

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6976 OF 2023

- 1] Sangamner Taluka Sahakari Dudh Utpadak
Va Prakriya Sangh Maryadit, Sangamner
Ahmednagar Through its Managing Director,
Dr. Sujit Ashok Khillari
Age : 48 years, Occu : Service,
R/o Rajhans Doodh Sangh Vasahat,
Ghulewadi, Sangamner, Tq. Sangamner,
Dist. Ahmednagar.
- 2] Nirzarheshwar Sahakari Dudh Utpadak
Sanstha Maryadit at village Kokangaon,
Tq. Sangamner, Dist. Ahmednagar
Through its Chairman
Keshav Kachru Shinde,
R/o. Kokangaon, Tq. Sangamner,
Dist. Ahmednagar.
- 3] Ashok Kisan Bhosale
Age 47 years, Occ. Agril.
R/o. Kokangaon, Tq. Sangamner,
Dist. Ahmednagar.

... Petitioners

VERSUS

- 1] The State of Maharashtra
Through its Secretary
Department of Cooperation and Textile
Mantralaya, Mumbai-32.
- 2] The Principal Secretary,
Department of Agricultural and Dairy,
Mantralaya, Mumbai-32.
- 3] The Commissioner,
Dairy Development Mantralaya,
Mumbai-32.
- 4] The Joint Registrar,
Co-Operative Societies (Dairy)
At Worli Dairy Campus,
Worli, Mumbai.

- 5] The Divisional Deputy Registrar,
Cooperative Society (Dairy),
Nashik Division, Nashik.
- 6] The Assistant Registrar,
Co-operative Societies (Dairy),
M.I.D.C. Ahmednagar.
- 7] Subhash s/o Malhari Aher
Age 69 years, Occ. Agriculture,
R/o. Village Ghargaon, Tq. Sangamner,
District Ahmednagar.
- 8] The Hon'ble Minister
For Dairy and Animal Husbandry,
Maharashtra State, Mantralaya,
Mumbai.

... Respondents

...
Advocate for petitioners : Mr. R.N. Dhorde, Senior Advocate
i/by Shri V.R. Dhorde a/w Mr. P.S. Dighe
Incharge GP for the respondents 1 to 6 and 8 : Mr. D.R. Kale
Advocate for the respondent no. 7 : Mr. S.S. Thombre
...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

**RESERVED ON : 26 SEPTEMBER 2023
PRONOUNCED ON : 05 OCTOBER 2023**

JUDGMENT (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. Learned Incharge Government Pleader waives service for respondents no. 1 to 6 and 8. Mr. S.S. Thombre waives service for respondent no. 7. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The petitioner no. 1 is a milk society registered for Sangamner taluka under the provisions of the Maharashtra Co-

operative Societies Act, 1960 (hereinafter "**the Act**"). By resorting to Article 226 of the Constitution of India the petitioners are challenging nomination of respondent no. 7 on the Managing Committee of petitioner no. 1 made by the Government by resorting to section 73 AAA (2), fifth proviso.

3. The learned Senior advocate Mr. Dhorde for the petitioners would submit that the election for constitution of the managing committee of the society was held in accordance with the provisions of the Act in the year 2022 for a period of five years and 17 directors were elected. He would submit that nomination of the respondent no. 7 by resorting to the fifth proviso of sub-section 2 of section 73AAA is not legally sustainable.

4. He would submit that under that enabling clause, only a person having requisite experience relating to the work of the society and possessing such qualification as may be specified by the government by way of an order published in the official gazette can be nominated. He would submit that the impugned order of nomination does not demonstrate as to how he was fitting in that eligibility criteria. He would submit that even otherwise, the respondent no. 7 was not eligible to be appointed being disqualified under section 73CA which provides for disqualification of the members of the managing committee and *inter alia* provides that no person is eligible for being

elected or nominated as member of the committee if he is a defaulter of any society.

