)
Vasahat, Kolhapur.)
13. Shri. Kishor Madhukar Tandale,)
R/o 227/2, E Ward, Tarabai Park,)
Kolhapur.)

14. Shri. Jameer Mahamadbhai Bagwan,)
R/o 1180 C Ward, Kolhapur.)
15. Shri. Balasaheb Shankarrao Korgaonkar,)
R/o 45, Nehrunagar,)
Mangalwarpeth, Kolhapur.)
16. Shri. Sadanand Shankarrao Korgaonkar,)
R/o 45, Nehrunagar, Mangalwarpeth,)
Kolhapur.)
17. Shri. Prasad Nandkumar Valanju,)
R/o 314C, Shivaji Chowk, Kolhapur.)
18. Shri. Ganesh Nandmular Valanju,)
R/o 2829 B Ward, Mandlik Vasahat)
Mangalwarpeth, Kolhapur.)
19. Shri. Nayan Vinayak Prasade,)
R/o 80, Pratibhanagar, Kolhapur.)
20. Shri. Kumar Kishor Ahuja,)
R/o Gurunanak Colony, Bapat)
Camp, Jadhavwadi, Kolhapur.)
21. Shri. Vivek Shivrudra Shete,)
R/o Ishwar Krupa, 2101-8,)
Laxminagar, Rukmininagar Area,)
Kolhapur.)
22. Shri. Dattajirao Pirajirao Varke,)

R/o M/s. Jai Jai Shiv Traders,)
Shri. Shahu Market Yard, Kolhapur.)

23. Shri. Anil Raghunath Patil,)
R/o A/P Dinderli Tal. Karvir,)
Dist. Kolhapur.).. Respondents

ALONGWITH
WRIT PETITION (STAMP) NO.16809 OF 2015

Shri. Krushnat Shankar Chavan,)
aged 58 years, Occu:-Agriculturist,)
R/o: Musad Male, Taluka Panhala,)
District Kolhapur.).. Petitioner

Versus

1. The State of Maharashtra,)
Through Government Pleader,)
High Court Bombay.)
2. Election Returning Officer,)
Kolhapur Shet Utpanna Bajar Samiti)
Kolhapur, and Sub Divisional Officer,)
Radhanagari-Kagal, Sub Division)
Kolhapur, Market Committee, Kolhapur.)
3. District Deputy Registrar Co-operative)
Society Kolhapur, Near Hotel Pearl,)
Kolhapur.)

4. The Administrator Kolhapur Sheti)
Utpanna Bajar Samiti, Kolhapur,)
Market Yard, Kolhapur.)
5. Shri. Arif Amjad Khan,)
R/o Vikramnagar, Kolhapur.)
6. Shri. Khandu Shripati Karale,)
R/o at Kekatwadi, Post Shirolu Dumala,)
Taluka Karveer, District Kolhapur.)
7. Shri. Rajaram Abaji Jagtap,)
R/o at Kurhadwadi, Post Vaghve,)
Taluka Panhala, District Kolhapur.)
8. Shri. Gundu Mahadev Karale,)
R/o A/P Kotoli, Taluka Panhala,)
District Kolhapur.)
9. Shri. Sarjerao Balwant Mane,)
R/o At Kurhadwadi, Post Vaghve,)
Taluka Panhala, District Kolhapur.)
10. Shri. Bharat Pandurang Patil,)
R/o A/P Mhakve, Taluka Kagal,)
District Kolhapur.)
11. Shri. Raghunath Ganpati Patil,)
R/o at Chandre, Post Walva, Taluka)
Radhanagari, District Kolhapur.)

