

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1421/2023

Gajanan s/o Shahuba Gore

...Versus...

Assistant Registrar of Cooperative Societies, Motala, Tah. Motala, District –
Buldhana and others

WITH

WRIT PETITION NO.1426/2023

Gajanan s/o Shahuba Gore

...Versus...

Assistant Registrar of Cooperative Societies, Motala, Tah. Motala, District –
Buldhana and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri R.D. Karode, Advocate for petitioner in both petitions
Shri N.R. Patil, AGP for respondent no.1 in both petitions
Ms D.V. Sapkal, Advocate for respondent no.5 in both petitions

CORAM : AVINASH G. GHAROTE, J.

DATE : 14/03/2023

1. Heard Shri R.D. Karode, learned counsel for the petitioner in both petitions. It is contended that on 24/02/2023 when the nomination form was filled, the respondent no.5 was a defaulter of the respondent no.4 – Bank, in view of which, an objection was raised by the petitioner before the Returning Officer (pg.14), on 27/02/2023. The Returning Officer, by the impugned order dated 28/02/2023, has rejected the objection

on the ground that there was no material placed before him by the objector, indicating the respondent no.5 to be a defaulter. He further states that the certificate dated 27/02/2023 placed before him indicated the respondent no.5 not to be a defaulter (pg.19).

2. In the present petitions, for the first time, a receipt is being placed on record dated 27/02/2023, indicating that the respondent no.5 was a defaulter of the respondent no.4 – Bank. So also, a demand list claimed to have been issued by the respondent no.4 has also been placed on record at page 15. I am afraid, considering the nature of the proceedings, it would not be permissible for me to accept this contention for the reason that the receipt dated 27/02/2023, was not placed before the Returning Officer along with the objection. Had this receipt being placed on record before the Returning Officer along with the objection, perhaps the position would have been different, however, since that was not done, the order of the Returning Officer cannot be tested on the basis of material which was not before him at all. That apart, it is equally doubtful as to whether the demand list at page 15 was placed before the Returning Officer as the impugned order does not indicate so. In fact, the impugned order places reliance upon the certificate issued on 27/02/2023 (pg.19), by which the Development Officer of the respondent no.4 has certified the respondent no.5 not to be a defaulter. Admittedly, there is no requirement in Rule 21 of the Maharashtra Co-operative

Societies (Election to Committee) Rules, 2014 (for short, “the Rules of 2014, hereinafter) of the respondent no.5 filing a no due certificate along with the nomination form as is indicated from the language of Rule 21 of the Rules of 2014 and therefore, in case such an objection is raised of the respondent no.5 candidate being a defaulter, it was necessary for the objector, to have placed the necessary material before the Returning Officer along with his objection, which has not been so done in the present matters. The reliance placed upon Section 4 of the Bankers’ Books Evidence Act, 1891 also does not come to the assistance of the petitioner in supporting his objection as there was nothing on record before the Returning Officer at the time of scrutiny to indicate a default as claimed at the time of scrutiny. The provisions of Rule 25 of the Rules of 2014 indicate that the enquiry at the time of scrutiny, has to be a summary enquiry, and considering the time limit for the scrutiny, has to be based upon material placed before him. Though reliance is placed upon Section 40 of the Maharashtra Co-operative Societies Act, 1960 (for short, “the MCS Act”, hereinafter) the same would relate to an entry in the register of members as kept under Section 38 of the MCS Act, which position, is long past gone in view of the fact, that the name of the respondent no.5, already stood included in the final voters’ list prepared by the Returning Officer.

3. Considering the nature of the proceedings, I am therefore not inclined to interfere in the impugned order. The

writ petitions are dismissed. No order as to costs.

4. Needless to say that the petitioner shall be free to avail appropriate remedy under section 91 of the MCS Act, in case he so advised.

(AVINASH G. GHAROTE, J.)

Wadkar