5. He would point out that on the date on which the respondent no. 7 was nominated he was a defaulter of a credit co-operative society by name Mulganga Gramin Bigar Sheti Sahakari Patsanstha Maryadit and adverts our attention to a certificate issued by the manager of that credit society dated 26.05.2023 wherein it has been expressly certified that as on 26.05.2023, the respondent no. 7 was in arrears of loan to the tune of Rs.3,15,360/-. He would submit that the petitioner no. 1 had raised specific objection with the respondent no. 5 who is the Divisional Deputy Registrar of Nasik region pointing out that the respondent no. 7 was disqualified under of section 73CA, and still no cognizance was taken.

6. Mr. Dhorde would then submit that the respondent no. 7 was nominated after the turbulence in the politics in the State and the change in the government whereafter the learned Minister holding the portfolio of Animal Husbandry by written communication dated 05.12.2022 expressly recommended the respondent no. 7 for being nominated on the Managing Committee of the petitioner no. 1 society. He would advert our attention to a copy of such recommendation dated 05.12.2022 (**Exhibit – K**). He would submit that since the respondent no. 7 is the staunch supporter of the learned Minister, he was

recommended to be nominated and the authorities have obliged the learned Minister without undertaking any objective scrutiny of his eligibility to be nominated under the fifth proviso to sub-section 2 of section 73AAA and ignoring the disqualification criterion provided for by section 73CA. He would, therefore, submit that the nomination besides being contrary to the provisions of law, is actuated by political interest and be quashed and set aside.

7. The learned Incharge Government Pleader by referring to the affidavits in reply filed by the respondent no. 5 on behalf of the respondents 2, 4 and 5 – Chandrashekhar S/o Madhavrao Bari supports the nomination of the respondent no. 7. He would submit that by resorting to the enabling provision contained in the fifth proviso to sub-section (2) of section 73AAA of the Act, he has been nominated. Such appointment is subject to the provisions of section 73CA. It is after the order of nomination when the compliance was sought for that the petitioner no. 1 informed about this disqualification of the respondent no. 7 under section 73CA and in turn he (respondent no. 5 – Divisional Joint Registrar) by communication dated 09.06.2023 addressed to the respondent no. 4 – Joint Registrar, Co-operative Societies (Dairy), Mumbai had informed about the alleged disqualification of the respondent no. 7 under section 73CA and solicited directions / guidance. Pursuant thereto, even the state

government solicited a report from the respondent no. 4. In turn, a report from the respondent no. 6 – Assistant Registrar, Co-operative Societies (Dairy), Ahmednagar was solicited. By communication dated 30.06.2023, the respondent no. 6 reported that there was no outstanding against the respondent no. 7 in respect of any dues of the Sahakarmaharshi Bhausahab Thorat Amrutvahini Sahakari Bank Ltd., Ghulewadi and its dues were cleared by him in February 2021. It was also informed that even Mulganga Gramin Bigar Sheti Sahakari Patsanstha Maryadit, Chandnapuri certified that as on 17.06.2023 the respondent no. 7 was not in default.

8. Learned Incharge Government Pleader would submit that as per the government order dated 14.07.2017 issued pursuant to the fifth proviso to sub-section (2) of section 73AAA, the respondent no. 7 possesses requisite educational qualification of matriculation (SSC). He would, therefore, submit that the nomination of the respondent no. 7 is strictly in accordance with law and cannot be questioned.

9. The learned advocate for the respondent no. 7 Mr. Thombre obviously supports the nomination. He would submit that it is after due scrutiny it was found that the respondent no. 7 was not a defaulter of either of the two co-operative societies as is mentioned in the affidavit in reply filed on behalf of the respondents 2, 4 and 5. He would submit that since the respondent no. 7 has been nominated

resorting to the fifth proviso to sub-section (2) of section 73AAA, though he is a member of the managing committee, such nominated members are required to possess a distinct status and be excluded for the purpose of counting the total number of members of the committee specified in the first proviso to sub-section (1). Such nominated members have no right to vote in the election of the society and are also not eligible to be elected as office bearers of the committee. He would, therefore, submit that since such nominated members are over and above the statutory strength prescribed for the composition of the managing committee, the provisions of section 73CA providing for disqualification of committee and its members may not be applicable to such nominated members.

