

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St.NO.21071 OF 2015**

Annasaheb Magar Co-operative Bank Limited	..Petitioner
Vs.	
The Hon'ble Minister for Co-operation & Ors.	..Respondents

**WITH
WRIT PETITION NO.7978 OF 2015**

Nandkumar Vithoba Lande	..Petitioner
Vs.	
The State of Maharashtra & Ors.	..Respondents

**Mr. Y. S. Jahagirdar Senior Advocate a/w Mr. S. S. Aradhye for the
Petitioner in Writ Petition St No.21071 of 2015**
Mr. S. S. Kanetkar for the Petitioner in Writ Petition No.7978 of 2015
**Mr. A. G. Damle Senior Advocate for the Respondent No.3 in both the
Petitions**
Mr. S. D. Rayrikar AGP for the Respondent Nos.1 & 2 in both the Petitions

**CORAM : R. M. SAVANT, J.
DATE : 10th AUGUST, 2015**

P.C.

1 The Petitioner in the above Writ Petition St.No.21071 of 2015 is an Urban Co-operative Bank. The Petitioner in Writ Petition No.7978 of 2015 is an objector to the nomination filed by the Respondent No.3 for contesting the elections to the Board of Directors of the Petitioner Bank.

2 In so far as Writ Petition St. No.21071 of 2015 is concerned, it takes exception to the order dated 16-7-2015 passed by the Appellate Authority

i.e. the Hon'ble Minister for Co-operation, Government of Maharashtra, by which order, the delay in filing the Appeal in question came to be condoned as also the operation of bye-law No.45(6) came to be set stayed.

In so far as the Writ Petition No.7978 of 2015 is concerned, it takes exception to the acceptance of the nomination of the Respondent No.3 which acceptance was as a consequence of stay granted by the Appellate Authority to the operation of bye-law No.45(6) vide the impugned order dated 29-7-2015.

3 In terms of the directions issued by the State Government pursuant to the 97th constitutional amendment, the Petitioner bank adopted the model bye-laws which were framed in compliance with the constitutional mandate. A meeting of the General Body of the Petitioner bank was held on 9-4-2013 where the amended bye-laws were approved amongst which was bye-law No.45 containing the disqualification for being a Director of the Petitioner bank. The said bye-laws were thereafter sanctioned by the Registrar of Co-operative Societies on 8-7-2014. In the context of the present Petitions, it is required to be noted that the Respondent No.3 i.e. Malhari Sadashiv Gavhane who is a sitting Director was part of the General Body which had assembled on 9-4-2013 and whose signature appears on the minute book as the Director who had attended the said meeting. After the sanction was accorded to the bye-laws on 8-7-2014, that the steps to hold the elections to the Petitioner bank

were set in motion sometime in May 2015 and the second phase of the programme that is from making the nomination forms available commenced from 22-7-2015 and the nominations were to be filed between 24-7-2015 and 28-7-2015.

4 In so far as the Respondent No.3 is concerned, it appears that he has leased out the premises belonging to him to the Petitioner Bank in which one of the branches of the Petitioner bank is functioning. The said lease it appears is of the year 2010. It is possibly on having a premonition of the fact that an objection would be raised to his nomination on the touchstone of bye-law No.45(6), that the Respondent No.3 chose to file an Appeal against the sanction accorded to the bye-laws by invoking Section 152 of the Maharashtra Co-operative Societies Act, before the Appellate Authority i.e. the Hon'ble Minister for Co-operation Government of Maharashtra. In the Appeal, the delay was sought to be justified on the ground that he was not aware of the said bye-law No.45(6) and that he became aware of it only after a copy of the bye-laws was furnished to him on 22-5-2015. The said Appeal it seems was filed on 13-7-2015 and moved on 16-7-2015.

5 It is required to be noted that though there was a delay of one year and the matter being as serious as a challenge to the bye-laws which have been passed in the General Body Meeting of the Petitioner bank and also

sanctioned by the Registrar Co-operative Societies, the Appellate Authority proceeded to consider the application for condonation of delay as well as the stay application that was filed *exparte* without giving notice to the Petitioner bank. The Appellate Authority thereafter for the reasons mentioned in the impugned order has condoned the delay as also granted stay to the said bye-law No.45 (6). Prima facie the reasons mentioned in the impugned order are not germane to grant of stay of the said bye-law No.45(6) which has been approved by the General Body as also sanctioned by the Registrar Co-operative Societies. In fact one of the grounds on the basis of which stay has been granted, does not seem to have been urged by the Appellant himself.

6 Be that as it may, since one of the planks of the challenge to the impugned order was the fact that the said order has been passed without hearing the Petitioner bank in a matter as serious as the operation of the bye-laws, the Learned Senior Counsel appearing for the Respondent No.3 on instructions fairly submitted that he has no objection to the impugned order being set aside and the matter being relegated back to the Appellate Authority for a *denovo* consideration. Since the very eligibility of the Respondent No.3 Mr. Malhari Sadashiv Gavhane to contest the elections is contingent upon the decision that would be rendered in the Appeal. The Learned Senior Counsel appearing for the Respondent No.3 has no objection to the Petitioner in Writ Petition No.7978 of 2015 for being joined as party to the said proceedings.

Statement accepted. In my view, it would be just and proper to dispose of the above Petitions by issuing the following directions :

(i) The impugned order dated 16-7-2015 is quashed and set aside and the matter is relegated back to the Appellate Authority i.e. the Hon'ble Minister for Co-operation, Government of Maharashtra, for a denovo consideration of the Appeal. On remand the Appellate Authority would consider the Appeal itself rather than the application for stay within the time frame that is stipulated by the instant order.

(ii) However, prior to considering the Appeal itself, the Appellate Authority to consider the application for delay filed by the Respondent No.3 and only if the delay is condoned that it would proceed to consider the Appeal on merits.

(iii) Though the nomination of the Respondent No.3 is accepted, it is clarified that the acceptance of the nomination of the Respondent No.3 and his right to contest the election would be contingent upon the decision that would be rendered in the Appeal and such further orders that would be passed in the challenge raised to the final order that would be passed by the Appellate Authority.

(iv) Mere acceptance of the nomination would not create any equities or right in favour of the Respondent No.3.

(v) The Petitioner in both the Petitions to serve their replies on Advocate Shri Sumit Kothari who is practising in this Court, by 11-8-2015 and file the same before the Hon'ble Minister for Co-operation, Government of Maharashtra. The parties to appear before the Hon'ble Minister for Co-operation on 12-8-2015 at 3.00 p.m. The Appellate Authority to decide the Appeal latest by 19-8-2015.

(vi) Needless to state that the contentions of the parties are kept open for being urged before the Appellate Authority. The Appellate Authority to decide the Appeal on its own merits and in accordance with law, however having regard to the observations made in the instant order.

(vii) The Learned AGP who is instructed by Mr. K. G. Valvi, the Under Secretary, Co-operation and Textiles Department, who is personally present in Court to communicate the aforesaid development to the Appellate Authority.

7 In the light of the aforesaid directions the above Writ Petitions to stand disposed of.

8 The parties to act upon a copy of this order duly authenticated by the Court Shirestdar.

[R.M.SAVANT, J]