IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5374 OF 2018

Umesh Mukundrao Apte)
Age : 50 years, Occ : Agriculturist)
R/o – Uttur, Tal : Ajara,)
Dist. Kolhapur) ….. Petitioner

Versus

1. State of Maharashtra,)
Through its department of Co-operation)
Maharashtra State, Mantralaya)
at Mumbai)

2. Ganpati Subrao Patil,)
Age – 66 years, Occup. - Agriculturist)
R/o. Madilage, Tal. Ajara,)
Dist. Kolhapur)

3. Ajra Taluka Shetkari Sahakari)
Sakhar Karkhana Limited,)
at Gavse, Tal.-Ajara, Dist.Kolhapur)

4. Regional Joint Registrar (Sugar))
and Joint Registrar, Cooperative)
Societies, Kolhapur Division at)
Kolhapur, Having office at -)
Saroj Apartment, 1314, 'C' Ward,)
Subhash Road, Laxmipuri,)
Kolhapur)

5. The Liquidator,)
Bhudargad Nagri Sahakari Pathsanstha)
Mydt.Gargoti, Tal. Bhudargad,)
Dist. Kolhapur) ….. Respondents

Mr.S.S.Patwardhan, i/b. Mr.Manoj Apagonda Patil for the Petitioner.

Mr.S.H.Kankal, A.G.P. for the State – Respondent nos. 1 to 4.

Mr.P.K.Dhakephalkar, Senior Advocate, a/w. Mr.Amit B. Borkar for the Respondent no.2.

Mr.Pralhad D. Paranjape for the Respondent no.3.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 25th JULY, 2018
PRONOUNCED ON : 7th AUGUST, 2018

JUDGMENT :

By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 7th June, 2017 passed by the learned Minister of Co-operation, Marketing and Textile, Maharashtra State in Revision Application No.251 of 2017 and also the impugned order dated 16th February,2017 passed by the Regional Joint Director (Sugar) and Joint Registrar, Co-operative Societies, Kolhapur Division at Kolhapur disqualifying the petitioner under section 73(CA) (1) (i) and under section 78(A)(1)(b) of the Maharashtra Co-operative Societies Act, 1960 (for short the said MCS Act). Some of the relevant facts for the purpose of deciding this writ petition are as under :-

2. The respondent no.3 is a sugar factory registered under the provisions of the said MCS Act. Sometime in the month of May 2016 the election for the office bearers of the respondent no.3 society was conducted for the term of five years i.e. from 2016-2021. The petitioner was one of the borrower of the Bhudargad Nagri Sahakari Pathsanstha Maryadit, Gargoti. The petitioner had taken a loan of Rs.4,25,000/- on 19th February, 1995 and a sum of Rs.2,25,000/-

on 19th October, 1995 from the said Bhudargad Nagri Sahakari Pathsanstha Maryadit, Gargoti. bearing loan amount under sections 135 and 171 respectively. The said Bhudargad Nagri Sahakari Pathsanstha Maryadit, Gargoti was subsequently placed in liquidation and a liquidator came to be appointed in respect of the said Bhudargad Nagri Sahakari Pathsanstha. It is the case of the petitioner that the petitioner had deposited certain amount in both the accounts in the year 2003 and thereafter had committed default, however had cleared all the arrears of loan.

3. On 4th December,2015 the respondent no.5 floated an One Time Settlement Scheme (OTS) for recovery of the loan amounts from the defaulters.

4. It is the case of the petitioner that the respondent no.5 who is a liquidator of the said Bhudargad Nagri Sahakari Pathsanstha informed all the branch managers of the said bank on 29th December, 2015 to implement the said OTS Scheme and forwarded a draft of the said OTS scheme to the branch managers. It is the case of the petitioner that on 20th January, 2016, the respondent no.5 committee extended the benefits of the OTS scheme on the basis of the resolution dated 6th January,2016.

