

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11154 OF 2016

Hiraman Ashok Avhad	...	Petitioner
Versus		
Prakash Gangadhar Gamane And Others	...	Respondents

Mr. R.N. Gite for the Petitioner.
Mr. P.N. Joshi for Respondent Nos. 2 and 6.
Mr. Sachin Kankal, AGP for Respondent Nos.9 to 12.

CORAM : K.K. TATED, J.

DATE : 29 SEPTEMBER, 2016

P.C. :

. Heard learned Counsel for the parties.

2 By this Petition under Article 227 of the Constitution of India, the
Petitioner is challenging an order dated 14 September 2016 passed by
Election Returning Officer, Belgaon Tarhale Vividh Karyakari Seva Sahakari
Sanstha Maryadit, Belgaon Tarhale, Tal. Igatpur, District Nashik.

3 In the present matter, in election of Belgaon Tarhale Vividh Karyakari
Seva Sahakari Sanstha Maryadit, Belgaon Tarhale, Tal. Igatpur, District
Nashik, Respondent Nos.1 to 6 filed their nomination forms, which were
objected by the Petitioner by filing application dated 14 September 2016
on the ground that those Respondents were defaulters. They failed to clear
their loan accounts. Hence, their nomination forms should be rejected.

4 In support of his contention, the Petitioner has placed on record

certificate dated 12 September 2016, issued by the Administrator of Shree Gajanan Sahakari Upsajalsinchan Yojana, Belgaon Tarhale, Tal. Igatpuri, District Nasik, in which Respondent No.2 Sukhdeo Pandurang Avhad was shown as defaulter. The Petitioner also placed on record other documents to show that the Respondents failed to clear their loan accounts on the date of filing of the nomination forms. That application was rejected by the Election Returning Officer by order dated 14 September 2016 on the ground that the objections raised by the Petitioner were not covered by Section 73 C A of the Maharashtra Co-operative Societies Act, 1960 ("the said Act"). Hence, the present Petition.

5 Mr. Gite, learned Counsel for the Petitioner submits that in the present proceedings, the Petitioner placed documentary evidence on record that the Respondents have failed to clear their loan liabilities and inspite of that the Election Returning Officer rejected objection application. He submits that the Petitioner in his application dated 14 September 2016, place on record that Sukhdeo, the legal heir of Pandurang Laxman Avhad failed to clear his loan liability under loan A/c No.51, Prakash Gangadhar Gamane failed to clear loan liability of his mother Punjabai Gangadhar Gamane, in respect of loan A/c No.14, Popat Kashinath Avhad failed to clear loan liability of his family members, Shevantabai Kashinath Avhad under loan A/c No.41, and Taba Tukaram Avhad have failed to clear loan A/c No.17 of his family member i.e. Pandu Tukaram Avhad. He submits that to that effect, the Petitioner has placed on record several documents and inspite of that the Authority rejected Petitioner's objections for the nomination forms of the Respondents. He submits that it is not necessary for declaration of disqualification of the Respondents that, they must be

defaulters in respect of the crop loan only. He submits that Section 73CA (1) (i)(c) of the said Act covered the cases of any society. He further submits that these facts were not considered by the Authority at the time of passing of the impugned order.

6 In support of his contention, learned Counsel for the Petitioner relied on judgement of **Manchak S. Pawar Vs. State of Maharashtra, 2011(3) Bom C.R. 812**. On the basis of these submissions, learned Counsel for the Petitioner submits that the impugned order passed by the Authority is liable to be set aside.

7 On the other hand, Mr. P.N. Joshi, learned Counsel submits that he has received instructions to appears on behalf of Respondent Nos.2 and 6 and he undertakes to file Vakalatnama within one week from today. The same is accepted.

8 Learned Counsel for Respondent Nos.2 and 6 vehemently opposed the present Writ Petition. He submits that in the present proceedings, the elections are only in respect of Belgaon Tarhale Vividh Karyakari Seva Sahakari Sanstha Maryadit, Belgaon Tarhale, Tal Igatpur, District Nasik, which is a Primary Multipurpose Agricultural Co-operative Society. He submits that as per provision of Section 73CA sub-clause (1) (ii) (a) of the SAID Act, it is specifically stated that if the members are defaulters of crop loan, then only provision of this Section is applicable. He submits that in the present proceedings, though the Petitioner has filed his objection application dated 14 September 2016, giving number of loan accounts, he failed and neglected to state whether that loan amount was in respect of

crop loan or any other loan. He submits that as on today, the Respondents are not defaulters of any crop loan. Hence, the Election Returning Officer has rightly held that the Petitioner's application was not covered under the provision of Section 73CA of the said Act and rejected his objections. He further submits that today i.e. 29 September 2016 is the last date for withdrawal of nomination form. In support of this contention about defaulter, he relied on judgement of this Court in the matter of **Vinod Chandra H. Doshi And Another Vs. Echjay Forgings Private Ltd. And Others, 2002 (4) Bom. C.R.428** and **Jaganrao Narhanrrao Harne & Another Vs. Sub-Divisional Officer & Anr., 2009(2) Bom. C.R. 710.**

9 The learned Counsel for the Respondents further submits that the present Petition is not maintainable as the Election Returning Officer has rejected the Petitioner's objections to the Respondents' nomination forms only. The proper remedies are available to the Petitioner only in the election petition. In support of this contention, learned Counsel for Respondent Nos.2 and 6 relies on Rule 78 of The Maharashtra Co-op. Societies (Election to Committee) Rules, 2014 and Section 91 of the said Act. He further submits that as per Rule 58 the procedure is prescribed for declaring a person as defaulter. That procedure was not adopted in the present case. On the basis of these submissions, learned Counsel for Respondent Nos.2 and 6 submits that there is no substance in the present Petition and the same is liable to be dismissed.

10 I heard learned Counsel at length. It is to be noted that in the present proceedings, there is no dispute that nomination forms were submitted by Respondent Nos.1 to 6 in respect of Primary Multipurpose

Agricultural Co-operative Society. In an objections filed by the Petitioner dated 14 September 2016, nowhere it is stated that Respondent Nos.1 to 6 were defaulters in respect of crop loan on the date of filing of the nomination. Those details were not given in the objections application. It is to be noted that bar under Section 73CA, particularly explanation shows that if the person is defaulter of crop loan, then only he is not entitled to contest the election of Primary Multipurpose Agricultural Co-operative Society. That is not the case in the present matter. The authority cited by learned Counsel for the Petitioner in the case of **Manchak S. Pawar** (*supra*), is not applicable to the facts and circumstances of the present case. In that case, there was a default on the part of the contesting member in respect of crop loan.

11 Considering these facts, I do not find any substance in the present Writ Petition, same stands dismissed.

(K.K. TATED, J.)