

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

WRIT PETITION NO.5480 OF 2022

**DEEPAK LAXMANRAO MARKAD
VERSUS
THE RETURNING OFFICER AND OTHERS**

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Advocate for Petitioner : Mr. Pradip Narayanrao Sonpethkar
AGP for Respondent - State : Mr. K. B. Jadhavar
Advocate for Respondent No.1 : Mr. S. K. Kadam
Advocate for Respondent No.2 : Mr. K. S. Solanke
Advocate for Respondent Nos.4, 5 and 7 : Mr. Mahesh L. Muthal
Advocate for Respondent No.6 : Mr. Prakash S. Gaikwad.
Advocate for Respondent Nos.8 and 9 : Mr. M. K. Bhosale

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CORAM : MANGESH S. PATIL, J.

DATED : 10 JUNE 2022

PER COURT :

1. The petitioner is aggrieved by the decision by the Returning Officer, respondent no.2 refuting his objection to the candidature of the contesting respondents in the impending elections under the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014.
2. The entire emphasis of the petitioner is on the fact that the contesting respondents were the defaulters of a society and thus were disqualified under section 73CA of the Maharashtra Co-operative Societies Act, 1960.

3. The Returning Officer by observing that the contesting respondents were defaulters, but subsequently having repaid the loan would not continue to be the defaulters and were not disqualified has turned down the objection. From the order one cannot ascertain as to how, firstly, the Returning Officer had concluded that the contesting respondents were the defaulter even without hearing them or even the society. Again, in spite of having found that the respondents were the defaulters it is also not clear as to how he could have thereafter reached a conclusion that they were not defaulters, since they had subsequently repaid the loan.

4. Be that as it may, the challenge is to be acceptance of the nomination. The election process is at an advanced stage and the voting is to take place tomorrow i.e. on 11-06-2022. The question as to whether the respondents are indeed defaulters within the meaning of the provision is a mixed question of fact and law. This court in exercise of its writ jurisdiction cannot enter into it. Besides, since the election is to take place tomorrow, the petition would have the remedy post election as well.

5. Writ petition is dismissed.

6. All points are kept open.

(MANGESH S. PATIL, J.)