



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

WRIT PETITION NO.1935/2025

Nitin Vijayrao Bawane .Vs. Assistant Registrar, Cooperative Societies, Korpana & Ors.

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

Court's or Judge's orders

Mr. G. G. Mishra, Advocate for petitioner.
Mr. T. S. Kene, Advocate for respondent No.3.

CORAM : ANIL L. PANSARE, J.
DATE : APRIL 8, 2025

On 07.04.2025, following order was passed.

"Heard.

2] Respondent no.3 suffered disqualification as Member of respondent no.4 - Society in terms of order dated 1/8/2024 passed by respondent no.1 under Section 73CA(1)(4) read with Section 78A(1)(b) of the Maharashtra Co-operative Societies Act, 1960 (for short "the said Act"). The order is said to have attained finality.

3] Section 73CA(A1)(3) of the said Act provides as under :

"73CA. Disqualification of committee and its members.

(A1) (1) and (2)

(3) A member of a committee who has ceased to be a member thereof, on account of having incurred disqualification under sub section (A1) and clauses (i) to (ix) of sub-section (1) shall not be eligible to be re-elected, re-co-opted or re-nominated as a member of the committee till the expiry of the period of next term of five years of the committee from the date on which he has so ceased to be a member of the committee."

Thus, a Member of a Committee, who has ceased to be a Member on account of having incurred disqualification under sub-section (A1) and Clauses (i) to (ix) of sub-section (1) shall not be eligible to be re-elected as a Member of the Committee till the expiry of the period of next term of five years of the Committee from the date on which he has so ceased to be a Member of the Committee.

4] In that sense, the disqualification incurred on 1/8/2024 shall continue to operate for the next term of five years for which the present elections are being held. The Returning Officer, vide order dated 21/3/2025, rejected the nomination form of respondent no.3 on the aforesaid ground.

5] Respondent no.3 preferred appeal against the said order before respondent no.1, who has set aside the order on the count that though respondent no.3 suffered disqualification, there is no order preventing him from contention election.

6] The argument is that this order runs contrary to Section 73CA(A1)(3) of the said Act. In addition, the petitioner's Counsel submits that the appellate powers under Section 152A of the said Act are to be exercised by the Registrar. The powers can be exercised by Assistant Registrar under general or special order passed by the State Government conferring the powers of Registrar upon the Assistant Registrar. The order impugned, according to him, does not disclose that the powers were conferred on respondent no.1.

7] As such, the election programme is declared. Today is the date for withdrawal of nomination and tomorrow is the date for publication of final list of candidates. However, the learned Counsel for the petitioner has relied upon the judgment passed by a Coordinate Bench of this Court in the case of Vivek Sudhakar Wadhai Vs. Assistant Registrar of Cooperative Societies and others [Writ Petition No. 5757/2022 decided on 20/10/2022], wherein following findings are relevant :

"14. The judgment of the Hon'ble Full Bench, in Karmaveer Tulshiram Authade Vs. State Election Commission reported in 2021(2) Mh.L.J. 349 is in the context of panchayat elections, which attract, the provisions of Article 243-O(b) of the Constitution of India in which there is a constitutional mandate not to interfere, as against which, in the present case, a specific provision exists under Section 152-A of the Maharashtra Co-operative Societies Act, an appeal which appellate decision, can always be considered in the writ jurisdiction in a case such as the present one.

15. In view of the aforesaid discussion, since the impugned order dated 20/07/2022 (page 29) is based upon an incorrect factual and legal premise, the same cannot be sustained and is hereby quashed and set aside. The petitions is allowed. No costs."

8] Issue notice to the respondents returnable tomorrow, i.e., on 8/4/2025.

9] The learned A.G.P waives notice for respondent nos. 1 and 2.

10] Hamdast granted. In addition to usual mode, the petitioner shall serve respondent nos. 3 and 4 through all permissible modes, including service by e-mail, and as a special case, the petitioner may serve the said respondents through WhatsApp.

