



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

WRIT PETITION NO.906/2025

Shir Premkumar Ramdasji Dahiwale .Vs. Assistant Registrar, Cooperative Societies,
Sakoli and Others.

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

Court's or Judge's orders

Mr. P. S Tidke, Advocate for petitioner.
Mr. S. B. Bissa, A.G.P. for respondent No.1.

CORAM : ANIL L. PANSARE, J.

DATE : FEBRUARY 20, 2025

On 18.02.2025, following order was passed.

"Heard.

2. *Petitioner is aggrieved by order dated 06.02.2025 passed by respondent No.1-Assistant Registrar, Cooperative Societies, Tahsil Sakoli, District Bhandara, thereby accepting the nomination forms submitted by respondent Nos.4 to 10.*

3. *The matter pertains to election of Managing Committee of respondent No.3 namely, Lokmanya Credit Cooperative Society Ltd. The nomination forms were to be submitted between 20.01.2025 and 24.01.2025. One of the conditions for submitting the nomination form was to submit/annex certificate of fixed deposits for Rs.25,000/- for General Category and Rs.2500/- for Reserved Category. The record indicates that on 24.01.2025, the aforesaid respondents had not deposited the amount of Rs.25,000/- as required. The petitioner raised objection to the nomination, which was upheld by respondent No.2-Election Officer vide order dated 28.01.2025. The nominations were accordingly rejected.*

4. *Respondent Nos.4 to 10 approached appellate authority under Section 152-A of the Maharashtra Cooperative Societies Act, 1960 but not within three days as stipulated. Despite such status, respondent No.1 entertained the appeal. Surprisingly, respondent No.1, in the impugned order, noted that these respondents have deposited the amount on 30.01.2025, meaning thereby that on 24.01.2025,*

they had not deposited the requisite amounts and their nomination could not have been accepted but has allowed the appeal on the said ground.

5. *Thus, the challenge is two folds. One is that the appeal has been entertained beyond the limitation without condoning the delay and secondly that the admitted facts have been ignored condoning incurable defects.*

6. *Learned A.G.P submits that the election is at the fag end. The final list of candidates contesting the elections has been published. The voting date is 22.02.2025. In the circumstances, he submits that in terms of the settled position of law, no interference is called for at this stage.*

7. *As against, counsel for the petitioner has referred to the recent judgment passed by the Supreme Court in the case of Union Territory of Ladakh and Ors. Vs. Jammu and Kashmir National Conference and another; [2023 (12) Scale 389]. On the point of settled position of law, the Court observed thus:*

“37. We would indicate that the restraint, self-imposed, by the Courts as a general principle, laid out in some detail in some of the decisions supra, in election matters to the extent that once a notification is issued and the election process starts, the Constitutional Courts, under normal circumstances are loath to interfere, is not a contentious issue. But where issues crop up, indicating unjust executive action or an attempt to disturb a level-playing field between candidates and/or political parties with no justifiable or intelligible basis, the Constitutional Courts are required, nay they are duty-bound, to step in. The reason that the Courts have usually maintained a hands-off approach is with the sole salutary objective of ensuring that the elections, which are a manifestation of the will of the people, are taken to their logical conclusion, without delay or dilution thereof. In the context of providing appropriate succour to the aggrieved litigant at the appropriate time, the learned Single Judge acted rightly. In all fairness, we must note that the learned ASG, during the course of arguments, did not contest the power per se of the High Court to issue the directions it did, except that the same amounted to denying the Appellants their discretion. As stated hereinbefore, we are satisfied that in view of the 1968 Order, the Appellants’ discretion was not unbridled, and rather, it was guided by the 1968 Order.”

