

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
APPEAL (LODGING) NO.387 OF 2014  
IN  
ARBITRATION PETITION (LODGING) NO.2075 OF 2013**

Shri Anzar Husain  
S/o.Late Shri Ishtiaq Husain  
Versus  
Shri Aziz ahmed Jalil Ahmed and others.

... Appellant  
... Respondents

Mr. Shailesh Naidu with Ms. Pooja Thorat i/by Mr. B.V.Phadnis  
for the appellant.  
Mr. Jitendra M. Patil for respondent No.1.  
Mr. Prakash Mahadik for respondent No.2.

**CORAM : MOHIT S. SHAH, C.J. &  
M.S. SONAK, J.**

**DATED : 24 September , 2014**

**P.C.**

This appeal is directed against the judgment and order dated 9 May 2014 of the learned Single Judge by which the learned Single Judge has upset the findings and the Award dated 4 September 2013 passed by the Sole Arbitrator appointed by the Central Registrar of Co-operative Societies, New Delhi. In so far as the present appellant (respondent No.6 in the Arbitration Petition under section 34 of the Arbitration and Conciliation Act, 1996) is concerned, the election of the appellant (respondent No.6 before the learned Single Judge) as Director of the Bombay Mercantile Bank Limited, a Multi-State

Co-operative Society, registered under the Multi-State Co-operative Societies Act, 2002 was challenged on two grounds; (1) that the appellant was holding an office of profit under the Co-operative Society as the appellant was engaged as an advocate of the Co-operative society and therefore, the appellant was disqualified by contesting elections for the office of Director, (2) that the appellant had absented himself from three consecutive annual general meetings and such absence were not condoned by the General Body.

2. The Arbitrator gave the following reasons in para 7.6 of the Award dated 4 September 2013 for not accepting the challenge to the appellant's election as Director of the Co-operative society:-

“Shri Anzar Hussain

7.6.1 The first allegation against the respondent Shri Anzar Hussain, mentioned during the course of oral arguments, by the learned counsel for the Petitioners was that Shri Anzar Hussain's nomination should have been rejected as he was drawing remuneration from the Bank as a legal advisor at the time of filing his nomination. This was in violation of Section 43(1)(i) of the MSCS Act, 2002 and Bye-Law 51(6) of the Bank. The learned counsel was informed that as this allegation was not part of the main pleadings, he could not raise a fresh issue at this stage and in any case no documentary evidence has been provided in support of the contention.

In a written reply alongwith affidavit submitted during the course of his arguments the respondent submitted that he had resigned from the panel of advocates on 17.01.2012 (copy filed at the state of arguments) (Exhibit R 18) of the bank prior to filing of his nomination. Therefore he was fully eligible to contest the elections and did not incur this dis-qualification. There being no documents or evidence from the side of petitioners to contest the arguments and documents submitted on this point by the petitioners the contention of the petitioners on this point is un-acceptable even as this matter should not have been raised at this stage.

7.6.2 The second contention of the petitioners in the main pleadings about Shri Anzar Hussain being ineligible relates to his non attending three consecutive AGM's as required under Section 43(1)(n) of the MSCS Act, 2002 and Bye-Law 51(4) of the Bank. In his reply to the petition Shri Anzar Hussain has denied that he did not attend the three AGMs. On the above point of his ineligibility, Shri Anzar Hussain in a written reply alongwith affidavit (Exhibit R 17) submitted during the course of his arguments, submitted that he had sought the membership of the bank on 21.11.2009 vide folio No.BMDD 16131 & share certificate No.21342 (certified copy of bank's confirmation enclosed with his application). According to the respondent since he became a member of the bank after the first AGM held on 3.10.2009, he could not have possibly attended three consecutive meetings. In light of this he was fully eligible to contest the elections and did not incur this dis-qualification also.

The disqualification of not attending 3 AGM as per MSCS Act would normally pre-suppose a 3 years stint for a member to be eligible to become a director. However, byelaw 62 of BMCB Byelaws prescribes only one year membership for eligibility as a director. This is apparently conflicting. The benefit of doubt can be given in this case. There being no documents or evidence from the side of petitioners to contest the arguments and documents submitted on this point by the petitioners the contention of the petitioners on this point is also rejected.”

3. As regards the first allegation that the appellant was holding the office of profit, the Arbitrator noted that the appellant had resigned from the panel of advocates on 17 January 2012 prior to filing of his nomination. There is no dispute about the fact that the appellant had filed his nomination on 23 January 2012. Hence, the appellant did not incur any disqualification on the ground of holding the office of profit on the date of filing the nomination.

4. As regards the second allegation, the Arbitrator noted that the appellant became a member of the cooperative society after the first AGM was held on 3 October 2009. In fact, the appellant had sought membership of the cooperative society on 21 November 2009 and, therefore, there was no question of the appellant attending Annual General Meeting of 3 October 2009. Since appellant becoming a member and the date of

filing nominations, only two AGMs were held on 22 September 2010 and 6 September 2011. The Arbitrator therefore, held that the appellant cannot be said to have absented himself from three consecutive meetings and, accordingly, the appellant did not incur disqualification on this ground.

