

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

WRIT PETITION NO.8312 OF 2022

Sambhaji Shivaji (Laxman) Pharate ..Petitioner
Versus
The State of Maharashtra and Ors. ..Respondents

Mr. Y. S. Jahagirdar, Senior Advocate a/w Vishal Kanade i/by
Ashish P. Pawar, for the Petitioner.

Mr. P. P. Pujari, AGP for the Respondent No.1.

Mr. Deelip Patil – Bankar, Chief Standing Counsel, SCEA, for
Respondent No.2.

Mr. Vijay Patil a/w Suresh Palande & Yogesh Patil, for the
Respondent No.3.

Mr. Vineet B. Naik, Senior Advocate i/by Sagar Rane, for the
Respondent No.4.

CORAM : NITIN W. SAMBRE, J.

DATE : 15th JULY, 2022

P.C.

1. The challenge in the petition is to the order dated 4th July, 2022 passed by the respondent No.2 Returning Officer of respondent No.4 Co-operative Sugar Factory, whereby nomination form of the respondent No.3 was accepted by rejecting the objection of the petitioner.

2. In the election of respondent No.4 Sugar Factory the date of filing of the nomination paper was 24th June, 2022, whereas the last date for withdrawal of the nomination form was 19th July, 2022.

3. The respondent No.3 submitted his nomination form for the election of the respondent No.4, a Co-operative Sugar Factory which was objected by the petitioner on the ground that the respondent No.3 has already incurred disqualification under Section 73CA(1)(i) clause (a) and (b) of the MCS Act in relation to Mandavgan Pharata Vividh Karyakari Seva Sanstha Maryadit i.e. co-operative society covered under the said provisions of Section 73CA(3) of the MCS Act. The said disqualification was in the background of default committed by the respondent No.3 in repayment of the loan which was informed to be already cleared on the date of order of disqualification.

4. Forming aforesaid order of disqualification to be basis, the petitioner made a prayer for rejection of nomination of respondent No.3 to the respondent No.4 society in view of the operation of such disqualification under very same provision of the Act. Such prayer made by the petitioner for rejection of nomination form of respondent No.3 is rejected vide impugned order dated 4th July, 2022 on the ground that the order of disqualification will operate only in regard to the society in relation to which, such order of disqualification was passed.

5. The said objection of the petitioner was rejected

vide impugned order.

6. Contentions of Mr. Y. S. Jahagirdar, learned senior counsel are, the order impugned passed by the respondent No.2 whereby objection to the nomination of the respondent was rejected is contrary to the provisions of Section 73CA of the MCS Act, the order of the Divisional Joint Registrar dated 14th June, 2021 passed in Revision No.93 of 2021 at Pune in the matter of disqualification as a committee member of a co-operative society and also judgment of this Court in the matter of ***Damodar s/o Shamrao Pande Vs. State of Maharashtra and Ors.*** reported in ***2016(6) Mh.L.J. 254.***

7. While inviting attention of this Court to the order impugned, learned senior counsel would urge that the disqualification in relation to any other co-operative society incurred under provisions of Section 73CA will also extend in the matter of election to any other society like the respondent society in this case. As such, order of disqualification cannot be restricted to the extent of Mandavgan Pharata Vividh Karyakari Seva Sahakari Sanstha of which respondent is held to be defaulter. So as to substantiate his contentions, he would urge that the Court is required to be sensitive to the object and mischief which is sought to be addressed by the said provision. He would also draw attention of this Court to the language of

clauses (i) to (ix) of Sub Section (1), Sub Section (2) and Sub Section (3) and also the provisions of Section 78 of the MCS Act.

8. The aforesaid submissions are supported by senior counsel Mr. Vineet Naik for respondent No.4. According to him, the disqualification incurred by the candidate like respondent No.3 has to be read by interpreting Section 73CA to mean incurring disqualification in relation to any other co-operative society which is covered under the said statutory provision. So as to substantiate the same, he has invited my attention to the language employed in the said provision.

9. Learned AGP supported the order impugned and sought dismissal of the petition.

10. Mr. Vijay Patil, counsel appearing for the respondent No.3 would urge that the order impugned is just and proper, as the language employed in Sub Sections (2) and (3) in categorical terms speaks of incurring disqualification by the respondent only in relation to such society of which he was a defaulter and the order of disqualification was passed. Such order of disqualification cannot be read to the detriment of respondent No.3 in the election of respondent No.4 society, as the disqualification which was ordered was for a particular moment and also in

relation to society in relation to which said respondent was defaulter. According to him, the order of disqualification in categorical terms records that the amount of loan was already repaid.

11. According to him, the election programme has travelled at an advanced stage, as such, this Court should not cause interference.

12. Mr. Deelip Patil - Bankar, counsel appearing for the Returning Officer i.e. respondent No.2 would urge that this Court needs to be sensitive to the provisions of Sub Sections (2) and (3) of Section 73CA of the MCS Act. According to him, the language of the Section, particularly, the words 'the society' and 'any society' is employed with particular intention to give appropriate meaning to the provision. As such, according to him, the order of disqualification against respondent No.3 was rightly held to be not applicable to the proceedings in question in relation to the election of respondent No.3 to respondent No.4 society. In addition, his contentions are, the election programme has travelled at an advanced stage, that being so, the Court should be slow in causing interference. He has drawn support from the judgment of this Court in the matter of ***Pandurang Laxman Kadam & Ors. Vs. State of Maharashtra & Ors.*** reported in ***2016(6) Bom.C.R. 75***, so as to claim that all the grounds including that of

validity of nominations, corrupt practices, irregularities and illegalities, so also electoral roll can be raised in an election dispute and not in the present petition. So as to substantiate said contention, he has also drawn support from the judgment of Apex Court in the matter of **Shaji K. Joseph Vs. V. Viswanath and Ors.** reported in **(2016) 4 SCC 429**, so as to claim that once the election programme has commenced and advanced, this Court should be not only slow but should be extra cautious in causing interference.

