

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

WRIT PETITION NO.6704 OF 2022

**ASHOK SOUDAGAR VEER
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE SECRETARY AND OTHERS**

. . .
Advocate for Petitioner : Mr. N. P. Patil Jamalpurkar h/f. Mr. A. D. Chapule
AGP for Respondents no. 1 and 2 : Mr. S. B. Pulkundwar
Advocate for Respondent No.3 : Mr. S. K. Kadam
Advocate for Respondent No.4 : Mr. H. B. Nandagavale
. . .

CORAM : MANGESH S. PATIL, J.

DATED : 04 JULY 2022

PER COURT :

1. The petitioner is aggrieved by the dismissal of his appeal preferred under section 152-A of the Maharashtra Co-operative Societies Act, 1960 (for short, "the Act"), confirming the decision of the Co-operative State Election Officer - Respondent No.3, upholding the objection raised by the respondent no.4 about he having incurred disqualification under section 73CA of the Act for being a defaulter of couple of co-operative societies.

2. I have heard learned advocate Mr. N. P. Patil Jamalpurkar holding for Mr. A. D. Chapule for the petitioner extensively.

3. As can be appreciated, the question whether the petitioner can be said to be a defaulter and has incurred the disqualification depends on number

of facts regarding which this court in exercise of the writ jurisdiction has inherent limitations in entering into the realm of factual disputes.

4. Prima facie, there are certificates issued by at least two co-operative societies pointing out the default of the petitioner in paying the dues.

5. It has been strongly submitted on behalf of the petitioner that in order to attract the provision of section 73CA of the Act, a person must be a defaulter of a society in his capacity as a member of that society. However, as has rightly been pointed out by learned advocate Mr. Kadam for the respondent no.3, there is an explanation of the word 'defaulter'. That explanation uses the word 'includes' which makes it abundantly clear that though the categories mentioned in the explanation require a person to be a member of the other society and in that capacity a defaulter, this is an inclusive definition and does not outrightly exclude category of non members as defaulters.

6. In view of such state of affairs, when apart from the certificate issued by couple of societies which were before the respondent no.3-returning officer as also the appellate authority, coupled with the fact that along with the affidavit-in-reply there is a judgment of the cooperative court holding the petitioner liable to pay the amount to one such society and particularly the

fact that according to the learned advocate for respondent no.3, even the appeal preferred by the petitioner against that judgment has been dismissed, for the time being, this much of material would be sufficient to substantiate the decision of the appellate authority confirming the order of the respondent no.3 returning officer.

7. Apart from the above state of affairs, admittedly, the date for withdrawal of candidature is over and tomorrow is the date for publication of list of valid candidates. The petition does not array the candidates who have already filed nominations who are certain to be effected by any decision in the writ petition in favour of the petitioner.

8. For the aforementioned reasons, the petition is dismissed.

(MANGESH S. PATIL, J.)

Tandale/-