

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5847 OF 2025

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Abhaysinha Sopanrao Shendge ... Petitioner
V/s.
The State of Maharashtra & Ors. ... Respondents

Shailendra Kanetkar for the petitioner.

Mr. Sharad T. Bhosale a/w Dilip Bodake for respondent
Nos.2 & 3.

Mr. Sarang S. Aradhey a/w Shantanu Gurav Gauri
Velankar for respondent No.16.

CORAM : AMIT BORKAR, J.

DATED : MAY 9, 2025

P.C.:

1. The matter was not listed in the cause list. However, upon oral mention made by the learned Advocate for the petitioner, the matter is taken on board for consideration.

2. By this writ petition filed under Article 226 of the Constitution of India, the petitioner has challenged the legality and propriety of the order passed by the Returning Officer, whereby the nomination form submitted by the petitioner for contesting the election of the Managing Committee of the Cooperative Society has been rejected. The ground for rejection is that the petitioner is allegedly a defaulter under the meaning of Section 73CA(1)(c)(ii) of the Maharashtra Cooperative Societies Act, 1960, on account of

non-payment of locker charges to the society.

3. Learned Advocate appearing on behalf of the petitioner has submitted that the disqualification under Section 73CA(1)(c)(ii) cannot be attracted in the petitioner's case, as the mandatory notice contemplated under the said provision, calling upon the petitioner to clear the outstanding dues within the prescribed time, was never served upon him. It is therefore contended that the Returning Officer has acted without jurisdiction, and the impugned order is liable to be quashed on this ground alone.

4. On perusal of the pleadings and material placed on record, it is evident that the core issue involved, i.e., whether the statutory notice was in fact served upon the petitioner, is a disputed question of fact. Such factual controversies cannot be conveniently or effectively adjudicated in the writ jurisdiction under Article 226, which is primarily concerned with legality of actions and not with appreciation of disputed facts requiring oral or documentary evidence.

5. In view of this legal position, this Court is not inclined to entertain the writ petition. However, the remedy of election petition under Section 91 of the Maharashtra Cooperative Societies Act, 1960 remains available to the petitioner. In such proceedings, the petitioner would be entitled to raise all contentions including the issue of non-service of notice, and the Election Tribunal shall decide the same on its own merits, in accordance with law.

6. In view of the above, the writ petition is disposed of by granting liberty to the petitioner to challenge the election result by

filing an election petition under Section 91 of the said Act. All contentions raised in the present petition are kept expressly open to be raised in such proceedings.

7. Writ petition accordingly stands disposed of. No order as to costs.

(AMIT BORKAR, J.)