

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

**WRIT PETITION NO.1194 OF 2017**

**Mr. Rajendra Ramesh Chitnis**

**..Petitioner**

**Versus**

**State of Maharashtra and others**

**..Respondents**

**Mr. I. R. Kulkarni a/w Ms. Shilpa Desai for the Petitioner.**

**Mrs. V. S. Nimbalkar, AGP for the Respondent No.1.**

**Mr. A. B. Borkar for the Respondent No.2.**

**Mr. S. S. Kanetkar for the Respondent No.3.**

**CORAM : R. M. SAVANT, J.**

**DATE : 27<sup>th</sup> JANUARY, 2017**

**PC.**

1           The order dated 21.01.2017 passed by the Additional Commissioner and Special Registrar, Co-operative Societies, Maharashtra State, Pune, dismissing the Appeal filed by the Petitioner is taken exception to by way of the above Petition. The Petitioner herein is a member of the Respondent No.3 Bank. Since the term of the Board of Directors of the Respondent No.3 Bank got over, elections are being held to the Board of Directors of the Respondent No.3 Bank. It seems that the first programme relating to the said elections upto the finalization of the voters list was completed sometime in November 2016. The second phase of the elections i.e. from making available the nomination forms to the stage of voting was announced on 06.01.2017. The Petitioner was

desirous of contesting the elections to the Board of Directors of the Respondent No.3 Bank. The bye laws which are in contention in the context of the challenge raised in the above Petition are bye law 31(ii) and bye law 29(a)(h), which for the sake of ready reference are reproduced hereinunder :-

“31. Eligibility of Board of Directors :-

An Active member shall not be eligible to be elected as Director unless-

(ii) he holds minimum hundred shares of Rs.100/- each.”

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“29(a) Disqualification for being a member of the board :-

h) is retained or employed as a legal practitioner on behalf or against the bank,

Explanation – for the purposes of this clause “legal practitioner” has the same meaning in the clause (ii) of sub-section (1) of the section 2 of the Advances Act, 1961 (25 of 1961)”

2           The Petitioner filed his nomination for the said elections. The said nomination of the Petitioner came to be rejected by the Returning Officer of the Respondent No.3 Bank vide order dated 11.01.2017. The said rejection is inter-alia on the ground that the Petitioner has not subscribed to 100/- shares whose worth would be Rs.10,000/- and that since the Petitioner had appeared as an Advocate against the Respondent No.3 Bank, he was not eligible to contest in terms of bye law 29(a)(h). The said rejection of the nomination form of the Petitioner is by order dated 11.01.2017. The Petitioner carried the matter by way of an Appeal

before the Appellate Authority under Section 152 of the Maharashtra Co-operative Societies Act, 1960 (For short “the Said Act”). The Appellate Authority has by the impugned order dated 21.01.2017 dismissed the Appeal and thereby confirmed the order passed by the Returning Officer based on the two grounds as adverted to hereinabove.

3           In so far as the said two grounds are concerned, the Learned Counsel Mr. I. R. Kulkarni appearing for the Petitioner would contend that with a view to contest elections to the Board of Directors of the Respondent No.3, the Petitioner had made an application on 05.05.2016 for allotment of 90 shares accompanied by cheque of Rs.9000/-, on which no decision was taken by the Respondent No.3 Bank. It was further sought to be pointed out by the Learned Counsel for the Petitioner that the Petitioner had thereafter deposited the said amount of Rs.9000/- by RTGS with the Respondent No.3 Bank and therefore the Petitioner can be said to have complied with the requirement of the said bye law 31(ii). In so far as the disqualification under bye law 29(a)(h) is concerned, it was the submission of the Learned Counsel that the ground for disqualification as provided was said bye law does not figure in the disqualifications mentioned in Section 73CA and therefore the said bye law is in conflict with Section 73CA of the Said Act.

4           Per contra, the Learned Counsel Mr. A. B. Borkar appearing for the Respondent No.2 and the Learned Counsel Mr. S. S. Kanetkar appearing for the Respondent No.3 i.e. Bank, support the orders passed by the Authorities below. The Learned Counsel would contend that the disqualifications under the bye laws are in addition to the ones provided under Section 73CA. In any event, the disqualification under bye law 29(a)(h) cannot be said to be in conflict with the provision of Section 73CA of the Said Act.

5           In my view, there is no merit in the above Petition. It is required to be noted that a Returning Officer whilst exercising power under Rule 8 of the Election to Committee Rules carries out a summary enquiry, he is not required or obliged to go into the justification or the explanation sought to be given by a candidate in respect of a ground which is appearing against him. In the instant case, admittedly, the Petitioner has not subscribed to 100 shares on the date of filing of the nomination. The Petitioner as indicated above had made an application on 05.05.2016 and thereafter sought to deposit the amount by RTGS on 09.01.2017 i.e. on the anvil of the filing of the nomination for contesting the elections. If that be so, the Returning Officer was within his powers to reject the nomination form on the ground that the eligibility condition prescribed by bye law 31(ii) was not fulfilled. In so far as the said aspect

is concerned, the Appellate Authority has also observed that though the Petitioner's application was allegedly kept pending from 05.05.2016, significantly the Petitioner had not taken any steps for redressal of his grievance in that regard.

6           In so far as the second ground i.e. rejection of nomination on the application bye law 29(a)(h) is concerned, there is no dispute about the fact that the Petitioner had appeared against the Bank in a litigation which was in the year 2011. The bye-law provides for the disqualification of a person who has appeared against the Bank as an Advocate. There can be said to be no conflict between bye law 29(a)(h) and Section 73CA of the Said Act. It is trite that the disqualification under the bye laws are in addition to the disqualifications mentioned in Section 73CA of the Said Act. Prima-facie, this Court also does not find any conflict between bye law 29(a)(h) and Section 73CA(i)(v) of the Said Act. In that view of the matter, the impugned orders passed by the Authorities below i.e. Returning Officer as confirmed by the Appellate Authority do not merit any interference at the hands of this Court under Article 227 of the Constitution of India. The Writ Petition is accordingly dismissed.

**[R.M.SAVANT, J]**