

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2284 OF 2022**

Sanjay Baburao Sonawale ... Petitioner
versus
The Commissioner, State Co-operative
Election Authority and Ors. ... Respondents

WITH
WRIT PETITION NO. 2281 OF 2022

Sanjay Baburao Sonawale ... Petitioner
versus
The Commissioner, State Co-operative
Election Authority and Ors. ... Respondents

WITH
WRIT PETITION NO.2283 OF 2022

Sanjay Baburao Sonawale ... Petitioner
versus
The Commissioner, State Co-operative
Election Authority and Ors. ... Respondents

Mr. Vaibhav Gaikwad, for Petitioner.
Mr. Dilip Bodake, for Respondent Nos.1 to 3 in all Petitions.
Mr. C.D.Mali, AGP for State.
Mr. Saumitra Salunke i/by Mr. P.R.Yadav, for Respondent No.4 in WP 2284 of 2022.
Mr. Pradeep Yadav with Ms. Swapnali Chavan, for Respondent No.4 in WP 2283 of 2022.
Mr. Ranjeet Agashe with Ms. Vinsha Acharya for Respondent No.4 in WP 2281 of 2022.

CORAM: N.J.JAMADAR, J.

DATE : 21 JUNE 2023

JUDGMENT :

1. Rule. Rule made returnable forthwith and with the consent of the

learned Counsel for the parties, heard finally.

2. Heard Mr. Gaikwad, learned Counsel for the Petitioner and Mr. Dilip Bodake, learned Counsel for Respondent Nos.1 to 3, Mr. Saumitra Salunke, learned Counsel for Respondent No.4 in WP No.2284 of 2022, Mr. Pradeep Yadav, learned Counsel for Respondent No.4 in WP No.2283 of 2022 and Mr. Rajeet Agashe, learned Counsel for Respondent No.4 in WP No.2281 of 2022.

3. Since all these Petitions have their genesis in the election to Ghot Vividh Karyakari Sahakari Seva Society Maryadit, a Co-operative Society registered under the Maharashtra Co-op. Societies Act, 1960, they are being heard and decided by this common judgment.

4. The Commissioner, State Co-operative Election Authority – Respondent No.1 declared a programme for electing the committee of Ghot Vividh Karyakari Sahakari Seva Society. The nomination forms were to be filled from 7 February 2022 to 11 February 2022. Scrutiny of the nomination forms was to be made by the Election Officer, Ghot Vividh Karyakari Sahakari Seva Society – Respondent No.2, on 14 February 2022.

5. In Writ Petition No.2284 of 2022, the Petitioner who had filed nomination form on 7 February 2022 from scheduled caste category, assails the rejection of his nomination and acceptance of nomination of Mahipati Mura Sonawale – Respondent No.4 from the scheduled caste category. Respondent No.4 took

objection to the nomination form of the Petitioner on the ground that the Petitioner was a defaulter of Janata Sahakari Bank Ltd., Satara, and therefore, had incurred disqualification under Section 73CA of the Act, 1960. It is the grievance of the Petitioner that the said objection was unjustifiably accepted and the nomination form of the Petitioner came to be rejected by Respondent No.2 without a speaking order. It is also the claim of the Petitioner that the Respondent No.4 was, in fact, a defaulter, and, therefore, disqualified under Section 73CA of the Act and the said objection duly raised by the Petitioner was again unjustifiably overruled by the Respondent No.2 and the nomination form of Respondent No.4 came to be accepted.

6. In Writ Petition No.2283 of 2022, the Petitioner assails the acceptance of nomination form of Mrs. Suvarna Rajendra Shinde on the ground that she had incurred disqualification as she was having more than three children. Yet, Respondent No.4 submitted a false Affidavit. The objection taken by the Petitioner was unjustifiably discarded by the Respondent No.2. Hence, the Petition to quash and set aside the order accepting the nomination form of Respondent No.4.

7. In Writ Petition No.2281 of 2022, the Petitioner assails the acceptance of the nomination of Mrs. Sunanda Jagannath Sawant – Respondent No.4 on the ground that she was a defaulter and, therefore, disqualified under Section 73CA of the Act, 1960. The objection taken by the Petitioner that the Respondent No.4 was a defaulter of Shivdaulat Sahakari Bank Ltd., was wrongfully rejected by the Respondent

No.2. Hence, this Petition.

