

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

WRIT PETITION (STAMP) NO.7806 OF 2015

Kisan Veer Satara Sahakari)
Sakhar Karkhana Ltd., Bhuinj,)
Kisanveernagar,)
Taluka- Wai, District- Satara) .. Petitioner

Versus

1. Ministry for Co-operation,)
Government of Maharashtra,)
Mantralay, Mumbai-400 032.)
2. Commissioner for Sugar,)
Sakhar Sankool, Shivaji Nagar,)
Pune-5.)
3. The Regional Deputy Director of Sugar,)
Sakhar Sankool, Shivaji Nagar, Pune-5.)
4. The Returning Officer,)
District Co-operative Returning)
Officer/Divisional Add. Director (Sugar))
Pune Division, Pune,)
1st Floor, Sakhar Sankul, Shivaji Nagar,)
Pune-411 005.)
5. Janubai Majoor Sahakari Sanstha)
Bopegaon, Taluka-Wai, District- Satara.)

6. Vadjai Devi Gramin Bigar Sheti)
Sahakari Patsanstha Mydt, Arale,)
Taluka and District Satara.)
7. Dewoor Sahakari Dudh Utpadak)
Sanstha Ltd., Dewoor, Taluka Koregaon,)
District Satara.)
8. Chatrapati Sambhaji Maharaj (Suyog))
Grahak Bazar Ltd.,)
Pimpode Br., Taluka Koregaon,)
District Satara.)
9. Pimpode No.2 V.K.S. Seva Society Ltd.,)
Pimpode, Taluka Koregaon,)
District Satara.)
10. Chatrapati Sambhaji Maharaj Sahakari)
Patsanstha Ltd., Pimpode Branch,)
Taluka Koregaon, District Satara.)
11. Vitthal Sahakari Dudh Utpadak Ltd.,)
Vangal, Taluka & District Satara.)
12. Shivshakti Sahakari Dudh Utpadak)
Sanstha Ltd., Shivthar, Taluka &)
District Satara.)
13. Bhairavnath Nagari Sahakari)
Patsanstha Mydt., Wai, Taluka Wai,)

- District Satara.)
14. Bhagyalaxmi Majoor Sahakari Sanstha)
Mydt., Wai, Taluka Wai, District Satara.)
15. Shreeram Pani Purvata Seva)
Sahakari Patsanstha Mydt.,)
Bopegaon, Taluka Wai, District Satara.)
16. Shree Ambika Majoor Sahakari)
Sanstha Mydt., Wai, Taluka Wai,)
District Satara.)
17. Laxmanrao Patil Nagari Sahakari)
Patsanstha Mydt., Wai, Taluka Wai,)
District Satara.)
18. Shetkari Sahakari Dudh Utpadak)
Sanstha, Kenjal, Taluka Wai,)
District Satara.)
19. Janaseva Sahakari Patsanstha)
Mydt., Kenjal, Taluka Wai,)
District Satara.)
20. Kamandalu Majoor Sahakari)
Sanstha Mydt., Asare, Taluka Wai,)
District Satara.)
21. Shri. Krishnamai Sahakari Dudh)
Vyavasaik Sanstha Mydt., Ozarde,)

- Taluka Wai, District Satara.)
22. Shri. Padmavati Gramin Bigar)
Sheti Sahakari Patsanstha Mydt.,)
Ozarde, Taluka Wai, District Satara.)
23. Pragati Pani Purvate Seva)
Sahakari Sanstha Mydt., Bopegaon,)
Taluka Wai, District Satara.)
24. State of Maharashtra) .. Respondents

Shri. Y. S. Jahagirdar, Senior Advocate with Shri. N. V. Walawalkar, Senior Advocate i/by Shri. Ajit J. Kenjale, for the Petitioner.

Shri. Amit B. Borkar i/by Shri. Sandeep Laxman Babar, for the Respondent No.6.

Shri. S. D. Rayrikar, AGP for the Respondent Nos.1 to 3 & 24.

**CORAM : R.M. SAVANT, J.
DATE : 07th APRIL, 2015**

ORAL JUDGMENT

1. Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2. By order dated 27.03.2015 passed in the above Petition the Petitioner was directed to serve the unserved Respondents and the notice was made returnable on 06.04.2015. A notice was also directed to be published in two local newspapers i.e. "Aikya" and "Pudhari" having

circulation in Satara District. The Learned Counsel for the Petitioner Shri. Ajit J. Kenjale has accordingly filed an affidavit of service annexing thereto the paper publications. The Respondent No.6 represents the class of societies whose names have been directed to be included in the final list of voters is represented by Shri. A. B. Borkar. Though the order passed by the District Co-operative Election Authority is in respect of 18 societies, in the above Petition 19 societies have been arrayed which includes the said 18 societies.

