

**(2003) 01 BOM CK 0026**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 37 of 2003**

Vijaysingh Krishnarao Parbat

APPELLANT

Vs

Returning Officer, Janata Sahakari Bank Ltd., Janata Sahakari Bank Ltd. and District Deputy Registrar of Co-operatives

RESPONDENT

**Date of Decision :** 09-01-2003

**Acts Referred:**

**Citation :** (2003) 2 ALLMR 523 : (2003) 5 BomCR 330 : (2003) 2 MhLj 485

**Hon'ble Judges :** R.M.S. Khandeparkar, J

**Bench :** Single Bench

**Advocate :** S.S. Patwardhan, for the Appellant; A.S. Oka and R.S. Datar for Respondent No. 1, A.A. Kumbhakoni and C.R. Sonawane, Asst. Government Pleader, for the Respondent

**Final Decision :** Dismissed

## Judgement

R.M.S. Khandeparkar, J.—Heard the learned Advocates for the parties. Rule. By consent, the rule is made returnable forthwith.

2. The petitioner challenges the orders passed by the Returning Officer and the Appellate Authority rejected his nomination paper for election to the managing committing of the Janata Sahakari Bank Limited, Kurduwadi, hereinafter referred to as "the said Society". The challenge is on the ground that inspite of the default having been cured prior to the disposal of the appeal u/s 152 of the Maharashtra Co-operative Societies Act, 1960, hereinafter referred to as "the said Act", the petitioner is being illegally denied the right to contest the said election in violation of the provisions of Section 73FF(1) of the said Act.

3. The programme for election of the managing committee of the said Society was declared in November, 2002. Accordingly the last date for filing of the nomination paper was 16-12-2002. The scrutiny was to take place on 17-12-2002. The last date of withdrawal of the nomination paper was 4-1-2003. The election is to be held on 19-1-2003. The petitioner had filed his nomination

paper on 16-12-2002. Pursuant to the objection raised by the management of the said Society in relation to the eligibility of the petitioner to contest the election on the ground that he was a defaulter in relation to the cash credit facility available by him from the Pandharpur Merchant Co-operative Bank Limited, Pandharpur (hereinafter called as "the said Bank"), the Returning Officer rejected the nomination paper of the petitioner. In the appeal carried from the said order of the Returning Officer, the Appellate Authority while dealing with the same u/s 152A of the said Act confirmed the decision of the Returning Officer. It is also a matter of record that the petitioner had paid a sum of Rs. 50,000/- to the said Bank on 24-12-2002, prior to the decision of the Appellate Authority. Hence, the present petition.

4. While challenging the impugned orders, placing reliance in the decision of the learned single Judge of this Court in the matter of Ramesh Rajaram Patil Vs. The Additional Commissioner, Aurangabad Division, Aurangabad and Others, as well as the decision of the Division Bench of this Court in Pandurang Hindurao Patil v. State of Maharashtra and Ors., reported in 1983 M.L.J. 1801 and of the Apex Court in Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others, , the learned Advocate for the petitioner submitted that the impugned orders are contrary to the provisions of Section 73FF(1) of the said Act in as much as the settled law is that the person seeking to contest the election for the managing committee of a co-operative society is entitled to cure the default, if any, prior to the final decision on the scrutiny of the nomination papers, and as the petitioner had cleared all the dues of the said Bank by 24-12-2002 and was not in default within the meaning of the said expression under the said provisions of law, both the authorities have acted illegally in rejecting the nomination paper of the petitioner. On the other hand, it was sought to be contended on behalf of the respondents that clearance of the default has to be prior to the last date of filing of the nomination papers and, admittedly, in the case in hand, the petitioner having continued to be a defaulter till 24-12-2002, the day much after the last date for filing of the nomination papers, no fault can be found with the impugned orders. In that regard, reliance is sought to be placed in the decision of the learned single Judge of this Court in Bhaulal Rajdhar Sonavane v. Returning Officer and Ors., reported in 1994 M.L.J. 1439. It was also sought to be contended that the election process having been already commenced, there is no case for interference at this stage and alternative efficacious remedy is available to the petitioner in the form of election petition by taking resort to Section 91 of the said Act. Attention was drawn in that regard to the unreported decision of the learned single Judge of this Court in Writ Petition No. 6418 of 1996, delivered on 10-1-1997. It was further contended that the powers of the Appellate Authority u/s 152A of the said Act are limited to ascertain whether the decision delivered by the Returning Officer was borne out from the records available before the Returning Officer on the date of his decision and it does not enable the parties to lead further evidence as such at the appellate stage or to consider the

