

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

WRIT PETITION NO.6095 OF 2016

1. Shri. Mahadev Sangappa Phutane
Age : 57 years, Occ. Business,
R/o : Budhwar Peth, Miraj,
Tal. Miraj, District Sangli
 2. Shri. Tamanna Aadvyappa Badge
Age : 71 years, Occ. : --
R/o : Somwar Peth, Miraj,
Tal. Miraj, District Sangli.
- Petitioners

Vs.

1. The Returning Officer,
Basaveshwar Nagari Sahakari
Patsanstha Ltd., District Sangli.
Somwar Peth, Miraj,
Tal. Miraj, District Sangli.
2. The District Co-op. Election Officer
Sangli, District Sangli
3. The District Deputy Registrar
Sangli, District Sangli
4. The State Co-op. Election Authority
Ground Floor, Old Central Bldg.,
B.J. Road, Pune – 411 001
5. The State of Maharashtra
6. Shri. Subhash Mahaling Karade
Age : 65 years, Occ.: Business,

R/o : Walve Galli, Miraj,
Tal. Miraj, District Sangli.

.... Respondents

**WITH
WRIT PETITION NO.6102 OF 2016**

1. Shri. Mahadev Sangappa Phutane
Age : 57 years, Occ. Business,
R/o : Budhwar Peth, Miraj,
Tal. Miraj, District Sangli

2. Shri. Tamanna Aadvyappa Badge
Age : 71 years, Occ. : Business
R/o : Somwar Peth, Miraj,
Tal. Miraj, District Sangli.

.... Petitioners

Vs.

1. The Returning Officer,
Basaveshwar Nagari Sahakari
Patsanstha Ltd., District Sangli.
Somwar Peth, Miraj,
Tal. Miraj, District Sangli.

2. The District Co-op. Election Officer
Sangli, District Sangli

3. The District Deputy Registrar
Sangli, District Sangli

4. The State Co-op. Election Authority
Ground Floor, Old Central Bldg.,
B.J. Road, Pune – 411 001

5. The State of Maharashtra

6. Shri. Annaso Appaso Harage
Age : 58 years, Occ.: Service,
R/o : Budhwar Peth, Miraj,
Tal. Miraj, District Sangli. Respondents

Mr. Kuldeep U. Nikam, Advocate for the Petitioners.
Mr. A.R. Metkari, AGP for Respondents no. 1 to 5.
Mr. Ramdas A. Shelke, Advocate for Respondents no.6.

Coram : **Smt. R.P. SondurBaldota, J.**
Date : 17th June, 2016

P.C.

1 The above two petitions are being disposed off by a common order as the facts alleged therein are identical and questions arising for consideration therein are also identical.

2 The petitioners are members of Shri. Basaveshwar Nagari Sahakari Patsanstha Maryadit, Tal. Miraj, District Sangli (hereinafter referred to as “the Credit Society”). On 11th May, 2016, respondent no.4 declared the schedule for the election to the Managing Committee of the Credit Society. The petitioners have filed their nominations to contest the election. Respondent no.6 to the two petitions also filed their respective nominations. The petitioners objected to their nominations by filing objections before respondent no.1, the Returning Officer on the ground that in view of Section 73CA (1)(iii), they are disqualified from contesting the election. Under that provision, no person is eligible

for being a member of the Committee, who has been held responsible under Section 79 or 88 or has been held responsible for payment of costs of inquiry under Section 85. Undisputedly, both respondent no.6 have been held responsible by the Inquiry Officer of Miraj Urban Co-operative Bank/ District Deputy Registrar (DDR), Sangli by his order dtd. 30th September, 2010 in the inquiry conducted under Section 88 of the Maharashtra Co-operative Societies Act read with Rule 72 of Maharashtra Co-operative Societies Rules. Respondent no.6 in the first petition is held responsible for damages to the Credit Society to the extent of Rs.11,78,648.37 ps. and respondent no.6 to the second petition to the extent of Rs.2,20,890.00.

3 The two grounds on which the Returning Officer rejected the objections of the petitioners are the order dtd. 4th October, 2011 passed by the Hon'ble Minister for Co-operation on Appeal No. 147 of 2011 and the orders passed by Judicial Magistrate, First Class, Miraj in Criminal Proceedings No. 363 of 2011, 80 of 2012 and 72 of 2012, acquitting the accused in those cases of the offences punishable under Sections 420, 465, 467, 471, 408 read with 34 Indian Penal Code. The order of the Returning Officer states neither the details of the appeal proceedings nor the details of the orders passed by the Court of Judicial Magistrate, First Class. It refers to Applications No.895 of 2015, 896 of 2015 and 897 of 2015, which numbers are in fact numbers of the applications for certified copies of the three orders. This by itself

is sufficient to hold that there is total non-application of mind on the part of the Returning Officer.