5. The branch manager of the respondent no.5, Ajara Branch accordingly vide its letter dated 4th February, 2016 invited the petitioner to take advantage of the said OTS scheme. It is the case of the petitioner that the petitioner intended to participate in the said OTS scheme and requested the branch manager of the benefits of the said OTS scheme vide its letter dated 26th April, 2016. It is the case of the petitioner that on 25th April,2016 the petitioner deposited the entire amount as directed by the branch manager of the said bank. On the same date, the

petitioner also submitted an undertaking with the branch of the respondent no.5 and assured that if there was any shortfall in the account of the petitioner, the same would be deposited by the petitioner under the said OTS scheme.

6. On 25th April, 2016, the petitioner filed nomination form for contesting election of the office bearer of the respondent no.3. On 26th April, 2016, the branch manager of the respondent no.5 forwarded a proposal of the petitioner to the General Manager of the respondent no.5 for approval. It is the case of the petitioner that on 31st May, 2016, the General Manger of the respondent no.5 recorded the sanction to the said proposal forwarded by the branch manager of the respondent no.5 dated 26th April, 2016 and informed the branch manager of the respondent no.5 to credit the fixed deposit amounts to the loan account of the petitioner.

7. On 18th December, 2016, the respondent no.2 i.e. Mr.Ganpati Subrao Patil filed a complaint under section 73(CA) (1) (i) and under section 78(A)(1)(b) of the MCS Act before the Regional Joint Director (Sugar) and Joint Registrar, Co-operative Societies alleging that the petitioner had committed default in making repayment of the loan to the Bhudargad Nagri Sahakari Pathsanstha and was not eligible to contest the election or to continue as a director of the respondent no.3 sugar factory. The petitioner appeared before the respondent no.4 and contested the said complaint. The petitioner also filed written arguments on 15th February,2017 along with the documents. The respondent no.4 passed an order on 16th February,2017 and disqualified the petitioner as a director of the respondent no.3 sugar factory under section 73(CA) (1) (i) and under section 78(A)(1)(b) of the Maharashtra Co-operative Societies Act, 1960.

8. Being aggrieved by the said order dated 16th February, 2017, the petitioner preferred a revision application (251 of 2017) along with stay application before the learned Minister of Co-operation, Maharashtra State on 4th March,2017. The said appeal was resisted by the respondent no.2 before the learned Minister of Co-operation. The learned Minister of Co-operation, Marketing and Textile, Maharashtra State passed an order on 7th June, 2017 dismissing the said Revision Application No.251 of 2017 filed by the petitioner on various grounds.

9. Being aggrieved by the said order dated 7th June, 2017 passed by the learned Minister of Co-operation, Marketing and Textile, Maharashtra State and 16th February,2017 passed by the Regional Joint Director (Sugar) and Joint Registrar, Co-operative Societies, Kolhapur Division at Kolhapur, the petitioner preferred this writ petition.

10. In view of the rival contentions raised by both the parties on the issue as to whether the petitioner was a defaulter or not in making repayment of the loan amount of the said Bhudargad Nagri Sahakari Pathsanstha or not on the date of filing nomination form by the petitioner, this court by an order dated 21st June, 2018 directed the petitioner to implead the liquidator of Bhudargad Nagri Sahakari Pathsanstha as respondent no.5 and directed the liquidator to file an affidavit after verifying the record of the society as to whether the petitioner had settled the dues of the said society as reflected in the said 'No dues certificate' dated 25th April,2016 purportedly signed by the manager of the respondent no.3, though on that date, the liquidator was already in place. The liquidator was also directed to indicate as to whether he had authorized the said branch manager to issue any such certificate in favour of the petitioner.

11. The liquidator was also directed to produce the original records pertaining to the loan account of the petitioner and the proof, if any, to show the repayment, if any, made by the petitioner prior to 26th April,2016 and to show whether the petitioner continued to be a defaulter under the said loan account. Pursuant to the said directions issued by this court, the liquidator of the said Bhudargad Nagri Sahakari Pathsanstha has filed a detailed affidavit on 7th July, 2018 in this writ petition. The petitioner has filed a rejoinder to the said affidavit in reply.

