

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1475 OF 2020

PETITIONER :- Sadashiv Ganpatrao Mahajan, Age: 60,
Occu.: Agriculturist, R/o: Warad, Tq.
Ralegaon, Dist. Yavatmal.

...VERSUS...

RESPONDENTS :-

1. State of Maharashtra, through its Secretary, Ministry of Cooperation, Mantralaya, Mumbai-32.
2. Divisional Joint Registrar of Cooperative Societies, Amravati Division, Amravati, Tq.& Dist. Amravati.
3. Returning Officer of the Yavatmal District Central Cooperative Bank Ltd., Yavatmal cum District Deputy Registrar of Cooperative Societies, Yavatmal, Tq. & Dist. Yavatmal.
4. Prafull Khushalrao Mankar, Age: 63, Occu: Agriculturist, R/o Saoner, Post Wadhona Bazar, Tq. Ralegaon, Dist. Yavatmal.
5. Varsha Rajendra Telenge, Age: Adult, Occ. Agriculturist, R/o: Raveri, Post Jalka, Tq.Ralegaon, Dist. Yavatmal.
6. Prajakta Pravin Kokate, Age: Adult, Occ.:

Agriculturist, R/o. Ridhora, Post
Wadhona Bazar, Tq. Ralegaon, Dist.
Yavatmal.

7. Yavatmal District Central Coop. Bank
Ltd., Yavatmal, through its CEO, Tq. &
Dist. Yavatmal.

Mr. R.L. Khapre, Sr. Counsel a/b Mr. D.R. Khapre,
counsel for the petitioner.
Ms Tajwar Khan, Asstt.Govt. Pleader for respondent Nos.1 & 2.
Mr. A.M.Ghare, counsel for respondent No.4.

CORAM : MANISH PITALE, J.
DATE : 18.12.2020.

ORAL JUDGMENT

Heard.

2. **Rule.** Rule made returnable forthwith. Though the
respondent Nos.3 and 5 to 7 are served, none appears on their
behalf. Hence, the writ petition is heard finally with the consent
of the learned counsel appearing for the rival parties.

3. By this petition, the petitioner has challenged order dated 12/03/2020, passed by respondent No.2, whereby an appeal filed by contesting respondent No.4 was allowed.

4. The facts in brief leading up to filing of this writ petition are that respondent No.4 had filed a nomination paper with regard to elections to be conducted for representation to respondent No.7-Yavatmal District Cooperative Bank, Yavatmal. Respondent No.4 sought to represent Gram Vividh Karyakari Sanstha Maryadit, Saoner in the said election to respondent No.7-Bank. The petitioner raised an objection to the said nomination of respondent No.4 on the ground that he was a member of the Managing Committee of one Wai Adivasi Vividh Karyakari Sahakari Sanstha Maryadit (For short "Sanstha"), which was a defaulting society and that therefore, disqualification as contemplated under section 27 read with section 73CA of the Maharashtra Cooperative Societies Act, 1960 (For short "Act of 1960") was attracted in the case of respondent No.4. The said objection raised by the petitioner was opposed by respondent No.4 before respondent No.3 i.e. the Returning Officer. The

proceedings before respondent No.3-Returning Officer were videographed and record of the same was maintained. In order to oppose the objection raised on behalf of the petitioner, respondent No.4 contended orally that the disqualification was not attracted for the reason that he had resigned from the Managing Committee of the said Sanstha on 27/01/2020.

5. The respondent No.3 took into consideration the contentions raised on behalf of the rival parties and the material placed on record. It was found that the said Sanstha was indeed a defaulting society and since respondent No.4 was a member of the Executive Committee thereof, the disqualification was attracted. Accordingly, the objection raised by the petitioner was accepted and the nomination paper of respondent No.4 was rejected.

6. Aggrieved by the same, respondent No.4 filed an appeal before respondent No.2 i.e. the Appellate Authority under section 152A of the Act of 1960. In the appeal, it was contended that the order passed by respondent No.3-Returning Officer was wholly unsustainable because respondent No.4 had resigned as a

member of the Executive Committee of the said Sanstha on 27/01/2020 and by operation of the Bylaws of the said Sanstha, such resignation operated from the date of the resignation letter. On this basis, it was submitted that the ground on which nomination paper of respondent No.4 was rejected, was wholly unsustainable. It is relevant that respondent No.4 had caused a document, purportedly the resignation letter dated 27/01/2020, to be placed on record before respondent No.3 after the hearing was over before the said Authority. It shows an acknowledgment by the Chairman of the said Sanstha. But, before respondent No.2-Appellate Authority, respondent No.4 placed reliance on another copy of the very same purported resignation letter dated 27/01/2020, which showed acknowledgment of receipt not only by the Chairman of the said Sanstha, but also by the Secretary of the said Sanstha.

