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

WRIT PETITION NO. 3772 OF 2025

Prakash s/o Marotrao Lonare … PETITIONER
Versus
Government of Maharashtra & Ors. … RESPONDENTS

AND
WRIT PETITION NO. 3771 OF 2025

Sharad Punaji Karluke … PETITIONER
Versus
Government of Maharashtra & Ors. … RESPONDENTS

AND
WRIT PETITION NO. 3812 OF 2025

Narayan Marotrao Todase … PETITIONER
Versus
Government of Maharashtra & Ors. … RESPONDENTS

AND
WRIT PETITION NO. 3813 OF 2025

Sevinand Narayan Mohankar … PETITIONER
Versus
Government of Maharashtra & Ors. … RESPONDENTS

AND
WRIT PETITION NO. 3814 OF 2025

Arjun Shankarrao Nemade … PETITIONER
Versus
Government of Maharashtra & Ors. … RESPONDENTS

AND
WRIT PETITION NO. 3818 OF 2025

Krushna Bondhyallu Manchalwar … PETITIONER
Versus
Government of Maharashtra & Ors. … RESPONDENTS

Mr. S. K. Tambde, Advocate for Petitioners in all Writ Petitions.
Mr. N. S. Autkar, AGP for Respondent/State in Writ Petition Nos. 3771/2025 and 3814/2025.
Ms. K. H. Bhondge, AGP for Respondent/State in Writ Petition No. 3772/2025.
Mr. S. C. Joshi, AGP for Respondent/State in Writ Petition No. 3812/2025.
Mr. A. V. Palshikar, AGP for Respondent/State in Writ Petition No. 3813/2025.
Ms. M. S. Naik, AGP for Respondent/State in Writ Petition No. 3818/2025.
Mr. A. R. Patil, Advocate for Respondent No.3 in Writ Petition No. 3772/2025.

CORAM : PRAFULLA S. KHUBALKAR
DATE : JULY 24, 2025.

COMMON ORDER

. These are the Petitions, challenging rejection of nomination form of the Petitioners for the elections to Vidarbha Vibhagiya Macchimar Sahakari Sangh Maryadit, Nagpur, which is scheduled to be held in accordance with the election programme declared on 20/6/2025, according to which, the voting is scheduled for 26/7/2025.

2. Heard Mr. S. K. Tambde, learned Counsel for the Petitioner, the learned AGP for Respondent Nos.1 and 2 and Mr. A. R. Patil, learned Counsel for Respondent No.3/Caveator in Writ Petition No. 3772/2025.

3. Since the issue involved in all Writ Petitions is similar, Writ Petitions are decided by common order and the facts of Writ Petition No. 3772/2025 are taken into consideration for the sake of convenience.

4. The Petitioner's primary contention is that rejection of nomination form of the Petitioner is wrong and erroneous, since the Respondents have wrongly relied upon the provisions of Section 73CA of the Maharashtra Co-operative Societies Act, 1960 *(for short, 'the Act of 1960')*. It is specifically submitted that the Authorities have wrongly concluded that the Petitioner is a Member who had represented a Society, whose managing committee was superseded. He states that the Petitioner was never a Member of a Society, whose managing committee was superseded. Learned Counsel for the Petitioner also submits that the invocation of provisions of Section 73CA of the Act of 1960 is itself erroneous. He submits that even the Returning Officer has committed same error of wrong application of Section 73CA to the facts of the case. He also submits that the Respondents could have, at the most, taken recourse to provisions of Section 78A(1)(b), however, the impugned order based on the provisions of Section 73CA is unsustainable.

5. In support of his contentions, learned Counsel for the Petitioner relies upon the following Judgments :

(i) Bhujangrao Narayanrao Deshmukh V/s State of Maharashtra and Others, 1995(1) Mh.L.J. 437.

(ii) Nandkumar Anandrao Walanju V/s The State of Maharashtra & Ors. 2016(3) ALL MR 204.

(iii) Sunil Pundlikrao Bhise V/s Assistant Registrar, Co-operative Societies, Arvi and Others, 2010(2) Mh.L.J. 377.

(iv) Gurunath Madhavrao Jamalpure V/s Zilla Parishad Teachers Co-operative Credit Society Ltd. Udgir and Others, 1996(1) Mh.L.J. 409.

