

1. By way of present writ petition, the petitioner is challenging the impugned action of respondent No. 1 – Returning Officer, Rashtriya Sahakari Shikshan Prasarak Mandal Limited, Chalisgaon, District Jalgaon, accepting the nomination forms of respondent Nos. 3 to 6 and prays for rejection of their nomination forms.
2. Heard Mr. Dhananjay B. Thoke, learned advocate for petitioner, Mr. V.H. Dighe, learned advocate for respondent Nos. 1 & 2, Mr. S.P. Brahme, learned advocate for respondent Nos. 3, 4 & 6 and Mr. K.B. Jadhavar, learned AGP for respondent/State.
3. Brief facts leading to filing the present writ petition can be summarized as under :-

- i) The petitioner was the bank registered as per the provisions of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as 'the Act, 1960 for brevity). Due to misadministration, initially administrator was appointed on the said bank and subsequently the bank went into liquidation. After the liquidation period was over i.e. on 23.2.2020, the custodian/receiver came to be appointed vide Rule 89 (17) of the Maharashtra Cooperative Societies Rules, 1961 (hereinafter referred to as 'the Rules, 1961 for brevity).
- ii) The election of the cooperative society i.e. Rashtriya Sahakari Shiksan Prasarak mandal Limited, Chalisgaon was declared by the District Cooperative Election Officer for the period of 2022-2027. As per the said programme, the provisional voters list was published on 21.6.2022. Thereafter from 21.6.2022 to 30.6.2022, 10 days period was given for calling objections to the provisional voters list. Last date for giving decision on the objections to the provisional list of voters was 11.7.2022. Thereafter, final voters list was published on 15.7.2022. The date for filing nomination was from 11.11.2022 to 17.11.2022. The date of scrutiny of the nomination papers was 18.11.2022 and the final list of nominated candidates was published on 21.11.2022. Date for withdrawal of nomination papers was from 21.11.2022 to 5.12.2022. Date of allotment of election symbols was

6.12.2022 and the date of voting was 18.12.2022. Counting of votes was done on 19.12.2022.

iii) It is the case of the petitioner that the respondent Nos. 3 to 6 filed their nominations. The petitioner being the Special Recovery Officer duly appointed by District Deputy Registrar, Cooperative Societies filed objections before the respondent No. 1 that respondent Nos. 3 to 6, aspiring candidates, are defaulters of his bank. Along with the objection, the petitioner also annexed the recovery certificates issued by the Assistant Registrar, Cooperative Societies, Jalgaon.

4. Mr. D.B. Thoke, learned counsel for the petitioner submits that recovery certificate is the conclusive proof of the fact that the respondent Nos. 3 to 6 are defaulters. The Returning Officer published list of valid nominations on 21.11.2022 and the names of respondent Nos. 3 to 6 were shown in the list of validly nominated candidates at Sr. Nos. 73, 77, 83 from open category and Sr. No. 4 in reserve category, respectively.

5. The learned counsel contended that petitioner asked reasons for rejection of it's objection and he was informed that for rejection, no order was required to be passed. Being aggrieved and dissatisfied by the action of respondent No. 1, accepting the nominations of respondent Nos. 3 to 6, the petitioner challenges the same by filing present writ petition on the following grounds :-

i) Respondent Nos. 3 to 6 are admittedly defaulters and

they are not eligible for being elected or nominated as a member of the committee of such society and thus, suffered disqualification, in terms of Section (73CA)(A1) (1)(i) of the Act, 1960.

ii) While rejecting the objection of the petitioner, respondent No. 1 – Returning Officer ought to have passed the reasoned order for accepting the nominations of respondent Nos. 3 to 6.

6. Mr. Thoke, learned counsel for the petitioner, therefore, submits that this court should interfere in the action of respondent No. 1, accepting the nominations of respondent Nos. 3 to 6 and prevent them from contesting the election.

7. This Court by order dated 25th November, 2022 had issued notice in the matter and had permitted the paper publication also. This Court specifically noted the contention of the petitioner that respondent Nos. 3 to 6 being defaulters of credit society under section 73(C)(A) of Act of 1960 cannot become member of any managing committee of any other cooperative credit society and that they have incurred disqualification.

