

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 2568/2023

Ganpat Ram S/o Dula Ram, Aged About 47 Years, Rulaniyon Ki Dhani, Village Jusari, Tehsil Makrana, District Nagour (Raj.).

-----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Secretariat, Department Of Cooperative Affairs, Jaipur, Rajasthan.
2. Registrar, Cooperative Societies, Nehru Sahkar Bhawan, Bhawani Singh Road, Jaipur, Raj.
3. Arbitrator Cum Deputy Registrar, Cooperative Societies, Nagaur, Raj.
4. Joosari Gram Seva Sahkari Samiti Ltd., Joosari, Tehsil Makrana, District Nagaur, Raj. Through Its Manager.
5. Amarchand Chotiya S/o Shिवbaksh, Joosari, Tehsil Makrana, District Nagaur (Raj.).
6. Poosaram S/o Danaram, Beniwalon Ki Dhani, Joosari, Tehsil Makrana, District Nagaur (Raj.).
7. Baluram S/o Kanaram, Beniwalon Ki Dhani, Joosari, Tehsil Makrana, District Nagaur (Raj.).

-----Respondents

For Petitioner(s)	:	Mr. B.S. Sandhu Mr. S.K. Shreemali
For Respondent(s)	:	Mr. Hari Prasad Mr. Rajendra Singh Mr. Samir Shrimali, Govt. Counsel

HON'BLE MR. JUSTICE MUNNURI LAXMAN

Order

17/07/2025

1. The present writ petition has been filed challenging the order dated 18.01.2023, whereby the Deputy Registrar has declared the petitioner ineligible on account of default in payment of dues to the society.

2. The case of the petitioner is that the petitioner obtained a loan from the society and he has paid the loan amount of Rs.28,593/- with interest on 08.09.2022. The society has not

declared him as a defaulter and as soon as the dues list was prepared by the society, he paid the dues amount. The present impugned proceedings have been taken up on the basis of a complaint made by one of the contestants in the election. On the basis of such complaint, the Registrar decided the reference of dispute without any evidence and without following the procedure contained under the Rajasthan Cooperative Societies Act, 2001 (hereinafter referred to as 'the Act of 2001') and the Rajasthan Cooperative Society Rules, 2003 (hereinafter referred to as 'the Rules of 2003').

3. The case of the respondents, including the private respondents, is that the petitioner filed his nomination on 06.09.2022 to contest elections to the post of Member of the Executive Committee of the Society and as per the provision of the Act of 2001, whereunder if there is continuous default of three months, the member incurs consequences of default. The petitioner failed to make payment of the loan amount for more than three months as on the date of filing of the application for nomination, and all dues were paid two days subsequent to filing of nomination. As such, the acceptance of nomination by the election officer is incorrect, and he ought to have disqualified the petitioner, and such action of the election officer has been assailed before the Registrar by way of a reference under Section 58 of the Act of 2001 and the Registrar decided the reference by affirming that the petitioner incurred ineligibility.

4. Learned counsel for the respondents further submit that against an order passed under Section 30 of the Act of 2001, a remedy of appeal lies before the Cooperative Tribunal and the

present writ petition is not maintainable. In this regard, it is relevant to refer to Section 58, 60 and 105 of the Act of 2001, which read as follows:

"58. Disputes which may be referred to arbitration

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(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society arises -

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past member or a person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society, or

(c) between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the society, or

(d) between the society and any other co-operative society, or

(e) between the society and the surety of a member, past member or a deceased member, or a person other than a member who has been granted a loan by the society or with whom the society has or had transaction under section 52, whether such a surety is or is not a member of a society, such dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute:

Provided that such disputes between the society and its employees, for which a remedy is available under the provisions of the service laws applicable on the employees, shall not be entertained under this section.

(2) For the purpose of sub-section (1), the following disputes shall also be deemed to be the disputes touching the constitution, management or the business of a co-operative society, namely:-

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or

legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor, where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of any officer of the society:

Provided that no dispute under this clause shall be entertained during the period commencing from the announcement of election programme and ending on the declaration of the results.

(3) If any question arises whether a dispute referred to the Registrar under this section is a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court."

"60. Reference of disputes to arbitration -

(1) The Registrar may, on receipt of the reference of a dispute under section 58,-

(a) decide the dispute himself, or

(b) transfer it for disposal to any person who has been invested by the Government with powers in that behalf, or

(c) refer it for disposal to an arbitrator having the eligibility, prescribed therefor.

(2) The Registrar may withdraw any reference transferred or referred for disposal under sub-section (1) and either decide it himself or transfer or refer it again for disposal to another person or arbitrator mentioned in clause (b) or (c) of that sub-section, if the person or arbitrator, to whom the dispute was first transferred or referred,-

(i) dies, resigns or is transferred; or

(ii) has become incapable of acting or against whom a complaint has been received regarding his misconduct or corruption; or

(iii) neglects or refuses to act.

(3) The Registrar or any other person to whom a dispute is referred for decision under this section may, pending the decision of the dispute, make such interlocutory

orders as he may deem necessary in the interests of justice.