12. Mr.Parwardhan, learned counsel appearing for the petitioner invited my attention to the annexures to the writ petition and some of the averments made in the affidavit in reply filed by the respondent no.5 and also in the affidavit in rejoinder filed by the petitioner on 23rd July, 2018.

13. It is submitted by the learned counsel for the petitioner that as on 25th April, 2016 i.e. on the date of filing of the nomination form by the petitioner, the petitioner had already paid the entire amount of Rs.1,78,430/-, Rs.1,79,680/-, Rs.4,65,554/- and Rs.21,060/- of Bhudargad Nagari Sahakari Patsanstha and thereafter had submitted a nomination form for contesting the election of the respondent no.3 Sugar Factory. He submits that inspite of the repayment of the entire loan to the said Bhudargad Nagari Sahakari Patsanstha by the petitioner, the learned Minister did not consider these crucial facts and dismissed the revision application filed by the petitioner. The respondent no.4 also did not consider these crucial facts and disqualified the petitioner as a Director of the respondent no.3 Sugar Factory under section 73(CA)(1)(i) and also 78(A)(1)(b) of the MCS Act.

14. It is submitted by the learned counsel that the Liquidator Committee had prepared an OTS scheme on 4th December, 2015 based on the scheme of the Government of Maharashtra's One Time Settlement Scheme and had issued a circular to all the branches of the said Bhudargad Nagari Sahakari Patsanstha. The draft scheme was also circulated on 29th December, 2015. On 6th January, 2016, the scheme was extended to all the borrowers of the said Bhudargad Nagari Sahakari Patsanstha. On 4th February, 2016, an intimation notice was issued by the Branch Manager of the said Bhudargad Nagari Sahakari Patsanstha, Branch Ajara informing the petitioner to avail off all the benefit of OTS as floated by the said Bhudargad Nagari Sahakari Patsanstha and informed about the ratio of deposit required under the said scheme for availing the benefit thereof.

15. It is submitted that accordingly on 22nd April, 2016, the petitioner had showed his willingness for participation in the said OTS scheme and requested to consider his proposed under the said scheme. He submits that on 25th April, 2016, the petitioner had repaid all the amounts as were informed to the petitioner as on that date by the Branch Manager of the respondent no.5 by depositing 70% of the fixed deposit amount by way of adjustment and 30% amount in cash. He submits that insofar as account no.135 is concerned, there were dues of Rs.21,46,587/-. The petitioner had paid 30% amount in cash i.e. Rs.6,43,975/-. Insofar as account no.171 is concerned, there were dues of Rs.6,69,131/-. The petitioner deposited 30% cash amount of Rs.2,00,740/- in the said account. The petitioner had also deposited the FD amount by way of adjustment to the extent of Rs.19,71,000/-.

16. It is submitted by the learned counsel for the petitioner that the petitioner also submitted an undertaking on 25th April, 2016 with the respondent no.5 that if any arrears was found to be due and payable by the petitioner under the

said loan accounts, it would be paid by the petitioner under the said OTS scheme. It is submitted by the learned counsel that on 26th April, 2016, the Branch Manager of the Ajara branch of the respondent no.5 forwarded the proposal of the petitioner to the General Manager of the said Bhudargad Nagari Sahakari Patsanstha with the remarks that the amounts and the documents of the petitioner were verified by the office and the same were correct and requested to issue a letter to the Branch Manager of the Pimpri-Chinchwad Branch to take note of the fact and to record the same to the loan account of the petitioner.

17. It is submitted by the learned counsel that the General Manager of the respondent no.5 vide letter dated 31st May, 2016 informed the Branch Manager of the Pimpri-Chinchwad to adjust the said FD amounts as mentioned in the correspondence to the loan account of the petitioner and to submit a report of compliance. Learned counsel accordingly submitted that the entire amount as directed by the Branch Manager of the respondent no.5 was already paid by the petitioner as on 25th April, 2016 when the petitioner had filed the nomination form.

