

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

WRIT PETITION NO. 5283 OF 2017

Govind Janardhanrao Dhumal and Others

..PETITIONERS

VERSUS

State Co-operative Election Authority,
Maharashtra, Pune and others

..RESPONDENTS

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Mr. A.T. Ghute, Advocate for petitioners.

Mr. S.K. Kadam, Advocate for Respondent Nos. 1 and 2.

Mr. K.J. Suryawanshi, Advocate for Respondent No.3.

Mr. Deelip Patil Bankar, Advocate for Respondent No.4.

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CORAM : M.S. SANKLECHA, J.

DATED : 26th APRIL, 2017

ORDER :

1. This petition under Article 227 of the Constitution of India assails the order dated 12th April, 2017 passed by the Respondent No.2 - Returning Officer accepting the nomination form of Respondent No.4 – Mr. Bankar as a candidate for election to the managing committee of Respondent No.3 - Dr. Hedgewar Nagri Sahakari Patsanstha Ltd. Vaijapur. The impugned order rejected the petitioner's complaint that Respondent No.4 is not eligible to contest the election being a defaulter (as a guarantor of a loan given to one Mr. Tupe) under Section 73 CA (1) of the Maharashtra State Co-

operative Societies Act, 1960 (Act) read with Rule 25(2) of the Maharashtra State Co-operative Societies (Election Committee) Rules, 2014 (Election Rules) read with by-law nos. 44(9) and 4(17) of the Respondent No.3 – society.

2. On 11th April, 2017 the petitioner filed an objection before Respondent No.1 - Returning Officer contending that Respondent No.4 is disqualified from contesting elections to Respondent No.3 – society. This for the reason that he had guaranteed a loan taken by Mr. Tupe from the Respondent No.3 - Society, which has not yet been repaid. The basis of the complaint was Section 73 CA (1) of the Act read with by-law nos. 44(9) and 4(17) of the Respondent No.3 - society. The returning officer thereafter called for the explanation from Respondent No.4 - Mr. Prakash Bankar as well as Respondent No.3 – society. Respondent No.4 responded to the same by communication dated 11th April, 2017, while accepting the fact that he is a guarantor of the loan taken by Mr. Tupe from the society, he denied the fact that he is defaulter of the society and also submitted that no written notice for outstanding loan is served upon him. By letter dated 11th April, 2017 the Respondent No.3 – society pointed out that amount of Rs.5 lakh is still outstanding from the principal debtor – Mr. Tupe to whom loan was given. Further it was pointed out that recovery certificate with regard to the

same has been obtained not only against Mr. Tupe but also against guarantor of the loan i.e. Mr. Bankar. However as no evidence of the same was produced before Respondent No.2 – Returning Officer, the impugned order holds that Respondent No.4 cannot be disqualified from contesting the election.

3. The grievance on behalf of the petitioner is that Respondent No.4 is defaulter in terms of by-laws of Respondent No.3 - society in terms of by-law no. 4(17) which defines the word 'defaulter' to mean *“any person who owes the society an amount in excess of 90 days either as principal debtor or as a guarantor”*. While by-law no. 44 lists out the various disqualifications which will prohibit a member from contesting election. At by law 44(9) a defaulter of the society is disqualified. It is on these clear facts that the petitioner submits that Respondent No.2 - Returning Officer could not have allowed Respondent No.4 to contest the elections.