8. *Thus, the Supreme Court reiterated the importance of self imposed restraint by the Constitutional Courts in the matters of elections, particularly when it has reached the last phase. However, in a case where the action of the executive is apparently unjust, the Constitutional Courts are expected to step in to resolve the controversy which, to my mind, will save the future litigation, which is bound to follow, if an unjust act of the executives is allowed to be continued.*

9. *In the present case and as noted above, not only are there two fold lapses pointed out by the petitioner's counsel, there is one more reason to step in the matter, which is that the petitioner was not even made party to the appeal.*

10. *The facts, as disclosed from record show that on 24.01.2025, respondent Nos.4 to 10 have submitted nomination forms without valid receipt of fixed deposit of Rs.25,000/-. Respondent No.2 on 28.01.2025, rejected the nomination forms on the objection raised by the petitioner. The appeal ought to have been filed within three working days viz. on or before 31.01.2025. The appeal, however, has been filed on 03.02.2025 as disclosed by respondent No.1 in his notice dated 03.02.2025 (Annexure 6). Thus, the appeal has been entertained belatedly without condoning delay. The petitioner has been not made party to the appeal. Further, the order impugned itself indicates that the amount of fixed deposit for Rs.25,000/- is deposited on 30.01.2025, meaning thereby that on 24.01.2025, the respondents had not invested the amount as required under Condition No.11 of the Election Programme.*

11. *Issue notice before admission to the respondents, returnable on 20.02.2025.*

12. *Learned A.G.P waives service of notice for respondent No.1.*

In addition to usual mode of service, the petitioner shall serve respondents through all permissible modes including service by speed post and e-mail. In addition, respondent No.1 shall intimate to all other respondents about the order passed today, which shall be deemed as service of notice of the petition to these respondents."

2. In response to the directions issued by this Court, learned A.G.P. submits that respondent No.1 has intimated to all the other respondents about the order passed by this Court. The counsel for the petitioner submits that he has also served notice upon the respondents. Despite such status, only respondent No.3-Society through President namely, Mr. Umesh Bhaurao Powankar and respondent No.4 are present. Respondent No.4 who is also the President of respondent No.3, submits that respondent No.8 is also present but is standing outside the Court.

3. Learned A.G.P. has tendered across the bar, reply of respondent No.1. Taken on record.

4. During the course of hearing, receipt of amount deposited by respondent Nos.4 to 10 were shown across the bar. It indicates that one Mr. Shende has signed the receipt in the capacity as Manager of respondent No.3 – Society. Mr. Shende is present in the Court. He submits that he is not Manager but is working as Peon in the society. When inquired as to why did he sign as Manager, he submits that he did so under the pressure of respondent No.4. He further submits that he did not receive any amount but has issued receipt at the instance of respondent No.4. This grievance was made by him before respondent No.2 on 28.01.2025, which is the date of hearing on objections raised by the petitioner. Thereafter, he has lodged complaint dated 29.01.2025 with respondent No.2 as well.

5. Respondent No.4 has denied the aforesaid allegation. He states that receipts have been issued by Mr. Shende of his own. He further states that respondent Nos.5 to 10 have deposited the amount with him. When inquired as to why was the amount deposited with him, respondent No.4 submits that respondent Nos. 5 to 10 were having some work and, therefore, they have deposited the amount

with him. He then submits that the amount was deposited by them at his shop.

6. Thus, it appears that respondent No.4 accepted the amount allegedly deposited by respondent Nos.5 to 10 when he (respondent No.4) was sitting in his shop. In other words, society/bank transaction is/was being operated from the shop of respondent No.4. At this stage, he submits that since none was present in the society/bank, respondent Nos.5 to 10 came to him and deposited the amount with them.

7. When inquired as to what is the strength of the staff, respondent No.4 submits that Mr. Shende is the only person working in the society/bank. Thus, it appears that entire society/bank is operated through a Peon. Respondent No.4 then submits that the Manager namely Ms Karishma Dahiware is absent without any application/permission. When inquired as to since when the Manager is absent, respondent No.4 states that she is absent for last many days. When inquired as to why action is not taken, respondent No.4 submits that since the Manager is daughter of Director namely Mr. Premdas Dahiware (petitioner herein), no action has been taken.

