

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.909 OF 2016

Popat @ Kailash Sarjerao Taware : Petitioner.
Versus
The State of Maharashtra
Through the Hon'ble Minister for
Co-operation and ors. : Respondents.

Mr. S S Prabhune for the Petitioner.
Mr. S D Rayrikar, AGP for the Respondent State.
Mr. S V Khaire for the Respondent Nos.3 and 4.
Mr. Vipul Shah for the Respondent No.7.

CORAM : R. M. SAVANT, J.
DATE : 21st March 2016

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 12/01/2016 passed by the Hon'ble Minister for Co-operation, Marketing and Textiles, Government of Maharashtra by which order the Appeal filed by the Petitioner being Appeal No.576 of 2015 came to be dismissed and resultantly the order dated 17/08/2015 passed by the Regional Director (Sugar), Pune, came to be confirmed.

2 The Petitioner is a member of the Respondent No.7 Society i.e. Moraya Vividh Karyakari Seva Society Ltd. Morgaon. The said Society is a member of the Respondent No.6 Sakhar Karkhana (sugar factory). The elections to the Respondent No.6 were held in the year 2014. The Petitioner

had filed his nomination for being elected as a Director of the Respondent No.6 Society. On the date of scrutiny of the nominations, it is an undisputed position that the Petitioner had a No Dues Certificate from the Respondent No.7 Society. This was on the basis that the Petitioner had advanced a cheque of Rs.10,08,057/- which the Petitioner owed to the Respondent No.7 Society under various loan accounts. The said amount of Rs.10,08,057/- was the total outstanding of the Petitioner under various loan accounts. After the elections were completed, the Respondent No.3 herein Shri Jagannath Vithobha Taware who had contested the election against the Petitioner complained to the Regional Director (Sugar) that the Petitioner was not entitled to contest the elections as the Petitioner was a defaulter of the Respondent No.6 Society in respect of various loans which he had taken. The said loans were referred to in paragraph 1 of the said letter. It was further mentioned that an amount of Rs.10,08,057/- was due from the Petitioner to the Respondent No.6 under the said loan accounts details of which were mentioned in the said letter. The said letter dated 22/05/2015 was taken cognizance of by the Regional Director (Sugar) who issued a show cause notice to the Petitioner dated 22/06/2015 under Section 73CA(c)(i) and Section 78A of the Maharashtra Co-operative Societies Act, 1960 (for short "the said Act").

3 The said notice was replied to on behalf of the Petitioner vide his reply dated 03/08/2015 and the principal contention in the said reply was that

the Petitioner was issued a No Dues Certificate on 14/03/2015 and was therefore not a defaulter on the date of scrutiny of the nominations. It was also sought to be contended in the said reply that the proper remedy for the complainant was to challenge the election of the Petitioner by filing an Election Petition within the statutory period.

4 The Regional Director of Sugar after giving an opportunity to the parties passed the order dated 17/08/2015 whereby the Petitioner stood disqualified under Section 73CA(c)(i) and was therefore removed as a Director under Section 78A of the said Act. The Regional Director has referred to the fact that on the date of scrutiny the Petitioner was a defaulter and though the cheque for the amount of Rs.10,08.057/- was paid, the cheque having been dishonoured, the Petitioner was therefore a defaulter of the Respondent No.7 Society on the date of scrutiny. The Regional Director therefore observed that the Petitioner was dis-entitled to continue as a Director of the Respondent No. 6 Society i.e. the Sakhar Karkhana.

5 The said order dated 17/08/2015 was taken exception to by the Petitioner by filing an Appeal under Section 152 of the said Act. The said Appeal came to be dismissed by the Appellate Authority i.e. the Hon'ble Minister for Co-operation, Marketing and Textiles, Government of Maharashtra by the impugned order dated 12/01/2016. As indicated above it is the said

order dated 12/01/2016 which is taken exception to by way of the above Petition.

6 On behalf of the State an affidavit in reply has been filed by one Ajay Mahdavrao Deshmukh, 2nd Special Auditor, CI.1, Co-operative Societies (Sugar) Pune. In the said affidavit it has been stated that though a No Dues Certificate was issued by the Respondent No.7 on 14/03/2015, the same was on the basis of the fact that the Petitioner had forwarded a cheque for the said amount on the said date. It is further stated that after the said cheque was deposited, the same was dishonoured on account of the lack of funds in the bank account of the Petitioner and the cheque was accordingly returned on 24/04/2015. Hence it has been stated in the said affidavit in reply that though the amount was paid later on in June 2015 and July 2015 it is an undisputed position that till 03/07/2015 the Petitioner was a defaulter. It is further stated that during the entire election process of the Respondent No.6 Society, the Petitioner was a defaulter within the meaning of Section 73CA(A1)(1) of the said Act. In so far as effective consultation is concerned, it has been stated that the effective consultation was done with the Federal Society of the Respondent No. 6 i.e. the Maharashtra Rajya Sahakari Sakhar Sangh Ltd. Sakhar Karkhana which is evidenced by the letter dated 26/06/2015 of the said Sangh.