12. Shri. Shivaji Bapu Patil,)
R/o at Karanjphen, Taluka Panhala,)
District Kolhapur.)
13. Shri. Bajirao Bandu Paudkar,)
R/o at Dhondewadi, Post Kasba)
Beed, Taluka Karvir, District Kolhapur.)
14. Shri. Laxman Kondiba Patil,)
R/o A/p Kotoli, Taluka Panhala,)
District Kolhapur.)
15. Shri. Ananda Bajirao Patil,)
R/o A/p Kotoli, Taluka Panhala,)
District Kolhapur.)
16. Shri. Satappa Bapu Nalavade,)
R/o at Dhondewai, Post Kasba)
Beed, Taluka Karvir, District Kolhapur.)
17. Shri. Shahaji Bhagwan Nalavade,)
R/o at Dhondewadi, Post Kasba Beed,)
Taluka Karvir, District Kolhapur.)
18. Shri. Nivrutti Ishwara Nalavade,)
residing at Dhondewadi, post Kasba)
Beed, Taluka Karvir, District Kolhapur.)
19. Shri. Pandurang Babu Nalawade,)
Residing at Dhondewadi, Post Kasba)
Beed, Taluka Karvir, District Kolhapur.)

20. Shri. Prakash Shamrao Redekar,)
R/o at Bacharwadi, Post Kotoli,)
Taluka Panhala, District Kolhapur.)
21. Shri. Babaso Shamrao Maskar,)
Residing at Kotoli, Taluka Panhala,)
District Kolhapur.)
22. Shri. Bajirao Mahadev Sutar,)
Residing at Sonoli, Taluka Kagal,)
District Kolhapur.)
23. Shri. Bajirao Pandurang Lavhate,)
at Post Kotoli, Taluka Panhala,)
District Kolhapur.)
24. Shri. Shrikant Bhimrao Mane,)
Residing at Shindewadi, Post)
Khupire, Taluka Karvir, District Kolhapur.)
25. Shri. Bapuso Dnyandev Naikwade,)
residing at Chavanwadi, Post Borgav,)
Taluka Panhala, District Kolhapur.)
26. Shri. Sardar Hindurao Chavan,)
residing at Chavanwadi, post Borgav,)
Taluka Panhala, District Kolhapur.)
27. Shri. Krushnat Dagdu Patil,)
residing at Karanjphen, Taluka Panhala,)

- District Kolhapur.)
28. Shri. Rangrao Maruti Patil,)
residing at Karanjphen, Taluka Panhala,)
District Kolhapur.)
29. Shri. Krushnat Balwant Khot,)
residing at Nikamwadi, Taluka Panhala,)
District Kolhapur.)
30. Shri. Mansing Ganapati Arande,)
residing at Karanjphen, Taluka Panhala,)
District Kolhapur.)
31. Shri. Baburao Shankar Khot,)
residing at Malwadi, Post Kotoli,)
Taluka Panhala, District Kolhapur.)
32. Shri. Subhash Balwant Yadav,)
R/o Malwadi, Post Kotoli, Taluka Panhala,)
District Kolhapur.)
33. Shri. Anil Raghunath Patil,)
Residing at Dindnerli, Taluka Karvir,)
District Kolhapur.)
34. District Collector, Kolhapur.).. Respondents

Mr. R. S. Apte, Senior Advocate i/by Mr. Neel G. Helekar, for the
Petitioner in Writ Petition No.5747 OF 2015.

Mr. G. N. Salunke, for the Petitioner in Writ Petition (Stamp)

No.16809 of 2015.

Mr. C. G. Patil, for the Respondent No.4 in both Petitions.

Mr. C. P. Yadav, AGP for the Respondent Nos.1 to 3 in both Petitions.

Mr. V. B. Rajure, for the Respondent No.23 in Writ Petition No.5747 of 2015 & for Respondent No.33 in Writ Petition (Stamp) No.16809 of 2015.

CORAM : R.M. SAVANT, J.

DATE : 08th JULY, 2015

ORAL JUDGMENT

1. Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2. The rejection of the nomination forms filed by the Petitioners above named by the Returning Officer by the order dated 10.06.2015 and the confirmation of the said rejection by the Appellate Authority by the impugned order dated 22.06.2015 is taken exception to by way of the above Petitions.