"105. Constitution of and appeals to the Tribunal. -

(1) The Government shall constitute a Tribunal, called "Rajasthan State Cooperative Tribunal" to exercise the powers and carry out the functions conferred on the Tribunal by or under this Act.

(2) The Tribunal shall consist of a Chairman and two other members to be appointed by the State Government.

(3) The Chairman of the Tribunal shall be an officer of the Rajasthan Higher Judicial Service of the rank of District and Sessions Judge of selection grade.

(4) One member of the Tribunal shall be an Additional Registrar of the Rajasthan State Co-operative Service.

(5) Another member of the Tribunal shall be either a distinguished advocate who has atleast 15 years experience in the co- operative law or a co-operator who has atleast 20 years experience in the field of co-operation and is a law graduate and has hold an office in any of the State or National Level Co-operative societies for not less than two times.

(6) The Chairman and members of the Tribunal shall ordinarily, subject to the attainment of the age of superannuation, be appointed for a period of five years. The advocate member shall not continue to be the member of the Tribunal after attaining the age of sixty years.

(7) The other conditions of service and procedure for selection of the Chairman and Members of the Tribunal shall be such as may be prescribed by the State Government from time to time.

(8) Any vacancy other than a casual vacancy in the membership of the Tribunal shall be filled by the Government.

(9) Subject to the previous sanction of the Government, the Tribunal shall frame regulations consistent with the provisions of this Act and the rules made thereunder, for regulating its procedure and the disposal of its business. The regulations shall come into force on the date of their publication in the Official gazette.

(10) Any person aggrieved by -

(a) an order removing a member of the committee of a co- operative society under section 30 or an order debarring a member from election or

appointment to a Committee under [sub-section (12) of section 28], or
(b) any decision of the Registrar made under clause (a) or sub-section (1) of section 60, or
(c) any decision of the person invested by the Government with powers in that behalf under clause (b) of sub-section (1) of section 60, or
(d) any award of an Arbitrator under clause (c) of sub-section (1) of section 60, or
(e) any order made under [Section 101] with a view to prevent any delay or obstruction in the execution of any decision or award that may be made under section 60,
(f) any decision passed by the State Government or the Registrar, as the case may be, in an appeal made under section 104,
[(g) any decision passed by the Registrar under Section 125,] may within ninety days from the date of the decision, award or order, as the case may be, appeal to the Tribunal.

Explanation :- The Tribunal hearing an appeal under this Act shall exercise all the powers conferred upon an appellate court by section 97 and order XLI in the First Schedule to the Code of Civil Procedure, 1908 (Central Act 5 of 1908).

(11) Pending an appeal under sub-section (10), the Tribunal may make such interlocutory orders, as it may think fit in the interest of justice."

5. It is also relevant to refer to Rule 77 of the Rules of 2003, which reads as follows:

"77. Reference of dispute -

(1) A reference of a dispute under section 58 of the Act shall be made in writing to Registrar in Form "H". Wherever necessary the Registrar may require the party referring the dispute to him to produce a certified copy of the relevant records on which the dispute is based and such other statements or records as may be required by him, before proceeding with the consideration of such reference.

(2) Where on receipt of a reference under sub-rule (1), the Registrar, decides under clause (c) of sub-section (1) of section 60 of the Act to refer it for disposal by an arbitrator, the reference shall be made to the arbitrator appointed by the Registrar, who shall either be a serving

or a retired officer or employee of the Rajasthan State or Subordinate Co-operative Services or any other serving officer of the Rajasthan State Services or any other legal expert conversant with the working of the concerned co-operative society.”

6. As per Section 58 read with Rule 77, any party to a dispute can seek reference by filing a claim under Form H of the Rules of 2003, and when a reference is made to the Registrar, the Registrar himself can decide or can appoint any person or refer the dispute to an arbitrator. Such officer is required to pass orders by exercising powers under Section 60 of the Act of 2001.

7. As per Section 105 Sub-Section 10(b) of the Act of 2001, if the Registrar himself decides the reference under Section 60, the remedy of appeal against such order of the Registrar lies before the Cooperative Tribunal. Without availing such statutory remedy provided under the Act, the present writ petition has been filed before this Court.

8. The contention of learned counsel for the petitioner is that in deciding the reference, the Registrar has not followed the basic procedure contemplated under the Act and Rules, more particularly Rule 78 of the Rules of 2003, and without any evidence the proceedings were concluded.

9. The arguments of the learned counsel are touching the merits of the impugned order. Such arguments can also be advanced before the statutory forum specially created to adjudicate the validity of such orders.

10. In the view of the effective alternative remedy available to the petitioner under Section 105 of the Act of 2001, this Court is not inclined to go into such disputed question of facts. It is left open to the petitioner to canvas all arguments while challenging

the merits of the order before the Cooperative Tribunal. The period spent before this Court shall be excluded from entertaining the appeal, if any, is filed against the impugned order. If any interim application is filed with the appeal challenging this order before the tribunal, the tribunal shall dispose of such application within a period of one week.

11. With the aforesaid directions, the instant writ petition is disposed of.

12. All pending applications, if any, shall also stand disposed of.

(MUNNURI LAXMAN),J

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