

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.488 OF 2022

Mr. Laxman Jethya Dombare ..Petitioner
Versus
Mr. Ladkya Rupa Kharpade and Ors. ..Respondents

Mr. D. S. Hatle i/by Deepak Jamsandekar, for the Petitioner.
Mr. Kishor S. Patil, for the Respondent No.1.
Mr. Deelip Patil – Bankar, Chief Standing Counsel SCEA for
Respondent No.2 & DDR.
Mrs. V. S. Nimbalkar, AGP for the Respondent No.3.

CORAM : NITIN W. SAMBRE, J.

DATE : 21st JUNE, 2022

P.C.

1. The petitioner was elected as a director of Thane District Central Co-operative Bank, Thane. The respondent No.1 unsuccessfully contested election against the petitioner for the said post.

2. The respondent No.1 initiated proceedings pursuant to the provisions of Section 73CA(1)(f)(vii) of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as “the Act” for the sake of brevity) seeking disqualification of the petitioner on the ground that he was having three children. A further relief is sought that after the petitioner is declared disqualified, the respondent No.1

claimed that a declaration be granted that he is elected on the said post.

3. The respondent/Divisional Joint Registrar, Co-operative Societies vide order impugned dated 21st December, 2021 noticed that the petitioner on the date of election was having three children and as such, ordered disqualification. However, prayer of the respondent No.1 seeking declaration that he stood elected against vacant post because of disqualification of the petitioner was turned down. Feeling aggrieved, the petitioner preferred this petition on the following grounds amongst other.

4. The claim of the petitioner is, the appropriate remedy available to the respondent No.1 in the matter of disqualification, particularly, having regard to the nature of prayer made viz. declaration in his favour that he is elected on the post on which the petitioner was elected *prima-facie* appears to be existence of election dispute. Drawing support from the provisions of Rules 78 and 76K of the Election Rules the contentions are, the respondent No.1 has a remedy of filing an election dispute and not the proceeding for disqualification. Counsel for the petitioner so as to buttress his argument has drawn support from the division bench judgment of this Court in the matter of ***Pandurang Laxman Kadam Vs. State of Maharashtra*** reported in **2015 (o) AIJ-MH 174018**, he would claim that

the nature of scope of inquiry under election dispute at any time is larger than provided under Section 73CA and that being so, the respondent No.1 should have been relegated by the authority to election dispute before the Co-operative Court. His further contentions are, once similar relief which was claimed during the course of nomination was rejected by the Returning Officer, the only option open to the respondent No.1 was of filing election dispute and not present proceedings for disqualification. According to him, the documents which the respondent No.1 has relied on resulting into passing of the order impugned of disqualification are not genuine, as same do not reflect the name of the wife of the petitioner or the mother of the child. In relation to whom the said documents are concerned his contentions are, the petitioner in such an eventuality cannot go before the Court, rather Co-operative Court seeking incorrect declaration that he was not blessed with third child. As such, order of disqualification is illegal.

5. Per contra, counsel for the respondent No.1, so also the learned AGP opposed the prayer of the petitioner and support the order impugned. My attention is invited to the finding of fact based on the documentary evidence recorded by the authority so as to claim that the order is quite justified in the facts and circumstances of the case.

As such, dismissal of the petition is sought.

6. I have appreciated the said submissions.

7. No doubt, the respondent No.1 at the time of election has raised an objection to the candidature of the petitioner seeking rejection of his nomination form on the ground of having three children. As the objection was turned down by the Returning Officer at the relevant time and rightly so pointed out by the counsel for the petitioner, said issue was not taken to its logical end during the process of election.

8. The respondent No.1 has taken out present proceedings after the elections are over under Section 73CA(1)(f) seeking declaration on the similar ground i.e. the petitioner is having third children and as such has incurred disqualification to hold the post of director.

9. Such claim was contested by the petitioner on merits, as the claim put forth by the respondent is substantiated by the documentary evidence.

10. In the aforesaid background, what can be noticed that even if claim was raised by the respondent for rejection of nomination form during the process of election, such plea was restricted only to the extent of election

process whereas under Section 73CA(1)(f) it is open for the respondent No.1 to seek declaration as regards disqualification of the petitioner. As such, both these remedies are available at different stages viz. before and after the election.

11. Merely because respondent No.1 has raised an objection to the nomination form of the petitioner or has sought declaration in the proceeding under Section 73CA that he be declared as elected cannot be given colour of an election dispute. In any case, prayer of the petitioner for grant of declaration that he is elected is not allowed vide impugned order.

12. In the aforesaid background, reliance placed by the petitioner on the division bench judgment of this Court in the matter of *Pandurang Laxman Kadam (cited supra)* is wholly misplaced. The issue in the said judgment considered by the division bench was in relation to the deletion of members from the final voters list and of remedy under Article 227 of the Constitution of India in extraordinary jurisdiction of this Court. In the case in hand, respondent No.1 has already taken recourse to a remedy provided by statute viz. under Section 73CA and the authority, in my opinion, was justified in exercising powers conferred in it by virtue of such provision.

13. Once it is noticed that Section 73CA of the Act confers jurisdiction on the authority to pass an order impugned, the contention of the petitioner that the order impugned is without jurisdiction also needs to be rejected.

14. As far as claim of the petitioner *qua* documents is concerned, the fact remains that the documents in categorical terms reflect the name of the daughter of the petitioner, so also the name of the petitioner in the capacity of the father of the said child Dipika. Amongst other documents, which are considered by the authority, rightly brought on record by the respondents No.1 are, extract of Ration Card and the Marriage Certificate. These two documents in relation to child Dipika, birth certificate and such other documents which are termed as public documents containing the name of the petitioner as that of father of the said child. As such, the authority below upon appreciation of such documents was justified in recording a finding that the documentary evidence supports the case of the respondent No.1 *qua* the prayer for disqualification of the petitioner. Such documents are duly interpreted by the authority so as to infer that the petitioner was blessed with third child, even though said fact is denied by the petitioner dishonestly.

15. In the aforesaid background, claim put forth that the respondent should have been relegated to an election

dispute or the documents which are relied on are not genuine, cannot be accepted.

16. The order impugned thereby ordering disqualification of the petitioner is quite justified as the documents based on which the said order is passed are significant. That being so, no case for interference is made out.

17. The petition as such fails, dismissed.

[NITIN W. SAMBRE, J.]