

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

WRIT PETITION NO.11601 OF 2015

1. Balu s/o Sitaram Kale,
Age 39 years, Occ. Agriculture
R/o Palshi, Post Wasdi,
Tq. Kannad, District Aurangabad.
2. Bhausahab so Bhaurao Gadekar
Age 43 years, Occ. Service
R/o Avishkar Colony, N-6,
CIDCO, Aurangabad.
3. Pandit s/o Roopchand Imale
Age 44 years, Occ. Service,
R/o Radhaswami Colony,
Jatwada Road, Aurangabad ... PETITIONERS

VERSUS

1. The State of Maharashtra
through the Secretary for
Co-operation Department,
Mantralaya, Mumbai
2. The Secretary,
State Co-operative Election
Authority, Central Building,
Maharashtra State, Pune.
3. The District Co-operative Election
Officer, Aurangabad and the
District Deputy Registrar,
Co-operative Societies, Aurangabad.

4. Lokvikas Nagri Sahakari Bank Ltd.,
Plot No.10, Seven Hills,
Near Highway Bridge,
Jalna Road, Aurangabad,
District Aurangabad,
through its Managing Director.
5. Kisan Murlidhar Bhade
Age 55 years, Occ. Agriculture,
R/o Garware Colony,
Satara Parisar, Aurangabad,
District Aurangabad ... RESPONDENTS

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Shri V.D. Hon, Senior Counsel with
Shri A.V. Hon, Advocate for petitioners
Shri A.R. Borulkar, A.G.P. for State
Shri S.K. Kadam, Advocate for respondent No.2.
Shri D.J. choudhari, Advocate for respondent No.4.
Shri V.J. Dixit, Senior Counsel with
Shri K.J. Suryawanshi, Advocate for respondent No.5

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CORAM: R.M. BORDE &
A.I.S. CHEEMA, JJ.

DATED: 2nd December, 2015.

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

1. Heard. Rule. Rule made returnable forthwith.
With the consent of the learned counsel for the parties, the
petition is taken up for final disposal at admission stage.

2. The petitioners are the members of the Lok Vikas Nagri Sahakari Bank Ltd., Aurangabad. The elections for electing the managing committee of the Bank are due in the year 2016 and as such, the State Election Authority has taken steps for conducting the elections of the Society. The petitioners are mainly objecting to the prescription of cut off date in respect of enrollment of the members for purposes of their participation in the process of election. The petitioners contend that, the elections to the managing committee of the Society were previously held on 16.1.2011 for a term between 2011-2016 and the date of publication of the Notification under Section 73(3)(a) of the unamended Act by the Registrar is 31.1.2011. The petitioners contend that, the term of the managing committee of the Society commences from the aforesaid date i.e. 31.1.2011 and the five years tenure of managing committee prescribed under the Act comes to an end on 30.1.2016. In view of the provisions of Section 27(3)(A) of the Maharashtra Cooperative Societies Act, 1960, as amended w.e.f.

23.8.2000, an individual member of the Society shall not be eligible to cast vote or participate in the process of election of the Society for a period of two years from the date of his enrollment as a member of such Society. It is the contention of the petitioners that, taking into consideration the provisions of sub-section 3(A) of Section 27, the member enrolled two years prior to the expiry of the terms of the managing committee of the Society only shall be entitled to participate in the process of election. Logically, according to the petitioners, the cut-off date for enrollment of the individual member of the Society shall be two years preceding the date of expiry of the term of the managing committee of the Society and in the instant case, it shall be 30.1.2014.

3. An objection has been raised in that behalf by the petitioners to the Returning Officer, who has, on consideration of the contentions raised by the petitioners as well as the respondents, has prescribed 15th January 2014 as a cut-off date for enlistment of members in voting list.

4. It would be appropriate to refer to certain provisions of the Maharashtra Cooperative Societies Act as amended w.e.f. 14.2.2013 as well as the provisions of the Act prior to the aforesaid amendment. Section 27 of the Act of 1960 as amended in 2013 and more particularly sub-section 3(A) provides that an individual member of a society shall not be eligible for voting in the affairs of that society for a period of two years from the date of his enrollment as a member of such society.

5. Section 73-AAA of the amended Act relates to constitution of the Committee and sub-section (3) thereof provides that the term of the office of the elected members of the Committee and its office bearers shall be five years from the date of election and the term of office bearers shall be co-terminus with the term of the Committee.

6. Section 166 of the Maharashtra Co-operative Societies Act reads thus :

"166. Repeal, saving and construction :-

(1) The Bombay Co-operative Societies Act, 1925, in its application to the State of Maharashtra is hereby repealed.

Provided that, the repeal shall not affect the previous operation of the Act so repealed and anything done or action taken or deemed to have been done or taken (including any; appointment or delegation made, application or other document filed, certificate of registration granted, agreements executed, notification, order, direction or notice issued, regulation, form or by-law framed, rule made or deemed to be made or proceeding instituted before any Registrar, arbitrator, liquidator or tribunal or other officer, authority or person) by or under the provisions of that Act, shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act, and shall continue in force unless and until superseded by anything done or any action taken under the corresponding provisions of this Act, and shall continue in force unless and until superseded by anything done or any action taken under this Act.

