



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3154 OF 2025

1. Sanjay s/o Murlidhar Pawar,
Age : 58 years, Occu. : Business,
R/o. Chandsar, Tq. Dharangaon,
Dist. Jalgaon.

...PETITIONER

VERSUS

1. **The Returning Officer**
For the elections of Jalgaon Jilha
Krushi Audyogik Sarva Seva Sahakari
Sanstha Ltd., Jalgaon,
Dist. Jalgaon.
2. Jalgaon Jilha Krushi Audyogik
Sarva Seva Sahakari Sanstha Ltd.,
Jalgaon, Dist, Jalgaon.
Through its Manager.
3. Patil Yadavrao Vishnu,
Age ; 68 years, Occu : Service,
R/o. Vivare, Tq. Raver,
Dist. Jalgaon.
4. Narkhede Nilkand Ananda,
Age : 55 years, Occu. : Service,
R/o. Bhadli (Bk), Tq. & Dist. Jalgaon.
5. Patil Ramesh Jagannath,
Age : 65 years, Occu. : Service,
R/o Jalke, Tq. & Dist. Jalgaon.

6. Patil Pundalik Daulat
Age : 65 years, Occu. : Service,
R/o Umarkhed, Tq. Chalisgaon,
Dist. Jalgaon.
7. Patil Natthu Damodar
Age : 60 years, Occu. : Service,
R/o Avhani, Tq. Dharangaon,
Dist. Jalgaon.
8. Patil Pratap Hari
Age : 68 years, Occu. : Service,
R/o Amadade, Tq. Bhadgaon,
Dist. Jalgaon.
9. Patil Arun Atmaram,
Age : 55 years, Occu. : Service,
R/o Kurangi, Tq. Pachora,
Dist. Jalgaon.
10. District Deputy Registrar,
Co-operative Societies, Jalgaon,
Dist, Jalgaon.
11. State Co-operative Election Authority
Maharashtra, Through its
District Election Officer.

...RESPONDENTS

Advocate for the petitioner : Mr. Mayur Salunke h/f. Mr. V. D. Salunke
Advocate for Respondent No.4 : Mr. V. B. Patil
Advocate for Respondent No.1 and 11 : Mr. V. H. Dighe
AGP for Respondent/State : Mr. P. D. Patil

CORAM

: KISHORE C. SANT, J.

DATE

: 07th MARCH 2025

PER COURT :-

1. This Court had issued notice on 05.03.2025 and placed the petition on 06.03.2025 at 2.30 p.m. The last date for withdrawal of nomination forms and for preparing the final list of candidate is 07.03.2025. The petitioner has produced on record affidavit of service showing that the other respondents are served with the notice through whatsapp. The petition is ready for hearing and thus, it is taken up for final disposal by consent of the parties who have appeared before the Court.

2. This petition is arises out of the election proceeding and challenging the order passed by the learned District Deputy Registrar Co-operative Societies, Dist. Jalgaon dated 03.03.2025 in appeal filed by the present petitioner. His appeal came to be rejected. The order passed by the Returning Officer rejecting nomination form of the petitioner by order dated 20.02.2025 was a subject matter of the appeal.

3. The petitioner is the person desirous of contesting the election to Respondent No.2. Respondent No.1 is the Returning Officer (for short

R.O.). Respondent No.2 is Jalgaon Jilha Krushi Audyogik Sarva Seva Sahakari Sanstha Ltd (hereinafter referred to as the Sanstha for the purpose of convenience). Respondent Nos. 3 to 9 are the persons whose nomination is accepted by the R.O. Respondent No.10 is the District Deputy Registrar (for short D.D.R.). Respondent No. 11 is the State Co-operative Election Authority, Maharashtra (hereinafter referred to as the Election Authority) who conducts the elections to the Co-operative Societies.

4. It is the case of the petitioner that he happens to be a member of Chandsar (Bk) Vividh Karyakari Seva Sahakari Society Ltd (for short “the said society”). This society is a member society of Respondent No.2- Sanstha. Elections are declared for the Sanstha. 7 members are to be elected from the constituency of member society. The voters list was prepared in December 2024. The society has sent the name of the petitioner as the representative to take part in the election on behalf of the society. The petitioner is thus, voter in the said election.