8. When inquired as to why was Clerk and Cashier not appointed, respondent No.4 submits that the bank has limited transaction/investments and, therefore, he did not think it necessary to appoint Cashier and Clerk. He submits that the bank is functional only with the help of the Peon. He then submits that all the transactions including collection of cash, its disbursement/payment are done by Mr. Shende.

9. Thus, it is evident that respondent No.3-Society is being operated with the help of a Peon, which obviously is not permissible. That apart, the theory put forth by respondent No.4 that Mr. Shende was absent when respondent Nos.5 to 10 came to deposit the amount

in the society/bank is apparently false inasmuch as the receipts issued by Mr.Shende indicate that on three dates i.e. on 18th, 19th and 20th January, 2025, the respondents including respondent No.4 have deposited the amount with Mr. Shende. When inquired as to whether Mr. Shende was absent on these three dates, he submits that he must be absent, therefore, respondent Nos.5 to 10 had been to him. Thus, respondent No.4 is not sure of absence of Mr. Shende. When inquired as to why was amount not deposited in the bank on 20.01.2025, respondent No. 4 has no answer except to state that he has deposited the amount on 30.01.2025.

10. At this stage, respondent No.4. Submits that he kept the amount with him to deal with the contingency to pay the amount if someone comes for withdrawal of the amount. He then stated that during those 10 days, nobody came to the society/bank for withdrawal and, therefore, the amount was lying with him.

11. As against, Mr. Shende states that multiple transactions of withdrawal occurred in those 10 days. When inquired as to how much is the balance to the credit of the society/bank, Mr.Shende submits that as on date the balance is Rs.3,000/- approximately.

12. The above picture depicts a sorry state of affairs of running a society/bank. It is operated through a Peon. The Manager is absent but the Managing Body is not willing to take any action against her. The receipts of receiving amounts are given without actual deposits. Respondent No.4 – President has kept with him, the alleged amount for 10 days and pressurised Mr. Shende to issue receipts.

13. Be that as it may, it is evident that the amount, if any, deposited by the respondent Nos. 5 to 10 was lying with respondent No.4 till 30.01.2025. Respondent No.4, thereafter, deposited the

entire sum, which includes the amount deposited by respondent Nos. 5 to 10 as also respondent No.4's share on 30.01.2025.

14. Thus on the date of submission of nomination forms viz. on 24.01.2025, respondent Nos.4 to 10 were not having the valid receipts of fixed deposits. It will be worth mentioning here that Mr. Shende has maintained his stand that he was forced to issue the receipts. He further submits that blank certificates of fixed deposits were also obtained by respondent No.4 under coercion. He then submits that on 24.01.2025, he has cancelled the counterfoil of those certificates because the amount was not deposited in the bank.

15. Despite such facts, which includes the fact that the amount was deposited on 30.01.2025, respondent No.1 has set aside the well reasoned order of respondent No.2, who has noted in the order that respondent Nos.4 to 10 had admitted before her of not depositing the amount in the society/bank, till 24.01.2025. The impugned order, therefore, appears to be apparently perverse. Nonetheless, the election has reached a final stage. In the circumstances, following arrangement will serve the purpose.

16. The election will be held as scheduled. The voters will be given two choices under the head of preference No.1 and preference No.2 for submitting their votes. Accordingly, two ballot papers shall be prepared, first as "Preference No.1" and second as "Preference No.2". This arrangement will ensure that if respondent Nos.4 to 10 are ultimately held to be not entitled for contesting the election, the votes given under other preference to other candidates will be taken as valid vote in their favour.

Respondent Nos. 1 and 2 shall ensure strict compliance of above and shall keep two boxes for voters, one is for preference No.1 and another is for preference No.2.

The vote boxes will be accordingly kept intact until the decision of the petition. Till then result of the election will not be declared.

Further, respondent No.1 shall take appropriate action against the officials concerned for the manner in which the society is functioning but only after taking legal opinion.

17. List in the week commencing from 17.03.2025.

18. All the concerned shall act on the authenticated copy of this order.

(Anil L. Pansare, J.)

Kahale