proceedings under the said provisions as continuation of the earlier proceedings as if in the form of a lis between the parties. It was then submitted that the whole proceedings u/s 152A as well as the present proceedings are bad in law for non-joinder of necessary parties i.e., all other candidates to the election proceedings, and in that regard attention is drawn to the unreported decision of the Division Bench of this Court in Letters Patent Appeal No. 143 of 1996 Kishore Rajaram Sawant v. The Returning Officer and Ors. delivered on 26-7-1996.

5. The first point which arises for consideration is as to whether a person who continues to be a defaulter even after the last date of filing of the nomination paper can be said to be eligible to contest the election to the managing committee of a co-operative society. Section 73FF of the said Act clearly provides that a person for being a member of the committee shall not be a defaulter of any society and in case he has already been a member of a society, he shall cease to be a member of the committee upon incurring the disqualification under the provisions of Sub-section (1) of Section 73FF. Undoubtedly, Section 73FF on the face of it nowhere specifically provides that a person who continues to be a defaulter even after the last date for filing of the nomination paper would be entitled to contest the proceedings on having cured such default either prior or after the date of scrutiny but prior to the date of the election. So also, there is no provision u/s 73FF enabling the person who had filed the nomination paper for election to the managing committee of the co-operative society to cure the default after the scrutiny but prior to the date of the order u/s 152A of the said Act. The decision of the learned single Judge in Ramesh Rajaram Patil's case (supra) nowhere lays down the law to the effect that the person can cure the default at any time after the last date of filing of the nomination papers, but on the contrary, it clearly speaks of the necessity of curing the default prior to the last date of filing of the nomination paper. Clear ruling in that regard in the said decision is to be found in para 16 thereof which reads thus:-

"...Neither the Rules nor the Act prohibit eligible members for filing their nomination papers, after such a programme is declared, a day or two before the last date of filing nomination papers. A person who had filed nomination papers a couple of days before the last date fixed for filing nomination papers may be a defaulter within the meaning of the explanation to Section 73-FF(1)(i) and if the date relevant for determining whether he was disqualified or not, is to be the last date of the filing of the nominations, it is possible to conceive that the person who had filed the nomination papers a couple of days before the last date of the filing of the nomination, would not be considered to be a defaulter, if he were to pay to the concerned society all his dues before the last date of accepting the nomination papers. Again, it is not that a person who could be considered defaulter on the date on which the election programme was declared, could not cure the defect by paying to the concerned society the entire amount due from him and wipe out the stigma on being a defaulter before the last date of filing of the nomination papers....."

6. Undoubtedly, in para 17 of the said decision, referring to the facts of that case, observation was made that "If this is so, there is no reason to suppose that the Returning Officer has to consider the question of disqualification with reference to the date on which the nomination paper was filed and not with reference to the date on which the decision of the scrutiny was to be recorded." The said observation was squarely in relation to the facts of the case where the default was cured prior to the date of the scrutiny. The facts of the said case clearly disclosed that the candidate therein had cured all the defaults prior to the date of the scrutiny. Besides, the default therein was not conscious or intentional but on account of unawareness of the party and the moment it was made known to the party, it was cleared by him. Considering that an innocent person, having brought to his notice the mistake committed by him, had immediately taken steps to mend his mistake, in the peculiar set of facts, the said observation was made by the learned single Judge in the said decision. However, that is not the ratio of the decision as is apparent from the discussion regarding the scheme of the Act and the necessity for curing the default prior to the last date of filing of the nomination papers revealed from the contents of para 16 of the decision.