On the basis of these Judgments, he submits that the position of law is settled that only when a member of the committee is removed under Section 78(1)(b), the disqualification could apply. He submits that in the instant case the Petitioner, as an individual Member, was never removed and even if a Committee is superseded, his nomination cannot be rejected on that count.

6. As regards the issue of not raising challenge to the order passed by the Returning Officer, he submits that challenge to the order passed by the Returning Officer is implicit in challenge to the order passed by the Appellate Authority and in support of his submission, he relies on the Judgment of Co-ordinate Bench of this Court in *Writ Petition No. 11400/2022 (Narayan Bhau Salve (deceased) through legal heirs & Ors. V/s Khandu Baburao Salve*

(deceased) through legal heirs & Ors.).

7. *Per contra*, the learned AGP and learned Counsel for the Respondent No.3 opposes the contentions made by the learned Counsel for Petitioner and raises preliminary objection to maintainability of the Petition in view of alternate remedy under Section 91 of the Act of 1960.

8. The learned Counsel for Respondent No.3 also opposes the Petition on the ground that the Petitioner has not challenged the order passed by the Returning Officer and in absence of challenge to the said order, the Petition cannot be entertained. Apart from this, he also submits that the election programme is already in process and voting is scheduled for day after tomorrow i.e. on 26/7/2025, and therefore, at this stage, no interference is warranted. He invites attention of the Court to the order dated 2/2/2023 passed by the Deputy Registrar, Co-operative Societies under Section 78 (1) of the Act of 1960, by which, the managing committee of Vidarbha Vibhagiya Matsyavyavasaya Sahakari Sangh Maryadit, was superseded and Administrator was directed to be appointed. It is pointed out that the Petitioners herein had represented the Society during the process of hearing, and therefore, it is submitted that the Petitioners had also suffered the disqualification. As regards contentions about erroneous applicability of provisions under Section 73CA, he

submits that while raising the objection, the provisions of Section 78(1) were invoked, and therefore, mere mentioning of incorrect provision in the impugned order does not invalidate the order.

9. The learned Counsel for Respondent No.3 relies upon the Judgment of Hon'ble Supreme Court in the matter of ***N. P. Ponnuswami V/s The Returning Officer, Namakhal Constituency, Namakkal, Salem District and others, AIR 1952 Supreme Court 64*** and submits that in view of settled position of law rejection or acceptance of nomination paper cannot be called in question under writ jurisdiction, when alternate remedy by way of Election Petition is available.

10. It has to be noted that the Petitioner's grievance is against rejection of his nomination form. His contention is that at no point of time there was any supersession of any managing committee, of which, he was a Member, and as such, there is no disqualification on that count. It is also to be noted that the Returning Officer as well as the Appellate Authority has rejected the nomination form while entertaining the objection under Section 78A (1) of the Act of 1960, although while passing the order preference is made to the provisions of Section 73CA of the Act. As such, the crucial question will be whether the Petitioner stood disqualified in view of the earlier order of

supersession, particularly, order dated 2/2/2023 passed by the District Deputy Registrar.

11. It has to be noted that the Petitioner's nomination form was rejected by the Returning Officer by order dated 30/6/2025 and the same is not challenged. The Petitioner has only challenged the order dated 14/7/2025 passed by the Appellate Authority, however, the issue as to whether the Petitioner has incurred any disqualification on the basis of alleged supersession will have to be independently decided on scrutiny of all the relevant documents.

12. It has to be noted that the election programme is in process and the voting is scheduled for 26/7/2025. The position of law is settled that Courts should restrain from interfering with the election process. The controversy about supersession of the managing committee, of which, the Petitioner was alleged to be a Member, and the effect of said supersession on the disqualification of the Petitioner, can be looked into in an appropriate proceedings, by way of Election Petition, if at all the Petitioner desires to challenge the same. The position of law as laid down in the Judgments relied upon by the Petitioner can be considered in the said proceedings.

13. Having regard to the overall factual and legal aspects, the issue about applicability of Section 73CA of the Act of 1960 and rejection of nomination of the Petitioner can be, thus, raised by the Petitioner in appropriate proceedings.

14. In view of the fact that the voting is scheduled for day after tomorrow i.e. 26/7/2025 and considering the position of law that interference in midst of election process be avoided and further in view of alternate remedy, the Writ Petitions deserve to be dismissed and the same are dismissed accordingly. No order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

vijaya

Signed by: Mrs. V.G. Yadav
Designation: PS To Honourable Judge
Date: 25/07/2025 19:12:50