



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

Arbitration Appeal No. 53 Of 2024
With
Civil Application No. 13950 Of 2024

Raju @ Rajendra Manoharrao Patil
Age : 48 years, Occ: Agriculture,
R/o Halli Tq. Basavkalyan,
District Bidar [Karnataka State].

.. Appellant

Versus

1. Pandurang Yashwant Dhongade,
Age : 82 years, Occ: Agriculture,
R/o. Wagholi (Gaur),
Taluka – Kallam, Dist. Osmanabad.
2. Osmanabad Janta Sahakari Bank Ltd.
Through its Chief Executive Officer,
Having Office at – Solapur Road,
Osmanabad, Dist. Osmanabad.
3. The District Deputy Registrar,
Co-operative Societies,
At Osmanabad and Returning Officer,
Central Building, Osmanabad.
4. Shri Adv. Prasad Chandrakant Kadam
Sole Arbitrator
Osmanabad Janta Sahakari Bank Ltd.
R/o. Gokul Yashwant Society,
Behind Old Collector Office, Latur,
Dist. Latur.

.. Respondents

* Mr. S. S. Rathi, Advocate for the Appellant.

- * Senior Counsel Mr. V. D. Hon i/by Mr. A.B. Anjanwatikar, Advocate for the Respondent No.1.
- * Mr. A. N. Irpatgire, Advocate for Respondent No.2.
- * Mr. R. D. Raut, AGP for Respondents/State.
- * Mr. J. R. Patil, Advocate for Respondent No.4.

CORAM : ROHIT W. JOSHI, J.

Date on which the arguments were heard : 26th AUGUST 2025

Date on which the Judgment is pronounced : 3rd SEPTEMBER 2025

J U D G M E N T :

1. The present appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'A&C Act'), challenging judgment and order dated 22.10.2024 passed by the learned Principal District Judge, Latur in Arbitration Case No.23/2024. The dispute in the appeal pertains to election of member of Board of Directors of Osmanabad Janata Sahakari Bank Limited which is a multi state co-operative society registered under the Multi-State Co-operative Societies Act, 2002 (hereinafter referred to as 'MSCS Act'). The Appellant and Respondent No.1 had contested the election for the post of Director of the Respondent No.2 against seat reserved for candidates belonging to economically weaker section (EWS category). The Appellant was declared elected. The election

result was declared on 20.11.2021. The Respondent No.1 challenged the election of Appellant by raising a dispute as contemplated under Section 84 of the MSCS Act. The dispute was lodged before the Respondent No.4 (Arbitrator). The Respondent No.4 set aside the election of the Appellant vide judgment and award dated 01.01.2024. The Appellant filed a petition under Section 34 of the A&C Act, challenging the said arbitral award dated 01.01.2024 which came to be registered as Arbitration Petition No. 23/2024. The said petition came to be dismissed by the learned Principal District Judge, Latur vide judgment and order dated 22.10.2024. The said arbitral award dated 01.01.2024 whereby the election of the Appellant as Member of the Board of Directors of Respondent No.2 from constituency no.5 reserved for EWS category is set aside and the subsequent judgment and order dated 22.10.2024 whereby the said award is upheld.

2. The elections for the Board of Directors of the Respondent No.2/Society were held on 19.11.2021. The Appellant and Respondent No.1 contested the election for the post of Member in the Board of Directors from constituency no.5 which was reserved for EWS category. The results were declared on 20.11.2021. The Appellant was declared elected. As stated above, the Respondent No.1 challenged the said election by filing a dispute on 20.12.2021 before the Respondent No.4. The contention of the Respondent No.1 was that the Appellant was not eligible to contest the election from EWS category since he had not signed declaration in the nomination form, stating that

he belonged to the said category. The Appellant appeared before the Respondent No.4/Arbitrator and initially raised a preliminary objection vide Exhibit-19 questioning the authority of the Respondent No.4 to entertain the arbitration. The said objection was rejected by the Respondent No.4/Arbitrator vide order dated 25.07.2022. This order dated 25.07.2022 was assailed by the Appellant by filing a petition before this Court being Writ Petition No.10028/2022. The said petition was disposed of with liberty to the Appellant to challenge the appointment of Respondent No.4 as Arbitrator at the appropriate stage in appropriate proceeding.

3. The Appellant contested the matter on merits. He raised issue pertaining to limitation and appointment of Respondent No.4. Apart from these legal submissions, the matter was also contested on merits.