5. As per the Election Program, the nomination forms were to be filled in from 12.02.2025 till 18.02.2025. The nominations were to be scrutinized on 20.02.2025. The list of contesting candidate was to be published on 21.02.2025. Date for withdrawal is from 21.02.2025 to 07.03.2025. The election is to be held on 16.03.2025. The petitioner filled in his nomination form, however, on 20.02.2025 the R.O. rejected the nomination form stating that, the petitioner is not complying with by-laws No. 36 (A) (1) which requires that, the society should possess at least 5 shares, total of Rs. 5000/- and should have a transaction of at least Rs. 50,000/- in a financial year.

6. The petitioner had challenged this order by filing an appeal before the learned D.D.R. The learned D.D.R. also rejected the appeal by order dated 03.03.2025 holding that the petitioner could not show that, the society had transaction of Rs. 50,000/- in financial year from time to time. Thus, the petitioner has come to this Court.

7. Mr. Salunke, learned Advocate for the petitioner vehemently argued that the petitioner filled in nomination form. There was no objection raised by any other person filling up such nomination form. The R.O., *suo moto*,

found the defect in the nomination. The R.O. further, without calling upon and without giving any notice to the petitioner, passed the order. He invited attention to by-law Nos. 16, 14 and 36. He submits that the impugned order does not indicate as to exactly which of the criteria is not fulfilled by the petitioner. No reasons are assigned. Even, the Appellate Authority has not discussed the reasons sufficiently. He submits that, before the Appellate Authority he had submitted documents to show that the society is possessing 5 shares certificates total of Rs. 5,000/-. Even, a certificate was submitted showing that during the week of 25.01.2025 till 01.02.2025, the said society had purchased material of around 52,000/-. He submits that, this vital proof was not considered by the Appellate Authority. He further invited attention to Rule 25 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014(hereinafter referred to as the said Rules). In view of Sub-Rule 2 of the Rule 25, it was necessary for the R.O. to call the petitioner and to allow the petitioner to complete the form or to remove the defects in the form, no such exercise is done. He has also alleged malafides against the R.O. He submits that, there is nothing in the order passed by the R.O., that chance was given to the

petitioner to cure defect in the nomination form. Neither the petitioner nor the representative were present and therefore, defects could not be cured.

8. The learned Advocate Mr. Dighe appearing for the R.O. submits that, in view of Rule 25 of the said Rules, a candidate or a representative has to remain present at the time of scrutiny of the nomination papers. When the scrutiny was done, neither the petitioner nor his representative was present. The R.O. has taken decision on the basis of material before him. The management of the Sanstha had given names of the societies which were valid members and having transaction of more than Rs. 50,000/- in the financial year and possessing requisite number of share certificates. He submits that, the enquiry is summary enquiry, no detailed enquiry is contemplated. The other two nomination papers from different constituencies are accepted. He thus submits that, the allegation of malafides does not find any ground. It is the said society who can point out the factual aspects before this Court. However the said society is not a party. When scrutiny was done there was no document as produced before the Appellate Authority. Therefore, he rightly passed an order. Now, there

are total 8 nomination papers. The petitioner has alternative remedy to file election dispute.

9. Mr. Patil, learned Advocate vehemently argued for respondent No. 4. At the outset, he submits that, present petition is not maintainable. There is remedy available of filing election petition. There is nothing on record to show that the said society has authorised the petitioner to contest the election. Though, serious allegations are made against the R.O. and a political party, they are not made party. The petitioner had suppressed the material facts that his two nominations are accepted. His main submission is that, the financial transaction of the said society is show in the year 2025, whereas it should have been prior to the 31.03.2024. That is for the year 2023-24 which happens to be co-operative year. Under law, the audit report is to be submitted prior to 15th May of the next year. It is only source for the R.O. to see the transaction. There was no material when the decision was taken before the R.O. to show the transaction in the financial year 2023-24. He further submits that, now the election process is set into motion. No interference at this stage is permissible under law. He also submits that In view of Section 73 CA (1) (I), it is submitted that, the

petitioner had filed an application in his individual capacity. He has rightly produced the transaction for the financial year 2023-24. The petitioner thus, was aware for which financial year he has to give transaction. He relies upon the judgment in the case of *Sambha s/o Gangaram Pikale vs. State of Maharashtra and others* reported in *1996 (2) Bom.C.R. 700* and upon the judgment in the case of *Suresh Pannalal Sankhala vs. Returning Officer and others* in *Writ Petition No. 2688 of 2023*. He thus prays for rejection of the writ petition.