10. We have carefully considered the rival submissions and perused the papers.

11. At the outset, it is necessary to note that though in the prayer clause, the petitioners have put up a challenge to the proviso to sub-section (2) of section 73AAA, the learned senior advocate Mr. Dhorde expressly submitted that the petitioners are not pressing for prayer clause (B).

12. So far as the statutory provisions are concerned, fifth proviso of sub-section (2) of section 73AAA reads as under:-

“Provided also that, in respect of society, excluding the Housing Society, having assistance of the Government in the form of share capital, loan, guarantee, grant, the Government land or any other form whether cash or kind, the committee shall also include following two members nominated by the Government, namely:-

(i) one Government Officer not below the rank of the Assistant Registrar of Co-operative Societies, and

(ii) one person having such requisite experience relating to the work of the society and such qualifications, as may be specified by the Government, by an order published in the Official Gazette: ”

13. Since simultaneously, the petitioners are also resorting to section 73CA to demonstrate that the respondent no. 7 was also disqualified, the relevant provision also needs to be looked into and reads as under:-

73CA. Disqualification of committee and its members

(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 purpose of this clause, the term “defaulter” includes --

(a) in the case of a primary agricultural credit society, a member who defaults the repayment of the crop loan on the due date;

(b) in the case of term lending society, a member who default the payment of any instalment of the loan granted to him;

(c) ...

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

(e) in the case of housing societies, a member who defaults the payment of dues to the society within three months from the date of service of notice in writing served by post under certificate of posting demanding the payment of dues;

14. Having noticed the provisions, let us turn to the facts. It is apparent that by virtue of fifth proviso, the state government possesses a power to appoint two members on the managing committee of the society. One could be a government officer not below the rank of the Assistant Registrar of the Co-operative Societies and one person having such requisite experience relating to the work of the society and such qualification as may be specified by the government by an order published in the official gazette. As far as the latter qualification is concerned, in the affidavit in reply, it has been specifically mentioned that the relevant order was published on 14.03.2017 (**Exhibit R-3**) providing inter alia for the qualifications for being nominated under that provision as S.S.C. or matriculation. This fact has not been controverted in the rejoinder. Consequently, as far as the educational qualification is concerned, the respondent no. 7 apparently possesses the qualification.

15. However, simultaneously, it is also imperative that such a person to be nominated should possess requisite experience relating to the work of the society. The affidavit in reply and the additional

affidavit in reply filed on behalf of the respondents 2, 4 and 5 conspicuously omit to address this aspect. When the statutory provision provides for experience and qualification both, the impugned order of nomination is absolutely silent and does not mention as to how the decision to nominate the respondent no. 7 was taken particularly in respect of the requisite experience criterion. Pertinently, the respondent no. 7 himself has not come forward by filing any affidavit in reply.

16. It is a matter of record that one Mr. Janardhan Mhatarba Pa. Aher by communication dated 05.12.2022 addressed to the learned Minister of Revenue and Animal Husbandry had recommended the respondent no. 7 to be nominated, whereupon by a specific noting in his hand and under the signature and stamp of the learned Minister, it was directed that he be nominated. Such endorsement clearly appears to be the own handwriting of the learned Minister and with his signature. If such is the state-of-affairs, whether the respondent no. 7 has been nominated on a recommendation of the learned Minister holding the relevant portfolio, which fact has not been controverted in the affidavits in reply, the petitioners' allegations stand duly substantiated wherein it is being alleged that the respondent no. 7 has been nominated by taking aid of the relevant provision but unmindful of the requisite experience criteria.