18. Learned counsel for the petitioner invited my attention to Exhibit “F” of the affidavit in reply filed by the respondent no.5 and would submit that the said statement showing the alleged arrears of the actual amounts payable by the petitioner to the respondent no.5 shows various errors and does not reflect the true and correct position. He submits that in any event the amount as shown as arrears in the account of the petitioner have been also paid by the petitioner. It is submitted by the learned counsel that if the Liquidators Committee had not taken any final decision on the proposal sent by the branch office of the respondent no.5 from the proposal of the petitioner of OTS scheme on time dated 24th April, 2016, the petitioner cannot be penalized for the said inaction. The petitioner had not only

deposited the entire amount as computed by the Branch Manager of the respondent no.5 but also furnished an undertaking to the effect that the arrears, if any, in the accounts of the petitioner would be paid by the petitioner as and when pointed out.

19. Learned counsel for the petitioner placed reliance on the documents annexed at pages 74 to 78 of the affidavit in reply filed by the respondent no.5 and also the documents annexed to the affidavit in rejoinder filed by the petitioner and would submit that the said documents would clearly indicate that the petitioner was invited to participate in the OTS scheme. The petitioner had participated in the said scheme and had deposited the outstanding amount fixed under the said OTS scheme. The petitioner was never informed thereafter as to whether the petitioner was still in arrears under the said OTS scheme at any point of time. The petitioner thus could not be declared as a defaulter and based on the such alleged default, could not have been disqualified to the post of Director.

20. Learned counsel for the petitioner placed reliance on the judgment of this Court in case of ***Jaganrao Narharrao Harne & Anr. vs. Sub-Divisional Officer, Amravati & Anr. 2009(2) Mh.L.J. 155*** and in particular paragraphs 2, 5, 7, 10 to 13 in support of his submission that since the petitioner had already paid the entire amount as computed by the Branch Manager of the respondent no.3 under the said OTS scheme and since the petitioner was not informed about the alleged arrears thereafter, the petitioner had no intention to commit any default and thus on that ground itself, the provisions of section 73(CA) of the MCS Act were not attracted to the facts of this case. The petitioner could not have been thus disqualified by the respondent no.4 as a Director of the respondent no.3 Sugar Factory under section 73(CA)(1)(i) and 78(A)(1)(b) of the MCS Act. He submits that the findings recorded by the respondent no.4 as well as by the learned Minister

are perverse and thus deserves to be set aside by this Court.

21. Mr.Dhakephalkar, learned senior counsel appearing for the respondent no.2 who had filed a complaint before the respondent no.4 against the petitioner alleging that the petitioner was a defaulter of the said Bhudargad Nagari Sahakari Patsanstha and submits that admittedly the petitioner had taken various loans from the said Bhudargad Nagari Sahakari Patsanstha and was in arrears of those loans to the said Bhudargad Nagari Sahakari Patsanstha. He invited my attention to various correspondence annexed to the petition and also to the affidavit in reply filed by the respondent nos.1 and 5. He strongly placed reliance on various orders passed by the Division Bench of this Court in PIL No.196 of 2004 filed by the said Bhudargad Nagari Sahakari Patsanstha and another vs. State of Maharashtra & others and would submit that this Court had appointed a learned senior counsel of this Court as *Amicus Curiae* and had issued various directions from time to time about considering the proposal of various defaulters. Each and every such proposal of the defaulters were to be evaluated by the learned *Amicus Curiae*.

22. Learned senior counsel strongly placed reliance on the averments made in the affidavit in reply filed by the respondent no.5 pursuant to the order dated 21st June, 2018 passed by this Court. He submits that the learned Liquidator has placed on record the material to show that the petitioner was a defaulter not only on the date of filing of the nomination form but also as on date. It is submitted that the Branch manager of the respondent no.5, who had alleged to have been issued a certificate of “no claim” in favour of the petitioner had no such authority to issue such certificate in view of the fact that the Liquidators committee was already in place and under the OTS scheme without the approval of the Liquidators Committee, no settlement could be accepted by any of the branch

office of the respondent no.5 society.