11] Respondent no.2 may also communicate this order to respondent nos. 3 and 4.

12] In the meantime, there shall be stay to order dated 2/4/2025 passed by respondent no.1 in Appeal No. 1/2025.

13] All parties to act on authenticated/uploaded copy of this order."

2. As could be seen, the Court was made to believe that the order of disqualification of respondent No.3 has attained finality.

3. Counsel for the respondent submits that this statement is incorrect and false inasmuch as respondent No.3 has preferred revision under Section 154 of the Act of 1960. He submits that the revision came to be filed on 07.01.2025. When inquired as to whether notices were issued, counsel for the respondent No.3 submits that notices are not yet received. When inquired whether stay to the order of disqualification of respondent No.3 is granted, he answered in the negative.

4. Thus, it is evident that respondent No.3 suffered disqualification under Section 73CA and the said order has been not stayed till today by Hon'ble Minister. Despite such status, respondent No.3 has filed declaration in terms of Rule 20 (2) of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014, stating

therein that he has not incurred any disqualification under Section 73CA of the Act of 1960.

5. To my mind, in absence of stay to the order of disqualification under Section 73CA, Rule 3 of the Rules of 2014, would obligate him to disclose that he has been disqualified in terms of said provisions. Having not done so, respondent No.3 will carry a blame of submitting false declaration.

6. When inquired, counsel for the petitioner submits that order of disqualification was passed because he sold his land and became landless. Counsel for the respondent No. 3 submits that prior to submitting nomination, he has purchased land. He further submits that the petition itself is not maintainable because the petitioner has withdrawn his candidature and, therefore, the objection raised by him itself is untenable. He has invited my attention to Rule 25 of the Rules of 2014. Sub Section (1) thereof reads thus:

“25. Scrutiny of nomination papers.—

(1) On the date fixed, for the scrutiny of nomination papers under rule 18, the candidates, one proposer of each candidate duly authorized in writing by each candidate, may attend at the time and place appointed in this behalf, and the Returning Officer shall give or cause to give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered as required by rule 20. No other person shall be allowed to attend the scrutiny of nomination.”

7. Counsel for respondent No.3 submits that the candidate, his one proposer duly authorised in writing may attend for examining nomination papers of candidates. He submits that candidate or his predecessor alone can examine the nomination paper and file/raise objections. In the present case, since the petitioner has withdrawn his candidature he would not be entitled to raise objection and, therefore, he cannot pursue the cause.

8. As against, counsel for the petitioner submits that stage of scrutiny comes prior to withdrawal of nomination. He submits that

when nominations were presented for examination, the petitioner was a contesting candidate and, therefore, had every right to raise objections and accordingly, same has been raised. Later the petitioner has withdrawn his candidature, which will have no bearing.

9. I find substance in the submissions made by the counsel for petitioner. What has been argued by respondent No.3's counsel is misconceived. Subsequent withdrawal of candidature can never be taken aid of to argue that at the time of scrutiny of nominations, the candidate, who has withdrawn his candidature subsequently, was not a candidate at all. For the purpose of scrutiny, those who had submitted nomination forms, would fall in the category of candidates. There is no dispute that the petitioner had submitted nomination form and was present for scrutiny. He validly raised objection that the respondent No.3 suffered disqualification as noted in order dated 07.04.2025.

10. Thus, the First Appellate Authority has committed serious error of law in setting aside the order passed by respondent No.2– Returning Officer. The order is, thus, unsustainable.

11. That being so, the petitioner has made out a case. The writ petition is accordingly allowed. Impugned order dated 02.04.2025 passed in Appeal No.1/2025 by respondent No.1 – Assistant Registrar, Cooperative Societies, Korpana is quashed and set aside.

Order dated 21.03.2025 passed by respondent No.2 – Returning Officer is restored.

The writ petition is disposed of in the above terms. No order as to costs.

(Anil L. Pansare, J.)