

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

WRIT PETITION NO. 7011 OF 2017

Dwarkanath Bhaskar Jadhav

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

**WITH
WRIT PETITION NO. 7013 OF 2017**

Babasaheb Ramrao Jadhav

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

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Mr. P.S. Dighe, Advocate for petitioners in both petitions.

Mr. A.D. Namde, A.G.P. for State in WP/7011/17.

Mr. K.N. Lokhande, A.G.P. for State in WP/7013/17.

Mr. S.K. Kadam, Advocate for Respondent Nos. 2 to 4 in both petitions.

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**CORAM : SANGITRAO S. PATIL, J.
(VACATION COURT)**

DATED : 01st JUNE, 2017

ORDER :

Heard the learned Counsel for the petitioners.

2. The petitioners have challenged the orders dated 29th May, 2017 passed by Respondent No.3 – Assistant Registrar, Co-operative Societies, Newasa dismissing their appeals against the orders dated 17th May, 2017

passed by Respondent No.4 – Returning Officer rejecting their nomination forms for contesting elections of Respondent No.5 – society.

3. The learned Counsel for the petitioners seeks leave to correct the description of Respondent No.3. Leave granted.

4. Issue notice to the respondents. The learned A.G.P. waives service of notice on behalf of Respondent Nos. 1 and 3. Mr. Kadam, learned Counsel waives service of notice on behalf of Respondent Nos. 2 and 4. The learned Counsel for the petitioners submits that the petitioners have served Respondent No.5 by private notice.

5. The learned A.G.P. supports the impugned orders.

6. The nomination forms of the petitioners are rejected solely on the ground that they are not borrower members of the society. Respondent No.3, while confirming the said orders added one more ground that the predecessors of the petitioners through whom they are claiming the borrower-membership, were defaulters. The learned Counsel for the petitioners submits that Respondent No.3 was not justified in adding one more ground which was not the ground taken by Respondent No.4 for rejecting the nomination forms of

the petitioners. He further submits that as per the provisions of sub-rule (2) of Rule 25 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (“Rules of 2014” for short) Respondent No.4 was not within his competence to reject the nomination forms of the petitioners except on the four grounds given in sub-clauses (a) to (d) under sub-rule (2). According to him the grounds for rejection of the nomination forms i.e. “the petitioners are not borrower members of the society” is not covered under sub-rule (2) of Rule 25. He submits that where a member is a defaulter or not is to be decided by the Registrar and not by the Returning Officers.

7. Relying on the judgment dated 27th March, 2015 delivered by the Division Bench of this Court in Writ Petition No. 3454 of 2015 (Suresh Ambadasrao Varpudkar Vs. District Co-operative Election Officer @ Divisional Joint Registrar, Co-operative Societies, Aurangabad and Others) he submits that the enquiry to be conducted by the District Co-operative Election Officer under Section 11 of the Act is circumscribed in relation to the matters referred to therein and any other question which falls within the jurisdiction of the Registrar shall have to be dealt with by the said authority and not by the District Co-operative Election Officer. According to him it was not open to Respondent No.4 to consider whether the petitioners are borrower or non-borrower members of the society. The learned Counsel further relied on the

judgment in the case of *Virendra Bhanji Rathod and Others Vs. Anand Vihar Co-op. Hsg. Society Ltd. and Others 2003 (4) All M.R. 843* wherein it has been held that under Rules 24 and 25 of the Maharashtra Co-operative Societies Rules, 1961 in the absence of the procedure laid down therein being followed, the right of the heir or the legal representative of the deceased either to claim membership of the society or the value of the share or interest of the deceased member, at the option of such heir or the legal representative, subsists and the society is not entitled to deny such right otherwise than in accordance with the provisions of law.

8. The learned Counsel submits that after the demise of the respective predecessors of the petitioners, the petitioners have succeeded their agricultural lands and the charges of loan amounts standing against their predecessors have been kept on their agricultural lands as seen from the 7/12 extracts. He, therefore, submits that the petitioners being the borrower members of the society should have been allowed to participate in the election and their nomination forms should not have been rejected by Respondent Nos. 3 and 4.

9. Mr. Kadam, the learned Counsel for Respondent Nos. 2 and 4 submits that the petitions are not at all maintainable since the other candidates

who are contesting the election, though necessary parties to these proceedings, have not been added as party respondents. He submits that on this sole ground the petitions are liable to be dismissed. In support of his contention, he relied on the judgment in the case of ***Vijaysingh Krishnarao Parbat Vs. Returning Officer and Others 2003 (5) Bom.C.R. 330***. He further submits that the election process is at the advanced stage. Therefore, no interference can be done at this stage.

10. The facts of the case cited by Mr. Kadam as narrated in paragraph no.3 of the judgment are almost identical to the facts of the present petitions. In that case also the candidates contesting the elections were not made parties to the petition before the Court. On that background, this Court observed in paragraph nos. 9 and 10 as under:

“9. As rightly submitted by the learned Advocates for the respondents, the Division Bench has already held that in order to enable the party to challenge the decision of the Returning Officer as regards the rejection of the nomination paper, all other candidates are necessary parties to the proceedings and, admittedly, in the case in hand neither at the stage of the appeal under section 152-A of the said Act nor in this proceedings all the candidates have been joined as the parties. On this count also, the petition is liable to be rejected.

10. Besides, the petitioner is not without alternative efficacious remedy. In terms of section 91 of the said Act, he is

entitled to raise election dispute on conclusion of the election process. The election process having already been commenced, there cannot be any justification for interference in the said process at this stage. In fact, the decision of the Apex Court in Shri Sant Sadguru Janardan Swamis case (supra) is very clear in that regard. The observation of the Division Bench in Pandurang Hindurao Patils case (supra) can be of no help to the petitioner as it is not the case of the respondents that merely because election dispute can be raised under section 91 of the said Act that the petition should be dismissed. In the case in hand, even on merits, as already seen above, there is absolutely no case made out for interference at this stage.”

11. In the present case, the candidates whose nomination forms have been accepted and who are going to contest the election have not been made parties. Even if it is accepted for a while that on merits the petitioners have good case, in the event of accepting their contentions, the candidates who are going to contest the elections would be adversely affected. Consequently, it was necessary to make those candidates as party respondents. Without giving an opportunity to those candidates, it would be difficult to grant any relief in favour of the petitioners.

12. As per the election programme, today is the last day for withdrawal of nomination papers. The list of the candidates who finally would participate

the election process, would be published on 02nd June, 2017 and election symbols also would be allotted to them on the same day. At this advanced stage of election process, no interference is called for.

13. In the circumstances in view of the above cited judgment, though on the technical ground, the petitions are liable to be rejected. Considering this legal defect in the petitions, I am not inclined to consider the merits of the matter in detail. No relief can be granted in favour of the petitioners in the absence of the other contesting members of the society. Hence the order:

Writ petitions are dismissed. No costs.

(SANGITRAO S. PATIL, J.)

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