

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

WRIT PETITION NO.254 OF 2023

Vaibhav Manohar Bhokare,
Age: 29 Years, Occu : Business,
R/o. 66 A, Kele Nagar, Near Shri Krishna
Temple, Nakane Road, Deopur,
Dhule, Tq. & Dist. Dhule. **.. PETITIONER**

VERSUS

- 1] The State Co-operative Election Authority,
Through its Secretary,
Maharashtra State, Pune,
Old Building, Ground Floor,
Pune-411 001.
- 2] The District Co-operative Election Officer,
(The District Deputy Registrar Co-operative
Societies, Dhule)
The Election Officer of Yogeshwar Co-operative
Credit Society Ltd. Dhule
Old Collector Office, Dhule.
- 3] Shri. Rakesh s/o. Ravindra Vani,
Age: 32 years, Occu : Business,
R/o. Matoshree, Patilnagar, Near Netaji
Ground, Bharatnagar, Deopur, Dhule
Tq. & Dist. Dhule. **.. RESPONDENTS**

WITH

WRIT PETITION NO.258 OF 2023

Vaibhav Manohar Bhokare,
Age: 29 Years, Occu : Business,
R/o. 66 A, Kele Nagar, Near Shri Krishna
Temple, Nakane Road, Deopur,
Dhule, Tq. & Dist. Dhule. **.. PETITIONER**

VERSUS

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Through its Secretary,
Maharashtra State, Pune,
Old Building, Ground Floor,
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- 2] The District Co-operative Election Officer,
(The District Deputy Registrar Co-operative
Societies, Dhule),
The Election Officer of Yogeshwar Co-operative
Credit Society Ltd. Dhule
Old Collector Office, Dhule.
- 3] Sunanda Gopalrao Lad (Kele),
Age: Major, Occu : Business,
R/o. Matoshree, Netaji Colony,
Deopur, Dhule,
Tq. & Dist. Dhule.

.. RESPONDENTS

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Mr.V.D.Sapkal, Senior Advocate i/b. Mr.S.R.Sapkal &
Adv.Nikita N.Gore, Advocates for the petitioners.
Mr.V.H.Dighe, Advocate for the respondent nos.1 and 2
Mr.K.B.Jadhavar, AGP for the respondent-State

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CORAM : ARUN R. PEDNEKER, J.

Reserved on : 16.01.2023

Pronounced on : 17.01.2023

JUDGMENT :

- 1] Rule. Rule made returnable forthwith and heard finally.

2] By the present Writ Petitions, the petitioner is challenging order dated 03.01.2023 passed by the District Co-operative Election Officer – respondent no.2 wherein objections of the petitioner to the nomination of respondent no.3 were overruled. The notices were issued in the present Writ Petitions on 07.01.2023, which were made returnable on 12.01.2023 on account of urgency. These Writ Petitions were listed on 12th January, 2023 but did not reach and were taken up for hearing on 13th January, 2023. On 13.01.2023, it was observed that none appears for respondent no.3 although bailiff report shows that respondent No.3 is served on 10.1.2023. The petitioner was again permitted to serve respondent no.3 by all modes including RPAD, E-mail etc. and the matters were listed for hearing today i.e. on 16.01.2023 at 10.30 a.m.

3] Today, the petitioner has shown print out of Whats-app message that the petitioner has again intimated to respondent no.3 about listing of the Writ Petitions today for hearing. Hence, the matters are taken up for hearing

today. Both the Petitions are identical on facts and hence taken up together for hearing.

4] The petitioner is the member of the Yogeshwar Nagari Credit Co-operative Society, Dhule. The respondent no. 2 – the District Co-operative Election Officer published election programme for Yogeshwar Nagari Credit Co-operative Society, Dhule on 25.12.2022. As per the election programme, last date for filing the nomination was 30.12.2022. The respondent no.3 in both the writ petitions filed their nominations for contesting the elections to the post of members of the Managing Committee of the society. The petitioner filed his objection on 02.01.2023. The objection was specific that the respondent no.3 in both the writ petitions were guarantors to the defaulter of loans given by the Yogeshwar Nagari Credit Co-operative Society, Dhule to Pruthvi Builders and Developers, Pruthvi Properties, Pruthvi Builders etc. It was specifically pointed out in the objection application that the bye laws of the society specifically provides for barring a guarantor of a

defaulted loan from contesting election of the co-operative society. The respondent no.2, by order dated 3rd January, 2023, rejected objections of the petitioner on the ground that there is no provision to reject nomination of the candidate, who is a guarantor to a loan which is defaulted in terms of the Maharashtra Co-operative Societies Act and Rules and bye laws of the Society.