23. It is submitted by the learned senior counsel that admittedly the proposal of the petitioner alleged to have been forwarded by the branch office was pending for approval on the date of the petitioner filing the nomination form and thus the question of giving any no dues certificate in favour of the petitioner on the date of filing of the nomination form i.e. 25th April, 2016 did not arise. Learned senior counsel for the respondent no.2 also placed reliance on a copy of the receipt showing payment of certain amount made by the petitioner after filing of the nomination form to the Liquidators Committee.

24. It is submitted that the Branch Manager of the respondent no.5 thus was not authorized to issue any such “No Dues Certificate” to the petitioner and thus in view of section 73(CA) of the MCS Act, the petitioner was rightly disqualified to be a member of the Committee of the respondent no.3, being a defaulter on the date of filing of the nomination form.

25. It is submitted by the learned senior counsel that the respondent no.4 as well as the learned Minister have rendered various findings of fact based on the documents produced on record by both the parties and the findings being not perverse, cannot be interfered with by this Court in this writ petition filed under Article 227 of the Constitution of India. Learned senior counsel placed reliance on the information obtained by his client under the provisions of the Right to Information Act, 2005 from the Liquidators Committee of the respondent no.5 dated 30th June, 2018 confirming that the petitioner is still a defaulter.

26. Learned senior counsel for the respondent no.2 distinguished the judgment of this Court in case of ***Jaganrao Narharrao Harne & Anr.*** (supra) on the ground that the facts before this Court in the said judgment were totally different and would not apply to the facts of this case.

27. Learned counsel for the respondent no.3 adopts the submissions made by the learned senior counsel for the respondent no.2 and would submit that no interference is warranted by this Court in the orders passed by the respondent no.4 as well as by the learned Minister.

28. Mr.Patwardhan, learned counsel for the petitioner in rejoinder submits that the case of the respondent no.5 in the affidavit in reply and the case of the respondent no.2 about the payments made by the petitioner is inconsistent. He placed reliance on the letter addressed by the Liquidators Committee to all the branches of the respondent no.5 informing that OTS scheme was extended to all the borrowers and thus the petitioner having availed off the said OTS scheme and having complied with the terms and conditions thereof, could not be considered as defaulter. He submits that it was neither the case of the respondent no.2 nor the respondent no.5 at any point of time that the proposal submitted by the petitioner under OTS scheme was also required to be evaluated by *Amicus Curiae* appointed by this Court in PIL No.196 of 2004 and other companion matters.

REASONS & CONCLUSIONS :

29. A short question that arises for consideration of this Court is whether the petitioner committed default for making repayment of the loans obtained from the branch of the respondent no.5 on the date of filing of the nomination form for

the post of a Director of the respondent no.3 and was thus disqualified to be a Director of the respondent no.3 under section 73(CA)(1)(i)(b) of the MCS Act or not. The question also arises for consideration of this Court is whether the Branch Manager of one of the branch of the respondent no.5 who had issued a "No Claim Certificate" in favour of the petitioner could have issued such certificate inspite of the fact that a Liquidator of the respondent no.5 society was already appointed and the powers of compromising the debts or liabilities of such society vest in the Liquidator appointed under section 105 of the MCS Act or not.

30. The petitioner has not disputed that the petitioner had taken a term loan dated 16th February, 1995 for the sum of Rs.4,25,000/- from a branch of the respondent no.5. The petitioner had mortgaged his property to secure the said loan dated 16th February, 1995. The said loan account was numbered as account no.135. It is the case of the respondent no.5 that as on 26th April, 2016, the total amount payable by the petitioner to the respondent no.5 as on 26th April, 2016 against the said loan account no.135 was Rs.77,99,090/-. The repayment of the said loan was to be made within 60 months and the stipulated date of repayment was on or before 10th December, 1999.