3. It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the Petitioners were desirous of contesting the elections to the Respondent No.4 Agricultural Produce Marketing Committee. The Petitioners in terms of the election programme accordingly submitted their nominations. The Petitioners were members of the outgoing Market Committee which was superseded by an order passed

under Section 41 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (For short “the APM Act”) and an administrator came to be appointed who is currently incharge of the affairs of the market committee pending the elections. An objection was raised to the nominations filed by the Petitioners by the Respondent No.23 on the ground that they stand disqualified under Sub Section (2A) of Section 45 of the said Act as they were part of the earlier marketing committee which was superseded. The said objection was upheld by the Returning Officer who by his order dated 10.06.2015 rejected the nominations of the Petitioners. The Petitioners thereafter filed an Appeal before the Collector, Kolhapur provided under the said Act. As indicated above, the said Appeals came to be dismissed by the Collector by holding that the Petitioners stand disqualified under Section 45(2A) of the said Act and therefore, the order passed by the Returning Officer did not require any inference in the Appellate Jurisdiction. It is the said order dated 22.06.2015 passed by the Appellate Authority which is taken exception to by way of the above Petition.

4. The impugned order is challenged on the ground that the Petitioners could not have been disqualified under Section 45(2A) of the said Act on account of the supersession of the earlier managing committee. It is the submission of the Learned Senior Counsel Mr. R. S.

Apte appearing on behalf of the Petitioners that the said provision does not come into play if the whole committee is superseded and applies only if a member is removed. In support of the said contention reliance is placed on a Division Bench judgment of this Court reported in 1997(3) Mh.L.J. 309 in the matter of Sambhaji Ramji Patil Umrekar Vs. District Supply Officer, Nanded and others. In short, it is the submission of the Learned Senior Counsel that in the light of the provisions of the Maharashtra Co-operative Societies Act and the said Act being pari-materia, the said judgment would apply on all fours to the facts of the present case.

5. Per contra, the Learned Counsel appearing for the Marketing Committee and the objector Mr. C. G. Patil and Mr. V. B. Rajure would support the orders passed by the Returning Officer as well as the Appellate Authority. It is the submission of the Learned Counsel that the two provisions i.e. Section 78 and Section 45 are not pari-materia and therefore the judgment would not further the case of the Petitioners. The Learned Counsel sought to make a distinction between the two statutory provisions. It was the submission of the Learned Counsel that in so far as the MCS Act is concerned, there is a proviso to Section 78(1)(b) which provides for a member being disqualified and there is no such proviso to Sub Section (a). It was the submission of the Learned Counsel that in so

far as the APM Act is concerned, since Sub Section (2A) of Section 45 immediately follows Sub Section (1), the same would have to be construed to mean, even if the whole committee is superseded then a member of that committee stands disqualified from contesting the elections.

6. Having heard the Learned Counsel for the parties, I have considered the rival contentions. Since much store has been layed on behalf of the Petitioners on the judgment of the Division Bench in *Sambhaji Ramji Patil Umrekar's case (supra)* to buttress their case that the removal or supersession of the committee would not impact a individual member and since it is the case of the Respondents that the statutory scheme in both the acts is different, it would be apposite to refer to the provisions of the said Act. Hence, Section 78(1)(a) and (b) and Section 45(1) and (2A) are reproduced hereinunder for the sake of ready reference- (relevant excerpt)

“78. [Power of removal of committee or member thereof:

[(1) If, in the opinion of the Registrar, the committee of any society of any member of such committee makes default, or is negligent in the performance of the duties imposed on it or him by this Act or the rules or the bye-laws, or commits any act which is prejudicial to the interests of the society or its members, or wilfully disobeys directions issued by the State Government, or by the Registrar for the purpose of securing proper implementation of Co-operative policy and development programme approved or undertaken by the