(2) Accordingly, all societies registered or deemed to be registered under the Act repealed the registration of which is in force at the commencement of this Act, shall on such commencement be deemed to be registered under this Act; and all proceedings pending immediately before such commencement before any Registrar, arbitrator, liquidator or tribunal or other officer, authority or person under the provisions of the repealed Act shall stand transferred, where necessary, to the Registrar, arbitrator, liquidator or tribunal or other corresponding officer, authority or person under this Act, and if no such officer, authority or person exists or if there be a doubt as to the corresponding officer, authority or person, to

such officer, authority or person as the State Government may designate and shall be continued and disposed of before such officer, authority or person in accordance with the provisions of this Act.

(3) Any reference to the Act repealed or to any provisions thereof or to any officer, authority or person entrusted with any functions thereunder, in any law for the time being in force or in any instrument or document, shall be construed, where necessary, as a reference to this Act or its relevant provisions or the corresponding officer, authority or person functioning under this Act and the corresponding officer, authority or person as the case may be, shall have and exercise the functions under the repealed Act or under the instrument or document.

(4) Notwithstanding anything contained in this Act, as amended by the Maharashtra Co-operative Societies (Amendment Act, 2013, but subject to the provisions of sub-section (15) of Section 73CB, the committees of which the elections become due after the 31st March 2013, shall continue till the elections to such societies are held under the provisions of this Act as amended by the said Act. All the orders of the Administrator, Liquidator or the Registrar shall continue for the period mentioned in such order as if such orders are passed under this Act as amended by the said Act. All proceedings pending before the Registrar, person authorised by him, Liquidator or any other officer, or authority or court under the provisions of this Act shall stand transferred wherever necessary to the Registrar or any corresponding officer or, authority or court under the provisions of this Act as amended by the said Act and shall be continued or disposed of by such Registrar, officer, authority or court, in accordance with the provisions of this Act as amended by the said Act.

Provided that, any such committee of the Society shall continue till the newly elected committee assumes the office."

7. Mr. Dixit, learned Senior Counsel appearing for the respondent No.5, placing reliance on Section 73-AAA(3) contends that the term of the members of the Committee and its office bearers shall be five years from the date of election and that the elections for electing managing committee of the Society were in fact held during the preceding term on 16.1.2011 and as such, the Registrar was justified in prescribing the cut-off date as 15.1.2014 having due regard to the provisions of Section 73-AAA(3) of the Act (as amended in 2013) and in view of the fact that the provisions of the Old enactment cannot be enforced in view of the inconsistencies appearing in Section 73-AAA(3) of the New enactment.

8. The prescription of the cut-off date for purpose of enrollment of the names of the members in the electoral roll does have a nexus with the commencement of the term of the elected body of the Society and the expiry of the term.

It is not a matter of dispute that the provisions of the amended Act are enforced since 14.2.2013. Section 73(3) (a) of the Act of 1960, prior to its amendment, prescribes that, in a general election of members of the committee of a society, on the election of two third or more number of members, the returning officer or any other officer or authority conducting such election shall within seven days after the declaration of results of the election of such members, or where such election is held before the date of commencement of the Maharashtra Co-operative Societies (Second Amendment) Act, 1986, and such number of members have been elected but the committee has, for whatever reason, not been so far constituted, forward their names together with their permanent addresses to the Registrar, who shall, within fifteen days from the date of receipt thereof by him publish or cause to be published such names and addresses by affixing a notice on the Notice Board or at any prominent place in his office, and upon such publication, the committee of the society shall be deemed to be duly constituted.

9. In the instant matter, it has been brought to our notice that, the District Deputy Registrar, Co-operative Societies has published a notification under Section 73(3)(a) declaring the constitution of the Committee on 31.1.2011. The term of the committee, which is admittedly five years, commences from the date of publication of the notification under Section 73(3)(a) of the Act. There shall not be any controversy in respect of the tenure of the Board of Directors, which is prescribed as five years under the by-laws of the Society.

10. Learned Senior Counsel appearing for respondent No.5 vehemently contends that the term of office of the elected members of the Committee and its office bearers shall be five years from the date of election as per the amended provisions of the Act enforced from 14.2.2013 and as such, taking into consideration the date of election to be 16.1.2011, the term comes to an end on 15.1.2016 and that the returning officer was justified in prescribing the cut off

date as 15.1.2014. The provisions of Section 73-AAA are enforced from 14.2.2013. The amended provisions of sub-section 3 of Section 73-AAA shall have no effect in respect of commencement of the term of the managing committee of the Society which has been constituted under the Act prior to its amendment. In view of Section 73(3)(a) of the Act prior to its amendment, the Committee shall be deemed to have been duly constituted on publication of the names of the elected representatives in the notification by the Registrar, which has been published in the instant matter on 31.1.2011. The term of the elected managing committee thus, which has been constituted under the enactment prior to amendment has commenced from 31.1.2011 and the amended provisions enforced from 14.2.2013, namely Section 73-AAA(3) shall have no effect on the date of commencement of the term of the managing committee of the Society which event has already occurred. The term of the managing committee of the Society thus, shall have to be deemed to continue up to 30.1.2016 and as such, the prescription of the cut-off date in the instant matter for

enrollment of the names of the members shall be 30.1.2014.

11. The Registrar as well as the Election Officer are directed to make necessary corrections in the electoral rolls prepared for purposes of holding elections to the Societies within a period of fifteen days from today.

12. Rule is accordingly made absolute. There shall be no order as to costs.

(A.I.S. CHEEMA, J.)

(R.M. BORDE, J.)