4. The contention of the Appellant is that the appointment of Arbitrator under the MSCS Act is required to be made by the Central Registrar. He contends that the appointment is made with respect to a particular dispute. It is contended that a dispute cannot be filed directly before any Arbitrator. According to the learned Advocate for the Appellant the dispute is required to be raised before the Central Registrar who then appoints an Arbitrator for adjudication of the dispute. In the present case, the Respondent No.1 filed the dispute directly before the Respondent No.4 on 22.12.2021. The Respondent No.2 moved a proposal to the Central Registrar on 29.03.2022 for appointment

of Respondent No.4 as Arbitrator for adjudication of 25 cases that were pending before him and for adjudication of 75 new cases. The dispute raised by the Respondent No.1 is included in the list of new cases referred in the proposal dated 29.03.2022. The Central Registrar granted approval to the said proposal on 12.04.2022. According to the learned Advocate for the Appellant the filing of the dispute itself is defective since it was filed on 22.12.2021 before Respondent No.4 who was not appointed as an Arbitrator to hear and decide the said dispute on that date.

5. Apart from this, another contention is raised that the election result was declared on 20.11.2021 and the dispute was filed on 22.12.2021 i.e. after the prescribed period of limitation of one month as per Section 85 (1)(c) of the MSCS Act.

6. As regards merits of the matter, the contention of the learned Advocate for the Appellant is that the Election Officer had verified the nomination form of the Appellant and had accepted the same as a valid nomination. He contends that once nomination form is accepted, election cannot be set aside on the ground in the alleged defect in the nomination form.

7. Per contra, the learned Senior Advocate for the Respondent No.1 contends that the dispute was properly filed before Respondent No.4 who was already appointed as an Arbitrator for adjudication of disputes and the Section 84 of the MSCS Act for adjudication of disputes relating to the Respondent No.2/Society.

The learned Senior Advocate further draws attention to the order-sheet maintained by the Respondent No.4/Arbitrator and points out that although filing of the dispute was accepted on 22.12.2021, the Respondent No.4 issued notice in the matter after 12.04.2022 which is the date on which approval to the appointment of Respondent No.4 was granted by the Central Registrar. As regards limitation, the learned Senior Advocate states that after the election results were declared on 20.11.2021, application for certified copies of the relevant documents was filed on 17.12.2021 and the said documents were received on 21.12.2021. The dispute was filed on the next date i.e. on 22.12.2021. The learned Senior Advocate contends that period from 17.12.2021 to 21.12.2021 consumed for obtaining certified copies needs to be excluded for the purpose of computation of limitation. Alternatively, he contends that the Arbitrator is empowered to condone the delay in view of Section 85 (3) of the MSCS Act and that the explanation offered by the Respondent No.1 for not filing the dispute before 20.12.2021 is accepted by the Respondent No.4/Arbitrator. As regards the merits, the learned Senior Advocate contends that the nomination form of the Appellant is an undisputed document, perusal whereof will demonstrate that the Appellant had not signed the declaration that he belongs to EWS category. It is contended that this declaration is the part of the nomination form itself. The learned Senior Advocate further contends that the portion in the nomination form regarding declaration of candidates belonging to EWS category is specifically scored out. The learned Senior Advocate further states that the Appellant

had not produced any document also before the Arbitrator to substantiate that he belonged to EWS category.

8. The appeal was ordered to be heard finally vide order dated 07.05.2025. However the appeal could not be heard finally on the said date. The matter was taken up for final hearing with consent of the parties.

9. Heard the rival submissions as aforesaid and perused the record of the case with the able assistance of the parties. Perusal of the nomination form of the Appellant will demonstrate that the Appellant had filled up the form for contesting election from EWS category. For persons contesting elections against seats falling under reserved category, there are declarations to be made which are appended to the nomination form. Perusal of the said declaration in the nomination form of the Appellant will demonstrate that the Appellant has not filled up the said declaration. The portion of the declaration is scored off by drawing to vertical lines. The declaration is admittedly not signed by the Appellant. However nomination is accepted as valid nomination by the Election Officer.