31. The petitioner has also not disputed that the petitioner had taken the second term loan on 9th October, 1995 for a sum of Rs.2,25,000/- from a branch of the respondent no.5. The said loan account was given account no.171. It is the case of the respondent no.5 that the said loan was to be repaid within 60 months i.e. on or before 19th July, 2000. As on 26th April, 2016, the total outstanding in the said account of the respondent no.5 was Rs.25,23,337/-. It is the case of the respondent no.5 that in both the accounts, the petitioner had committed default and the said default continued even after the petitioner contested the election for the post of a

Director of the respondent no.3.

32. A perusal of the record indicates that on 24th September, 2002, the Commissioner for Co-operation and the Registrar of the Co-operative Societies, Maharashtra State, Pune had appointed an Administrator of the respondent no.5 society. On 13th February, 2007, a Liquidator came to be appointed by the respondent no.5. The Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur is working as a Chairman of the Liquidator's Committee consisting of another four officers.

33. Some time in the year 2003 and 2004, number of public interest litigations came to be filed in this Court by various depositors and their association *inter-alia* praying for refund of the deposits not made by the respondent no.5. The Division Bench of this Court passed various orders in the said writ petition from time to time. This Court appointed a senior advocate of this Court as *Amicus Curiae* in the matter to assist the Court. By an order dated 21st February, 2013, this Court issued various directions for settlement of the claim with the defaulters. It was directed by the Division Bench of this Court that the proposals to be finalized by the Liquidation Committee and were to be weighted by the *Amicus Curiae*. It was further directed that after the proposal was finalized by the Liquidator's Committee, it shall be placed before the learned *Amicus Curiae* upon which the report shall be placed before this Court for approval. This Court has been supervising various proposals received from the depositors for disbursement of the amount from time to time.

34. It is the case of the petitioner that the State Government as well as the office of the respondent no.5 had floated a scheme of OTS for the borrowers with

an intention to recover the loan amounts. The respondent no.5 had informed all the Branch Managers of the respondent no.5 about the scheme floated by the Liquidator's Committee as OTS scheme and had forwarded a draft of the said OTS scheme for implementation to the borrowers for recovery of the loan amount. It is the case of the petitioner that the petitioner had availed off the said OTS scheme and had showed his willingness to participate under the said scheme vide his letter dated 22nd April, 2016 and repaid all the amount as informed to the petitioner as on 25th April, 2016 by depositing 70% FD amount by way of adjustment and 30% amount in cash. It is also the case of the petitioner that in view of the said payment made by the petitioner, the Branch Manager of one of the Branch of the respondent no.5 had forwarded a proposal of the petitioner to the General Manager of the respondent no.5 with a remark that the amounts and the documents were verified by this office and the same was correct. Learned counsel for the petitioner vehemently urged before this Court that the Branch Manager had certified that the entire amount due and payable by the petitioner was paid by the petitioner and the account of the petitioner was closed as on 25th April, 2016.

35. A perusal of the record clearly indicates that the General Manager of the respondent no.5 vide his letter dated 31st May, 2016 had informed to the Branch Manager of the Pimpri-Chinchwad to adjust the FD amount of the petitioner to the loan account of the petitioner and thereafter to submit a report of compliance. It is thus clear that on the date of the petitioner contesting the election for the post of a Director, the amounts of the FD which were required to be adjusted according to the petitioner, were not even adjusted.

36. It is not the case of the petitioner that the Liquidator's Committee which was already in place since much prior to the date of the petitioner contesting

the said election, had approved the proposal under the said OTS scheme submitted by the petitioner and/or forwarded by the Branch Manager of one of the branch of the respondent no.5 to the General Manager of the respondent no.5 for approval.