5. The above award of the Arbitrator came to be challenged before the learned Single Judge by filing the arbitration petition under section 34 of the Act.

6. The learned Single Judge has given the following reasons for setting aside the award of the Arbitrator in so far as present appellant (respondent No.6 before the learned Single Judge) is concerned:-

“10. As far as the Respondent No.6 is concerned, he had admittedly not attended three consecutive annual general meetings dated 3<sup>rd</sup> October, 2009, 22<sup>nd</sup> September, 2010 and 6<sup>th</sup> September, 2011.

11. The Respondent No.6 is holding office of profit in the Bank as an Advocate of the Bank. Therefore, as per the provisions of the Bye-law and the provisions of the said Act, Respondent No.6 is not entitled to act as Director of the Bank. The learned Arbitrator has not taken into consideration this aspect and erroneously held the Respondent No.6 to be eligible to be appointed as a director.”

7. The learned counsel for the appellant has submitted that the learned Single Judge has not at all dealt with the reasoning of the Arbitrator as contained in para 7.6 of the Award. He submitted that having been an advocate of the cooperative society in the past, cannot be a ground of disqualification. Our attention is invited to the provisions of Section 43 of the Multi-State Cooperative Societies Act, 2002 in so far as the same are relevant for the purposes of present appeal. Section 43 of the said Act reads as under:-

“43. Disqualifications for being a member of Board.-

(1) No member of any multi-State co-operative society or nominee of a member, society or a national co-operative society shall be eligible for being chosen as, or for being, a member of the board of such multi-State co-operative society or a national co-operative society, or of any other co-operative society to which the multi-State co-operative society is affiliated, if such member-

- (a) has been adjudged by a competent court to be insolvent or of unsound mind;
- (b) **is concerned or participates in the profits of any contract with the society;**
- (c) has been convicted for an offence involving moral turpitude;
- (d) .....
- (e) has been a member of the society for less than twelve months immediately preceding the date of such election or appointment;

- (f) .....
- (g) .....
- (h) .....
- (i) is retained or employed as a legal practitioner on behalf of or against the multi-State co-operative society, or on behalf of or against any other multi-State co-operative society which is a member of the former society.**
- (j) .....
- (k) .....
- (l) .....
- (m) .....
- (n) absents himself from three consecutive general body meetings and such absence has not been condoned by the members in the general body.**

8. It is submitted that having been an advocate of the cooperative society in the past, is not treated as disqualification because both clauses (b) and (i) of Section 43 of Multi-state Co-operative Societies Act, 2002 require the disqualification on the date of filing nominations. The learned counsel has invited our attention to other clauses, namely clauses (a), (c) and (e) of Section 43 which are also concerned with disqualifications. All these clauses would indicate that the event, which disqualifies a member from contesting election, had occurred prior to the date of nomination and the consequences of such event continue on the date of filing nomination. For instance, if a member has been adjudged by a competent Court to be insolvent or of unsound mind, it would mean that insolvency or unsoundness

continues from the date of filing nomination. Similarly, if a person has been convicted of an offence involving moral turpitude, it means that the effect of conviction continues. However, if conviction is set aside by any appeal Court, obviously, the member would be eligible subject to disqualification of his membership on other grounds. Similarly, if a person was advocate of the Cooperative Society or was on the panel of advocates of the Cooperative Society but if he resigns before filing of nomination forms, he cannot be treated as having been retained or employed as a legal practitioner.

9. We find considerable substance in the above submission made on behalf of the appellant. The finding of the Arbitrator that the appellant had resigned as a legal practitioner of co-operative society on 17 January 2012 prior to filing of his nomination form on 23 January 2012 has not be disputed. The ground in the memo of the arbitration petition also does not indicate that the appellant had continued as a legal practitioner of the cooperative society beyond 17 January 2012. The finding in para 11 of the judgment of the learned Single Judge must, therefore, be held to be not borne out by the record of the case. It cannot be said that the learned Arbitrator committed any error in rejecting the challenge to the appellant's election as Director on the above ground.

10. As regards the second challenge that the appellant has absented himself from three consecutive Annual General



Meetings, the Arbitrator had given cogent reason for taking the view that after the appellant became a member of the cooperative society, only two AGMs were held. This finding of fact has also not been controverted. The learned Single Judge, however, proceeded on the basis that three AGMs were conducted, which the appellant could have attended but did not attend. Since only two AGMs of the cooperative society were held after the appellant became member of the cooperative society and before filing of the nomination, on this ground also, we are of the view that the learned Judge erred in holding that the appellant was disqualified to contest the election on the ground that he had not attended three Annual General Meetings.

11. In view of the above discussion, we allow this appeal and set aside the findings given by the learned Single Judge in paras 10 and 11 of the judgment dated 9 May 2014. Accordingly, Arbitration Petition (Lodging) No.2075 of 2013 under section 34 of the Act against the appellant is dismissed. In so far as the appellant (respondent No.6 before the learned Single Judge) is concerned, the Award of the learned Arbitrator dated 4 September 2013 is restored.

**CHIEF JUSTICE**

**M.S. SONAK, J.**