

Prajakta Vartak

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

WRIT PETITION NO.9209 OF 2021

Tukaram Sonu Bhoirkar

...Petitioner

V/s.

The Election Officer Pune District
Central Co-Op. Bank Ltd. Pune & Ors.

...Respondents

Mr. Surel Shah i/b. Mr. Prashant Patil for Petitioner.

Mr. Nitin Patil for Respondent No.2.

Mr. Dilip Bodke for Respondent Nos.1 & 5.

Mr. S. D. Rayrikar, AGP for State/Respondent Nos.4 & 6.

CORAM : G. S. KULKARNI, J.

DATE : DECEMBER 21, 2021

P.C. :

1. Heard learned counsel for the petitioner and learned counsel for the respondents.

2. This petition is filed by the petitioner praying for the following reliefs:-

“a) Rule be issued and record and proceed be called for the Respondent No.1;

b) That this Hon’ble Court may be pleased to quash and set aside the Order/Letter dated 08/12/2021 passed by the Respondent No.1 i.e. The Election Officer, Pune District Central Co-operative Bank, Pune and further be pleased to direct the Respondent No.1 to consider the objection dated 07/12/2021 (Exh. ‘B’) of the Petitioner to the candidature of the Respondent No.2 from ‘A’ category of Maval Taluka constituency and to decide the same as per law.”

3. It is the petitioner’s case that 06 December, 2021 was the last date for filing of the nomination and the scrutiny of the nomination was scheduled for 07 December, 2021 at 11.00 a.m. It is the case of the petitioner that he

objected to the nomination of respondent no.2 vide his objection dated 7 December, 2021 which he intended to submit to the Election Officer and with such intention, he approached the Election Officer at 11.15 a.m. to 11.30 a.m. as reflected in paragraph 5 of the petition which reads thus:-

“5. The Petitioner states that as per the directions given by the Respondent No.1, the Petitioner reached to the office of the Respondent No.1 at about 11.15 am to 11.30 am on the way to the office of the Respondent No.1 there was huge traffic and also there was crown in the building of the PDCC Bank premises. Therefore, the petitioner has reached to the office of the respondent no.1 in between 11.15 am to 11.30 a.m. At that time the scrutiny of nomination forms are going on, however the Respondent no.1 refused to accept the objection of the Petitioner on the ground that the time is already over and the same cannot be accepted now. It was the case of the Petitioner that though the Respondent No.2 and his family members are defaulters, he has filed the nomination and the same is required to be rejected. It was further pointed out that the Respondent No.2 is the member of Talegaon Station Vikas Seva Society Limited and residing in the area of the operation of the said society still the form has been submitted from the Navlakh Umbre Vividh Karyakari Society. It was further pointed that the Respondent no.2 being director of Respondent No.3 taken huge amount of loan on his family members name and not paid the loan amount since 2014. The Respondent No.2 is residing in joint family in the area of the said society and the family members of the Respondent No.2 has taken huge amount of loan of more than Rs. 1 Crore and they are in default since long time, therefore, the nomination of the Respondent No.2 required to be rejected as he and his family members are in default.”

4. However, such objection of the petitioner was not accepted by the Election Officer on the ground that the time is already over. Thereafter on the same day the petitioner forwarded his objection to the Election Officer by speed post which he made in the evening at 07.51 p.m. as seen from the post

office acknowledgment affixed at page 24 (petitioner's complaint). The speed post was received by the Election Officer on 8 December, 2021. It was informed to the petitioner that his objection could not be considered as the same was raised belatedly. Hence the petitioner has filed the present petition.

5. Mr. Shah, learned counsel for the petitioner has very limited submissions. His submission is that the petitioner was entitled to submit an objection and hence approached the Election Officer on 07 December, 2021, when the Election Officer ought not to have taken a position that the petitioner's objection cannot be accepted.

6. I am of the opinion that the submissions of Mr. Shah cannot be accepted, admittedly, the petitioner was delayed in submitting his objections on the nomination filed by respondent no.2. It cannot be ascertained whether the petitioner really approached the Election Officer to submit his objection at 11.15 a.m. to 11.30 a.m. as contended by him. This becomes a disputed question of fact which cannot be adjudicated by this Court in exercise of a writ jurisdiction under Article 226 of the Constitution. Secondly, admittedly the petitioner forwarded his objection by speed post made at 7.15 p.m. on 7 December 2021 which reached the Election Officer the next day after scrutiny of the nomination as per the notified election programme was over. Thus,

there was no obligation for the Election Officer to consider such belated objection.

7. For the above reasons, in my opinion, there is no merit in the petition. It is accordingly rejected. No costs.

(G. S. KULKARNI, J.)

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signed by
PRAJAKTA
SAGAR
VARTAK
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