7. The rival parties made their submissions before respondent No.2-Appellate Authority and by the impugned order dated 12/03/2020, appeal filed by respondent No.4 was allowed, the order of respondent No.3-Returning Officer was set aside and

the nomination paper of respondent No.4 was accepted.

8. The petitioner immediately filed the present writ petition on 16/03/2020 before this Court, wherein notice was issued on the very same day and it was directed that the writ petition would be disposed of on the returnable date. It was also recorded that if for some reason, the writ petition remained pending, the process of election shall continue till the stage of counting of votes, but the result for the concerned constituency shall be declared only with the leave of this Court. In the said order passed on 16/03/2020, respondent No.4 was represented on caveat through learned counsel who raised a specific objection regarding maintainability of the writ petition and yet this Court issued notice and passed the aforesaid order.

9. Later on, due to the COVID-19 pandemic situation and the consequent lockdown, the election to the aforesaid respondent No.7 Bank could not be conducted and in this situation, leave was granted to counsel to mention the present writ petition for urgent hearing, in case there was further progress

made in the process of election. It is relevant that the Hon'ble Supreme Court had directed in one of the matters that reached the said Court that the election to respondent No.7 Bank needs to be conducted expeditiously. Since the date of polling came to be fixed for 21/12/2020, this petition along with connected petitions was mentioned for urgent listing and that is how the present writ petition was listed today for final hearing.

10. At the outset, Mr. A.M.Ghare, learned counsel appearing for respondent No.4 reiterated the preliminary objection regarding maintainability of the present writ petition, contending that considering the nature of the dispute and the questions raised in the present writ petition, the remedy of filing election dispute under section 91 of the Act of 1960 read with Rule 78 of the Maharashtra Cooperative Societies (Election to Committee) Rules, 2014 was available to the petitioner. It was submitted that even if section 152A of the Act of 1960, under which respondent No.2 had passed the impugned order, stated that such an order would be final and on that basis the present writ petition was sought to be argued before this Court, there was

nothing to show that the nature of grievance sought to be raised in the present writ petition could not be raised in a properly presented election dispute in terms of the aforesaid provisions. On this basis, it was submitted that the writ petition ought not to be entertained and that the petitioner ought to be relegated to the aforesaid remedy. Reliance was placed on judgment of this Court in the case of **Pandurang Laxman Kadam v. State of Maharashtra**, reported in **2016(4) ALL MR 629** and other judgments, which according to the learned counsel for respondent No.4 clearly demonstrated that the present writ petition ought not to be entertained by this Court.

11. The aforesaid contention raised on behalf of respondent No.4 was vehemently opposed by Mr. R.L. Khapre, learned Senior Counsel assisted by Mr. D.R. Khapre, learned counsel appearing for the petitioner who invited attention of this Court to Section 152A of the Act of 1960 and the peculiar language used therein. It was submitted that the provision stated that the decision of the Appellate Authority herein shall be final and no further appeal or revision shall lie against such a decision.

It was submitted that when finality was attached to the order passed by the Appellate Authority under the aforesaid provision, there was no avenue available to the petitioner to raise his grievance other than filing the present writ petition. It was submitted that the grievance raised on behalf of the petitioner could not be raised in an election dispute under section 91 of the Act of 1960 read with Rule 78 of the aforesaid Rules and this was fortified by a long standing judgment of a learned Single Judge of this Court in the case of **Nanaji s/o Ganuji Bhokre v. Commissioner, Amravati Division, Amravati and others**, reported in **1994 (2) Mh.L.J.1277**. By relying on the paragraph-7 of the aforesaid judgment, it was contended that the findings rendered by the Appellate Authority under section 152A of the Act of 1960, were final and binding and that the petitioner would not be able to raise the very same grievance in an election dispute under the provisions of the said Act and the Rules.

