

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

1020 WRIT PETITION NO.4076 OF 2023

DWARKADAS UTTAMRAO RAJEBHOSALE
VERSUS
DISTRICT COOPERATIVE ELECTION OFFICER AND OTHERS
...

1022 WRIT PETITION NO.4078 OF 2023

SAMBHAJI MOHINIRAJ MATE
VERSUS
DISTRICT COOPERATIVE ELECTION OFFICER AND OTHERS
...

1023 WRIT PETITION NO.4079 OF 2023

SATISH SHANKARRAO INGLE
VERSUS
DISTRICT COOPERATIVE ELECTION OFFICER AND OTHERS
...

Advocate for Petitioners : Mr. P.D. Bachate
AGP for Respondent/State : Mr. K.B. Jadhavar
Advocate for Respondents 1 & 2 : Mr. S.K. Kadam
Advocate for Respondent 3 : Mr. N.B. Narwade
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CORAM : ARUN R. PEDNEKER, J.
CLOSED ON : 11/04/2023
DELIVERED ON : 12/04/2023

ORDER :

1. The petitioners in above writ petitions are the members of Ahmednagar Zilla Maratha Seva Nagari Sahkari Patsanstha Maryadit, Ahmednagar (hereinafter referred to as 'the Credit Society' for short) and the original objectors and the respondent No. 3 in all writ petitions are nominated candidates and are either guarantor or borrower of the Credit Society of the same loan amount and therefore, all the writ petitions are taken up together for consideration.
2. By the present writ petitions, the petitioners are challenging the order

dated 6.4.2023 passed by the respondent No. 1 - District Deputy Registrar, Cooperative Societies, Ahmednagar in the appeals filed by respondents/ guarantors/ borrowers, by which the respondent No. 1 has quashed and set aside the order dated 27.3.2023, passed by the respondent No. 2 - Returning Officer (The Assistant Registrar, Cooperative Societies, Ahmednagar) of Ahmednagar Zilla Maratha Seva Nagari Sahkari Patsanstha Maryadit, Ahmednagar, disqualifying the respondents and rejecting the nominations of the respondents by upholding the objections raised by the petitioners. The respondent No. 1 has directed to include the names of the respondents in the final list of nominated candidates of the Credit Society.

3. Brief facts, leading to the institution of the writ petitions can be summarized as under :-

All these writ petitions involve common question and therefore, they are taken up together for consideration. However, the facts are taken from Writ Petition No. 4078/2023.

4. Elections of Ahmednagar Zilla Maratha Seva Nagari Sahkari Patsanstha Maryadit, Ahmednagar (Credit Society) were due and as such, election programme was published on 17.3.2023. As per the election programme the nominations were required to be filed between 17.3.2023 to 24.3.2023. The scrutiny of the nominations was scheduled on 27.3.2023. The list of valid candidates was to be published on 28.3.2023. The date for withdrawal of nomination form was scheduled between 28.3.2023 to 11.4.2023. The list of contesting candidates would be published on 12.4.2023. The date of polling is scheduled on 24.4.2023.

5. The petitioner raised objections to the nomination of respondent No. 3 by contending that the respondent No. 3 is the guarantor of the loan

granted in favour of Bhausahab Changdev Harde. The said Bhausahab Harde is a defaulter of Rs.34,734/- as on the date of scrutiny and therefore, respondent No. 3 is not entitled to contest the elections of the Credit Society. The respondent No. 2 – Returning Officer scrutinized the nomination form of respondent No. 3 and on consideration of the objection raised by the petitioner and other material on record rejected the nomination of the respondent No. 3. Thereafter, respondent No. 3 challenged the said order of the respondent No. 2 before the respondent No. 1 by filing appeal. The petitioner filed intervention application in the said appeal.

6. The respondent No. 1, on examination of the record, held that the borrower had made payment of entire outstanding dues on the date of scrutiny and as such, respondent No. 3/guarantor is not the defaulter within the meaning of section 73-CA of the Maharashtra Cooperative Societies Act and as per the bye-law No. 4 (17) of the Credit Society. Hence, the petitioner challenged the order of respondent No. 1 in this petition.

7. Mr. P.D. Bachate, learned counsel for the petitioners in all the writ petitions contends that respondent No. 3, who filed nomination are either borrowers or the guarantors of the said Credit Society and the respondent No. 3 are defaulters on the date of scrutiny as they had not made payments as on the last date of nomination and the default cannot be rectified. The petitioners relied upon the certificate issued by the Credit Society showing that the respondent No. 3 is in default of amount of Rs.34,734/- as on the date of scrutiny of objections.

8. The learned counsel relies upon the judgments of this Court in the cases of **Manchak s/o. Shahaji Pawar Vs. State of Maharashtra and Ors.**

reported in 2011 (3) Mh.L.J. 833, Vijaysing Krishnarao Parbat Vs. Returning officer & Ors., reported in 2003 (2) All MR 523 and Sunil Rameshchandra Kedia Vs. State of Maharashtra and others reported in 2009 (1) Mh.L.J. 537.

9. Per contra, Mr. N.B. Narwade, learned counsel appearing for respondent No. 3 in all these writ petitions submits that along with the list of names of provisional voters list, list of defaulter members is submitted by the Credit Society and the Society had not listed the respondent/nominated candidates as defaulters of the society. No objection was raised on they being defaulters by the society so also by any other person. On the date of scrutiny when the objections were raised at that moment itself, the respondents had made the payment of outstanding dues. In the peculiar facts of this case, Mr. Narwade, learned counsel submits that respondent No. 3 in these petitions are not the defaulters and they being the nominated candidates should not be refrained from contesting the election of the Credit Society. The learned counsel also submits that as there is no notice for default by the Society and every outstanding amount cannot be terms as default. The petitioner has also produced certificate dated 27.3.2023 showing that entire amount is paid and dues are settled on 27.3.2023 and there is no dispute over the payment of defaulted amount.

10. The Credit Society had published a list of defaulted members along with the list of members in the provisional voters list and the respondents' names are not reflected in the defaulter list. Thereafter, a certificate of default is issued on the date of scrutiny by the Society to the objector and on the basis of the said certificate issued, the respondent No 2 Election Authority had disqualified the respondents/nominated candidates. The nominated candidates also cleared the outstanding dues on the same day.

The contentions of the respondents that they are not defaulters and every outstanding due amount cannot be termed as a defaulted amount which they paid on the same date to avoid any doubt needs consideration by leading elaborate evidence, moreso, when the Credit Society had not termed the respondents as defaulters in the list of defaulters submitted with the provisional voters list. The stand of the Credit Society is contradictory on the aspect of default by the respondents and thus, a finding has to be rendered on elaborate evidence as regards default by the respondents. The findings on default cannot be rendered in the present writ petitions in summary jurisdiction. Evidence is required to be lead on this issue. This Court would not exercise it's writ jurisdiction and render finding on default.

11. As regards the contention of the petitioners that all the candidates have to be made party to appeal petitions, it is pointed out that the last date for publication of the nominated candidates is 11.4.2022 and as such, the list of nominated candidates was not available as on the date of filing of the appeals. In any event, the objectors/petitioners had filed intervention applications before the appellate authority.

12. In view of the discussion made above, this Court cannot exercise it's writ jurisdiction and the petitioners can avail the appropriate remedy as may be available in law. In view of the same, the writ petitions are disposed of with liberty to the petitioners to seek remedy as may be available in law before the appropriate forum.

[ARUN R. PEDNEKER J.]