

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7724 OF 2021**

Santosh Dattatraya Wagh & Anr	...Petitioners
<i>Versus</i>	
The Hon'ble State Minister & Anr	...Respondents

Mr Satish A Sarang, for the Petitioners.
Mr SS Panchpor, for the Respondents.

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.**
DATED: 17th November 2021

PC:-

1. Mr Sarang tenders a draft amendment. It is taken on record and marked “X” for identification with today’s date. Leave to amend. Amendment to be carried out within a week without need of reverification.

2. Heard.

3. We are not inclined to interfere in exercise of our discretionary jurisdiction under Article 226 of the Constitution of India in this Writ Petition. The Petitioners challenge an order of 21st October 2021 passed by the Hon’ble Minister for State

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Cooperation dismissing the Petitioners' Revision Application No. 360 of 2021. By that Revision Application, the Petitioners challenged an order of 29th June 2021 passed by the Additional Registrar of Cooperative Societies. The order of the Hon'ble Minister confirmed, therefore, the Additional Registrar's order of 29th June 2021.

4. There is no dispute that in 2017, the Petitioners took a Crop Loan facility from one Ranjani Vividh Karyakari Society.

5. The Petition asserts that the Crop Loan was repaid.

6. This, regrettably, is less than fully accurate at least for the purposes with which we are concerned. At page 87 of the Petition, there is a tabulation that shows the amounts due from each of the Petitioners, the due dates and the actual dates of payments. As the Respondents point out, this has to be read with the statutory provision of Section 73CA of the Maharashtra Cooperative Societies Act 1960. The section reads thus:

“73CA. Disqualification of committee and its members:

(A1) In the case of a society, which gives loans to members for purchasing machinery, implements, equipment, commodities or other goods, or which deals in such goods, no member, who or whose member of the family is a dealer in such goods or is a director of a company or a partner in a firm carrying on business in such goods, in the area of operation of the society shall be eligible for being elected or nominated as a member of the committee of such society.

... ..

(1) Without prejudice to the other provisions of this Act or the rules made thereunder in relation to the disqualification of being a member of a committee, no person shall be eligible for being appointed, nominated, elected, co-opted or, for being a member of a committee, if he—

(i) is a defaulter of any society;

Explanation.—For the purposes of this clause, the term “defaulter” includes—

(a) **in the case of a primary agricultural credit society, a member who defaults the repayment of the crop loan on the due date;**

(b) in the case of term lending society, a member who default the payment of any instalment of the loan granted to him

(c) in the case of any society,—

(i) a member who has taken *anamat* or advance; or

(ii) a member who has purchased any goods or commodities on credit or availed himself or any services from the society for which charges are payable; and fails to repay the full amount of such *anamat* or advance or pay the price of such goods or commodities or charges for such service, after receipt of notice of demand by him from the concerned society or within thirty days from the date of withdrawal of *anamat* or advance by him or from the date of delivery of goods to him or availing of services by him whichever is earlier.”

7. Clearly, this provides for disqualification of a committee and members of a committee of a society. The explanation to Sub-Section (1) defines various classes of defaulters. The society in question is a Multi Purpose Society. It may thus address itself and its affairs to one or more of the purposes set out in Section 73CA. But the section and its explanation deal not only with the type of society but also with the types of debts that may be incurred. Sub-clause (a), emphasised above, shows that a defaulter including a member who defaults in the repayment of Crop Loan “*on the due date*”. In other words, repayment at a later date will not save the defaulting member from being held to be or labelled as a defaulter. Once the borrower is a defaulter, the disqualification is automatic.

8. In the Revision Application that the Petitioners filed, a copy of which is at page 92, the Petitioners asserted that they were not defaulters (paragraph 2). This is factually and demonstrably incorrect.

9. Before us, it is also argued that the Hon’ble Minister did not afford a hearing and, therefore, the principles of natural justice were violated. Again, we find that this is inaccurate. The impugned order at page 101 specifically speaks of a hearing. Admittedly, the Petitioners tendered written submissions. It is alleged that only written submissions were tendered but no hearing was afforded. But there is nothing to show that the Petitioners demanded that, in addition to filing of Written Submissions, they should be allowed to make oral submissions. On the other hand, the impugned order specifically states that the Petitioners were “heard”. It is not possible for us to get into this controversy of whether the “hearing”

noted in the impugned order included an oral hearing or not since there is nothing on record at all to show that the Petitioners were not heard or that they demanded an oral hearing and this was refused. In any case, it is accepted that the Petitioners' written submissions were taken on record and were allowed to be filed. As the learned counsel for the Respondents points out, in the Writ Court we are not concerned with the merits of the decision unless it is shown to be entirely arbitrary and violative or ultra vires Article 14. We are concerned with the decision making process.

10. We find no infirmity in the impugned order. There is no cause to interfere. The Writ Petition is rejected. There will be no order as to costs.

11. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)