12. On the merits of the matter, the learned senior counsel appearing for the petitioner invited attention of this Court to the orders passed by respondent Nos.2 and 3. It was submitted

that respondent No.3 had correctly taken note of the material available on record to conclude that disqualification as contemplated under the Act of 1960 was attracted in the case of respondent No.4. It was submitted that the theory regarding the resignation of respondent No.4 from the Managing Committee of the defaulting Sanstha was an afterthought on the part of respondent No.4. It was submitted that the two different copies of the purported resignation letter dated 27/01/2020, one placed on record before respondent No.3 after the hearing was over and the other placed on record before respondent No.2, demonstrated that there was no truth in the theory of resignation put forth on behalf of respondent No.4. It was further contended that the contemporaneous record in the form of videography of the hearing before respondent No.3 demonstrated that respondent No.4, as also the Secretary of the defaulting Sanstha had admitted during the course of hearing that respondent No.4 was a member of the Executive Committee of the defaulting Sanstha and that the said Sanstha was indeed a defaulter.

13. According to the learned senior counsel appearing for

the petitioner, this aspect was completely ignored by respondent No.2 in the impugned order. According to the learned senior counsel, despite the fact that respondent No.2 noted that the appeal memo along with documents and other material was perused, there was total non-application of mind to the same and perverse findings were rendered in favour of respondent No.4. Attention of this Court was invited to the Bylaws of the defaulting Sanstha to further support the contentions raised on behalf of the petitioner to challenge the impugned order. It was submitted that the findings of respondent No.2 were perverse and wholly unsustainable; thereby demonstrating that writ jurisdiction could certainly be exercised by this Court to interfere with the same in the interest of justice.

14. On the other hand, the learned counsel appearing for respondent No.4 submitted that the alleged variation in the two copies of the resignation letter dated 27/01/2020, was very well explained by the material on record before this Court and even before respondent No.2. It was submitted that there were affidavits placed on record before this court, sworn by the

Chairman of the said Sanstha and the Secretary thereof to explain why there was apparent variation in the two copies of the said resignation letter on record. It was submitted that in the face of such material, unless evidence was led in accordance with law in a properly presented election dispute under the provisions of the said Act and Rules, no conclusions could be rendered by the Writ Court and therefore, the writ petition deserved to be dismissed.

15. Additionally, it was submitted that perusal of the relevant provision i.e. section 73CA of the Act of 1960, would show that respondent No.3 had rejected the nomination paper of respondent No.4 by applying a part of the said provision that in the facts of the case did not apply and that this aspect was appreciated by respondent No.2 while passing the impugned order. It was submitted that when exercise of power by respondent No.3 was itself fallacious, there was every justification for respondent No.2 to interfere with the same. On this basis, it was submitted that on merits also the writ petition did not deserve any further consideration.

16. Heard learned counsel for the rival parties and perused the material on record. Insofar as the question of maintainability of the writ petition is concerned, this Court has given due consideration to the aforesaid judgments on which reliance is placed by the counsel representing the rival parties. There is indeed a long standing view of this Court in the case of **Nanaji Ganuji Bhokre v. Commissioner, Amravati Division** (*supra*) to the effect that the finding rendered by the Appellate Authority under section 152A of the Act of 1960 is final and binding and that the Election Tribunal could not further go into it. In any case, even if for the sake of argument, the contention raised on behalf respondent No.4 is to be considered, the remedy of filing an election dispute under the provisions of the Act and the Rules could only be said to be an alternative remedy. But, looking to the nature of language used under section 152A of the Act of 1960, it becomes clear that once a decision is taken by the Appellate Authority under section 152A of the Act of 1960, it is final and no further appeal or revision can lie against such a decision.

Therefore, a writ petition filed in such circumstances is certainly maintainable.

17. Insofar as the question of alternative remedy is concerned, it is not an absolute embargo or rule of law that the hands of the writ Court are tied in the face of an alternative remedy. Reluctance on the part of a writ Court to entertain a petition in the face of an alternative remedy is at best a rule of prudence, being a self imposed restriction and not a rule of law. In a given case when the writ Court finds that the impugned order has the colour of absolute finality and a grievance is sought to be raised against the same, the jurisdiction of the writ Court is certainly not barred. This is only to address the serious objection regarding maintainability raised on behalf of respondent No.4, without the necessity of this Court making any comment on the correctness or otherwise of ratio laid down in the judgment of this Court in the case of **Nanaji Ganuji Bhokre v. Commissioner, Amravati Division, Amravati** (*supra*). In the light of the aforesaid view that this court is inclined to take, the reliance placed on behalf of respondent No.4 on the judgment of the Hon'ble

Supreme Court in the case of **Everest Apartment v. State**, reported in **AIR 1996 SC 1449**, can also not take the case of respondent No.4 any further. Therefore, the preliminary objection raised on behalf of respondent No.4 is rejected.

