

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

WRIT PETITION NO.13993 OF 2023

- . Sunita w/o Kalyanrao Kharat,
Age: 40 years, Occu.: Agri.,
R/o. Limbe Wadgaon, Post – Patoda,
Tq. Mantha, Dist.: Jalna .. **Petitioner**

Versus

1. The Returning Officer,
The Jalna District Central Co-op.
Bank Ltd., Jalna, Dist. Jalna @
The District Deputy Registrar,
Coop. Societies, Jalna,
Dist. Jalna
2. The Jalna District Central Co-op.
Bank Ltd., Jalna, Dist. Jalna,
Through its Managing Director
3. Sandip Bhujangrao Gore,
Age: Major, Occu.: Agri.,
R./o.: Vidoli, Tq. Mantha,
Dist. Jalna
4. The State Cooperative Election Authority
Through its Secretary
Maharashtra State, Pune
5. The Appellate Authority for the
Election of District Central Coop. Bank Ltd.
Jalna @ The Divisional Joint Registrar
Cooperative Societies, Aurangabad,
Division Aurangabad .. **Respondents**

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Advocate for Petitioner:
Mr. Mahesh Deshmukh h/f. Mr. V. D. Salunke
Advocate for Respondents No.1&4: Mr. S. K. Kadam
Advocate for Respondent No.2:
Mr. Yogesh K. Bobade

Advocate for Respondent No.3: Mr. V. D. Hon,
Senior Advocate i/b. Mr. Dhananjay A. Mane

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CORAM:	ARUN R. PEDNEKER, J.
Date:	06.11.2023

JUDGMENT:

1. **Rule.** Rule returnable forthwith. With consent of the parties, the petition is heard finally.

2. By the present petition, the petitioner is challenging the order dated 26.06.2023 passed by the respondent no.1 - Returning Officer, rejecting the nomination form of the petitioner to contest the election of respondent no.2 - Bank, so also, the order dated 30.10.2023 passed by respondent no.5 - appellate authority dismissing the appeal filed by the petitioner against the order passed by the Returning Officer.

3. The brief facts leading to filing of this petition can be summarized as under:

A. The petitioner is a member of Libe Wadgaon VKSS Society and the said society is

a member of Jalna District Central Cooperative Bank, Jalna (*in short "JDCC Bank"*). The said Libe Wadgaon VKSS Society being member of the JDCC Bank forwarded the name of the petitioner to include her name in the voters list of JDCC Bank as a representative of the said society. Accordingly, the name of the petitioner appeared in the voters list at serial no.7 in the cooperative societies constituency. The election of the JDCC Bank was due and the respondent no.1 was appointed as election Officer to delcare the election programme to elect 17 members of the managing committee of JDCC Bank. As per the election programme 8 seats are to be elected from the societies constituency, 2 seats are reserved for women, 1 seat each is from SC, ST, OBC, VJNT, Other agriculturist societies, Krushi Panan Society and Nagri Bank respectively.

B. As per the amended election programme, the nomination forms were accepted

from 19.06.2023 to 23.06.2023 and the scrutiny was scheduled on 26.06.2023, the date of withdrawal of nomination for is from 23.10.2023 to 06.11.2023, publication of final list of nominated candidates and allotment of symbols is on 07.11.2023 and voting is on 18.11.2023.

C. The petitioner filed her 2 separate nominations for the societies constituency along with all the documents. The petitioner particularly had given an affidavit Appendix-A that in terms of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014, Rule 21(3), that she is not disqualified under any of the rules to contest the election. On 26.06.2023, Respondent No.3 raised objection to the nomination of the petitioner stating that the the petitioner is a defaulter of Mantha Urban Cooperative Bank Ltd., Mantha. The petitioner appeared before the Returning Officer and filed her say to the objection and submitted

a letter dated 23.06.2023 issued by the recovery officer of the Mantha Urban Cooperative Bank Ltd., Mantha, as under:-

उपरोक्त विषयानुसार आपण दिनांक २३=०६=२०२३ रोजी ओ टी एस स्कीम प्रमाणे बँक अर्ज भरणे बाबत अर्ज दिलेला आहे परंतु बँकेच्या रोख व्यवहार बंद झालेला असल्याने आपण भरणे करत असलेली कर्ज रक्कम पावती व बे बाकी प्रमाणपत्र आपणास बँक नियमानुसार बँक वेळेत देण्यात येईल. तूर्तास हि कच्ची पावती समजण्यात यावी.