4 The order dtd. 8th October, 2011 relied upon by Respondent no.6 before the Returning Officer, is the interim order passed in the appeal preferred by 10 other persons, who have similarly been indicted for different amounts by the Inquiry Officer in his order dtd. 30th September, 2010. The operative part of the order states that the application made in the appeal for stay of the impugned order is allowed and the order dtd. 30th September, 2010 passed under Section 88 of the Co-operative Societies Act is stayed until further orders. The appeal is pending till date. Now the question is whether respondents no.6 can derive any benefit from the order passed in a proceeding to which they are not parties.

5 The record shows that the audit report of the Credit Society for the years 2003-2004 and 2004-2005 indicated several irregularities in the management of the Credit Society as also misappropriation of funds of more than Rs.6.00 Crores. Therefore, the Registrar had ordered inquiry into its working and financial condition, the report of which confirmed the irregularities and misappropriation of the funds of the Credit Society. Then enquiry under Section 88 was ordered to assess damages against the delinquents for making an order requiring them to repay or restore the money or property or any part thereof

with interest. The Enquiry Officer followed the procedure under Rule 72 of the Maharashtra Co-operative Societies Rules, 1961 and passed his order dtd. 30th September, 2010 against respondents no.6 in the two petitions and several other persons. That order came to be challenged by some of the persons by preferring appeal before the Hon'ble Minister (Co-operation) with an application for interim reliefs. There is no challenge by respondents no.6 herein to the order. Therefore, the interim order passed by the Hon'ble Minister on the appeal before him can be of no help to these respondents. This glaring aspect has not been considered by the Returning Officer.

6 Mr. Shelke, the learned advocate for Respondents no.6 seeks to submit that the order passed by the Hon'ble Minister stays the operation of the entire order. In other words, it is a blanket stay. As such respondents no.6 would get benefit of the same. In my considered opinion, there can be no substance in the submission advanced. Considering the nature of the order impugned in the appeal, it's interim stay would be limited to the appellants challenging the same. The order fixes up the financial liability of each delinquent. Therefore each delinquent needs to independently challenge his own liability. No person will have locus standi in respect of the liability of the other.

7 As regards the acquittal of respondents no.6 in the criminal proceedings filed against them, the same also can be of no

relevance since the prosecution of the respondents for the offences punishable under Indian Penal Code are entirely different proceedings. Besides the degree of proof required to be established in the two proceedings is different. It is, therefore, clear that respondents no.6 are clearly disqualified for contesting the election under Section 73 CA (1)(iii) of the Co-operative Societies Act.

8 Mr. Shelke, the learned counsel for respondent no.6 relying upon the decision of the Apex Court in Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Another vs. State of Maharashtra and Others, reported in (2001) 8 Supreme Court Cases, page 509 seeks to submit that once the election process has been set motion, the High Court should not stay continuation of the election process even though there may be some alleged illegality or breach of rules in the election process. The decision relied upon is not relevant to the facts of the present case. The dispute before the Apex Court was as regards preparation of the electoral roll and the Apex Court held that preparation of the electoral roll being an intermediate stage in the process of election and the election process having been set in motion, it should not be stayed. The facts in the case on hand are different. The question whether the contesting member is qualified or not goes to the very root of his contest of election. Besides, Mr. Nikam states that he is not seeking to stay the process of election. The relief essentially asked for by the

petitioners is of disqualification of the two respondents and deletion of their names from the list of contestants published by the Returning Officer. In that circumstance also, the decision cited by Mr. Shelke will not be applicable to the facts of the present case.

9 Since respondents no.6 to the two petition are clearly disqualified in view of disqualified from contesting election under Section 73 CA(1) (iii) of the Maharashtra Co-operative Societies Act, the Returning Officer ought to have allowed the objections raised by the petitioners. Hence, the petitions are allowed in terms of prayer clause (a). Mr. Shelke requests for stay of operation of the order for a period of two weeks. In the facts of the case, the request is rejected. Respondent no.1 shall take note of the order and do the needful.

Parties to act on the authenticated copy of this order.

(Smt. R.P. SondurBaldota, J)