10. Considering all the above, this Court considered as to whether, the nomination form is rightly rejected by the R.O. and whether the order of the Appellate Court is correct. The nomination is rejected only on the ground of non compliance of by-laws No. 36. Chapter 8 at last provides for board of director. By-laws No. 36 provides that there shall board of director of 19 members including Ex-officio Executive Director. 7 directors are to be elected from the active member societies having at least 5 shares total of Rs. 5,000/- and have transaction of Rs. 50,000/- in a financial year. Therefore, this Court has to consider as to whether the petitioner has made

out a case that the orders passed by the R.O. and the Appellate Authority is illegal. In view of by-laws No. 36 two conditions where to be fulfilled :

(a) that the society posses 5 shares total of Rs. 5000/- and

(b) it had transaction of minimum of Rs. 50,000/- in the financial year

11. There is no dispute about holding of the shares and about transaction in the week from 25.01.2025 till 01.02.2025. The dispute is only about whether this transaction can be taken as a transaction in the financial year. Though, the grounds of maintainability of the petition in absence of making the society as party is raised, but is not seriously contested. This Court also finds merit in the same ground. So far as the maintainability is concerned, the election petition cannot be said to be an alternative remedy. Presently it is the case of rejection of nomination paper. This is different than the election petition. Here, the right of the petitioner to contest the election itself is taken away whereas, the election petition is to challenge the election of the persons elected which takes a long process. About maintainability, this Court holds that, the petition is very much maintainable.

12. From the order of the R.O., this court finds substance in the submission that, nothing is appearing in the order, that the R.O. had given any chance to the petitioner to cure the defect. There is also nothing in the order showing that, the petitioner or his representative was present and therefore no opportunity could be given. Looking at the certificate, much is argued by Mr. Patil that, by writing definition of Co-operative year that, the Co-operative year is the year that starts from 1st April of the earlier year to 31st March of the current year. In the present case, as per his submission, it could be 1st April 2023 till 31st March 2024 as the audit report is to be submitted on 15th May of the next financial year. This audit report is the basis for the R.O. to consider these aspects of transaction. This Court finds substance in the argument of Mr. Salunke that, in by-laws No. 36 used is as financial year and not co-operative year in absence of definition of financial year for the purpose of this act necessarily be that the financial year for the purpose of present election is the financial year starting from 1st April 2024 till 31st March 2025. This Court does not find that, submission of the petitioner needs to be upheld. This Court further is of the opinion that, when there is doubt, benefit should go to the person who wants to contest the election.

13. Coming to the other aspects of malafides, this Court find that there is no substance in the allegation of malafides as the same R.O. has accepted two other nomination forms of the petitioner from two different constituencies. Secondly, the R.O. is not made a party in individual capacity to this writ petition and even in the appeal.

14. So far as the Appellate Court's order is concerned, the only reason assigned by the Appellate Court is that the petitioner has failed to show that the financial transaction of Rs. 50,000/- were made with the society. This court finds that, it is not the requirement to show that there has to be transaction from time to time. What is expected is only transaction of Rs. 50,000/-. This Court also does not find force in two submission for all these reasons. This Court has no hesitation in holding that the nomination is rejected by the learned R.O. The Appellate Court also failed to appreciate that the nomination paper was validly filled up. It is assailed that the rejection of nomination paper is illegal.

15. Coming to the judgment cited by the petitioner in the case of ***Sambha Gangaram Pikale*** (supra), there is no dispute that the by-laws cannot over-ride the rules. By-laws is integral part of the rules. In the case of ***Suresh*** (supra), also there is no dispute about the proposal. In view of the facts discussed above, this Court finds that both the judgments are not applicable in the present case. Hence following order :

ORDER

- (i) The Writ petition stands allowed in terms of prayer clause “B”.
- (ii) The nomination paper of the petitioner is held to be valid.
- (iii) No order as to costs.

[KISHORE C. SANT, J.]