37. Pursuant to the direction issued by this Court on 21st June, 2016 in this writ petition, the respondent no.5 has filed a detailed affidavit on 7th July, 2018. The Liquidator's Committee has annexed several documents, including the statement of account of the petitioner since inception. According to the said statement of account submitted by the Liquidator's Committee, total amount outstanding in the two accounts of the petitioner as on 30th April, 2016 as per the OTS loans was Rs.29,02,635/-. If the said proposal would have been sanctioned by the Liquidator's Committee as on 30th April, 2016, the amount would have been Rs.24,46,611/-. It is stated in the affidavit that as against the said amount, the Branch manager of the respondent no.5 had recovered an amount of Rs.21,50,925/- without sanction of the Liquidator's Committee. There was thus a shortfall of Rs.7,51,710/- as on 26th April, 2016. The Branch Manager recovered further amount on 30th May, 2016 directly to the profit and loss amount in the sum of Rs.6,65,390/-. According to the said affidavit filed by the Liquidator's Committee as on 6th July, 2018, the petitioner is still liable to a sum of Rs.1,57,367/-.

38. A perusal of the record clearly indicates that the Liquidator's Committee had never approved the proposal of the petitioner under the said OTS scheme even till date. Under section 105(1)(g) of the MCS Act, the Liquidator appointed under section 103 has powers subject to the rules and the general supervision, control and direction of the Registrar has power to compromise the liabilities, debts etc. Section 105(1)(g) which reads thus :-

> “105. Powers of Liquidator.—
>
> (1) The Liquidator appointed under section 103 shall have powers, subject to the rules and the general supervision, control and direction of the Registrar;
>
> (a) to (f) …...
>
> (g) to compromise all calls or liabilities to calls and debts and liabilities capable of resulting in debts, and all claims present or future, certain or contingent, subsisting or supposed to subsist between the society and a contributory or alleged contributory or other debtor or person apprehending liability to the society, and all questions in any way relating to or affecting the assets or the winding up of the society, on such terms as may be agreed, and take any security for the discharge of any such call, liability, debt, or claim, and give a complete discharge in respect thereof.”

39. It is thus clear beyond reasonable doubt that the Liquidator was already appointed of the respondent no.5 society under section 103 of the MCS Act. The debts of any creditors of the respondent no.5 society which was under liquidation could be compromised or discharged completely only by the Liquidator Committee and not by the Branch Manager of the society.

40. In this case the Liquidator's Committee was appointed comprising of five members. The proposals of various settlement made by the parties from time to time in respect of the loans and outstanding towards the respondent no.5 were being supervised by this Court in various public interest litigations filed by some of the depositors. This Court had also appointed a senior advocate of this Court as *Amicus Curiae*. It was directed that all the proposals received by the Liquidator's Committee were to be weighted by the *Amicus Curiae* and thereafter were to be placed before the Division Bench of this Court in the said public interest litigation for approval. It is not in dispute that neither the proposal of the petitioner was

approved by the Liquidator's Committee nor was weighted by *Amicus Curiae* nor was finally approved by this Court in the said group of public interest litigations.

41. In my view, the petitioner had not complied with the terms and conditions of the OTS scheme floated by the State Government as well as by the Liquidator's Committee. Merely because the petitioner had made certain payments as allegedly directed by the branch of the respondent no.5, the said proposal was subject to the approval of the Liquidator's Committee and thereafter by this Court. The Branch Manager had no power to issue any such “No Dues Certificate” in favour of the petitioner and that also without taking sanction from the Liquidator's Committee. The Liquidator being in place, all such powers could be exercised only by the Liquidator's Committee and not by the Branch manager. The Liquidator's Committee has brought these facts on record in detailed affidavit filed before this Court.

