

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

**REVIEW APPLICATION NO. : 103 OF 2023
IN WRIT PETITION NO. 2688 OF 2023**

Shantilal Tarachand Bothra,
Age : 71 years, Occu. Business,
R/o Bazarpeth, Chopda,
Tq. Chopda, Dist. Jalgaon.

...APPLICANT
(Ori. Respondent No.3)

Versus

1. **Suresh Pannalal Sankhala,**
Age : 59 years, Occu : Service,
R/o .89, Ganesh Colony,
Chopda, Tq. Chopda,
Dist. Jalgaon.

...RESPONDENT
(Ori. Petitioner)

2. Returning Officer,
Mahavir Nagari Sahakari
Patsanstha Maryadit
Chopda, Tq. Chopda,
Dist. Jalgaon.

3. Mahavir Nagari Sahakari
Patsanstha Maryadit
Chopda, Tq. Chopda,
Dist. Jalgaon,
Through its Secretary.

RESPONDENTS
(Ori. Respondent Nos. 1 and 2)

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Advocate for the Applicant :- Mr. V. D. Salunke
Advocate for Respondent No.1 : Mr. V. B. Patil
Advocate for respondent No.2 : Mr. S. K. Kadam.

...
CORAM : ARUN R. PEDNEKER, J.

RESERVED ON : 26.06.2023
PRONOUNCED ON : 26.07.2023

...

ORDER :

1. By the present review application, the applicant prayed as follows :

“(A) The Review Petition may kindly be allowed.

(B) By allowing this petition the judgment and order dated 16.03.2023 in Writ Petition No. 2688/2023 may kindly be reviewed and the directions issued in paragraph no. 16 of the judgment may kindly be recalled.

(C) It may kindly be held and declared that order passed by Returning Officer on 17.03.2023 deleting the name of petitioner from final list of contesting candidate and consequently setting aside his election is wholly illegal and it may kindly be set aside.”

2. This review application is filed because of the peculiar facts in this case which are required to be noted from the order under review passed in the Writ Petition. The elections of the respondent no.2 – Mahavir Nagari Sahakari Patsanstha Maryadit Chopda was due, as such, the election authority declared election of the said society for the period of 2022 to 2027. The primary voters’ list came to be published on 04.01.2023. As per the election programme, the nomination

came to be accepted from 20.02.2023 to 24.02.2023. The scrutiny of the nomination was from 27.02.2023 and the list of nominated candidates was published on 28.02.2023. The last date of withdrawal of nomination was from 28.02.2023 to 15.03.2023 and the date for publication of nominated candidates was on 16.03.2023. The election was to take place on 26th March, 2023.

3. Review applicant / original respondent no.3 in the Writ Petition filed his nomination for contesting the election of the member of Managing Committee of the Mahavir Nagari Sahakari Patsanstha Maryadit Chopda. The writ petitioner raised objection to the said nomination of the respondent no.3. The respondent no.1 authority, by order dated 28.02.2023, rejected the objection of the writ petitioner and accepted the nomination of the review applicant / original respondent No.3.

4. The writ petitioner challenged the order dated 28.02.2023 passed by respondent No.1 in the Writ Petition No. 2688/2023.

5. It was the contention of the respondent No.3 -review applicant in the Writ Petition is as under :

“The learned counsel for the respondent no. 3 submits that the loan is taken by Shri Shamkant Raghunath Chaudhari of Rs.25 lakhs and Shri Ishwar Sukhdeo Patil of Rs.25 lakh and the respondent no.3 is only a guarantor to the said loan and the property of the respondent no.3 is mortgaged to the said purpose.”

Thus, it was the contention of the review applicant that he was only a guarantor to the loan which was defaulted. This Court analyzed the provisions of Section 73 and bye-laws No. 4(17) and 44(9) of the society and this Court held that the review applicant is a ‘defaulter’.

