

Vidya Amin

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

WRIT PETITION NO. 9334 OF 2021

Shailaja Dnyaneshwar Dalvi

... Petitioner

V/s.

The Election Officer, Pune District Central
Coop. Bank Ltd., Pune & Ors.

... Respondents

Mr. Surel S. Shah i/b. Mr. Prashant D. Patil for the petitioner.

Mr. Nitin Gaware Patil for respondent no. 3.

Mr. Dilip Bodke for respondent no. 1, 41 to 43.

Mr. S.D. Rayrikar, AGP for the State/respondent nos. 43 & 44.

CORAM : G.S.KULKARNI, J.

DATE : 21 December, 2021

P.C.:

1. This petition challenges an order dated 16 December, 2021 passed by the Divisional Joint Registrar Cooperative Societies, Pune Division rejecting the petitioner's appeal filed against an order dated 7 December, 2021 passed by respondent no. 1- Election Officer, who was appointed to conduct the election of the Pune District Central Cooperative Bank.

2. Respondent no. 3 – Dnyanoba Savaleram Dabhade filed an objection on 7 December, 2021 as permissible under Rule 25(1) of the Maharashtra Cooperative Societies (Election to Committee) Rules, 2014 challenging the nomination form as submitted by the petitioner primarily on two grounds. Firstly, as per the provisions

of bye-laws 32(2)(A), the petitioner did not hold any position as a Director in any of the Cooperative Societies for a period of one year and such a certificate was not enclosed with the nomination form submitted by the petitioner. The second objection was to the effect that the petitioner was not eligible to contest the election as per the bye-law no. 36(2)(A)(3) for the reasons that the Society which the petitioner was representing, in the context of the present elections, was not categorized in 'A' or 'B' Audit class. Accordingly, the Election Officer vide order dated 7 December, 2021 held that the objection which was raised by respondent no. 3 was accepted and the nomination form as submitted by the petitioner cannot be accepted. Being aggrieved by such decision rendered by the Election officer, the petitioner approached the Divisional Joint Registrar Cooperative Societies, Pune Division in an appeal filed under section 152-A of the Maharashtra Cooperative Societies Act. The appellate authority considered the rival submissions and dismissed the petitioner's appeal by the impugned order dated 16 December, 2021.

3. Mr. Shah, learned counsel for the petitioner would submit that both the authorities have erred in not accepting and coming to conclusion that the petitioner's nomination could not be accepted. Insofar as respondent no. 3's objection with regard to the

petitioner not being the Director of the Cooperative Society for a period of one year, Mr. Shah submits that the certificate to that effect was not only annexed to the nomination but also it was on record before the Appellate Authority. It was on the letter head of the petitioner's society. The Appellate Authority has recorded that it was submitted before the appellate authority and not part of the nomination. If that is so, it is required to be held that the nomination form itself was defective.

4. Insofar as the second contention is concerned that the Society of the petitioner was not a Class 'A' or 'B' society as per the requirement of Bye-law no. 36(2)(A)(3), it appears to be quite clear that the nomination form was submitted by the petitioner on 6 December, 2021 and the order was passed by the Assistant Registrar on 22 November, 2021, which is prior to the petitioner submitting his nomination that the petitioner-society was Class 'C' Audit society. Thus on the date of submission of the nomination the petitioner's society was not a Class 'A' or 'B' society, it was Class 'C' society.

5. Mr. Shah, learned counsel for the petitioner confronted with this apparent difficulty for the petitioner, would submit that the Assistant Registrar did not have authority to issue such letter

dated 22 November, 2021. This is an argument in desperation. Mr. Shah's submission cannot be accepted for the reason that it would not be the jurisdiction of the Election officer to undertake any inquiry as to whether the Assistant Registrar had any authority to issue such certificate and/or has rightly issued the said letter dated 22 November, 2021 recording that the society of the petitioner was inadvertently classified as Class 'B' Society and it ought to have been Class 'C' society. Once it was an admitted position on record that the petitioner society was Class 'C' audit society, then certainly Bye-law 36(2)(A) was required to be considered by the Election officer to hold the petitioner not eligible to contest the election as per the clear wording of Bye-law 36(2) (A).

6. Mr. Shah nonetheless has another argument. He now submits that the Bye-law No. 36(2) cannot be construed as disqualification to contest the election as it has sub-clauses referring to eligibility. In my opinion, such submission as urged by Mr. Shah cannot be accepted. Bye-law no. 36 has to be read in its entirety. Sub-clause (2) has various sub-clauses, i.e., A, B & C. Each of these clauses have further sub-clauses which clearly provides that a person incurring any of the disqualification/ deficiencies as set out in these clauses, would not be eligible to

contest the election. Once the rule itself uses the words “eligible to contest the election”, merely because there is a separate clause, i.e. 36(2)(B) specifically providing for a category under which a candidate would be disqualified, it cannot be construed, that whatever was contemplated under Bye law 36(2)(A)(2) and (3) prescribes ineligibility and not disqualification. If this submission of Mr. Shah is accepted, it would amount to complete misleading of bye-laws and defeating the very purpose for which bye-law is framed.

7. For the above reasons, I find no reason to interfere with the impugned orders. The petition is accordingly dismissed. No costs.

(G.S.KULKARNI, J.)