7 The principal contention of the learned counsel appearing for the Petitioner was that the Petitioner could not have been removed as a Director of the Respondent No. 6 Sakhar Karkhana by taking recourse to Section 78A of the said Act and that the removal of the Petitioner could only have been as a consequence of an election petition that was required to be filed by the Respondent No.1. It was also the submission of the learned counsel for the Petitioner that on the day when the scrutiny was carried out the Petitioner was armed with a No Dues Certificate and therefore could not be termed as defaulter on the said day. It was also the contention of the learned counsel for the Petitioner that unless there was a demand by the Respondent No. 7 Society, the Petitioner could not be termed as a defaulter. The learned counsel for the Petitioner sought to raise a contention that the order was vitiated on account of there being no effective consultation with the Federal Society.

8 In my view, it is not possible to accept the contentions urged on behalf of the Petitioner. As indicated above the Petitioner was issued the said No Dues Certificate dated 14/03/2015 as the Petitioner had forwarded a cheque for the outstanding amount due from him under the loans in question. However, since the said cheque advanced by the Petitioner was dishonoured, the Petitioner had not cleared the outstanding dues and therefore the day when the scrutiny of the nominations was carried out the Petitioner's outstanding remained and therefore the Petitioner was a defaulter within the

meaning of Section 73CA(c)(i) of the said Act.

9 In so far as Section 78A is concerned, the power under the said provision can be invoked to remove any member of the committee who stands disqualified by and under the said Act for being a member of the committee. The said Section only postulates that removal can be after a modicum of procedure of hearing the member is followed. In the instant case, as indicated above the Petitioner was disqualified to be a member or the Director of the Respondent No.6 as he was a defaulter of the Respondent No.7 Society, the removal of the Petitioner was also after a procedure for the same was followed.

10 A show cause notice in the instant case as can be seen has been issued both under Section 73 CA(c)(i) as well as under Section 78A of the said Act. The order passed by the Regional Director is under Section 73CA (c)(i) as well as under Section 78A of the said Act. It is only the Appellate Authority's order which refers to Section 73CA(c)(i) but having regard to the background in which the appellate jurisdiction was invoked, it would have to be held that the said order is referable to both the provisions i.e. Section 73CA(c)(i) as well as Section 78A of the said Act.

11 Once a member is disqualified under Section 73CA(c)(i), then the authorities are within their powers to remove such a member of the committee

under Section 78A of the said Act that is what is precisely done in the instant case. Hence the submission of the learned counsel for the Petitioner that the Petitioner could not have been removed by taking recourse of Section 78A of the said Act cannot be accepted.

12 In so far as the submission of the learned counsel that there has to be a notice of demand from the Society i.e. raised in the instant case and thereafter only after the notice of demand has not been complied with that the Petitioner could have been termed as defaulter is concerned, the said submission is misconceived. Different types of loans which the Petitioner has availed of are reflected in the first paragraph of the letter of the complainant, one of the loans is a cattle loan for which the repayment was within the stipulated time. Second loan is a crop loan which the Petitioner was obliged to repay during the course of the year in which the loan was availed of. In fact in respect of both the loans the accumulated interest has also been shown, meaning thereby that in spite of the repayment done, the loans have not been repaid. In my view, therefore the said contention of the learned counsel for the petitioner has to be rejected. On behalf of the Petitioner reliance was sought to be placed on the judgment of the Apex Court reported in (1991) 2 SCC 423 in the matter of **Pundalik v/s. District Deputy Registrar, Co-operative Societies, Chandrapur and others.** In the facts of the instant case, the judgment of the Apex Court in **Pundlik's** case (supra) does not further the case of the Petitioner

as in the instant case the show cause notice was issued both under Section 73CA(c)(i) and Section 78A of the said Act.

13 In so far as the ground of there being no effective consultation is concerned, the letter of the Federal Society dated 26/06/2015 is annexed to the affidavit in reply filed by Shri Ajay Madhavrao Deshmukh, in which reply it is stated that the Federal Society has nothing to say in the matter. Hence there has been consultation with the Federal Society, and therefore, there is no merit in the said contention urged on behalf of the Petitioner.

14 In that view of the matter, no case for exercise of the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

At this stage the learned counsel for the Petitioner seeks stay of the instant order. In view of the fact that the Petitioner has stood disqualified on account of being a defaulter, the said prayer cannot be acceded to and is accordingly rejected.

[R.M.SAVANT, J]