State Government or is otherwise not discharging its or his functions properly and diligently [or where a situation has arisen in which the committee or any member of such committee refuses or has ceased to discharge its or his functions] and the business of the society has or is likely to come to a stand still, or where any member of such committee stands disqualified by or under this Act for being a member, the Registrar may, after giving the committee or the member, as the case may be, an opportunity of stating its or his objections, if any, within 15 days from the date of receipt of notice, and after consultation with the federal society to which the society is affiliated ; by order -

(a)(i) remove the committee, and-

(ii) appoint a committee consisting of three or more members (who shall not be the members of the committees so removed) of the society in its place, or appoint one or more Administrators who need not be members of the society, but who shall not be the members of the committee so removed to manage the affairs of the society for a period of not exceeding six months, which period, at the discretion of the Registrar may be extended by a further period not exceeding three months so, however, that the total period does not exceed nine months in the aggregate:

Provided that, the Registrar shall have the power to change the committee or any member thereof or the administrator or administrators appointed under paragraph (ii) at his discretion even before the expiry of the period specified in the order made under this sub-section;

(b) remove the member and appoint any person as member of such committee in his place, or direct the society to elect or appoint a member in his place, for the remainder of the term of office of the member so removed].

[Provided that, the member who has been so removed, shall not be eligible to be re-elected, re-appointed, re-nominated or re-co-opted as a member of any committee till the expiry of the period of next one full term of the committee from the date on which he has been so removed or till such lesser period as may be laid down under the provisions of section 73 FFF or 1444E: as the case may be:]”

“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 authorised by it in this behalf arising out of audit of accounts of the Market Committee or inspection of the officer 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 therefor], supersede 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 be superseded without the [State Marketing Board] referred to in section 44 being previously consulted.]

(2).....

[(2A) The member of the Committee, who has been removed under sub-section (1) shall not be eligible for being re-elected, re-appointed (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.]”

7. A reading of Section 78 therefore discloses that both the committee as well as an individual member can be removed. In so far as the removal of an individual member is concerned, the consequences are mentioned in clause (b) of Sub Section (1). The said clause (b) has a proviso which posits that a member who has been removed under Section 78(1)(b) shall not be eligible to be reelected, reappointed, renominated,

or re-co-opted as a member of any committee till the expiry of the period of next one full term of the committee from the date on which he has been so removed. Hence, the proviso to clause (b) of Sub Section (1) provides for the disqualification of an individual member who has been removed under Section 78.

8. Now coming to Section 45 of the APM Act, the said provision also contemplates the removal of the marketing committee or the removal of the member. By Sub Section (2A) what is provided is that a member of the committee who has been removed under Sub Section (2A) shall not be eligible to be reelected, reappointed, renominated, or re-co-opted as member of the committee. Hence, Sub Section (2A) also provides for the disqualification of a member who has been removed under Sub Section (1). The Sub Section (2A) does not speak about the disqualification of a member on account of the supersession of the committee as a whole. In my view, except the way the relevant provisions are structured, there is no difference in the said two sets of provisions i.e. Section 78 and Section 45 and therefore, the said provisions can be said to be *pari-materia*. In so far as the judgment of the Division Bench is concerned, the Division Bench in the said case was also concerned with the rejection of the nomination filed by the Petitioner therein on the ground that he was a member of the managing committee which was superseded. The Division Bench held that

the proviso to clause (b) of Sub Section (1) being a penal provision would have to be construed strictly and since it does not talk about the disqualification on the ground of the committee itself being superseded the rejection of the nomination on the said basis was unsustainable. Paragraph 9 of the judgment of the Division Bench is material and for the sake of ready reference is reproduced herein under :-

