IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10064 OF 2023

Bhaginath Shahadu Magar .. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Co-operation, Textile and Marketing
Department, Mantralaya, Mumbai.

2. The Additional Commissioner and Registrar
Co-operative Department, Maharashtra State,
Pune.

3. The Returning Officer/District Deputy Registrar,
Co-operative Societies, Aurangabad.
The Vaijapur Merchants Co-operative Bank Ltd.,
Vaijapur.

4. The Vaijapur Merchants Co-operative Bank Ltd.,
Vaijapur, Through its Managing Director.

5. Vijay Valabhdas Ved

6. Vishal Jivanlal Sancheti

7. Ravindra Bansilal Sancheti

8. Vijay Vishram Thombare

9. Prashant Uttamrao Tribhuvan

10. Manoj Mohanlal Chhajed

11. Saurabh Ravindra Sancheti .. Respondents

Mr. Rahul R. Karpe, Advocate for the Petitioner.
Mr. K. B. Jadhavar, AGP for Respondents/State.
Mr. V. H. Dighe, Advocate for Respondent No. 3.
Mr. Ajeet D. Kasliwal, Advocate for Respondent No. 4.
Mr. K. J. Suryawanshi, Advocate for Respondent Nos. 6 and 7.

CORAM : KISHORE C. SANT, J.

DATED : 11th AUGUST, 2023.

P. C. :-

. The petitioner has come to this Court against the order passed by the learned Additional Registrar, Co-operative Societies (Administration), State of Maharashtra, Pune dated 09.08.2023. The appeal was filed under Section 152-A of the Maharashtra Co-operative Societies Act (for short “MCS Act”) challenging the decision of the Returning Officer dated 03.08.2023 thereby rejecting nomination form of the petitioner for not having paid the deposit towards share capital of Rs. 10,000/-.

2. The case is only that, this petitioner filled in a nomination form from General category in the election to the Vaijapur Merchant Co-operative Bank – respondent No. 4. The respondent Nos. 5 and 6 raised objection on 02.08.2023. The ground of objection was raised that in view of rule No. 40 of the bylaws of the bank, a person desirous of contesting the election should be a person who has deposited Rs. 10,000/- towards share capital. The programme of the election was

published on 22.06.2023. On the date of this publication the petitioner had deposited only Rs. 7,500/-. There is no approval given to further deposit by the petitioner as deposited towards share capital.

3. The petitioner filed his say stating that, he had deposited Rs. 7,500/- on 26.08.2011. Though the election programme was declared, the elections were postponed. In view of postponement of the programme the date for filling up the nomination form was decided to be 01.08.2023. The petitioner on 06.07.2023 itself had deposited an amount of Rs. 3,000/- and therefore, the amount needs to be considered towards share capital.

4. The Returning Officer held that, the original election programme was scheduled to be till 29.06.2023, however, the Government by general order directed to postpone the elections and to commence the proceedings on 01.08.2023. As per election calendar the next date after 28.06.2023 was 01.08.2023. The election officer thus considered that on 01.08.2023 the election programme started from the stage as on 28.06.2023. Thus, since no amount was deposited prior to 28.06.2023 the deposit of the amount on 06.07.2023 cannot be considered for the purpose of treating the petitioner as eligible to contest the election. Further, it is held that, mere deposit is not sufficient to hold the person eligible till the said deposit is duly

accepted towards share capital by the Board of Directors.

5. In the appeal, the respondent No. 2 – the Additional Commissioner and Registrar, Co-operative Department also held that, the deposit of an amount of Rs. 3,000/- on 06.07.2023 was taken in suspense account and there was no approval by the Board of Directors and dismissed the appeal.

6. Thus, the admitted position is that on 22.06.2023 the respondent No. 3 declared the election programme to respondent No. 4 Bank. The programme was from 26.06.2023 till 29.06.2023. The Government passed an order on 28.06.2023 and directed to postpone the elections and to commence the same from 01.08.2023 from the stage as of on 28.06.2023. Admittedly, no amount towards share capital was deposited by the petitioner till 28.06.2023 and the same was deposited only on 06.07.2023. Thus, the question is whether the said deposit can be said to be deposit towards share capital so as to make the petitioner eligible to contest the election.

7. Learned advocate for the petitioner submits that, in view of clause No. 9 of the general instructions issued to the candidates shows that, the candidate has to deposit the amount towards share capital. Thus, he submits that, he had deposited Rs. 7,500/- in the year 2011

itself and deposited further amount of Rs. 3,000/- on 06.07.2023 and the same ought to have been considered to be proper compliance with bylaw No. 40. He submits that, even in view of bylaw No. 25 what is material is only deposit of amount of Rs. 10,000/- and nothing further. Thus, he submits that, the petitioner was duly qualified and his nomination is wrongly rejected.

8. Learned advocate Mr. Dighe for respondent No. 3 submits that, both the authorities have passed orders against the petitioner on the question of eligibility of the petitioner. Mere deposit of the amount in the bank is not sufficient after the amount is deposited towards share capital. There has to be approval from the Board of Directors accepting the amount towards share capital. As on the date of filing of the nomination form no such resolution was passed by the Board of Directions accepting the deposit of the petitioner towards share capital. He relies upon the judgment delivered by this Court in Writ Petition (Stamp) No. 8168 of 2015 in the case of **Radheshyam Ramniranjan Yadav Vs. Commissioner for Co-operation & Registrar of Co-operative Societies, Maharashtra State & Ors.** along with other connected matters.

9. Mr. Dighe, learned advocate for respondent No. 3 further submits that, alternative remedy is available to the petitioner to raise a dispute

under Section 91 of the MCS Act. In this case, it is necessary to give the evidence and therefore, the said issue cannot be decided in writ jurisdiction. He also submits that, the Returning Officer has to consider the bylaw as it is.

10. Learned advocate Mr. Kasliwal appearing for respondent No. 4 vehemently opposes the petition. He submits that, both the authorities have rightly considered the objection in proper manner. No illegality is committed by any of the authorities.

11. In rejoinder, learned advocate Mr. Karpe for the petitioner submits that, after the amount is deposited the resolution to treat the said amount towards share capital is merely a ministerial act. There is no requirement in the bylaw that the deposit of the amount be followed by the resolution or any resolution and it be produced while filling up the nomination form.

12. This Court in the judgment of **Radheshyam Ramniranjan Yadav** (surpa) had an occasion to deal with very bylaw i.e. bylaw No. 40. The facts of the present case are of most identical. This Court negatived the argument that there is no necessity of the approval of the Board of Directors or that there should be share certificate issued. It is observed that, mere deposit of the amount cannot satisfy the

requirement of bylaw No. 40. The ultimate power of the society is vested in the managing committee. In that case, it was a Co-operative Housing Society. In other societies it was held that it is the Board of Directors which has ultimate power in this respect. Looking to the ratio of the judgment referred to above and bylaw No. 40, this Court finds that, mere deposit of the amount is not sufficient. In this case there is no resolution by the Board of Directors accepting the said deposit towards share capital.

13. On considering the submissions and the judgment relied upon, this Court finds substance in the argument of Mr. Dighe, learned advocate for respondent No. 3 that there is alternative remedy to raise the election dispute under Section 91 of the MCS Act. The Returning Officer certainly cannot go beyond the bylaw. The Returning Officer is also not expected to interpret the bylaws.

14. Thus, this Court finds that, none of the authorities have committed any error in passing the orders. There is no substance found in the petition. Therefore, the petition deserves to be dismissed and the same is accordingly dismissed. No order as to costs.

(KISHORE C. SANT, J.)

P.S.B.