18. Insofar as the merits of the case are concerned, this Court has perused the orders passed by respondent No.2 and 3 and the material placed on record. The objection raised on behalf of the petitioner before respondent No.3 was that the nomination paper of respondent No.4 ought not to be accepted for the reason that he had attracted disqualification under section 73CA of the Act of 1960, as he was member of Executive Committee of a defaulting Sanstha. This was disputed by respondent No.4. In order that the said objection raised on behalf of the petitioner to succeed, two facts were required to be ascertained. Firstly, that the respondent No.4 was a member of the Executive Committee of the defaulting Sanstha at the time the nomination paper was filed and secondly, the said Sanstha was a defaulting Sanstha. There is no dispute about the fact that the proceeding before respondent No.3 was videographed and the said videography was available for

perusal of the said respondent. A transcript of the said videography placed before this Court shows that not only respondent No.4, but Secretary of the said defaulting Sanstha conceded to both the facts i.e. respondent No.4 was indeed a member of the Executive Committee of the defaulting Sanstha and that the said Sanstha was a defaulter. After hearing was concluded before respondent No.3, the respondent No.4 appears to have placed on record a document purporting to be a resignation letter dated 27/01/2020, seeking to demonstrate that he had resigned as a member of the Executive Committee of the defaulting Sanstha and that therefore, the disqualification was not attracted. The said document is at page-23 of the record of the writ petition, and it shows acknowledgment by the Chairman of the said defaulting Sanstha. There is no reference to the said document in the order passed by respondent No.3 and it is recorded that respondent No.4 had orally claimed that he had resigned on 27/01/2020.

19. By relying upon the material that was available on record and the submissions made, the respondent No.3 rejected the nomination paper of respondent No.4, against which appeal

was filed before respondent No.2-Appellate Authority. It is before the Appellate Authority that respondent No.4 produced a different version of the purported resignation letter dated 27/01/2020, which is found at page 37 of the record of the writ petition. In this document, not only the signature of the Chairman of the defaulting Sanstha is found, but signature of Secretary of the said Sanstha is also appended and the time is shown as 3.00 p.m. on 27/01/2020. It also shows that the said document is a true copy said to have been issued by the Secretary on 04/03/2020. It is on the basis of the said copy of the purported resignation letter that much emphasis was placed on behalf of respondent No.4 to contend that the resignation letter was genuine and that by operation of the relevant Bylaws of the said defaulting Sanstha, it operated from the date of the said document i.e. 27/01/2020. It was sought to be explained that only the signature of the Chairman of the defaulting Sanstha found in the copy of the purported resignation letter at page-23 of the record of the writ petition was because the same was an office copy retained by respondent No.4 and copy of the same at page-37 of the record

was the one which was obtained by respondent No.4 to place on record the correct factual position before the Appellate Authority.

20. On this basis, it was submitted that the resignation letter, when read with the relevant Bylaws demonstrated that the disqualification was not attracted. It is relevant that the Bylaws of the defaulting Sanstha provided that if no action was taken on the resignation letter within a period of one month, the same would be deemed to have come into effect from the date of such resignation letter.

21. This Court has perused the two varying copies of the purported resignation letter at pages-23 and 37 of the record. In the first place, the copy of the purported resignation letter at page-23 was never brought to the notice of respondent No.3 when the matter was heard. It was thereafter that the same was sought to be placed on record before respondent No.3. This is the reason why no reference to the same is found in the order passed by respondent No.3. It appears that when the matter reached the Appellate Authority, respondent No.4 desired to create an

impression before the said Authority that he had submitted a genuine resignation letter in terms of the Bylaws of the defaulting Sanstha. It is at this stage that the other copy of the purported resignation letter at page-37 of the record was placed before the Appellate Authority. It is here that the signature of the Secretary is found for the first time on the purported resignation letter. This has some significance, because as per the relevant Bylaws of the defaulting Sanstha a resignation letter was required to be submitted to the Secretary of the said Sanstha. The document claimed to be resignation letter which is found at page-23 of the record shows that it bears the signature only of the Chairman of the Sanstha, thereby showing that the same could not have satisfied the requirement of the said Bylaws.