17. Again, the stand of the petitioners that even the provision of section 73CA regulates the members who have been nominated by resorting to the fifth proviso to sub-section (2) of section 73AAA has been specifically admitted by the respondents 2, 4 and 5 in the affidavits in reply. Independently, the provision of section 73CA (*supra*) *ex facie* demonstrate that the disqualification of the members who are appointed, elected, co-opted is equally applicable to a member who is nominated. The use of the word 'nominated' makes it abundantly clear that even this section 73CA would be applicable to the persons who are nominated by the government resorting to fifth proviso to sub-section (2) of section 73AAA.

18. Though it is being pointed out that the respondent no. 6 in a report submitted to the respondent no. 5 informed about the respondent no. 7 being not a defaulter of either of the two co-operative societies, the stand is clearly a convenient one. When section 73CA speaks about the disqualification of a member who is a defaulter of any society, such default *qua* nominated member will have to be examined as on the date on which the impugned order nominating the respondent no. 7 was passed. Even according to the stand being taken by the respondent – authorities in the affidavits in reply, the respondent no. 7 was nominated on 15.05.2023 and the certificate of Mulganga co-operative society which forms the basis of the report

submitted by the respondent no. 6 to the respondent no. 5 mentions that as on the date of that report, he was not a defaulter of the society. It is clearly a whitewash. The fact that the petitioner together with a certificate of the selfsame society had approached the respondent no. 4 expressly mentioning that as on 26.05.2023, the respondent no. 7 was a defaulter of the society to the tune of Rs.3,15,360/- has not been expressly denied in the affidavits in reply and the respondent no. 7 has also not controverted this fact by filing any affidavit in reply. His being not a defaulter on a future date post his nomination is not relevant. As on the date he was nominated, he was clearly a defaulter of Mulganga Gramin Bigar Sheti Sahakari Patsanstha Maryadit and by virtue of section 73CA, he could not have been legally nominated by resorting to fifth proviso to sub-section (2) of section 73AAA.

19. Though some arguments were advanced by Mr. Dhorde to demonstrate that the provision of section 73AAA(2) fifth proviso was not available to be invoked since the petitioner society had not taken any benefit or aid from the government, in view of the specific wordings of the fifth proviso which can be resorted to in respect of the society having availed assistance of the government in the form of share capital, loan, guarantee, grant, the government land or any other form whether cash or kind, we are not in agreement with the learned senior advocate.

20. Admittedly, the central government scheme providing for supplemental protein which scheme has been sought to be implemented through the state government and which, by its order dated 29.10.2013, has granted approval to setting up of paraphernalia in the petitioners' society to the tune of Rs.600/-, though 75% of the funds were being provided by the Central government and the remaining 25% is to be shared by the petitioner no. 1 society. The state government is the implementing agency. In our considered view, taking into consideration the object of providing for this prerogative of making nomination on the managing committee reserved with the government, the purpose and object would be defeated if the state government is said to be not entitled to resort to this provision. In other words, when the petitioner no. 1 society has been admitted to a scheme for a particular project of the central government being implemented through the state government, it would fall in the category where it can certainly be said that it is having the assistance of the government in kind which can be interpreted *ejusdem generis* with the words share capital, loan, guarantee, grant, the government land or in any other form in cash or kind. Therefore, we are not in agreement with Mr. Dhorde that the fifth proviso of sub-section (2) of section 73AAA is not applicable to the petitioner no. 1 society.

21. In the circumstances, nomination of the respondent no. 7 being contrary to the provision of fifth proviso to sub-section (2) of section 73AAA as well as section 73CA of the Act besides being actuated by political reasons, is clearly illegal and arbitrary and liable to be quashed and set aside.

22. The writ petition is allowed.

23. It is declared that the appointment of the respondent no. 7 on the managing committee of the petitioner no. 1 society by letter/order dated 19.05.2023 and 15.05.2023 is illegal and is quashed and set aside.

24. Rule is made absolute in the above terms.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/