Further before me the petitioner placed reliance upon a recovery certificate dated 21st July, 2015 and also on notices dated 02nd April, 2016 and 13th April, 2016 being demand issued by Respondent No.3 – society to Respondent No.4 as annexed to the affidavit in reply to the petition by Respondent No.3 – society, to submit that this is evidence of Respondent No.4 being a defaulter in not having made the payment. Reliance is also

placed upon the decisions of this Court in *Manchak Shahaji Pawar Vs. State of Maharashtra and Others 2011(2) All M.R. 561* and *Vijay Narsinha Deshmukh Vs. State of Maharashtra and Others (Writ Petition No. 10302 of 2016)*. These two decisions are relied upon to contend that this Court has set aside the orders of the Returning Officer accepting the nomination forms of a member seeking to contest the election to the co-operative society on account of being defaulter of the society. However both the aforesaid decisions referred to members who were principal borrowers who committed the default. Mr. Suryawanshi, learned Counsel for Respondent No.3 placed reliance upon the decision of this Court in *Sambha Gangaram Pikale Vs. State of Maharashtra and Others 1996(2) Mh.L.J. 182* wherein this Court has extended the disqualification even in respect of the guarantor as he was a defaulter of the society.

4. As against the above, Mr. Patil, learned Counsel for Respondent No.4 submits that the petition should not be entertained as alternate remedy of filing of election petition under Section 91 of the Act read with Rule 78 of the Election Rules is available to the petitioner. Further he submits that the issue of Respondent No.4 being a defaulter is a disputed question of fact, particularly as he denies any notice under Section 101 of the Act or the demand notices dated 02nd April, 2016 and 13th April, 2016

now being relied, were ever received by him. Moreover he submits that various evidences which are now being furnished as Exhibits to the petition or to the affidavit in reply by Respondent No.3 – society were never given to the Returning Officer and thus the Returning Officer has had no opportunity to apply his mind to these facts before taking a view one way or the other. Moreover these were never made available to the petitioner before the Returning Officer to enable him to rebut it with necessary evidence, if so required, before the Returning Officer

5. I have considered the rival submissions. At the very outset it must be noted that the Returning Officer examines/scrutinises the nomination papers and decide upon the objection in a summary manner/enquiry as provided in Rule 25(2) of the Election Rules. Thus unless there is clinching evidence of a candidate being disqualified from contesting the elections, it would not be fair to disqualify him. More particularly so, as an alternative remedy of filing an election petition under Section 91 of the Act is available, where these issues would be gone into in depth. In the present facts, the entire issue of Respondent No.4 – Mr. Prakash Bankar, being a defaulter or not, is a disputed question of fact dependent upon the receipt of notices under Section 101 of the Act or subsequent demand notices under dated 02nd April, 2016 and 13th April,

2016, which is being denied by Respondent No.4. It is contended that the signatures thereon are not his. Moreover as rightly contended by the Counsel for Respondent No. 4, the notice under Section 101 of the Act and subsequent notices dated 02nd April, 2016 and 13th April, 2016 were not placed before the Returning Officer. Thus the petitioner had no chance to rebut it. Further on the basis of the facts before Respondent No.2 - Returning Officer, it's decision rejecting the objections to the nomination form cannot be called perverse. The decisions relied upon by the petitioner and Respondent No.3 – Society will not apply, as there were no disputed questions of fact in those cases. Those decisions would only be applicable, once it is established that Respondent No.4 is a defaulter in having not honored the demand made upon him as a guarantor of loan given to Mr. Tupe. This being a defaulter is itself disputed in the context of the facts.

6. Therefore this is not a case to exercise my supervisory jurisdiction under Article 227 of the Constitution of India. The petitioner is not without remedy. The petitioner could raise this very issue by filing election petition in terms of Rule 78 of the Election Rules read with Section 91 of the Act. Further as mandated by Section 94 (1A) of the Act an election dispute has to be decided as expeditiously as possible and

preferably within a period of six months from the date on which the dispute is filed.

7. In view of the disputed questions of fact which arises in this case and on the basis of evidence on record before the Returning Officer, the impugned order cannot said to be perverse. Therefore interference of this Court is not warranted. Petition is dismissed.

8. However, it is clarified that if the petitioner files an election petition, the same would be decided by the Co-operative Court on its own merits, without in any manner being influenced by this order. All contentions are kept open.

(M.S. SANKLECHA, J.)

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