5] The impugned order specifically observed that the official of the society along with record appeared before him and the society from its record has pointed out that the respondent no. 3 in both the writ petitions are guarantors of the loan account, which is being defaulted. The same position has also not been contested by the representative of the respondent no.3 before the respondent no.2. However, the contention of the society as well as respondent no.3 before the Election Officer – respondent no.2 was that a guarantor to a loan which has been defaulted cannot be disqualified as there is no such provision under the Maharashtra Co-operative Societies Act and Rules and bye

laws of the society to disqualify a 'guarantor' of a loan which is defaulted.

6] The learned counsel for the petitioner submits that there is specific bye laws no. 4 (17) and 44 (9) of the society in respect of defaulter. The learned counsel further submits that this Court in Writ Petition No.11516/2022 [Shri Gopalrao Kashinath Kele & others Vs. The State Co-operative Election Authority & others] decided on 28.11.2022 has specifically observed that the bye laws no.4 (17) of the society, bars a 'guarantor' of a loan which has been defaulted from being a voter of the society. In the aforesaid judgment in the case of Shri Gopalrao Kashinath Kele & others Vs. The State Co-operative Election Authority & others (supra), this Court has considered the bye-laws of the present Co-operative Credit Society and the Election Officer is also the same Officer. This Court in the said judgment of Shri Gopalrao Kashinath Kele (supra) has specifically held that a guarantor to a loan which is defaulted is also a defaulter and is not even eligible to be a

voter of the co-operative society. It is to be noted that Rule 25 (2) of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 provides for scrutiny of nomination papers. Relying upon the said Rule, learned counsel submits that the respondent no. 2 was duty bound to look into the Maharashtra Co-operative Societies Act, Rules and the bye laws of the society before accepting the nomination of the respondent no.3. The learned counsel for the petitioner submits that this Court should exercise its writ jurisdiction and set aside the order passed by the respondent no.2 and prohibit respondent no.3 from contesting the elections.

7] The learned counsel for the petitioner relies upon the judgment in the case of **Dalsing Shamsing Rajput Vs. State of Maharashtra & ors.** reported in 2006 (5) Bom.C.R. 691 and in the case of **Dattatray Genaba Lole and others Vs. Divisional Joint Registrar, Co-operative Societies and others** reported in 2022 (1) Bom.C.R. 471.

8] The learned counsel for respondent no.2 submits that the election is at advanced stage. That 18.01.2023 is the last date for withdrawal of the nomination and any interference by this Court will destabilize the election process. The learned counsel submits that the petitioner has efficacious remedy available by filing an election petition. Thus, he submits that this Court should not be interfered with the election process.

9] Having considered rival submissions, following facts are required to be noted in the instant case.

a) That the respondent no.3 in both the petitions are undisputedly guarantors of a loan which has been defaulted and the same is evident from the report of the society and the same has not been disputed by the respondent no.3 before the Election Officer.

b) The Election Officer has accepted that the respondent no.3 in both petitions are the guarantors to a loan which has been defaulted but has accepted the

nomination of the respondent no.3 on the ground that there is no prohibition in the Maharashtra Co-operative Societies Act, Rules or bye laws of the society, prohibiting respondent no.3 from contesting the elections.

10] I have already dealt with the bye law no. 4 (17) of the same Co-operative Society in the case of Shri Gopalrao Kashinath Kele Vs. The State Co-operative Election Authority & others in Writ Petition No.11516 of 2022 along with connected matter, decided on 28.11.2022. This Court in para 21 of the said Judgment has observed as under:

21] In terms of bye law no.4 (17), even a guarantor to a defaulting loan is a defaulter and thus if guarantor of a defaulting firm is a member of the cooperative society then even he is disqualified from voting.....

11] The relevant provisions of the bye laws no.4 (17) and 44 (9) of the society, which reads as under:

4. Definition :

(17) 'Defaulter' means any borrower whose loan is in default for more than 90

days; also a person who is a guarantor to such a loan.

44. Disqualification for the post of Directorship :

An active member of the society shall be disqualified to be elected as a Director or become a member – Director of the society, if such a member -

(9) Has become defaulter under the provisions of bye laws.

12] It is also to be noted that in the case of **Dattatray Genaba Lole and others Vs. Divisional Joint Registrar, Co-operative Societies and others** reported in 2022 (1) Bom.C.R. 471 at paras 8.3 and 8.4 this Court has held as under certain circumstances alone, this Court can interfere with the election process. Para 8.3 and 8.4 of the said judgment, reads as under :

8.3 The legal principles that emerge from the various judgments noted and discussed in detail below is that as a matter of principle, Courts have been reluctant to interfere at an intermediate stage of an election process. It has been held that every allegation of illegality or irregularity and every assertion of rights by persons being excluded from the voters list are

not entertained by Courts under Article 226 of the Constitution of India at the intermediate stage of the election process. There is a strong public policy reason behind Courts being circumspect in entertaining challenges at this stage under Article 226 of the Constitution of India. This is because there is a vital public interest in the elections being completed after which various matters can be gone into. A liberal approach to interference at the intermediate stage would frequently result in election processes being halted or becoming uncertain, which by itself undermines the sanctity of such elections and the democratic object that they seek to achieve.

