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{wp5181.23}

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

29 WRIT PETITION NO. 5181 OF 2023

VITTHAL JAGANNATH KAKDE
VERSUS
DIVISIONAL JOINT REGISTRAR AND OTHERS

Mr.M.S. Deshmukh, Advocate for the petitioner.
Mr.P.D. Patil, AGP for the respondent-State.
Mr.P.P. Kalaskar, Advocate for respondent Nos. 3 to 7.
Mr.M.P. Tripathi, Advocate for respondent No.8.

CORAM : KISHORE C. SANT, J.
DATE : 01.10.2024

PC :-

01. Heard learned Advocates for the parties. Submission in short is that the petitioner is held to be disqualified without order passed dated 29.07.2021 under section 85 attaining finality. This action was taken on the complaint of respondent Nos. 3 to 5. Only enquiry report under section 83 is prepared and show cause notice is issued. However, by way of abundant precaution, the petitioner had deposited amount under protest by reserving his right to contest the proceeding.

02. The petitioner, therefore, approached the Authorities. The petitioner by way of communication dated 08.06.2021 has clearly stated that he is depositing the amount towards cost of enquiry fees under protest by reserving his right. However, still the order came to be passed. This Court issued notice on 03.05.2023 recording reasons in detail and also granted stay to the order dated 17.01.2023⁴² and 26.04.2023 passed by the Authorities. Thus, the matter revolves only around a question as to whether the action of declaring the petitioner disqualified is passed after following the procedure.

03. While rejecting the revision, the Divisional Joint Registrar, Co-operative Societies, Nashik has mainly considered that the petitioner has accepted the liability as per enquiry report under section 83 and deposited the amount. Looking to the facts of the case and specific stand of the petitioner that he had deposited the amount by reserving his rights to contest the proceeding without prejudice to his rights. It clearly appears that the learned Divisional Joint Registrar has wrongly taken such deposit of the amount as acceptance of the liability. The petitioner, therefore, prays to allow the petition by quashing and setting aside order dated 26.04.2023 passed by the Joint Divisional Registrar and in Revision Application No. 50 of 2023.

04. During the course of arguments, the petitioner has also relied upon an order passed in the case of one Shahaji Shivaji Dangat by the same authority in revision application No. R-86 of 2023, wherein said revision came to be allowed and order under section 73 CA (1) (III) of the Co-operative Societies Act dated 24.04.2023 is quashed and set aside.

05. Learned Advocate for the private respondents vehemently opposed the petition stating that there is clear finding recorded by the authorities in enquiry under section 83. Even show cause notice was issued. Deposit of the amount clearly amounts to acceptance of liability. He thus justifies the impugned order.

06. Learned AGP also supports the order and prays for rejection of the petition.

07. This Court has gone through the petition, its annexures and the sections referred to above. It is clearly seen that till now the proceeding is only reached to the stage of issuance of show cause notice dated 29.07.2021 under section 85. There is no finality attached to the

said order.

07. Considering all above facts and also order dated 03.05.2023 passed by this Court, this Court finds that case is made out to allow the petition. The petition is, therefore, allowed in terms of prayer clauses (A) and (B) and disposed off with no order as to costs.

[KISHORE C. SANT, J.]