

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (STAMP) NO.7194 OF 2015

Shri. Pavanaidevi Sahakari Dudh Vyavasaik

Sanstha Maryadit, Asandoli

.. Petitioner

Versus

Kolhapur Zillha Dudh Utpadak Sangh Maryadit,

Kolhapur and others

.. Respondents

Shri. V. B. Rajure, for the Petitioner.

Shri. Amit B. Borkar, for the Respondent No.1.

Shri. Nagesh Chavan, for the Respondent No.3.

Mrs. M. S. Bane 'B' Pannel Counsel for the Respondent No.2.

CORAM : R.M. SAVANT, J.

DATE : 18th MARCH, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 02.03.2015 passed by the District Election Officer and Divisional Joint Registrar (Milk), Pune Division, Pune, by which order an enquiry as to who should be delegate of the Petitioner society has been concluded and the District Election Officer has held that the two persons in respect of whom resolutions were passed in the managing committee of the Petitioner society would both be not entitled to act as delegates of the Petitioner society and participate in the affairs of the Respondent No.1 society.

2. It is not necessary to burden this order with unnecessary details. Suffice it to say that the Petitioner society is a “C” class society and is a member of the Respondent No.1 Kolhapur Zillha Dudh Utpadak Sangh which is a “A” class society and a federal society. The Petitioner society as a member of the Respondent No.1 society is therefore, entitled to participate in the elections which are held to the Board of Directors of the Respondent No.1 society. The representation of the Petitioner is through a delegate who is nominated by passing a resolution to that effect in the managing committee meeting of the society. In so far as the instant case is concerned, the provisional list of voters was published on 11.02.2015 and the objections were to be taken by 20.02.2015. The name of the Petitioner society was appearing at Sr. No.1892 in the said provisional list and against its name the names of two persons Shri. Damaji Balkrishna Patil and Shri. Govind Ganpati Ugave were shown as delegates. In terms of Section 27(3) of the Maharashtra Co-operative Societies Act, 1960, the societies which are members of the class “A” society can nominate one member to be its delegate to participate in the affairs of the Respondent No.1 society. In the instant case, a resolution came to be passed in favour of Shri. Damaji Balkrishna Patil on 06.01.2015 nominating him as its delegate. Thereafter another resolution came to be passed in favour of Shri. Govind Ganpati Ugave on 31.01.2015 and that is how the issue arose as to who can be the delegate of the Petitioner society to participate in the

affairs of the Respondent No.1 society. In view of the said dispute which has arisen, an enquiry was conducted by the District Election Officer who by the impugned order has ruled that both the persons are not entitled to act as the delegates of the Petitioner society. The Election Officer has referred to the judgments of this Court in paragraph 4 of the impugned order. As indicated above, it is the said order dated 02.03.2015 which is taken exception to by way of the above Petition.

3. In so far as the proceedings before the District Election Officer are concerned, it is required to be noted that Shri. Damaji Balkrishna Patil was personally present before the District Election Officer. However, neither submissions were made on his behalf nor did he produce any material or papers. However, in so far as Shri. Govind Ganpati Ugave is concerned, he was represented by advocate Shri. Kiran Patil and it seems that he participated in the proceedings. Apart from the said fact, it is required to be noted that Shri. Damaji Balkrishna Patil is now represented by advocate Shri. Nagesh Chavan in the instant Petition who on instructions of the said Shri. Damaji Balkrishna Patil who is personally present in Court makes a statement that Shri. Damaji Balkrishna Patil is not interested in being a delegate of the Petitioner society and that he has no objection to Shri. Govind Ganpati Ugave being the delegate.

4. The Learned AGP Mrs. M. S. Bane sought to justify the

impugned order and in support thereof sought to place reliance on a judgment of a Division Bench of this Court in Letters Patent Appeal No.15 of 2007 rendered on 16th March, 2007 in the matter of Smt. Kamlabai Vitthal Rohankar Vs. The Additional Collector, Chandrapur.

In my view, the facts in the case before the Division Bench in the Letters Patent Appeal are distinguishable from the facts in the present case. In the said case before the Division Bench there was a contest between the two persons in whose favour resolutions were passed for being the delegates of the society concerned and one of them was the Appellant in the LPA. It is in the said context that the contention of the Appellant in the said case that the Returning Officer cannot go into the merits of the managing committee meeting in which the resolution was passed was upheld by the Division Bench and resultantly, the Division Bench has held that it would be the Appellant in the said case who can be the delegate as the resolution in the first instance was passed in his favour. Such is not the case in the instant matter as even before the District Election Officer the said Shri. Damaji Balkrishna Patil has not contested though he was present. Apart from the said fact, in the instant case both the persons in whose favour the resolutions were passed were held not to be entitled to participate in the affairs of the Respondent No.1 and it is not a case where one of them has been held to be so entitled. It is also required to be noted that in the instant case, a statement has been made on behalf of the said Shri. Damaji

Balkrishna Patil through his Learned Counsel Shri. Nagesh Chavan that he is not interested in participating in the affairs of the Respondent No.1 and has no objection to Shri. Govind Ganpati Ugave participating in the affairs as a delegate. Hence, in the background of the aforestated facts the impugned order whereby the District Election Officer has held that both the persons in whose favour resolutions are passed are not entitled to participate in the affairs of the Respondent No.1 is required to be quashed and set aside. Since the Petitioner is a member of the Respondent No.1 society, it would be appropriate if the Petitioner is permitted to participate in the affairs of the Respondent No.1 which can only be through its delegate. Hence, Shri. Govind Ganpati Ugave in whose favour the resolution was passed in the first instance would be entitled to be the delegate of the Petitioner society to participate in the affairs of the Respondent No.1 for the ensuing elections to the Respondent No.1 society. The present order has been passed in the facts and circumstances of the instant case and would obviously not act as precedent in future matters. The name of Shri. Govind Ganpati Ugave to be included in the final list of voters and the name of Shri. Damaji Balkrishna Patil would accordingly stand deleted from the provisional list of voters. The Petition is allowed to the aforesaid extent and to accordingly stand disposed of.

[R.M. SAVANT, J]