6. This Court further held that original respondent No.3 is disqualified under the bye-laws of respondent No.2 – society and that the respondent No.3 being the defaulter in view of the bye-laws of the society is barred from contesting elections of respondent No.3 -Mahavir Nagari Sahakari Pat Sanstha Maryadit, Chopda. This matter was argued on 15.03.2023, the last date for the publication of the nominated candidates was 16.03.2023. The judgment was pronounced on 16.03.2023 and the operative part of the judgment at

paragraph 16 is as under :-

“Thus, I hereby quash and set aside the order passed by the respondent no.1 – Returning Officer, Mahavir Nagari Sahakari Patsanstha Maryadit, Chopda, Taluka Chopda, District Jalgaon, accepting nomination of the respondent no.3. The respondent no. 3 is barred from contesting the elections to the Mahavir Nagari Sahakari Patsanstha Maryadit, Chopda. The respondent no. 1 - Returning Officer, Mahavir Nagari Sahakari Patsanstha Maryadit, Chopda, Taluka Chopda, District Jalgaon 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 Mahavir Nagari Sahakari Patsanstha Maryadit Chopda can proceed further without change of the election programme.”

The matter was fixed for delivering judgment on 16.03.2023 at 2.30 p.m.

7. At the time of delivering the judgment, it was brought to the notice of this Court by Mr. S. K. Kadam, learned counsel appearing for respondent No.1 – election authority that the election to the Managing Committee of the respondent No.2 -Society was declared unopposed. Mr. Kadam submitted that the result was declared on

15.03.2023 after 3.00 p.m. and the same is communicated to him today (i.e. 16.03.2023). This Court recorded the statement of Mr. Kadam and held that since the Writ Petition was already argued extensively on 15.03.2023 from 10.30 a.m. to 12.00 noon and reserved for the judgment, the judgment was pronounced in Court and in the operative part of the judgment under review further directions were given as :-

“Mr. S. K. Kadam, learned counsel appearing for the respondent No.1 – election authority, at the time of pronouncement of the judgment, submits that the election to the managing committee of the respondent no.2 – society was unopposed and as such results are declared on 15.03.2023 after 3.00 p.m. and the same is communicated to him today.

Since this Writ Petition was already argued extensively Yesterday i.e. on 15.03.2023 from 10.30 a.m. to 12 Noon and reserved for judgment, the judgment is pronounced.

In view of this judgment, all legal consequences to follow.”

8. Learned counsel further submitted that when the matter was reserved for order, the Court had indicated that the parties may file written submissions and he had prepared written submission and wanted to deliver it on the next date, however, this Court delivered the judgment on the next date.

As such, he was not able to bring the notice of this Court that results are declared and that this Court should not pass order in the Writ Petition. Much capital is tried to be made by the applicant that he was not able to give legal submission in writing. This Court had extensively heard the matter and had permitted the counsels to give submission for assistance of Court. However, that does not mean the Court will wait for an additional day, when 16.03.2023 was the last date of publication of list of elected candidates and it could have not been possible to grant relief to the writ petitioner without interfering with the election process. Granting relief beyond 16.03.2023 would mean that the election programme would have to be re-declared from the date of publication of list of elected candidates, by re-drawing the list.

9. Be that as it may, the learned counsel appearing for the review applicant submitted that once it was brought to the notice of this Court that the results are declared, this Court should have not passed the operative part of the order at paragraph 16.

10. This Court by order dated 16.03.2023 has recorded that

the election results are declared and directed that all the legal consequences of the judgment to follow.

11. Its the case of the applicant that after the judgment under review was passed, the Returning Officer re- published the list of elected candidates deleting the name of the review applicant. He submits that the Returning Officer had become functus officio after the election results were declared and that he had no role to play in re-drawing the list of elected members. As such, the Returning Officer has travelled beyond his jurisdiction and illegally passed fresh order declaring the names of the elected candidates. Mr. Kadam appearing for the election authority also submitted that in view of the order passed by this Court, the election authority has re-drawn the names of the elected candidates deleting the name of the review applicant.

12. Relevant provisions of the Section 73CA of the Maharashtra Co-operative Societies Act, 1960, Rules and Bye-laws which are necessary to decide the review application are quoted below :

“[73.CA]. Disqualification of committee and its members]

[(A1) In the case of a society, which gives loans to members for purchasing machinery, implements, equipment, commodities or other goods, or which deals in such goods, no member, who or whose member of the family is a dealer in such goods or is a director of a company or a partner in a firm carrying on business in such goods, in the area of operation of the society shall be eligible for being elected or nominated as a member of the committee of such society;

Explanation - For the purposes of this sub- section, the expression “family” shall have the same meaning as explained in the Explanation 1 to sub-section (2) of section 75.

