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

WRIT PETITION NO.5921 OF 2022

KISAN BABURAO BERAD
VERSUS
STATE OF MAHARASHTRA THROUGH MINISTRY OF
CO-OPERATION DEPARTMENT AND OTHERS

. . .
Advocate for Petitioner : Mr. Girish K. Naik Thigle
AGP for Respondent – State : Mr. K. B. Jadhavar
Advocate for Respondent Nos.2 and 3 : Mr. V. H. Dighe
. . .

CORAM : MANGESH S. PATIL, J.

DATED : 10 JUNE 2022

PER COURT :

. The petitioner is aggrieved by the rejection of his nomination in the impending elections to be held under the Maharashtra Co-operative Societies Act, 1950 (for short, "of the Act") and the Rules thereunder, on the ground of he being a defaulter as contemplated under section 73CA(1) of the Act. He is also aggrieved by the dismissal of the appeal by the Deputy Registrar, Co-operative Societies preferred by him under section 152(A) of the Act.

2. I have heard learned advocate Mr. Naik Thigle for the petitioner, learned AGP for the respondent-State and also Mr. Dighe for the respondent Nos.2 and 3.

3. The whole emphasis of the learned advocate Mr. Thigle is on the fact that the question as to if the petitioner is a defaulter or otherwise has not been decided on some credible evidence. Based on a communication issued by the liquidator of a cooperative society, which is also vague, a conclusion has been reached that he is a defaulter. The communication itself clearly mentions that for want of complete record having been handed over to the liquidator, the fact as to if the petitioner has repaid the loan after 2017 till the charge was taken over by the liquidator, cannot be ascertained for want of record. No inference ought to have been drawn much less, rejecting his nomination by resorting to the aforementioned facts. The petitioner has never availed the loan of the society.

4. The learned advocate Mr. Dighe for the respondent Nos.2 and 3 submits that the election process is at an advanced stage. 8th June 2022 was the last date on which the list of the valid candidates was to be published. There are several disputed questions of facts which cannot be gone into and decided at this juncture. The fact remains that the liquidator based on some objective material in the form of an audit report, had informed that at some point of time the petitioner had availed of loan of that society and the fact whether it was repaid or otherwise must be within the knowledge of the petitioner. He has not demonstrated about having ever repaid that loan. If a Returning Officer is expected to undertake a summary scrutiny during the

process of the election, no fault in the decision taken by him based on such communication issued by the liquidator, which was *prima facie* sufficient to draw an objective inference, can be found.

5. Learned advocate Mr. Dighe would further submit that inclusion of the petitioner's name by accepting his candidature is likely to affect the interest of the candidates, whose nomination has already been accepted. However, they are not parties to the present petition.

6. Having considered the rival submissions, there cannot be a manner of doubt that the election programme has been declared and 8 June 2022 was the date on which the final list of candidates and allotment of symbols was to take place. It clearly demonstrates that the process of election has reached an advanced stage.

7. The fact whether the petitioner is, in fact, a defaulter of the society is a pure question of fact. This court at this juncture, cannot be expected to enter upon and decide the issue.

8. Besides, liquidator of the society after referring to the statutory audit report of the year 2016-2017 has informed in writing about the petitioner being a debtor of that society. It is true that he has also expressed inability to conclusively inform whether the petitioner has subsequently repaid the loan or otherwise for want of record. If the petitioner had ever obtained

some loan from the society as is reflected in the audit report, he would be the best person to know as to if he had thereafter repaid it.

9. No exception can be taken to the conduct of the liquidator in expressing his inability to say if the loan was subsequently repaid since according to him the record for the subsequent period was never handed over to him after he took over the charge.

10. If such was the material available before the Returning Officer, it cannot be said that his conclusion that the petitioner is a defaulter and is disqualified in view of section 73CA(1) of the Co-operative Societies Act is a plausible decision based on the material available before him.

11. In view of the above state of affairs, there is no merit in the writ petition.

12. Writ petition is dismissed keeping open the avenue to the petitioner to resort to an appropriate remedy.

(MANGESH S. PATIL, J.)

Tandale/-