8.4 The only circumstance in which the Courts would be inclined to interfere in a challenge to an election process at an intermediate stage would be when the order or action under challenge is patently and demonstrably illegal, such as, for example, by applying a non-existent rule or provision to the election process or failing to adhere to a mandatory provision. The intervention in such cases has been explained as enabling or assisting the process of the election rather than thwarting or stalling it. Also, one of the important aspects to consider is the precise stage of the election process and the delay, if any, in the filing of the petition.

13] Thus, there is no absolute bar for exercise of the writ jurisdiction of this Court in interfering with elections to

the co-operative society. However, the same has to be exercised only in case of patent illegality coupled with other factors such as stage of election and the effect the interference will cause on the on going elections. While examining similar facts situation, the Division Bench of this Court in the case of **Dalsing Shamsing Rajput Vs. State of Maharashtra & ors.** reported in 2006 (5) Bom.C.R. 691 in para 6 has held as under:

6. *It is the contention of learned Advocate Shri V.B. Patil that petitioner being contesting candidate, Election petition is alternate remedy available to the petitioner. Even for supporting this argument, he has placed reliance upon Clause (d) as contained in head notes of the decision in the case of Ashok Sonar v. State of Maharashtra (supra). We have already pointed out factual distinction between the reported judgment and the matter before us. Said Clause (d) itself indicates that in the reported matter, polling had already taken place whereas in the matter at hands, society is yet to enter the polling only on 26-3-2006. If at all respondent No. 5 is not eligible to contest the elections to the Managing Committee of the Society, and if we can prevent him from so contesting without disturbing the election programme, we feel that the same will serve the interest of justice. Election petition cannot be termed as equally efficacious remedy in the present fact situation.*

It will be absurd and ridiculous to the democratic process of election that a person not eligible to contest is allowed to contest any election and then efforts are started to dislodge him. We are, therefore, not inclined to feel obstructed by the availability of alternate remedy. In fact, we are of the considered opinion that the alternate remedy suggested by learned Advocate Shri V.B. Patil is certainly not equally efficacious remedy in the present matter.

14] This Court in the case of **Dalsing Shamsing Rajpur** (supra) in a very similar situation has held that when the member is not eligible to contest the election to the Managing Committee of the society, this Court can prevent him from so contesting without disturbing the election programme and the same will serve the interest of justice. This Court has further held that election petition cannot be termed as equally efficacious remedy in the fact situation. That it would be absurd and ridiculous to the democratic process of election that a person not eligible to contest is allowed to contest election and then efforts are started to dislodge him. Thus, this Court exercised its writ

jurisdiction and prohibited ineligible candidate from contesting the election.

15] Coming to the facts of the instant case, the respondent no.3 in both the petitions are clearly barred from contesting the election to the managing committee of the society in view of the bye law nos.4 (17) and 44 (9) of the Yogeshwar Nagari Credit Co-operative Society, Dhule. The order passed by the respondent no. 2 – the District Co-operative Election Officer is patently illegal. In view of the law laid down in the case of **Dattatray Genaba Lole and others Vs. Divisional Joint Registrar, Co-operative Societies and others** (supra) in para 8.3 8.4, this Court can interfere in the election process under the circumstances mentioned therein and in the case of **Dalsing Shamsing Rajput Vs. State of Maharashtra & ors.** (supra) this Court has interfered in the illegal acceptance of the nomination without disturbing the election process.

16] By applying the law laid down in above judgments of **Dattatray Genaba Lole and others Vs.**

Divisional Joint Registrar, Co-operative Societies and others (supra) and **Dalsing Shamsing Rajput Vs. State of Maharashtra & ors.** (supra), I hereby quash and set aside the order passed by the respondent no.2 – The District Co-operative Election Officer, accepting nomination of the respondent no.3. The respondent no.3 in both the petitions are barred from contesting the elections to the Yogeshwar Nagari Credit Co-operative Society, Dhule. The respondent no.2 – The District Co-operative Election Officer to make necessary correction in the final list of nominated candidates after the last date of withdrawal of nomination. The election to the Managing Committee of the society can proceed further without change of the election programme.

17] In view of the same, Rule is made absolute in above terms.

18] The Writ Petitions are allowed accordingly.

[ARUN R. PEDNEKER]
JUDGE