

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3894 OF 2022

Balasaheb Karbhari Kachre
Age: 52 years, Occu: Agri.,
R/o: Padali, Tq. Pathardi
District: Ahmednagar

... Petitioner

Versus

1. The State of Maharashtra,
Through Election Officer,
District Deputy Registrar,
Co. op. Sawanstha, Ahmednagar

2. The Returning Officer,
V. K. S. S. Sawanstha Ltd. Padali,
Tq. Pathardi, District Ahmednagar

3. The V. K. S. S. Sawanstha Ltd. Padali
Through Secretary, Tq. Pathardi,
District Ahmednagar

4. Dilip Yadav Kachre
Age: 60 years, Occu: Agri.,
R/o: Padali, Tq. Pathardi,
District Ahmednagar

... Respondents

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Mr. R. P. Bhumkar, Advocate for the Petitioner
Mr. P. N. Kutti, AGP for the Respondent No.1/State
Mr. S. K. Kadam, Advocate for Respondent No.2
Mr. Tushar Shinde h/f Mr. C. K. Shinde, Advocate for Respondent No.3
Mr. K. D. Bade, Advocate for Respondent No.4

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 6th April, 2022

ORAL JUDGMENT :

1. **RULE.** Rule made returnable forthwith. Heard finally with the consent of the learned Advocates for the respective parties.
2. This petition takes exception to the order dated 17/03/2022, passed by respondent no.2/Returning Officer, thereby reviewing his own order and accepting the nomination of respondent no.4
3. The programme for finalization of the voters list of respondent no.3/Society was published by respondent no.2. Nomination forms were to be filed between 10/03/2022 to 16/03/2022. On 17/03/2022, the scrutiny of nomination forms was to be held.
4. Petitioner objected to the nomination of respondent no.4 on the ground that he is a defaulter of Adinath Nagari Sahakari Pathasawnstha Ltd. and therefore, he is not eligible to contest the election. Alongwith the objection, the petitioner submitted a certificate of outstanding dues of respondent no.4 issued by the said Adinath Pathasawnstha. The respondent no.2 accepted the objection

and rejected the nomination form of respondent no.4 on 17/03/2022 holding that respondent no.4 is the defaulter of the said Adinath Pathasawnstha. Therefore, as per Section 73CA of the Maharashtra Co-operative Societies Act, 1960 (for short “the Act, 1960”), he is not eligible to contest the election. In the order, it is mentioned that the respondent no.4 is entitled to challenge the said order by filing an appeal under Section 152-A of the Act, 1960.

5. The petitioner was surprised to see the name of respondent no.4 in the list of validly nominated candidates. The petitioner sought information from respondent no.2 as to how the nomination form of respondent no.4 was accepted. The respondent no.2 in writing informed to the petitioner that nomination form of respondent no.4 was rejected, however, the proposer of respondent no.4 sought time upto 3:00 pm for compliance of the deficiencies. He then submitted certificate that respondent no.4 has cleared the dues of the said Adinath Pathasawnstha. The said Pathasawnstha confirmed that its dues are cleared. Therefore, in view of principles of nature's justice, the nomination form of respondent no.4 is accepted. This action of respondent no.2 is challenged by the petitioner.

6. Heard the learned Advocate for the petitioner, learned Assistant Government Pleader for respondent no.1, learned Advocate for respondent no.2, learned Advocate for respondent no.3 and learned Advocate for respondent no.4.

7. It is not in dispute that on the date of filing of nomination form, respondent no.1 was a defaulter of Adinath Pathasawnstha and on that ground, his nomination form was rejected by respondent no.2 vide order dated 17/03/2022. However, respondent no.2 has reviewed his own order at the instance of respondent no.4 and accepted the nomination form of specious ground that the respondent no.4 has cleared all his dues.

8. The impugned order is unsustainable in law and facts of the case as admittedly, respondent no.4 was a defaulter on the date on which he filed nomination and till 16/03/2022, which was the last date of filing nomination forms, he did not clear his dues and it is clear from the record that, after his nomination form was rejected by respondent no.2, on 17/03/2022, he cleared the dues.

