

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO. 4411 OF 2012
WITH
WRIT PETITION NO. 4412 OF 2012**

Jalgaon Zilla Sahakari Cotton Marketing
Federation Ltd.

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

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Mr. V.D. Hon, Senior Advocate a/w Mr. V.B. Jadhav, Advocate for
petitioner.

Mr. S.K. Tambe, A.G.P. for Respondent Nos. 1 and 2.

Mr. V.P. Patil, Advocate for Respondent No.3 in WP 4412/12.

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**CORAM : T.V. NALAWADE, J.
DATED : 20th DECEMBER, 2016**

ORDER :

1. The first proceeding is filed to challenge the order made by the District Deputy Registrar, Co-operative Societies, Jalgaon in Appeal No. 05 of 2012 which was filed by present Respondent No.3 to challenge the decision given by the election committee / Returning Officer during the scrutiny of nomination papers and by which the nomination paper of present Respondent No.3 was rejected. The Appellate Authority has allowed the appeal and it is held that rejection of nomination was not

proper. The second proceeding is filed to challenge the decision of the same Appellate Authority given in favour of Respondent No.3 of the second proceeding and in that proceeding also the appellate authority has held that the order of rejection of nomination paper was illegal. These decisions are challenged by Udesing Ramsing Pawar by showing that he is challenging the decisions as Chairman of Jalgaon Zilla Sahakari Cotton Marketing Federation Ltd., Jalgaon. Both sides are heard.

2. The election to the managing committee of the petitioner institute was declared for the period 2012-17. The respondent from Writ Petition No. 4411/12 had filed two nomination papers. One nomination paper was filed as representative of society of which he is a member and another nomination paper was filed in his individual capacity. Both nomination papers were rejected. The committee appointed for scrutiny had held that as per the by-law no. 18 (new), the co-operative institution of this respondent was not eligible as the institute had not made transactions worth Rs.5,00,000/- with the present petitioner institution and that was requirement of by-law no. 18. The other nomination form was rejected by holding that respondent was not having two shares of Rs.500/- each of the petitioner institution though he had become member by paying subscription towards share capital as per old by-law. It was

informed to this respondent that he was not eligible to contest the election as he was not satisfying the conditions laid down in by-law no. 18. The District Deputy Registrar allowed the appeal by holding that no record was discussed in the order of rejection of nomination showing that there was no transaction worth Rs.5,00,000/- of the co-operative society with present petitioner. The Appellate Authority has held that no procedure was followed as laid down in Section 26 of the Maharashtra Co-operative Societies Act, 1960 if the condition of share capital was changed by making new by-law and so it was not possible to hold that he was not eligible to contest the election in individual category.

3. In the second proceeding also no reasoning at all was given for rejection of both nomination papers of the respondent. In the present proceeding it was submitted that the society of respondent had made correspondence with petitioner – federal society and it had requested to return the share capital as it was not doing the business. It was submitted that accordingly resolution passed by petitioner society and it was informed to society of respondent that it can take back the share capital, amount of Rs.14,000/-. Though copy of correspondence is produced on record, there is no corresponding record like steps taken to delete the name from share register, creating separate record of such member. Only

on the basis of copies of such correspondence it cannot be said that such steps were really taken prior to the relevant date. The Appellate Authority has held that in view of provision of Section 73(3) of the aforesaid Act, the respondent lady was entitled to contest the election. Even if that reasoning is ignored, it can be said that order shown to be made could not have sustained in law.

4. Even if aforesaid merits of present matter are ignored, it can be said that the entire process of election started by the chairman – Udesing Ramsing Pawar was illegal and everything was done highhandedly. The submissions made and the record produced show that by using the power given by Section 73(1)(b) of the aforesaid Act, the State Government had issued circular and had declared that the elections to all the co-operative institutions were postponed and this decision was to be enforced against all the societies which had not reached the stage of filing of nomination forms on the date of circular. The circular was issued on 20th April, 2012. The elections were postponed till 31st July, 2012. Admittedly, in the present matter the election program was declared on 02nd April, 2012 and it was to be completed prior to 30th June, 2012. The nomination forms were to be filled before 30th April, 2012 and supplying of nomination form was to be started on 28th April, 2012. Thus the stage of filing of

nomination form was not reached in the present matter on the date of circular i.e. on 20th April, 2012.

5. In view of this circumstance, the Chairman ought not to have gone with the election of the society. It can be said that the Chairman did everything highhandedly. Such election cannot be recognised in law even if it is shown as unopposed election. Learned Counsel for respondent produced copy of order made by this Court in Petition No. 4411 of 2012 dated 12th June, 2012 showing that the date of election was automatically postponed of the present institution till 31st July, 2012. In spite of such order made by this Court, the petitioner – Chairman created record of election and showed that he and his persons were elected unopposed.

6. There are many other things which were illegal on the part of this Chairman. The record shows that he and his associates, the members of managing committee worked as committee of scrutiny. Even the employee of the society was shown as candidate for election. By using aforesaid modus operandi the other nomination forms were rejected and the old body declared itself as elected unopposed. Thus election process was not in the hands of independent person. On this point, learned Counsel for respondent placed reliance on some observations made by

this Court in the case reported as **1993(2) Mh.L.J. 1206 (Kartarsing Pardeshi and Others Vs. State of Maharashtra and Others)**. In similar circumstance, the Division Bench of this Court quashed and set aside the entire election. The election program was controlled by the previous managing committee and they did the scrutiny of nomination papers, etc. The observations made by this Court in case cited supra are squarely applicable to the present matter also.

7. It is surprising that the State Government, Co-operative Department did not take action and did not even show urgency in the present matter even when there are aforesaid circumstances. The department is expected to act immediately in the case like present one to see that the managing committee which is not elected legally is not allowed to function. There are provision under the Maharashtra Co-operative Societies Act, 1960 for giving administration to the Administrator. That needs to be done immediately. With these observations both proceedings stand dismissed.

(T.V. NALAWADE, J.)

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