42. Learned counsel appearing for the petitioner could not produce any material on record before this Court to show that such Branch Manger was authorized to sanction the proposal submitted by the petitioner under the OTS scheme or to issue such “No Dues Certificate” in favour of the petitioner. If such Branch Manager would have power to sanction such proposal, the petitioner was not required to submit an undertaking for payment of shortfall, if any, in the loan accounts of the petitioner. The petitioner also does not dispute that even the letter of adjustment of fixed deposits was issued in the month of May, 2016 i.e. much after the petitioner having contested the election. In my view, both the authorities have thus rightly considered all these aspects and have rightly disqualified the petitioner to be a Director of the respondent no.3. The said so called “No Dues Certificate” issued by the Branch Manager is *ex-facie* contrary to section 105(1)(g)

of the MCS Act and was thus of no consequences and would not bind the respondent no.5.

43. In my view, there is no substance in the submission made by the learned counsel for the petitioner that if the respondent no.5 did not take final decision in sanctioning the proposal of the petitioner within a reasonable period of time, the petitioner cannot be made to suffer. The petitioner had deposited certain amount allegedly as informed by the Branch Manager of the respondent no.5 and on the next date had filed a nomination form.

44. Section 73(CA) of the MCS Act clearly provides that no person shall be eligible for being appointed, nominated, elected, co-opted or, for being a member of a committee if he is a defaulter of any society or in case a term lending society, a member who default the payment of any installment of the loan granted to him. In my view, since the petitioner had not repaid the entire amount of loan obtained from a branch of the respondent no.5 and was a defaulter on the date of filing a nomination form for the post of a Director of the respondent no.3, he was rightly disqualified by the Regional Joint Director (Sugar) and Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur under section 73(CA)(1)(i) and under section 78(A)(a)(b) of the MCS Act by recording various reasons. Learned Minister of Co-operation, Marketing and Textile, Maharashtra State also has considered all the submissions and documents produced by both the parties and has rightly refused to interfere with the order passed by the Regional Joint Director (Sugar) and Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur. Both the authorities have rendered various findings of fact which being not perverse, cannot be interfered with by this Court in this writ petition field under Article 227 of the Constitution of India.

45. Insofar as the submission of Mr.Patwardhan, learned counsel for the petitioner that the petitioner was not informed about the alleged arrears of loan after the date of filing of the nomination form is concerned, in my view, there is no merit in this submission of the learned counsel for the petitioner. The petitioner has made some payment even subsequently in respect of the arrears of the loan.

46. Insofar as the submission of the learned counsel for the petitioner that the petitioner was invited to participate in the OTS scheme formulated by the State Government and also by the Liquidator's Committee is concerned, there is no dispute that such OTS scheme was formulated by the State Government and was forwarded by the Liquidator's Committee to the borrowers and that the petitioner was invited to participate in the said OTS scheme. A perusal of the record indicates that information obtained by the respondent no.2 from the Liquidator's Committee under the provisions of the Right to Information Act, 2005 also confirmed that the petitioner was still a defaulter.

47. Insofar as the judgment of this Court in case of ***Jaganrao Narharrao Harne & Anr.*** (supra) relied upon by the learned counsel for the petitioner is concerned, the objection to the nomination paper filed by the respondent was rejected by the Returning Officer. The Returning Officer had held that there was no material before him to conclude that the respondent no.2 therein could be said to be a defaulter within the meaning of section 73(FF) of the MCS Act. In paragraph 7 of the said judgment, this Court held that in order to point out that the word “defaulter” it implies previous knowledge of liability. After considering the facts before this Court in the said judgment, this Court held that it was not possible for this Court to hold at that stage that the respondent no.2 was a legal

representative of the deceased borrower for the purpose of liability which had been mentioned in the document of surety. This Court held that the petitioner ought to have proved that the liability of the father was accepted by the respondent no.2 and the same was within his knowledge or was communicated to him. In my view, the said judgment of this Court in case of ***Jaganrao Narharrao Harne & Anr.*** (supra) even remotely does not apply to the facts of this case. The facts before this Court in the said judgment and in this case are totally different. The said judgment thus would not assist the case of the petitioner.

48. In my view, the petition is devoid of merit. I therefore pass the following order :-

(a) The Writ Petition No.5374 of 2018 is dismissed.

(b) There shall be no order as to costs.

(R.D. DHANUKA, J.)