

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 177 OF 2015

Ashok Bhau Viroje & Ors.	..	Petitioners
vs.		
The State of Maharashtra & Ors.	..	Respondents

Mr. Sarang Aradhye for Petitioners.
Mr. S. D. Rayrikar – AGP for Respondent Nos. 1 and 4.
Mr. J. S. Kapre for Respondent Nos. 2, 3, 5, 6 to 28, 31 to 38.

CORAM : M. S. SONAK, J.
DATE: 22 JANUARY 2015

P.C. :-

1] The learned counsel for the petitioners persuaded this Court to take up this matter for circulation by contending that in the present case, the Administrator appointed to govern the affairs of the society has enrolled new members and such members have now been included in the voters list for the elections to the managing committee of the society scheduled for 24 January 2015.

2] In the aforesaid regard, the learned counsel made reference to interim order of the Co-operative Court dated 22 December 2014 in Co-operative Case no. 383 of 2014, which restrained the Administrator or the concerned officer from including names of new members enrolled by the Administrator in the final list of voters. This interim order could not be produced before the Returning Officer

who disposed of the petitioners' objections on 22 December 2014, in the morning session. On this basis, it is now contended that this Court ought to restrain the new members enrolled to membership by the Administrator, from exercising right to franchise.

3] On the perusal of the impugned order made by the Returning Officer, however it is noticed that the Administrator has not in fact enrolled any new members or in any case no members admitted by the Administrator are enrolled in the final voters list. The 31 members, whose enrollment the petitioners object, may no doubts have been enrolled post 28 November 2011 i.e. the date on which the Administrator came to be appointed. However such 31 persons were admitted as members by the general body of the society. Such persons are mostly legal heirs of the deceased members. The contention, which, in the first place persuaded this Court to take up this petition on urgent basis was therefore not factually correct.

4] The learned counsel for the petitioners, however submitted that the general body does not have power to admit any new members, since such power is basically vested in the managing committee. Since the managing committee stood superseded, admission of such 31 persons as members of the society, was void *ab initio*.

5] In the first place, the aforesaid contention is different and distinct from the contention that it is the Administrator who has enrolled new members and such new members find place in the final list of voters. Secondly, such persons were admitted to the membership of the society some time in the year 2012. There is no explanation as to why the petitioners did not take any steps to question the admission. Thirdly, such contention can always be gone into by the Co-operative Court or the Competent Authority under Section 91 of the Maharashtra Co-operative Societies Act, 1960, which would be the ordinary remedy in such matters.

6] Reliance is placed by the learned counsel for the petitioners upon the decision of this Court in the case ***Gautam s/o. Kacharu Jagtap & Ors. vs. Assistant Registrar, Co-operative Societies (Milk) Ahmednagar & Ors.***¹ The perusal of the facts in the said case would indicate that the members in question were enrolled for the first time on 27 December 2009 in terms of Section 27(3-A) of the said Act, newly enrolled members do not get a right to vote, until they complete a period of two years, which in the said case would be 26 December 2011. However, such members were included in the voters list on 7 January 2011 when the election programme came to be published. It is in these circumstances that the petition was entertained and the Returning officer was directed to ignore the

1 2011 (4) Mh.L.J. 655

votes cast by the said newly enrolled members. The fact situation in the present case is quite different.

7] The elections, as noted earlier, are scheduled for 24 January 2015. The petitioners, have not made out any case for exercise of extra ordinary jurisdiction. The petitioners have an alternate remedy by way of raising dispute, if they are aggrieved, either by the admission of new members, their enrollment in the list of voters or the result of the election. Accordingly, it is not necessary to entertain the present petition. The petition is therefore dismissed.

8] It is however clarified that none of the observations in the present order shall influence either the Co-operative Court or any other Competent Authority which shall go into the issue of enrollment of new members, in case the petitioners do raise such issue before the Co-operative Court or any other Competent Authority. All contentions in this regard are specifically kept open.

9] For the aforesaid reasons, the petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)