

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.2481 OF 2022

Shri Yogendra S/o Tarachand Katare,
Aged 44 yrs, Occupation : Agriculturist,
R/o Khairbodi, Tahsil Tirora,
District Gondia. **PETITIONER**

...V E R S U S...

1. The Assistant Registrar Co-operative Societies cum Appellate Authority U/s 152A of Maharashtra Co-operative Societies Act, 1960, Tirora, Tahsil Tirora, District Gondia.
2. The Returning Officer for conducting elections of Vividh Karyakari Seva Sahakari Sanstha Maryadit, Khairbodi, Tahsil Tirora, Distt. Gondia.
3. The Vividh Karyakari Seva Sahakari Sanstha Maryadit, Khairbodi, registration No.1136, through its Secretary, Khairbodi, Tahsil Tirora, District Gondia.
4. Shri Chintaman S/o Prabhudas Rahangadale, aged 44 yrs, Occupation : Agriculturist, R/o Khairbodi, Tahsil Tirora, District Gondia. **RESPONDENTS**

Mr. A. M. Ghare, Advocate with Mr. O. A. Ghare, Advocate for Petitioner.
Ms. T. H. Khan, AGP for Respondent 1/State.
Mr. I. N. Choudhari, Advocate for Respondent 4.

CORAM: **ROHIT B. DEO, J.**
DATE: **6th MAY, 2022.**

ORAL JUDGMENT:

The election to the Managing Committee of the respondent 3 – Society are declared and respondent 4 is an aspiring candidate who submitted nomination form on 18.04.2022.

2. The scrutiny was scheduled on 20.04.2022. The Returning Officer rejected the nomination form on the premise that the respondent 4 is disqualified to contest the elections in view of the provisions of Section 73CA(D) of the Maharashtra Co-operative Societies Act, 1960 (Act of 1960) in as much as amount of Rs.12,01,041/- (Twelve Lakhs One Thousand Forty One) was due and payable towards repayment of the loan availed. The said order of rejection came to be passed on the basis of an objection to the nomination form lodged by the petitioner.

3. Respondent 4 preferred appeal under Section 152A of the Act of 1960, which is allowed by the respondent 1 vide order dated 20.04.2022. The appeal is allowed on the premise that the contesting candidate cleared the arrears of loan on the date of the scrutiny. It is this order which is impugned herein.

4. The learned counsel for the petitioner Mr. Ghare has two fold submissions to canvass. The first submission is that the relevant date to decide the eligibility of the candidate is the date of the submission of the nomination form. The ineligibility operating on the date of the nomination form cannot be removed by clearing the arrears of loan, at any point in time after the submission of the nomination form, is the submission. The other submission is that in any event the respondent 4 did not produce on record any material on the date of the scrutiny to demonstrate that he was not a defaulter.

5. While it is well entrenched that the writ Court must be slow to interfere in the election process, there is no absolute fetter. The self-drawn 'Laxman Rekha' can be transgressed if on facts which are not in dispute and the position of law obtaining, there cannot be a *bona fide* debate qua the eligibility of the candidate to contest the election.

6. In the present case, the well settled position of law appears to be, that the ineligibility operating cannot be removed, after the submission of the nomination form, much less by producing material in appeal, and the relevant date is the date of

submission of the nomination form. Such view is consistently taken by this Court *inter alia* in ***Manchak s/o Shajaji Pawar v. State of Maharashtra and others 2011(3) Mh.L.J. 833*** and ***Ravi Amrutrao Bagde v. Commissioner, Amravati Division and others 2006(2) Mh.L.J. 33.***

7. Considering the admitted factual position that as on the date of the submission of the nomination form the respondent 4 was not qualified to contest the election, I am not inclined to relegate the petitioner to the remedy of election petition.

8. The order impugned is set aside and the order of the Returning Officer of rejecting the nomination form is restored.

9. The petition is allowed in the aforestated terms.

10. Steno copy granted.

JUDGE

NSN