

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO.8168 OF 2015**

Radheshyam Ramniranjan Yadav ..Petitioner
Vs.
**Commissioner For Co-operation & Registrar of Co-operative Societies,
Maharashtra State & Ors.** ..Respondents

**WITH
WRIT PETITION St. NO.8170 OF 2015**

Sheela Vishwanath Jadhav ..Petitioner
Vs.
**Commissioner For Co-operation & Registrar of Co-operative Societies,
Maharashtra State & Ors.** ..Respondents

**WITH
WRIT PETITION St. NO.8172 OF 2015**

Rajkumar Rajnath Mishra ..Petitioner
Vs.
**Commissioner For Co-operation & Registrar of Co-operative Societies,
Maharashtra State & Ors.** ..Respondents

**WITH
WRIT PETITION St. NO.8173 OF 2015**

Umashankar Sitaram Singh ..Petitioner
Vs.
**Commissioner For Co-operation & Registrar of Co-operative Societies,
Maharashtra State & Ors.** ..Respondents

**WITH
WRIT PETITION St. NO.8176 OF 2015**

Shalini Sadashiv Varese ..Petitioner
Vs.
**Commissioner For Co-operation & Registrar of Co-operative Societies,
Maharashtra State & Ors.** ..Respondents

**WITH
WRIT PETITION St. NO.8177 OF 2015**

Suddhuram Tulsi Yadav

..Petitioner

Vs.

**Commissioner For Co-operation & Registrar of Co-operative Societies,
Maharashtra State & Ors.**

..Respondents

**Mr. R. S. Apte, Senior Advocate with Mr. Sujit Pathak and Mr. Dilip Shukla
i/b M/s. ABG Associates for the Petitioners**

**Mr. Ameet Mehta with Mr. S.S.Dube and Ms Dipti Shah i/b M/s Solicis Lex
for the Respondent No.3**

**Mr. A.B. Vagyani GP with Mr. A. I. Patel AGP for the Respondent Nos.1 and
2**

CORAM : R. M. SAVANT, J.

DATE : 30th MARCH, 2015

P.C.

1 The above Writ Petitions take exception to the identical orders all dated 20-3-2015, by which orders, the Appellate Authority i.e. the Additional Commissioner and Special Registrar Co-operative Societies Maharashtra State dismissed the Appeals filed by each of the Petitioners abovenamed.

2 The controversy in the above Petitions relates to the rejection of the nomination forms of the Petitioners for the ensuing elections to the Board of Directors of the Respondent No.3 Bank. The Respondent No.3 is a co-operative society engaged in the banking business and in popular parlance, is an urban bank for the purposes of the control of the Registrar of Co-operative Societies.

3 It is not necessary to burden this order with unnecessary details. Suffice it to state that that second phase of the programme for the elections to the Board of Directors was announced on 18-2-2015 and as per the said programme the nominations were to be filed from 3-3-2015 to 7-3-2015. At this stage, it would be relevant to refer to the bye law which is in contention in so far as the eligibility of a person to participate in the elections is concerned. The said bye law is No.40 which is for the sake of ready reference is reproduced herein under.

BYELAW NO.40

To contest the election of Board of Directors, the active member should comply following criteria at the time of nomination :

Sr. No.	Bank Category (deposits in Court Receiver.)	Minimum Shares Amt. (in Rs.)	Minimum deposit Amt. (in Rs.)
1	Upto 100 Cr.	5000 AND	25000
2	100 to 500 Cr.	10000 AND	50000
3	More than 500 Cr.	15000 AND	100000

Note: The elected directors shall keep the above deposits for the entire tenure of the board. The persons contesting from reserve seat under Section 73B and 73C shall comply with 50% of the criteria required for general category at the time of nomination.

4 In so far as the Respondent No.3 Bank is concerned, it falls in the

first category and hence the requirement is that a person has to subscribe to shares worth Rs.5000/- and make a deposit of Rs.25,000/-. The said bye law No.40 as originally existing underwent an amendment by virtue of the resolution passed in the General Body Meeting of the Respondent No.3 dated 4-4-2013. The resolution passed in the General Body Meeting for amending the bye law has been approved by the Registrar Co-operative Societies on 1-8-2014 and post the amendment, the bye law stands as has been reproduced hereinabove.

5 The Petitioners in each of the Petitions filed their nominations for contesting from various constituencies, two of the Petitioners being ladies were contesting from the womens constituencies. It seems that the Petitioners had obtained certificates all dated 3-3-2015 which are now annexed to the above Petitions as Exhibit-C, wherein it is shown that the Petitioners had made the deposit of Rs.25,000/- and the Petitioners have also annexed a receipt wherein the Petitioners have deposited Rs.5000/- towards the share amount. It is on the basis of the said certificates and the receipts, it seems that the Petitioners sought to prove their eligibility so as to be entitled to contest the elections to the Board of Directors of the Respondent No.3 Bank. The Returning Officer before whom the certificates were produced, in terms of the mandate cast upon him as a Returning Officer, juxtaposed the certificates and receipts with the concerned register of deposit as well as the share register and found that there

were no entries in the name of the Petitioners in so far as the deposit and the subscription to the shares to the extent of Rs.5000/- is concerned. The Returning Officer accordingly by his order dated 10-3-2015 rejected the nominations of the Petitioners as having not complied with the bye law No.40 of the bye law applicable to the Respondent No.3 Bank.