D. In view of the objection raised and the documents filed by the objector, it was pointed out to the the Returning Officer by the petitioner that she has already deposited the due amount on 23.06.2023 and, therefore, she is not a defaulter as on 23.06.2023, the date of filing of her nomination. The Returning Officer after considering the objection and the response of the petitioner rejected both the nominations of the petitioner and, therefore, the petitioner filed 2 separate appeals. It was contended before the appellate authority that she has deposited the entire amounts on the date of filing of her nomination, as such, she is

qualified to contest the election. The petitioner further produced document at page 54 of the petition – a letter of the Bank dated 18.10.2023, indicating that on 23.06.2023 all the outstanding amount stands deposited. However, the appellate authority rejected the contention of the petitioner and dismissed the appeal filed by the petitioner. The petitioner has filed the present writ petition challenging the orders passed by the Returning Officer and the appellate authority.

4. Mr. Mahesh Deshmukh holding for Mr. V. D. Salunke, learned counsel for the petitioner submits that the petitioner having paid the entire outstanding due amount as on 23.06.2023, is qualified to contest the election.

5. Per contra, Mr. V. D. Hon, Senior Advocate instructed by Mr. Dhananjay A. Mane learned counsel for the objector submits that the payment was not made on 23.06.2023 and that he has

produced on record documents indicating that as of 23.06.2023, the petitioner was a defaulter of the Mantha Urban Cooperative Bank Ltd., Mantha, so also, he further submits that payment if at all has been made at a later date and that the petitioner was not qualified as on the date of filing her nomination to contest the election. The learned Senior Advocate further submits that this court should not interfere with the election process and that if a reasonable view is taken by the Returning Officer this court should not interfere with the same and that the petitioner can challenge the impugned orders by way of an election petition.

6. Mr. V. D. Hon, Senior Advocate for the objector relied upon the judgment of this court in the case of **Bharat H. Mehta Vs. Secretary, Jai Hind Co-op. Housing Society Ltd. and others, 2000 (4) Mh. L. J. 461**, to contend that the disputed questions are best resolved by an election petition and not in writ jurisdiction and another judgment of this court in the case of **Dattatray**

Genaba Lole and others Vs. Divisional Joint Registrar Co-operative Societies and others, 2022

(1) Bom.C.R. 471, to contend that this court should not ordinarily interfere in the election process.

7. Mr. S. K. Kadam, learned counsel appearing for the election authority submits that the Returning Officer has rightly rejected the nomination of the petitioner on the ground that the Bank, to which the petitioner was required to pay the outstanding amount is under liquidation and that the liquidator cannot accept OTS Scheme without the permission of the Registrar and, as such, deposit towards an OTS Scheme is impermissible. Without the permission of the Registrar, the OTS Scheme cannot be sanctioned, in view of the section 107 of the Maharashtra Co-operative Societies Act, 1960 and any amount deposited towards the OTS Scheme cannot be permitted as an amount paid towards the OTS Scheme, unless the OTS Scheme has been accepted by the Registrar.

8. Having considered the rival submissions, the moot question that arises for consideration is whether the petitioner had paid all her dues of the Mantha Urban Cooperative Bank Ltd., Mantha, on 23.06.2023 and was eligible to contest the election and whether this court can interfere in the instant case and direct the respondent authority to accept the nomination of the petitioner in exercise of its writ jurisdiction.