7. Even on facts, as rightly submitted by the learned Advocate for the respondents, undisputedly, the records apparently disclose that the petitioner continued to be in arrears to the said Bank even on the date of the order passed by the Appellate Authority u/s 152A of the said Act. It is the case of the petitioner himself that he had been enjoying the cash credit facility from the said Bank and the period for which the said facility was granted had expired much prior to the date of filing of the nomination paper. It is also his case that he had already applied for renewal of the said facility to the said Bank. However, it is not the case of the petitioner that the said renewal had been granted by the said Bank. The records also disclose that on account of the cash credit facility enjoyed by the petitioner from the said Bank, an amount of Rs. 5,46,453/- was due and payable on the last date of filing of the nomination papers and only a sum of Rs. 50,000/- out of the said amount was paid by the petitioner on 24-12-2002. Apparently, therefore, the petitioner was a defaulter within the meaning of the said expression u/s 73FF(1) on the last date of filing of nomination and confirmed to be so even on the date of the order by the Appellate Authority u/s 152A of the said Act.

8. The necessity of clearing the default prior to the last date of filing of the nomination paper was well clarified by the learned single Judge of this Court in Bhaulal Rajdhar Sonavane's case (supra). In fact, there is a reference to the Division Bench decision in that regard. No doubt, the Division Bench decision was on the basis of the concession of the counsel before the Court. However, to conclude otherwise than that the person seeking to contest the election for the managing committee of a co-operative society should not be a defaulter on the last date for filing of the nomination, would virtually render the provisions of Section 73FF to be nugatory and meaningless. Undoubtedly, default is not permitted to be a permanent stigma but at the same time the provisions

apparently disclose that in order to enable a member of the society to be eligible for and to contest the election for the managing committee of the society, he cannot continue to be a defaulter even on the last day on which a person can decide to proceed to contest the election. The contention that the last date for decision to contest would be on the last date of withdrawal of the nomination, and that therefore, relevant date for the purpose of decision as to whether the candidate is a defaulter or not has to be the date of withdrawal of the nomination, is unacceptable. The last date of withdrawal is not provided with the intention to have a decision about the eligibility of the person to contest the election but only to decide whether he still persists with his decision to contest or not. But the candidate must be eligible to contest the election and such eligibility has to be satisfied on or before the last date of filing of the nomination paper and the decision as regards the candidate's disinterest to contest the election after the scrutiny is of no consequence for the purpose of deciding the eligibility criteria for contesting the election. Being so, a person to be eligible to contest the election has to disclose himself to be not a defaulter at least on or before the last date of filing of the nomination paper. Clearing of default subsequent to the said date would not enure to the benefit of such candidate and would not entitle him to contest the election.

9. As rightly submitted by the learned Advocates for the respondents, the Division Bench has already held that in order to enable the party to challenge the decision of the Returning Officer as regards the rejection of the nomination paper, all other candidates are necessary parties to the proceedings and, admittedly, in the case in hand neither at the stage of the appeal u/s 152A of the said Act nor in this proceedings all the candidates have been joined as the parties. On this count also, the petition is liable to be rejected.

10. Besides, the petitioner is not without alternative efficacious remedy. In terms of Section 91 of the said Act, he is entitled to raise election dispute on conclusion of the election process. The election process having already been commenced, there cannot be any justification for interference in the said process at this stage. In fact, the decision of the Apex Court in Shri Sant Sadguru Janardan Swami's case (supra) is very clear in that regard. The observation of the Division Bench in Pandurang Hindurao Patil's case (supra) can be of no help to the petitioner as it is not the case of the respondents that merely because election dispute can be raised u/s 91 of the said Act that the petition should be dismissed. In the case in hand, even on merits, as already seen above, there is absolutely no case made out for interference at this stage.

11. It was also sought to be contended that the candidature of the petitioner was not objected to by any other contesting candidates but by the Society. Undoubtedly, there are no provisions either in the said Act or the Rules framed thereunder prohibiting the society or its management from bringing to the notice of the scrutiny officer the issue of non-eligibility of a contesting candidate at the time of scrutiny. Considering that Section 73FF clearly disqualifies a defaulter

from contesting the proceedings, it is the duty of the scrutiny officer to ascertain from the records available before him or made available before him either by the contesting candidates or by the society itself as to whether the contesting candidates are qualified to contest the election in accordance with the provisions of law or not. Viewed from this angle, no default can be found with the order passed by the scrutiny officer based on the objection raised on behalf of the said Society in relation to the eligibility of the petitioner to contest the election.

12. The learned Advocates for the respondents have also raised the point regarding the scope of the enquiry u/s 152A of the said Act. However, in the facts and circumstances of the case, it is not necessary to decide the said issue in this petition.

13. For the reasons stated above, the petition fails and is hereby dismissed with no order as to costs.