8. After notice, learned advocate Mr. V.H. Dhige appeared for respondent Nos. 1 and 2 and submits that the scrutiny of the nomination is fixed for one day only and there were over 100 nominations received. Mr. Dighe, learned counsel submits that when objections were received at the stage of nomination, enquiry is very

limited as there is time only of one day for Returning Officer to complete the process of scrutiny of nominations.

9. The Returning Officer on examination of the nomination forms and certificates given by the petitioner can accept or reject the nomination. The learned counsel submits that there was no dues certificate given by the petitioner and as such, respondent No. 1 Returning Officer had accepted the nomination of the respondent Nos. 3 to 6.

10. Mr. Dighe, learned counsel for respondent Nos. 1 and 2 submits that if the nomination is rejected, then there is provision for appeal, however, if the nomination is accepted, there is no provision of appeal and the legislative intent is very clear that same can be challenged by filing an election petition only.

11. Mr. S.P. Brahme, learned counsel for respondent Nos. 3 to 6 submits that petitioner society is de-recognized cooperative credit society and by virtue of section 21 of the Act, 1960, it is no more in existence and as such, there can be no objection raised at the instance of the said society or there can be no default of the said society.

12. Mr. Brahme further submits that certificates under section 101 of the Act, 1960 are of the years 2004 and 2007 and more than 15 years have been passed away and that the detailed enquiry is necessary to determine as to whether the claims were satisfied.

13. Mr. Brahme, learned counsel submits that the default has to be

made out by leading proper evidence and the claim can only be decided by proper adjudication and more so, petitioner's own stand is in doubt.

14. Mr. Brahme, learned counsel for respondent Nos. 3 to 6 further submits that in view of the provision of section 78 of Maharashtra Co-operative Societies (Election to Committee) Rules, 2014, (hereinafter referred to as 'the Rules of 2014'), there can be challenge to the acceptance of nomination only by way of filing an election petition and that any interference at the stage will destabilize the election process. He therefore submits that while exercising summary writ jurisdiction, this Court may not interfere in validity of acceptance of nomination papers of respondent Nos. 3 to 6 by respondent No. 1.

15. In the instant case, according to the petitioner, respondent Nos. 3 to 6 are defaulters from the year 2004. While accepting the nomination forms, time was limited for enquiry and only one day's time is prescribed for completing the process. Only summary enquiry could have been possible at the instance of the Returning Officer within such a short period calling upon the candidates to dispute the objections raised. Since objections were raised on the same day of scrutiny by producing the material, the Returning Officer possibly could not verify all the truthfulness of the material and the default should be on the date of nomination as reflected from the material produced and thus having accepted the nomination on the limited enquiry as being valid, the only course available to the petitioner

would be filing of the election petition in view of the bar contained in Rule 78 of the Rules of 2014 and evidence would be required on the aspect of, first, locus of the petitioner and second, the status of the default as on the date of filing of the nomination. The petitioner is not deprived from bringing the whole facts before Court competent to hear the election petition. But, in the present writ petition, although some prima-facie possible illegality may have been seen from the material produced, this Court is unable to render a finding as to the default at the hands of respondent Nos. 3 to 6. The same will have to be done by leading evidence after filing the election petition under section 91 of the Act, 1960 r/w. Rule 78 of Rules of 2014.

16. There is no patent illegality in the action of Returning Officer in accepting the nomination papers of respondent Nos. 3 to 6 and as such, this writ petition is not entertained and the petitioner is permitted to raise his grievance in an appropriate proceedings as available in law.

17. Thus, this writ petition is dismissed with liberty to the petitioner to challenge the acceptance of nomination of respondent Nos. 3 to 6 and for any other relief, by way of filing an election petition under section 91 of the Act, 1960 r/w. Rule 78 of Rules of 2014 or by filing any other proceedings as may be available in law. All contentions of the parties are left open.

[ARUN R. PEDNEKER J.]