8. Affidavits in Reply are filed on behalf of Respondent Nos.1 to 3 and the Respondent No.4. In Writ Petition No.2284 of 2022, in the Affidavit in Reply filed by the Election Officer, it was contended that Mahipati Mura Sonawale – Respondent No.4 had submitted NOC of Kalganga Krushak Seva Sahkari Sanstha Maryadit – Tarale that he had paid due amount as of 14 February 2022 and there was no outstanding amount. Thus, it was ruled that the Respondent No.4 was not a defaulter and, consequently, the nomination form of Respondent No.4 was accepted.

9. In the Affidavit in Reply filed on behalf of Respondent No.4, it was contended that the Respondent No.4 had not incurred any disqualification as the society of which Respondent No.4 was stated to be a defaulter had issued no dues certificate. A copy of the deposit receipt issued by Kalganga Krushak Seva Sanstha Maryadit, Tarale, was annexed to the Affidavit.

10. Mr. Gaikwad made an endeavour to draw home the point that the question as to whether the Respondent No.4 was a defaulter ought to have been decided with reference to the dates prescribed for filling in the nomination form. Since the Respondent No.4 had submitted a receipt which indicated that the outstanding amount was paid on 14 February 2022, the same ought not to have been considered by the Election Officer. Moreover, Mr. Gaikwad would submit that the Election Officer ought to have passed a speaking order.

11. I am not inclined to accede to the aforesaid submissions. The fact that on the date of the scrutiny of the nomination form, the Respondent No.4 could show that he was not a defaulter, was rightly taken into account by the Election Officer. The acceptance of the nomination form of Respondent No.4, therefore, cannot be faulted at. The rejection of the nomination of the Petitioner is equally impeccable. The certificate issued by Janata Sahakari Bank Ltd., Satara, dated 14 February 2022 indicates that as of that date, the Petitioner owed a sum of Rs.7,43,399/- to the said Bank. Nothing contrary could be demonstrated. Hence, I do not find any substance in Writ Petition No.2284 of 2022.

12. In Writ Petition No.2281 and 2283 of 2022, the Election Officer has categorically asserted that the Petitioner had not raised any objection at the time of the scrutiny of the nomination forms of the Respondent No.4. Nor any document was furnished by the Petitioner. Therefore, the nomination forms of the Respondent No.4 were accepted.

13. It would be contextually relevant to note that in Writ Petition Nos.2281 and 2283 of 2022, the Petitioner claims to have raised oral objection. This statement of the Petitioner lends credence to the assertion of the Election Officer that the Petitioner had neither raised any objection nor submitted any documents assailing the nomination forms of Respondent No.4. I, thus, find substance in the submission of Mr. Bodake, learned Counsel for Respondent Nos.1 to 3, that the challenge in these

Petitions does not merit countenance.

14. In any event, in Writ Petition No.2281 of 2004, Shivdaulat Sahakari Bank Ltd., of which the Respondent No.4 was stated to be a defaulter, had issued a certificate on 7 February 2022 that she did not owe any amount to the said bank. In fact, on 8 February 2017 itself, a certificate was issued by the said Bank to the concerned Revenue Officer to remove the entry of encumbrance in the record of rights of agricultural land of the Respondent No.4 and her husband.

15. Likewise, in Writ Petition No.2283 of 2022, in the absence of any written objection and the documents in support thereof that the Respondent No.4 had three children, the Election Officer was justified in accepting the nomination form of Respondent No.4. In the backdrop of the facts of the case, the submission of Mr. Gaikwad that the Election Officer ought to have passed a speaking order does not seem to be well founded. In the absence of objection in writing, supported with documents, the Election Officer was not at all required to delve into the aspect of disqualification of Respondent Nos.4 in Writ Petition No.2281 and 2283 of 2022.

16. In the totality of the circumstances, rejection of the nomination form of the Petitioner and acceptance of the nomination forms of Respondent Nos.4, in the respective Petitions, are in order. No interference is, thus, warranted in exercise of extra-ordinary writ jurisdiction. Needless to clarify that Petitioners would be at liberty to raise appropriate election dispute as permissible in law. Thus, the Writ Petitions

deserve to be dismissed.

17. Hence, the following order :

ORDER

- (i) The Writ Petitions stand dismissed.
- (ii) The interim order dated 2 March 2022 passed by this Court stands vacated.
- (iii) Respondent Nos.1 to 3 shall proceed to conduct the election from the stage it came to be stayed by the order passed by this Court dated 2 March 2022 by notifying further programme in accordance with the rules.
- (iv) Rule stands discharged.
- (v) No costs.

(N.J.JAMADAR, J.)