9. Perusal of the nomination form would indicate that the petitioner had filed nomination form along with an affidavit that she is not a defaulter or there is no prohibition from contesting the election. On the objection being raised on 23.06.2023 the petitioner had produced a document i.e. provisional receipt (कच्ची पावती). The receipt notes that the petitioner has applied under the OTS Scheme. But on account of the fact that the cash deposit is closed and proper receipt towards the amount deposited cannot be given and, thus, provisional receipt of deposit is given to

the petitioner and further the provisional receipt notes that no dues certificate would be given to the petitioner in terms of the Rules of the Bank during the banking hours and the provisional receipt is given.

10. Thereafter, on 18.10.2023, the Branch Manager has issued letter with an outward number indicating therein that the Bank is under liquidation and that the outstanding dues of the petitioner were Rs.11,71,481/- and Rs.4,79,417/-, total of which is Rs.16,50,898/- and were paid as on 23.06.2023 and at that time a provisional receipt dated 23.06.2023 was issued to the petitioner by the Bank. However, since the Bank is under liquidation and every day there are large number of depositors who visit the Bank for taking back their amounts create lot of chaos in the Bank and, as such, outward number was inadvertently missed out to be mentioned on letter dated 23.06.2023. He has also annexed along with letter true copy of the register. Further the letter indicated that there is no dues towards the Bank

by the petitioner. The said document is at page 54 of the petition.

11. Per contra, the document produced by the objector at page 21 of the reply is a letter dated 23.06.2023 issued by the Bank that Rs.36,92,326/- is outstanding due from the petitioner. It is not known at what time such a letter is issued to the objector. Thereafter, at page 23 and 24 are the copies of the cheques shown dated 26.06.2023. So also, a letter dated 26.06.2023 is produced from the headquarter of the Mantha Urban Cooperative Bank Ltd., Mantha, wherein it is indicated that on 26.06.2023 the bank Loan Account No.178/91 Rs.3,60,000/- loan was taken and Loan Account No.187/108 Rs.2,50,000/- loan was taken, total loan of Rs.6,10,000/- and that entire amount is deposited on 26.06.2023 and thus, there is no dues of the petitioner qua the Bank. The documents relied upon by respondent no.3 – the objector dated 23.06.2023 and 26.06.2023, indicates that the entire loan amount has been paid on 26.06.2023 and not on 23.06.2023.

12. In the instant case, the petitioner has paid all outstanding dues of the Mantha Urban Cooperative Bank Ltd., Mantha and the same is reflected from the documents produced by the petitioner so also by the respondent. The entire dues of the Bank are paid by the petitioner and that there is no outstanding dues of the petitioner qua the Mantha Urban Cooperative Bank Ltd., Mantha. However, the limited question is whether the outstanding amounts were paid on 23.06.2023 by 03:00 pm. Or thereafter. Prima facie, in terms of the receipt issued by the recovery officer, the petitioner has made payment by cash to the recovery officer and recovery officer has issued a provisional receipt. This provisional receipt was produced before the Returning Officer. Although the receipt is produced, the Returning Officer has travelled beyond the receipt and held that the petitioner is not entitled to make the payment towards the OTS Scheme, which is not approved by the Registrar. The inquiry as contemplated at the stage of

scrutiny of nomination of a candidate is summary in nature and the Returning Officer on the basis of the receipt produced ought to have enquired, whether the petitioner is prima facie a defaulter of the Mantha Urban Cooperative Bank Ltd., Mantha. In the appeal filed by the petitioner before the appellate authority under section 152-A of the 1960 Act, the petitioner had produced additional evidence in a form of letter issued by the Bank that the petitioner has paid all the dues on 23.06.2023. This court in the case of **Jagdish Lahu Badhe Vs. State Co-operative Election Authority and others, passed in Writ Petition No.11684 of 2022, dated 01.12.2022**, has accepted the arguments of the election authority that the power of the Returning Officer seeking rectification of the nomination paper can also be exercised by the appellate authority. Before the appellate authority the additional document produced indicated that the petitioner was eligible as on the date of filing of the nomination.