“The learned Counsel for the Respondent No.2 has supported the order rejecting the nomination form only on the basis of proviso to section 78(1)(b) of the Maharashtra Co-operative Societies Act. He has further contended that interim order passed on 23-12-1996 in Writ Petition No.5720 of 1996 and continued in L.P.A. No.6 of 1997 amounts to individual disqualification of the present appellant. Admittedly, the present appellant has not been removed under Section 78(1)(b) of the Maharashtra Co-operative Societies Act and instead the entire body of the Managing Committee has been removed by invoking the powers under section 78(1)(a) of the said Act. In addition, the petitioner has not been disqualified under section 73-FF of the Maharashtra Co-operative Societies Act. The Returning Officer while rejecting the nomination form of the appellant has relied upon the provisions of section 73-FF(iv) which means that the nomination form of the appellant has been rejected on the ground that he has incurred disqualification under the said Act. It appears that the Returning Officer has held that the appellant has incurred disqualifications as the entire Board of Directors has been removed under section 78(1)(a) of the Act. The said ground in support of the order rejecting the nomination form is totally baseless as there is no disqualification from contesting elections to any other co-operative societies in the provisions of section 78(1)(a). However, the proviso to section 78(1)(b) as amended in 1997, provides that any member who has been removed under section 78(1)(b) shall not be eligible to be reelected, reappointed, renominated, or re-co-opted as a member of

any committee till the expiry of the period of next one full term of the committee from the date on which he has been so removed or till such lesser period as may be. In the instant case, no order under section 78(1)(b) has been passed against the present appellant. Even otherwise, this Court in the case of *Bhujangrao Narayanrao Deshmukh vs. State of Maharashtra* as reported in 1995(1) Mh.L.J. 437 and in the case of *Gurunath madhavrao Jamalpure vs. Zilla Parishad Teachers Co-operative Credit Society Ltd., Udgir* reported in 1996(1) Mh.L.J. 409, had the occasion to interpret the provisions of section 78(1)(b) as well as its proviso. This Court held that the proviso is penal in nature and it has to be construed strictly and, therefore, unless the words of the statute are clear, we cannot bring more persons under the umbrella of this provision than is intended by the Legislature. It was further held that the proviso speaks about the single member and not of the entire committee. The observations in paragraph No.11 of the judgment in the case of *Gurunath Jamalpure* (supra) are reproduced below and the said observations were made by following the law laid down in *Bhujangrao's* case.

“The view that the proviso applies to the members when individually removed for individual act is not based on a mechanical approach that the proviso follows clause (b) of sub-section (1) but it is based on the consideration that the provisions about disqualification will have to be read as a whole and the statute will have to be put to a homogeneous construction. The purposeful reading of the proviso impugned brings one to an inevitable result that it was provided for a different purpose than was taken case in Clause (a)(ii) of sub-section (1) of section 78, which is disqualifying the members of the erstwhile committee from being nominated as the members of the committee appointed by the Registrar. The Legislature thought that when an individual member is removed for his act or omission, he will have to be kept away from the co-operative movements for a certain period and the period has been prescribed in the proviso.”

We are in respectful agreement with the law laid down in the above cases and we hold that the proviso to section 78(1)(b) of the Act is not applicable in the cases where the entire board/managing committee has been dissolved under section 78(1)(a) of the Act.”

9. In the light of the fact that the provisions are pari-materia, the judgment of the Division Bench of this Court in *Sambhaji Ramji Patil Umrekar's* case would apply on all fours to the facts of the present cases. The Petitioners therefore cannot be held to be disqualified on the ground that they were part of the managing committee which has been superseded as there is no order passed against them individually removing them as members of the managing committee. In that view of the matter, the impugned orders both dated 10.06.2015 and 24.06.2015 as also the rejection of the nominations by the Returning Officer are required to be quashed and set aside and accordingly quashed and set aside. The Returning Officer is directed to accept the nominations of the Petitioners and thereafter proceed with the election programme as per the schedule. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute.

10. The Learned AGP Mr. C. P. Yadav to inform the concerned authorities of the aforesaid developments. Parties to act on a copy of this order duly authenticated by the Court Shirestedar.

[R.M. SAVANT, J]