

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

WRIT PETITION NO. 10302 OF 2016

Vijay Narsinha Deshmukh
Age: 55 years, Occu.: Service presently
working as Development Officer,
Life Insurance Corporation, Jalna,
R/o 2134, Income Tax Colony,
Jalna, Tq. & Dist. Jalna.

..PETITIONER

VERSUS

1. State of Maharashtra
Through its Secretary
Co-operation and Textile Department,
Mantralaya, Mumbai-32.
2. The District Deputy Registrar
Co-operative Societies, Jalna.
3. The Returning Officer
(Shri V.P. Rodge)
for Devgiri Nagari Sahakari Pat Sanstha
Maryadit, Jalna and
ARCS Jalna, having its office at ARCS Office,
Bhuvikas Bank Building, Survey No. 488,
Jalna, Tq. & Dist. Jalna.
4. Devgiri Nagari Sahakari Pat Sanstha Maryadit,
Jalna, 7, Shanta Govind Apartment,
Gandhi Chaman, Old Jalna,
Tq. & Dist. Jalna
Through its Secretary.
5. Sudhakar Vitthalrao Kulkarni
Age: 58 years, Occu.: Retired,
R/o Roopnagar, Ambad 'T' Point,
Jalna, Tq. & Dist. Jalna.

..RESPONDENTS

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Mr. Deelip Bankar Patil, Advocate h/f Mr. S.M. Gunjal, Advocate for petitioner.

Mr. S.R. Yadav, A.G.P. for Respondent Nos.1 to 3.

Mr. S.S. Paturkar, Advocate for Respondent No.4.

Mr. J.R. Pawar, Advocate for Respondent No.5.

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CORAM : T.V. NALAWADE, J.

DATED : 13th OCTOBER, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard both sides by consent for final disposal.

2. The petition is filed by one member of Respondent No.4 – Co-operative Credit Society to challenge the decision given by the District Co-operative Election Officer, Jalna in Appeal No. 1 of 2016.

3. Respondent No.5 wants to contest the election of Respondent No.4 – Society. The nomination forms were to be accepted between 12th September, 2016 and 16th September, 2016. The nomination form was filed by Respondent No.5 on 16th September, 2016 and he had made declaration that he was not disqualified due to any provision of the Maharashtra Co-operative Societies Act, 1960. On 19th September, 2016, the date fixed for taking of objection, objection was filed by present

petitioner to nomination of Respondent No.5. It was contended that Respondent No.5 was a member of M.S.R.T.C. Employees Co-operative Credit Society and he was defaulter in that society. He produced certificate dated 16th September, 2016 issued by this society which was to the effect that Respondent No.5 was defaulter and due to default, amount of Rs.69,374/- was due from him as arrears. The particulars like principal amount and interest were given in the certificate. Respondent No.5 then applied to the Returning Officer and requested for time as he wanted to produce certificate that he had cleared the arrears. In application dated 19th September, 2016, Respondent No.5 specifically admitted that he had committed default but he wanted to clear the dues prior to 11.00 a.m. of 20th September, 2016. It appears that on the same day, he went to the society where he had become defaulter and he cleared the dues. He produced the certificate on 19th September, 2016 itself before the Returning Officer. After giving hearing to both the sides, the Returning Officer gave decision on 20th September, 2016 and rejected the nomination of Respondent No.5. It was held that in view of the provision of Section 73FF (1)(i)(b), the disqualification was incurred and so the nomination cannot be accepted. The appellate authority – District Co-operative Election Officer allowed the appeal by holding that the amount was paid though subsequently and on the date of scrutiny i.e. 19th

September, 2016, Respondent No.5 was not defaulter and so his nomination needs to be accepted.

4. On the aforesaid point, the learned Counsel for present petitioner placed reliance on some reported cases. In the case **2003(2) Mh.L.J. 485 (Vijaysingh Krishnarao Parbat Vs. Returning Officer, Janata Sahakari Bank Ltd. and others)** decided at Principal Seat of this Court, there was occasion to consider similar situation and this Court held that a person is eligible to contest the election if he discloses himself to be not a defaulter at least on or before last date of filing of nomination papers. Thus it was held that on or before last date of filing of nomination papers the arrears need to be cleared and candidate must show that he was no more defaulter. Similar observations are made by this Court in the cases reported as **2011(3) Mh.L.J. 833 (Manchak Shahaji Pawar Vs. State of Maharashtra and Others)** and **2005(4) All M.R. 318 (Aurangabad Bench)(Navnath Motiram Shirale Vs. The Returning Officer (Assistant Registrar Co-op. Societies Patoda, Dist. Beed) and Others)**. In other decision given by this Court at this Bench on 24th April, 2015 in Writ Petition In 4341 of 2015 (Gangadhar Govindrao Rathod Vs. State of Maharashtra and Others) similar observations are made.

5. On the other hand, the learned Counsel for Respondent No.5 placed reliance on observations made by this Court in Case reported as **1995(1) Mh.L.J. 208 (Ramesh Rajaram Patil Vs. Additional Commissioner, Aurangabad Division and Others)**. In that case this Court had held that if the amount was paid before recording of decision by the Returning Officer and that may be after the last date given to file nomination paper, he cannot be treated as defaulter and his nomination needs to be accepted. In other matter reported as 1987 Mh.L.J. 944 (Maulidhar Bhaulal Malu Vs. Sudhakar Honaji Patil and Another) it is held that the default needs to be established. The said case was on the ground mentioned in Section 73FF (1)(c), thus ground was different and there was necessity to show that the candidate was defaulter.

6. In the present matter, it was simple loan transaction and admittedly Respondent No.5 was defaulter. The other case of Ramesh Raharan Patil (supra) on which reliance was placed by Respondent No.5 was considered by this Court in case of Vijaysing cited supra. This Court holds that the ratio laid down in the case of Vijaysing Krishnarao Parbat (supra), needs to be accepted in view of the wording of provision of Section 73FF (1)(i) of the Act. Thus the appellate authority has committed serious mistake in allowing the appeal and in holding that the

petitioner is eligible to contest the election to the Managing Committee of co-operative society. The decision given in appeal cannot sustain in law.

In that result, following order:

Petition is allowed. The order made by appellate authority – District Co-operative Election Officer in Appeal No. 1 of 2016 filed under Section 152-A of the Maharashtra Co-operative Societies Act is hereby set aside and order made by the Returning Officer is restored. Nomination stands rejected. Parties to act on authenticate copy of this order. Rule made absolute in aforesaid terms.

(T.V. NALAWADE, J.)

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