10. The learned Arbitrator and the learned Principal District Judge have held that it was necessary for the Appellant to fill up the declaration and sign the same in order to confirm that the Appellant is a person belonging to EWS category since he was contesting election for the said category. Both authorities have

also observed that apart from failure to sign the declaration, the Appellant did not produce any documentary evidence before them to establish that he belonged to EWS category. In that view of the matter, the learned Arbitrator has set aside the election of the Appellant and the said order is also upheld by the learned Principal District Judge while deciding the application under Section 34 of the A&C Act. No fault can be found with the finding that Appellant did not fill up the nomination form properly. It is apparent that furnishing declaration that the Appellant belonged to EWS category was necessary to enable him to contest election from the said category. Apart from the failure to sign the declaration in the prescribed form, the Appellant also failed to produce any documentary evidence to demonstrate that he belonged to EWS category. In that view of the matter, no fault can be found with respect to the arbitral award setting aside the election of the Appellant, as also with respect to the order passed by the learned Principal District Judge, dismissing petition filed by the Appellant challenging the arbitral award.

11. As regards the issue of limitation, Section 85 (1)(c) prescribes limitation of one year for reference of disputes relating to election to arbitration. In the present case, the election was declared on 20.11.2021 and as stated above, the dispute is filed on 22.12.2021 that is beyond the prescribed period of limitation.

12. As stated above, the contention of Respondent No.1 is that period of four days from 17.12.2021 to 21.12.2021 which was spent in obtaining certified copy of nomination form of Appellant

and other documents needs to be excluded. Perusal of the Act and the Rules does not indicate that filing of certified copy of nomination form or other documents is made mandatory for filing dispute pertaining to the election. The said period of five days therefore cannot be excluded for computation of limitation. However perusal of the award passed by the Arbitrator demonstrates that the learned Arbitrator has accepted this cause as a sufficient cause for accepting filing of limitation beyond the prescribed period of limitation of one month. It will be pertinent to mention that Section 85 (3) of the MSCS Act confers authority on the Arbitrator to admit disputes referred after the prescribed period of limitation if the Appellant furnishes satisfactory explanation for the delay. The learned Arbitrator has arrived at the satisfaction that the delay is properly explained. The discretion exercised by the Arbitrator need not be and cannot be interfered with having regard to the limited scope of interference under Sections 34 and 37 of the A&C Act. The explanation offered even otherwise appears to be plausible that for raising a dispute arising due to improper nomination form it was appropriate to file nomination form of the Appellant and therefore application for certified copy of the same, was made by the Respondent No.1. The contention with respect to the limitation is therefore, liable to be rejected.

13. The other objection raised by the Appellant is pertaining to filing of the dispute before the Respondent No.4. The contention as pointed out above is that the dispute was filed directly before the Respondent No.4/Arbitrator on 22.12.2021, although his

appointment for adjudication of the dispute is made on 12.04.2022. The learned Advocate contends that the Respondent No.4/Arbitrator had no jurisdiction to accept filing of the dispute directly before him. He contends that unless a person is appointed as an Arbitrator by the Central Registrar for adjudication of a particular dispute, he has no authority to accept filing of the dispute.

14. The learned Senior Advocate for the Respondent No.1 states that the Respondent No.4 was associated as Arbitrator appointed under Section 84 of the MSCS Act for the Respondent No.2/Society since the year 2019. He contends that in that view of the matter, the Respondent No.1 filed the dispute before Respondent No.4. Mr. Hon submits that although filing of dispute was accepted, notice in the matter was issued only after 12.04.2022 that is the date on which Respondent No.4 was appointed as Arbitrator for deciding the present election dispute.

15. Power to appoint Arbitrator is vested with the Central Registrar under Section 84 (4) of the MSCS Act. Section 84 (1) provides that dispute in relation to a society registered under the MSCS Act shall be referred to arbitration for adjudication. Perusal of Section 84(4) will demonstrate that it provides that when a dispute has been referred to arbitration under subsection (1) the same shall be settled or decided by the Arbitrator to be appointed by the Central Registrar. Perusal of Section 84(4), therefore, indicates that the appointment of the Arbitrator by

Central Registrar is required to be made after a dispute is referred to arbitrator. The learned Advocates representing rival parties submit that there is no provision either under the Act or the Rules, which specifically provides filing of the dispute before any particular person or authority. The contention of the learned Advocate for the Appellant is that having regard to scheme of the Act, the dispute must be filed before the Central Registrar and thereafter the Central Registrar is required to appoint Arbitrator for adjudication of the same. However the learned Senior Advocate contends that since there is no specific provision regarding filing of arbitration before a particular person or authority, no fault can be found with the act of the Respondent No.1 in presenting the arbitration to the Respondent No.4. He reiterates the submission that Respondent No.4 has entertained the arbitration by issuing notice in the matter only after order of appointment came to be passed on 12.04.2022. There is no dispute about the fact that the Respondent No.4 is appointed as Arbitrator by the Central Registrar for adjudication of the dispute raised by the Respondent No.1 with respect to election of the Appellant. It is undisputed that the Central Registrar has appointed the Respondent No.4 as an Arbitrator. Likewise it is also matter of record that the Respondent No.4 was adjudicating disputes in relation to the Respondent No.2/Society as an Arbitrator since the year 2019. In that view of the matter in the considered opinion of this Court, the objection raised by the Appellant is technical in nature. It must be stated that the objection raised by the Appellant is taken care of by the fact, that although the Respondent No.4 accepted filing of the dispute