13. I have appreciated the aforesaid submissions.

14. As regards the case of the petitioner that the respondent No.3 has incurred disqualification under the provisions of Section 73CA of the MCS Act in the matter of his election to the respondent No.4 society appears to be justified. Similar stand taken by Mr. Vineet Naik, learned senior counsel in the matter also appears to be in tune with the principle of interpretation, as the object which is sought to be achieved by incorporating provisions for disqualification under Section 73CA of the MCS Act cannot be interpreted and read to mean that such disqualification has to be read in relation to the all the affairs of the society in regard to which such order was passed. The fact remains that clause (i) of Sub Section (1) of Section 73CA of the MCS Act in categorical terms provides in regard to

the defaulter of 'any society'. The word 'any society' referred to in said provision has to be read to mean that all the societies which are covered under the said provisions. Sub Section (2) of Section 73CA provides for the consequences if a member have incurred disqualification under Sub Section (a). The said Sub Section provides for the cessation of membership of such disqualified member of the committee and his seat shall be deemed to be vacant as a consequences of such order of disqualification.

15. Sub Section (3) of Section 73CA further provides that such member who has ceased to be a member after disqualification is not eligible to be re-elected, co-opted or re-nominated as a member of the committee till the expiry of the period of next term of five years of the committee from the date on which he has so ceased to be a member of the committee.

16. As such, Sub Section (2) and Sub Section (3) of Section 73CA provides for consequences of an order of disqualification passed under Sub Section (1) of Section 73CA in relation to membership of such society in relation to which order of disqualification was passed.

17. However, the plain reading of Sub Section (1) of Section 73CA provides for the non-eligibility of a person for being appointed, nominated, elected, co-opted or, for

being a member of a committee, if he is defaulter of any society. The word 'defaulter' explained in clause (i) of Sub Section (1) of Section 73CA to mean, in case of a primary agricultural credit society, a member who defaults the repayment of the crop loan on due date; or in case of term lending society, a member who commits default in payment of the loan granted to him. The fact remains that the word 'any society' referred to in clause (i) of Sub Section (1) of Section 73CA has to be interpreted to mean that all the societies which are covered under the said Section 73CA and cannot be restricted to the extent of society in regard to which such the order of disqualification was passed pursuant to Sub Sections (1), (2) and (3) of Section 73CA. The word 'the society' used in Sub Section (2) and Sub Section (3) of Section 73CA has to be restricted to mean that the society in relation to which the order of disqualification under Sub Section (1) is passed, whereas the wordings used in clause (i) of Sub Section (1) 'any society' has to be given a wide meaning to mean all the societies which are covered under the provisions of said Section 73CA. The term 'defaulter' is said to be an inclusive one as provided in the explanation to clause (i) of Sub Section (1) of Section 73CA. If sub-clause (i) to sub-clause (ix) of clause (f) of the aforesaid provision are appreciated, the contentions of counsel for respondent Nos.2 and 3 cannot be accepted as same will lead to

illogical interpretation of the provision.

18. If the submissions of Mr. Deelip Patil – Bankar and Mr. Vijay Patil appearing for the respondent/election authority and the respondent No.3 is accepted, the same will be making violence to Section 73CA, as the clause (i) of Sub Section (1) of Section 73CA cannot be given restrictive meaning. The mischief which is addressed by the section is required to be considered and addressed while interpreting the provisions. It will be making violence to the aforesaid section to accept the submissions of respondent Nos.2 and 3 that the disqualification will operate only qua the society in relation to which the order of disqualification is passed and not the other societies which are covered under the said provisions. It cannot be the intention of legislature to permit a defaulter to continue his such activity by getting elected to other society.

19. In the case in hand, though the default in repayment of loan was covered by the respondent No.3, still he suffered an order of disqualification and the consequences provided under Sub Section (2) and Sub Section (3) shall follow in relation to the society of which respondent No.3 is held to be defaulter. Mr. Vijay Patil has pointed out that the default in repayment of loan was duly complied, however, the order of disqualification is not

stayed by any of the authorities and still holds the field. As such, once the default is committed by the members like respondent No.3, even if his default is covered subsequently by repaying the amount that by itself will not take the such defaulter member out of clutches of provisions of Sub Sections (1), (2) and (3) so also Section 73CA(1).

20. In view of above interpretation, the issue as is rightly said to be covered by the judgment of this Court in the matter of *Damodar Shamrao Pande (cited supra)* with which I am in agreement of.

21. Be that as it may, the fact remains that in the case in hand, it is an admitted position that the election programme has reached at an advanced stage. Even aforesaid illegality is noticed on the part of the respondent No.2 authority, it will be inappropriate for this Court to cause interference at this stage of the election process, as the Court cannot upset the election process which has rolled and reached at an advanced stage. Rightly so, the counsel for the aforesaid respondent Nos.2 and 3 have invited attention of this Court to the judgments in the matter of *Pandurang Laxman Kadam and Shaji K. Joseph (cited supra)*. The issue of rejection/acceptance of nomination can always be looked into an election dispute post election.

22. That being so, no case for interference in extraordinary jurisdiction is made out.

23. The petition as such fails, same stands dismissed.

[NITIN W. SAMBRE, J.]