

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO.8440 OF 2015**

Prashant Prabhakar Salunke

..Petitioner

Vs.

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

..Respondents

Ms Sweta Sharma for the Petitioner

**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 Writ Jurisdiction of this court is invoked against the order dated 20-3-2015 by which order, the Appeal filed by the Petitioner came to be dismissed by the Appellate Authority i.e. the Additional Commissioner and Special Registrar Co-operative Societies Maharashtra State. The above Petition was heard along with the batch of Petitions being Writ Petition No.8168 of 2015 and the companion matters. However, the factual matrix involved in the above Petition is slightly different than the factual matrix involved in the other 6 Petitions. The controversy in the above Petition is as regards the rejection of the nomination of the petitioner to contest the elections to the Board of Directors of the Respondent No.3 Bank.

2 It is not necessary to burden this order with unnecessary facts. Suffice it to state that the Returning officer has rejected the nomination of the Petitioner on the ground that the Petitioner has filled up the form in his individual name when the proprietorship concern of the Petitioner i.e. M/s Screen Charms is the member of the Respondent No.3 Bank.

3 In so far as the eligibility to contest the election to the Board of Directors is concerned, the same is prescribed by bye law 40 of the bye laws of the Respondent No.3 Bank. The same is reproduced hereinunder for the sake of ready reference.

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 The record discloses that the Petitioner had pursuant to the amendment to the bye law No.40 had subscribed to shares worth Rs.5000/- on 27-11-2014. The record discloses that the said subscription was approved by the Board of Directors of the Respondent No.3 bank on 13-1-2015. There is no dispute about the fact that the Petitioner had already made deposit of Rs.25,000/- as is required by the bye law earlier in point of time. The nomination of the Petitioner was rejected on the ground that though the membership is in the name of the firm i.e. M/s.Screen Charms, the nomination was filed in the name of the firm through the Petitioner. The Petitioner aggrieved by the said rejection of the nomination by the Returning Officer challenged the same before the Appellate Authority by way of an Appeal under Section 152A of the Maharashtra Co-operative Societies Act. The said Appeal filed by the Petitioner as indicated above came to be dismissed by the Appellate Authority by the impugned order dated 20-3-2015 by observing that the proprietorship firm and the Petitioner Prashant Salunke are two different entities.

5 In my view, the Appellate Authority erred in rejecting the Appeal on the ground that the proprietorship firm and the proprietor are two separate entities. It is well settled that a proprietorship does not have a separate existence than the proprietor and therefore to consider them as two separate

entities would be fallacious. Apart from the said ground, the application has not been rejected on the grounds on which the applications of the Petitioners in the batch of Writ Petitions were rejected namely that on the date of the nomination they had not subscribed to the requisite number of shares and had not made the deposit that was required to be made as contemplated by the bye law No.40. There is no dispute about the fact that the Petitioner has subscribed to shares worth Rs.5000/- much earlier i.e. on 27-4-2014. The case of the Petitioner in the instant Petition therefore stands on a different footing than the case of the Petitioners in the other Petitions. Hence though the election programme is at the final stage, having regard to the fact that the nomination of the Petitioner herein has been rejected, which rejection can be said to be in breach of bye law No.40 and for a highly technical reason the Petitioner cannot be deprived from taking part in the democratic process. The impugned order dated 20-3-2015 is therefore required to be quashed and set aside and is accordingly quashed and set aside, resultantly the Appeal filed by the Petitioner would stand allowed. The order passed by the Returning Officer dated 10-3-2015 would also accordingly stand set aside. The Returning Officer is directed to accept the nomination of the Petitioner herein and allot him a symbol and include his name in the final list of candidates.

6 In so far as the challenge raised to the acceptance of nomination of Mr. Vijayshankar Ambikaprasad Tripathi is concerned, in the light of the

observations made in the order passed in Writ Petition No.8168 of 2015 and companion matters, it is not necessary to pass any further order in the instant Petition. Suffice it to state that the said issue is being kept open for being agitated before the appropriate forum if the occasion so arises after the elections are over. The above Writ Petition is allowed to the aforesaid extent. The Petition to accordingly stand disposed of.

[R.M.SAVANT, J]