on 22.12.2022, the dispute is actually entertained subsequent to order dated 12.04.2022 appointing Respondent No.4 as Arbitrator. It is a matter of record that the Arbitrator has issued notice in the matter after 12.04.2022.

16. Section 84 (5) of the MSCS Act provides that arbitration under the provisions of the said Act, shall be governed by the provisions of the A&C Act. The arbitral award passed under the A&C Act can be challenged in filing the petition under Section 34 of the said Act. The MSCS Act also does not provide for any separate appeal or other remedy to challenge the arbitral award. The only remedy to a person aggrieved by an arbitral award is to file objection under Section 34 of the A&C Act. The grounds for interference under Section 34 of the A&C Act, are very limited. An arbitral award can be set aside only if one of the contingencies enumerated under Section 34 (2) is /are satisfied. The Appellant has contended that the arbitral award is not in accordance with law and therefore is in conflict with public policy of India. The contention of the Appellant is liable to be rejected. The term 'public policy of India' is in view of Explanation 1 to Section 34 (2). It states that an award can be said to be in conflict with public policy of India only if the making of award is induced by fraud or corruption or in violation of Section 75 or 81 or in contravention with fundamental policy of Indian law or in conflict with basic notions of morality or justice. The contention of the learned Advocate for the Appellant is that the award is in conflict with public policy of India. The said contention cannot be accepted. Only because the award may not be strictly in

accordance with law will not mean that it is not in accordance with public policy of India. In the present case, two principal objections are raised, first with respect to limitation and second with respect to direct filing of dispute before Respondent No.4/Arbitrator before he was so appointed. As regards the aspect of limitation, there is a power to condone the delay. The delay is only of two days. It is explained by stating that time spent in obtaining certified copies must be excluded. The learned Arbitrator has accepted the explanation. Therefore on this count, the award cannot be said to be in conflict with public policy of India.

17. As regards filing of the dispute before the Respondent No.4, it is undisputed that the Respondent No.4 was subsequently appointed as an Arbitrator and that he has started the proceedings after his appointment as such. Therefore even on this count, the award cannot be said to be in conflict with public policy of India, assuming that the dispute was wrongly directly filed before the Respondent No.4. It may be reiterated that Respondent No.4 was already associated with Respondent No.2/Society as an Arbitrator. In peculiar facts, mistake, if any, in filing dispute before Respondent No.4 will not mean that the award is in conflict with public policy of India.

18. As regards merits, the contention raised by the Appellant is that once the nomination is accepted, defect in nomination form cannot be a ground to set aside the election. The learned Arbitrator/Respondent No.4 and the learned Principal District

Judge have not accepted the said contention. Both authorities have held that the portion in the nomination form with respect to declaration of candidate belonging to EWS category, is specifically scored out by the Appellant. The Appellant has not signed the declaration. Despite this, his nomination was erroneously accepted for candidate belonging to EWS category. The authorities have also held that the Appellant had failed to bring any material on record to establish that he belonged to EWS category during the course of hearing before that. In that view of the matter, even on merits this Court does not find that any error is committed by the Respondent No.4/Arbitrator and the learned Principal District Judge in upsetting the election of the Appellant. It must be stated that if a person who does not belong to a particular category contests election from that category and is declared elected, it will be a necessary obligation by the competent authority dealing with election disputes to set aside election of such candidate. In that view of the matter, even on merits, no fault can be found with the impugned award and order passed by the learned Arbitrator/Respondent No.4 and learned Principal District Judge. It may be stated that the Appellant has filed an additional affidavit in the present appeal alongwith which EWS certificate for the relevant period is to be used. However in a proceeding under Section 34 or an appeal arising under Section 37 of the A&C Act, such material cannot be looked into. The said document which is produced before this Court for the first time, is liable to be discarded.

19. In view of the reasons recorded above and the opinion of this Court, no case for interference is made out. The Arbitration Appeal is dismissed with no order as to cost.

20. Civil Application is disposed of.

**ROHIT W. JOSHI
JUDGE**

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