In **Manchak S/o Shahaji Pawar Vs. State of Maharashtra** reported in **2011 (3) Mh.L.J**, the learned Single Judge of this Court [**Coram: B. P. Dharmadhikari, J.**] held that for deciding

eligibility of the candidates for contesting the election, relevant date is the last date prescribed for filing nomination papers. In that case, respondent no.4 was the defaulter of crop-loan payable on 28/05/2010. He failed to pay the crop-loan till 07/01/2011, which was the last date prescribed for filing nomination. The loan arrears were cleared on 08/01/2011. It was therefore held that since respondent no.4 failed to pay the loan arrears on the relevant date i.e. last date prescribed for filing of nomination papers, respondent no.4 was disqualified and payment made after last date does not wipe out the non-eligibility. This ratio is squarely applicable to the facts of the present case. In the present case, undisputably, the last date for filing nomination was 16/03/2022 and the dues were cleared by respondent no.4 on 17/03/2022 which was kept for scrutiny of nomination forms. The respondent no.2 was right in rejecting the nomination form of respondent no.4 on 17/03/2022.

9. On being asked, the learned Advocate for respondent no.2 fairly admitted that there is no provision in law empowering the respondent no.2 to review his own order. Once having rejected the nomination form of respondent no.4 on 17/03/2022, respondent no.2 was not justified in granting time to respondent no.4 for repaying the dues

and producing clearance certificate and on that basis, accepting his nomination form, thereby virtually reviewing his own order of rejecting the nomination form of respondent no.4. Thus, the impugned order passed by respondent no.2, thereby granting time to respondent no.4 to clear the dues and thereafter, accepting the nomination form of respondent no.4 is only without jurisdiction and therefore, cannot be sustained.

10. The learned Advocate for respondent no.4 vehemently submitted that respondent no.4 has cleared the dues by 17/03/2022 and for the mistake on the part of respondent no.2 of reviewing his own order, respondent no.4 should not suffer. He further submitted that the validly nominated candidates list is already declared on 05/04/2022 and therefore, this Court may not interfere in the impugned order at this stage. Further, by placing reliance on **Vijaysingh Krishnarao Parbat Vs. Returning Officer & Others** reported in **2003 (5) Bom. C.R. 330**, he submits that once the list of all the validly nominated candidates is published, all should be made party to the petition.

11. It is not possible to accept the contention of the learned Advocate for respondent no.4 that for the mistake on the part of

respondent no.2, respondent no.4 should not suffer. Since the impugned order passed by respondent no.2 is without jurisdiction, the respondent no.4 cannot take any benefit of the same.

12. Another argument of the learned Advocate that all the validly nominated candidates should be made party to the petition, is also liable to be rejected in the facts of the present case. Admittedly, respondent no.4 had filed nomination form from 'OBC' category and it is informed by the learned Advocate for respondent no.2 that apart from respondent no.4, only one candidate has filed nomination form from 'OBC' category. Since this Court has come to a conclusion that the impugned order of accepting the nomination of respondent no.4 is illegal and unsustainable, the sole candidate who has filed nomination from 'OBC' category will be declared elected. Therefore, no order adverse to the interest of that candidate is being passed in the present petition. Therefore, no prejudice will be caused to the candidate who has filed nomination from 'OBC' category. In the peculiar facts of the present case, other candidate's election is not likely to be affected by the order passed in the present petition. In this view of the matter, I am not inclined to accept the submission of the learned Advocate for respondent no.4 that all the validly nominated

candidate should be made party and this Court shall not interfere as the list of validly nominated candidate is declared.

13. For the aforestated reasons, writ petition is allowed. The impugned order dated 17/03/2022, passed by respondent No.2//Returning Officer, thereby accepting the nomination of respondent no.4, is hereby quashed and set aside.

14. Rule is made absolute in the above terms with no order as to costs.

[NITIN B. SURYAWANSHI, J.]

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