22. This Court has gathered an impression that respondent No.4 sought to somehow place his case regarding genuineness of the resignation letter within the four corners of the Bylaws by producing a different copy before the Appellate Authority, which bore the signature of the Secretary also. This appears to be a clear afterthought to wriggle out of a difficult

situation in which respondent No.4 found himself. This Court has reached this conclusion because when a contemporaneous record pertaining to the hearing conducted before respondent No.3 i.e. transcript of the videography of the hearing is perused, it becomes clear that neither respondent No.4 nor the secretary of the defaulting Sanstha made any reference to such a resignation letter, purportedly submitted by respondent No.4 on 27/01/2020. Nothing prevented respondent No.4 to come clean before respondent No.3 with the facts of the case. In fact, an aspect which was clearly in his favour could certainly have been placed by him before respondent No.3 when the hearing was conducted and it was videographed. A perusal of the transcription shows that respondent No.4, as well as Secretary of the defaulting Sanstha conceded to the fact that respondent No.4 was a member of the Executive committee of the said Sanstha and that the Sanstha was in fact a defaulter. This contemporaneous material completely falsifies the stand taken by respondent No.4 before the Appellate Authority, while challenging the order passed by respondent No.3.

23. Surprisingly, there is no reference at all to this aspect of the matter in the impugned order passed by respondent No.2. Although, it is noted by the Appellate Authority, after recording the contentions of the rival parties, that the appeal memo, documents and the entire record was perused, there is absolutely no reference to this obvious incongruity in the material before the Appellate Authority. Instead, the Appellate Authority accepted the theory of resignation put forth on behalf of respondent No.4 and thereupon set aside the order passed by respondent No.3. It is also relevant that the said Sanstha being a defaulter was not disputed at any stage. This demonstrates that the findings rendered in the impugned order are absolutely perverse and wholly unsustainable. The material that was relevant for deciding the controversy was ignored. In fact, such material indicated attempts made on the part of respondent No.4 to get over admissions made before respondent No.3 and yet there was no reference to the same in the impugned order. Therefore, the said order clearly suffers from glaring errors, inviting interference in writ jurisdiction.

24. An attempt was made in this writ petition on behalf of respondent No.4, by filing affidavits of the Chairman of the defaulting Sanstha and its Secretary to explain the variance in the copies of the purported resignation letter found at pages 23 and 37 of the record. The contents of the said affidavits clearly show that the same are nothing but an afterthought and a post facto exercise made on the part of respondent No.4 to avert the obvious consequences of the material available on record. This Court refuses to accept the explanations sought to be placed before this Court by way of the said affidavits, quite apart from the fact that the affidavit of the Secretary of the defaulting Sanstha placed before this Court is in direct contradiction to the contemporaneous record of the hearing conducted before respondent No.3.

25. As regards the contention raised on behalf of respondent No.4 pertaining to section 73CA of the Act of 1960 and the fact that respondent No.3 referred to a wrong provision i.e. Section 73CA(1)(f)(i) instead of 73CA(1)(f)(ii), while accepting the objection raised by the petitioner, this Court is of the opinion that merely because a wrong provision was relied upon by

respondent No.3, the same cannot inure to the benefit of respondent No.4. The ingredients necessary to show disqualification of respondent No.4 under the aforesaid provision were clearly available on record and even admitted to by respondent No.4 and the Secretary of the defaulting Sanstha. There was no prejudice suffered by respondent no.4. Therefore, there is no substance in the aforesaid contention raised on behalf of respondent No.4.

26. In view of the above, this Court finds that the impugned order passed by the Appellate Authority is wholly unsustainable. Accordingly, the writ petition is allowed. The impugned order is quashed and set aside and the order passed by respondent No.3 rejecting the nomination paper of respondent No.4 is upheld.

27. Considering the urgency of the matter, the learned A.G.P appearing on behalf of respondent Nos.1 to 3 is requested to immediately communicate the order passed today by this Court to the concerned officer so that appropriate steps for deleting the

name of respondent No.4 from the ballot paper are taken before the actual polling begins on 21/12/2020.

28. Considering the pandemic situation and the fact that the lockdown is being released step-wise, the parties are also expected to act on a copy of the order passed today, downloaded from the official website of the High Court.

29. Rule is made absolute in the above terms. No costs.

JUDGE

Ghanshyam
Khunte

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by Ghanshyam
Khunte
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