

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9182 OF 2015

1) Balasaheb s/o Shrirang Dhodke
Age: 56 Yrs., occu. Agril.

2) Ashok s/o Shrirang Nande,
Age: 56 Yrs., occu. Agril.

Both r/o Bawchi, Tq. Kaij,
District Beed.

- PETITIONERS

VERSUS

1) The State Co-operative
Election Authority,
Maharashtra State, Pune.

2) The Election Officer of
V.K.S.S. Society, Bawchi,
Tq. Kaij, Dist. Beed.

3) The V.K.S.S. Society,
Bawchi, Tq. Kaij, Dist. Beed.
Through its Secretary.

- RESPONDENTS

Mr.VD Salunke, Advocate for Petitioner/s

Mr.SK Kadam, AGP for State.

Mr.RB Dhanore, Adv. For Resp.no.2;

Mr. DJ Choudhari, Adv. For Resp.no.3.

**CORAM : R.M.BORDE &
P.R.BORA,JJ.**

DATE : 22nd September,2015.

ORAL JUDGMENT (PER:- R.M.BORDE,J.)

1) Heard. Rule, with the consent of learned Counsel for the parties, the petition is taken up for final disposal at admission stage.

2) The petitioners are the members of Respondent No.3 – VKSS society, Bawchi, Tq. Kaij, District Beed. An election programme and programme for finalization of voters list was published in the month of August 2015. According to the petitioners, the programme in respect of finalization of voters list has not been published in local news paper. As such, there is violation of provision of Rule 75 of The Maharashtra Co-operative Societies (Election to Committees) Rules, 2014.

3) According to the respondents, the election programme including the programme for finalization of the voters list has been duly

published. In order to consider the contentions raised by the petitioners in the instant petition, we do not deem it appropriate to deal with the aforesaid challenge raised by the petitioners and keep option of petitioner to raise the issue at appropriate stage.

4) The principal grievance raised by the petitioners in the instant petition is in respect of non-consideration of the objections to the voters list tendered by the petitioners on 27th August, 2010. The petitioners contend that they have duly raised the objections to the enlistment of the names of the persons in the voters list, who are residents of different villages. According to the petitioners, it is not permissible to offer membership of the society in favour of such an individual, who is not a resident of village Bawchi, since the area of operation of the society, prescribed under the bye-laws, extends to village Bawchi.

. The other objection raised by the

petitioners is in respect of non-inclusion of 22 members in the voters list. The petitioners contend that the Returning Officer did not take decision on the objections raised by them and proceeded to finalize the voters list. The contention raised by the petitioners that no decision has been rendered in respect of the objections raised by the petitioners, has been controverted by the Assistant Co-operative Officer and Election Officer. According to the Returning Officer, the objections raised by the petitioners have been duly considered and decision has been taken, turning down the objections raised by the petitioners. The petitioners further contend that they have not been afforded an opportunity of hearing before the Returning Officer and decision has been taken in their absence. However, said contention has been controverted by the respondents. We do not propose to entertain the disputed questions of facts raised in the instant petition. The objection raised by the petitioners in respect of

non-inclusion of 22 members in the voters list, deserves consideration.

5) It is not a matter of dispute that such of those 22 members have participated in the earlier process of election. Their names have been deleted from the voters list on account of their failure to deposit the enhanced share value with the society. Section 26 of the Maharashtra Cooperative Societies Act, 1960, provides that a member shall be entitled to exercise such right, as provided under the Act, Rules and bye-laws provided that such right can be exercised until he has made such payment to the society in respect of membership, or acquired such interest in the society as may be prescribed and specified under the bye-laws of the society from time to time. Second proviso to Section 26(1) provides that in case of increase in minimum contribution of the member in share capital, to exercise right of membership, the society shall give due notice of demand to the members and give reasonable period to comply with. According to the

petitioners, the society has neither given any notice of demand to the petitioners, nor has specified the reasonable period for complying such demand.

6) The learned Counsel appearing for the society contends that common notice was displayed at the society's office and as such, such display/publication shall be deemed to be a notice to such of those members. We are afraid the alleged publication of notice at the society's office by the society can be considered to be due notice within contemplation of second proviso to Section 26(1) of the Act. The intention of the legislature, by providing for a notice of demand in respect of increase in the share capital, is in order to make the members of the society aware of such increase and to facilitate them to make necessary compliance. In the instant matter, neither a notice of demand has been published in newspaper nor any individual notice has been issued to the members.

According to us, a notice within contemplation of second proviso to Section 26(1) of the Act, shall be served on each of the members, in the manner provided under the bye-laws of the respective societies in relation to tender of notice of communication. Since there is violation of the mandate contained in second proviso to Section 26(1) of the Act, the action of the society, not to incorporate the names of those 22 members in the provisional voters list, is illegal. The Returning Officer ought to have accepted the objections raised by the petitioners in respect of exclusion of those 22 members in the final voters list. If the bye-laws of the society prescribe a particular mode and manner of service of notice, the same shall be adhered to. In the instant matter, there cannot be a dual opinion that there is violation of mandate of second proviso to Section 26(1) of the Act. As such, names of 22 members enlisted in the objections raised by the petitioners to the Returning Officer, shall be included in the final voters

list and such of those members shall be permitted to participate in the process of election.

7) Rule is made absolute to the extent specified above. There shall be no order as to costs.

sd/-
(P.R.BORA)
JUDGE

sd/-
(R.M.BORDE)
JUDGE

bdv/