6 The aggrieved Petitioners carried the matter in by way of Appeals under Section 152A of the Maharashtra Co-operative Societies Act. The Appellate Authority did not find any reason to disagree with the order passed by the Returning Officer in the teeth of the fact that the Petitioners had not complied with bye law No.40 in the matter of subscribing to the share capital to the extent of shares worth Rs.5000/- and making deposit of Rs.25,000/-. The Appellate Authority as indicated above has accordingly by the impugned orders has rejected the Appeals.

7 The Learned Senior Counsel appearing on behalf of the Petitioners Mr. R.S.Apte, would seek to rely upon the order passed in respect of a candidate who according to him was similarly situated as the Petitioners i.e. one,Vijayshankar Ambikaprasad Tripathi. The Learned Senior Counsel would contend that though the Appeals filed by the Petitioners have been rejected, the Appeal filed by the said Vijayshankar Ambikaprasad Tripathi was allowed and since the Petitioners stand on the same footing as the said Vijayshankar

Ambikaprasad Tripathi, the order passed by the Appellate Authority in so far as the Petitioners are concerned requires to be interfered with. In so far as the compliance of bye law No.40 is concerned, the Learned Senior Counsel would contend that what is required is only subscription to the share capital and making of the deposit of Rs.25,000/- and there is no necessity that shares be issued or that there should be an approval of the Board of Directors, as no such requirement was there when the bye law No.40 as it originally stood was in operation.

8 Per contra the Learned GP Mr. Vagyan and the Learned Counsel appearing for the Respondent No.3 Bank Mr. Mehta would both support the impugned orders. In so far as Vijayshankar Ambikaprasad Tripathi's case is concerned, the Learned GP would contend that the said Vijayshankar Ambikaprasad Tripathi had produced the certificate dated 3-3-2015 before the Appellate Authority whereas the Petitioners had not and it is taking into consideration the said certificate that the Appeal filed by the said Tripathi was allowed. In so far as the compliance of bye law No.40 is concerned, the Learned GP as well as the Learned Counsel appearing for the Respondent No.3 would contend that the application for deposit of the share money has to be accepted by the Board of Directors and that the share certificates have also to be issued as otherwise a person is ineligible to contest the elections on mere deposit of the share amount or the balance share amount. In the instant case,

the Learned GP would contend that there is no approval of the Board of Directors and neither share certificates have been issued.

9 Affidavits in reply to the Petition have been filed on behalf of the Respondent No.1 and the Respondent No.3.

10 Having heard the Learned Counsel for the parties, I have considered the rival contentions. In the instant case, as indicated above, much store was laid on behalf of the Petitioners on the certificate issued by the Respondent No.3 Bank dated 3-3-2015. However, as indicated above, the Returning Officer as per the mandate cast upon him whilst carrying out the subscribing had juxtaposed the certificate with the record of the Bank namely the register of shares as well as the deposit wherein he found that there were no entries made in the name of the Petitioners. It is on account of the said fact that the Returning Officer rejected the nomination of the Petitioners on the ground that there was non compliance of bye law No.40. It is not possible to accept the contention of the Learned Senior Counsel that what is required is only a deposit of the balance share amount and that there is no necessity for the approval of the Board of Directors or that the share certificates be issued. In my view, bye law No.40 cannot be construed in the manner as propounded by the Learned Senior Counsel. The bye law by its nature requires that the candidate has to subscribe to shares worth Rs.5000/- and also to make a

deposit of Rs.25,000/- with the Respondent No.3 Bank, merely the deposit of Rs.5000/- towards share amount therefore cannot satisfy the requirement of the said bye law No.40. It is well settled that the ultimate power in such matters is vested in the managing committee in so far as the co-operative housing societies etc. are concerned, and the Board of Directors in so far as other societies are concerned. In the instant case, admittedly there is no resolution of the Board of Directors approving the deposit made on 2-3-2015 i.e. the day prior to the nominations being opened up in so far as the Respondent No.3 Bank is concerned.

11 In so far as the case of the said Vijayshankar Ambikaprasad Tripathi is concerned, prima facie it appears that the facts were identical but as indicated above the Learned GP was at pains to distinguish the facts of the said case from the facts of the case of the Petitioners above named, however could not do so with any deal of conviction. It is not necessary to go into the said aspect as the person aggrieved by the candidature of said Shri Tripathi can obviously take recourse to the avenues open in law if the occasion to arises after the elections are over. Hence by keeping the said avenue open this Court does not express any opinion on the said aspect.

12 Lastly it is required to be noted that the election programme in its second phase is at the last stage where what remains is only voting which is to

take place on 5-4-2015. Hence in so far as the Petitioners are concerned, no case for interdiction in the Writ Jurisdiction of this Court is made out. The Writ Petitions are accordingly dismissed.

[R.M.SAVANT, J]