13. This court has consistently held that the eligibility to contest the election has to be on the date of filing of the nomination or at least before the last date of filing of the nomination paper. Reference can be made to **Vijaysingh Krishnarao Parbat Vs. Returning Officer, Janata Sahakari Bank Ltd. and others**, reported in 2003 (2) Mh.L.J. 485 and **Yogendra Tarachand Katare Vs. The Assistant Registrar Co-operative Societies cum Appellate Authority and others**, passed in Writ Petition No.2481 of 2022, dated 06.05.2022.

14. The Returning Officer in the factual background of this case has held that the petitioner has not paid the outstanding dues. However, the document produced by the petitioner before the Returning Officer at the stage of scrutiny was sufficient to indicate that the petitioner has paid his outstanding dues and the Returning Officer ought not to have travelled beyond the receipt issued by the recovery officer of the Bank to the petitioner and hold that the Bank cannot accept payment towards OTS Schme

without the approval of the OTS Scheme by the Registrar. The scrutiny that is contemplated by the Returning Officer is summary in nature and once a prima facie case is made out that the candidate is eligible to contest and is not disqualified as on the date of nomination, the Returning Officer ought to have ordinarily accepted the same. Since the Returning Officer failed to do so at least the appellate authority before whom further documents were produced that the petitioner was eligible as on the date of filing of the nomination ought to have accepted the nomination of the petitioner.

15. The contested issue as to whether the petitioner has paid the dues on 23.06.2023 or 26.06.2023 can be agitated by the respondent / objector by filing an election petition and prima facie the election authority so also the appellate authority ought to have accepted the nomination of the petitioner on the face of the documents produced before it that the petitioner has paid all the dues of the Mantha Urban Co-operative Bank

Ltd., Mantha. The Returning Officer cannot embark upon an enquiry into a seriously contested issue. The Returning Officer cannot non-suit a candidate, who has prima-facie produced the proof of payment of outstanding dues.

16. Having come to the finding that the Returning Officer or the appellate authority should have accepted the nomination form of the petitioner since she has prima-facie paid all the dues on 23.06.2023, the next question that arises for consideration is whether this court can interfere in the instant case and quash the orders passed by the Returning Officer so also of the appellate authority and direct that the nomination form of the petitioner be accepted.

17. This court in the case of **Dattatray Lole** (supra), at para 8.3 and 8.4 has held 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."

18. This court in the case of Dattatray Lole (supra) has held that there is no absolute bar for

exercise of the writ jurisdiction in interfering with the election to the cooperative society. However, the same has to be exercised 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.

19. In the instant case, the last date for withdrawal is today i.e. 06.11.2023, as such, giving direction to the respondent authority to include the name of the petitioner in the final list of nominated candidates, would not amount to interfering in the election process and that the election can be continued from the on going stage without any interference.

20. The reliance placed by the learned Senior Advocate for the respondent – objector on the case of **Bharat H. Mehta** (supra) is of no assistance. In the said case, the documents were produced in the writ court to demonstrate that the petitioner therein has discharged the entire liability of the society and was not a defaulter. Receipt of

payment was not given by the society in favour of the petitioner therein indicating that he has discharged the entire liability of the society. In view of the same, this court held that the petitioner can file an election dispute and not adjudicate the issue in the writ petition at the belated stage to prove his case that he is not a defaulter of the society.

In the instant case, the documents were filed before the Returning Officer so also before the appellate authority. As such, the judgment of **Bharat Mehta** (supra) relied upon by the respondent – objector is of no assistance to the respondent – objector.

21. The orders passed by the election authority so also by the appellate authority are patently illegal and are thus quashed and set aside. The respondent – objector is at liberty to dispute the payment made to the Mantha Urban Cooperative Bank Ltd., Mantha, on 23.06.2023 by filing an appropriate election petition and by leading evidence.

22. With the above observations, Rule is made absolute in above terms and following order is passed:

ORDER

A. Writ Petition is allowed.

B. The petitioner's name be included in the final list of contesting candidates in the election for Jalna District Central Co-operative Bank Ltd., Jalna.

[ARUN R. PEDNEKER, J.]

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