(1) Without prejudice to the other provisions of this Act or the rules made thereunder in relation to the disqualification of being member of a committee, no person shall be eligible for being appointed, nominated, elected, co-opted or, for being a member of a committee, if he -

(i) is a defaulter of any society;

Explanation - For the purposes of this clause, the term “defaulter” includes -

(d) in the case of non-agricultural credit societies, a member who defaults the payment of any installment of the loan granted;”

.....

Rule 58 of the Maharashtra Co-operative Societies Rules, 1961.- “Disqualification for membership of committee:- (1) No person shall be eligible for appointment, or election or nomination or co-option or being continued as member of the committee or District Loan Committee of State Land Development Bank, if he is in default to any society, in respect of any dues from him either as borrower or is a defaulter within the meaning of Section 73FF or has incurred disqualification under Clauses (ii), (iii), (iv), (v), and (iv) of sub-section (J) of Section 73FF

(2) When any member incurs disqualification as mentioned in sub-rule (J) the Chief Executive Officer or whatsoever name called, shall communicate, the members, that he has ceased to be a member of the committee, under certificate of posting. The Chief Executive Officer shall also report alongwith a copy of communication to the Registrar and also affix a copy thereof on the notice board of the society. The publication of such copy of the notice of the receipt of such copy of the notice in the office of the Registrar, shall be the conclusive proof of the fact that the person has duly received the communication. When any member ceased to be a member of the committee, the seat of such member shall be deemed to have fallen vacant from the date of such communication. The society shall not allow such persons to exercise any powers, enjoy any rights and privileges and perform functions as member of the committee, under the Act and the rules and bye-laws made thereunder. If the Chief Executive Officer fails to take action as

contemplated above, the Registrar shall after giving an opportunity to the person disqualified, issue communication of cessation of membership of such person from the committee of the society under certificate of posting and also by publishing a copy on the notice board of his office.”

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Bye-laws No. 4(17) and 44(9):

“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.”

13. The provisions of Section 73CA of the Maharashtra Co-operative Societies Act read with the bye-laws No.4(17) and 44(9) would indicate that no person shall be eligible for being appointed, nominated, elected, co-opted or, for being a member of a committee, if he is a defaulter of any society.

14. In the judgment under review, finding is rendered that

the review applicant is a defaulter of the society and as such in view of Section 73CA he would be ineligible for being appointed, nominated, elected, opted or, for being as a member of the Managing Committee of the society.

15. On the face of the finding in the Writ Petition that the applicant is a defaulter of the society, the disqualification under Section 73CA comes into play. The applicant is ineligible for being elected and also for continuing as a member of the society even if elected.

16. As regards the contention of the appellant that the Returning Officer has become functus officio and that he could have not redrawn the names of the elected members of the Committee is concerned it would give rise to an independent cause of action and is beyond the scope of his review application. This submission of the learned counsel for the appellant cannot be dealt with in review application as it could be an independent cause.

17 In terms of Rule 58 of the Maharashtra Co-operative Societies Rules 1961, different authority is constituted under the Act to inquire into the default committed by a member and once a declaration is given to the effect that person who

is elected member is a defaulter of the society he ceases to hold the position of a elected member of the Co-operative Society. The Registrar is the authority constituted under the Act to declare a Managing Committee member as a defaulter of the Co-operative Society.

18. In view of the above, the final directions of this Court in the Writ Petition are not redundant. The declaration that the applicant is a defaulter would debar the applicant to continue to be on the post of member even if elected.

19. In view of the same, the prayer to recall paragraph 16 of the judgment and issue consequential directions is refused. As regards the submission of the applicant that the Returning Officer was not competent to redraw the names of elected members as he had become functus officio, the same being independent cause of action, it cannot be claimed in this review application. Therefore, no relief can be granted in this review application.

20. Review Application is dismissed as there is no error apparent on face of record.

(ARUN R. PEDNEKER)
JUDGE

shp/-