3. The Writ Jurisdiction of this Court is invoked against the order dated 16.03.2015 passed by the District Co-operative Election Officer and Regional Joint Director (Sugar), Pune. By the said order, the objection raised on behalf of the Respondent Nos.5 to 23 and more especially the 18 societies out of the said Respondents was upheld as regards their exclusion from the provisional list of voters and the said 18 societies were directed to be included in the final list of voters along with the names of their delegates. The issue in the above Petition can be said to lie in a narrow compass and is relating to whether the names of the said 18 societies can be included in the final list of voters which has been published for the ensuing elections to be held to the Petitioner Co-operative Sugar Factory. The said issue has had a chequered history which goes back to their expulsion or removal from the membership register

which has been communicated to them vide letter dated 26.12.2005 of the managing director of the Petitioner society. The expulsion was sought to be challenged by the said 18 societies by taking recourse to Section 79A of the Maharashtra Co-operative Societies Act, 1960 (For short "MCS Act"). It appears that during the pendency of the said application under Section 79A, the elections for the term 2008-2014 were announced. The Collector in view of the pendency of the said proceedings filed under Section 79A directed the inclusion of the names of the 18 societies in the final voters list for the said elections by his order dated 03.01.2008. The said applications filed under Section 79A were thereafter rejected by the Regional Joint Director (Sugar) by order dated 12.02.2008. By the said order, the said authority directed the said societies to approach the appropriate Court for redressal of their grievance. In view of the rejection of the said application under Section 79A filed by the said societies, the Petitioner herein moved the Collector for deletion of the names of the said 18 societies which were directed to be included by the Collector who was the Returning Officer by his order dated 03.01.2008. The said application filed by the Petitioner was rejected by the Collector and was communicated to the Petitioner by the Collector by his letter dated 14.02.2008. The said rejection was for the reasons mentioned in the said letter. It is not necessary to go into the said aspect for the purposes of the

present Petition. The said communication of the Collector dated 14.02.2008 was taken exception to by the Petitioner society by way of Writ Petition No.1251 of 2008. The said Writ Petition came to be disposed of by order dated 27.02.2008 by a Learned Single Judge of this Court (S. C. Dharmadhikari, J.) and whilst disposing of the said Writ Petition the statement made on behalf of the said 18 societies by the Learned Counsel has been recorded. In the context of the present Petition, paragraph 7 onwards of the said order dated 27.02.2008 are material and are reproduced herein under :-

“7. That apart, Mr. Borkar, after taking instructions from each of the respondent societies, makes a statement that these societies would now resort to proceedings under section 91(1) of the M.C.S. Act. He states that he has instructions to make a statement that within one week from today, each of these societies would file a Dispute in competent co-operative Court seeking declaration of their rights and further relief that the alleged Termination by petitioner society does not bind them. He submits that in the light of this statement, this petition be disposed of.

8. Considering the fact that the Collector had earlier included names of societies subject to the orders under section 79A and those proceedings having been found to be untenable in law an opportunity is required to be given to the concerned societies to approach the co-operative Court. In my view, following order would meet ends of justice.

(a) Statement of Mr. Borkar that the respondent societies would approach the competent co-operative Court and file dispute under section 91 within one week from today is accepted.

(b) In the light of this statement, the order of the Collector permitting the concerned societies (respondent Nos.5 to 23) to vote at the ensuing elections is not

disturbed but it is clarified that merely because the Collector has included the names in the final voters' list that by no stretch of imagination confers any right of membership on these societies. Equally, the societies would be free to urge that their rights are not validly put an end to. Such and other issues are open for consideration by the co-operative Court.

(c) The order of the Collector permitting the said societies is without prejudice to the rights and contentions of the petitioner and the said societies in the dispute before co-operative Court.

(d) Needless to state that if the societies do not file the dispute within a period of one week from today, it is directed that the subject societies may be permitted to vote at the ensuing elections but their votes will be kept separately and not counted until they resort to appropriate proceedings and obtain suitable directions with regard to their membership rights.

(e) Petition stands disposed of. Mr. Borkar states that the respondent societies will also seek appropriate interim reliefs on or before 15th March 2008.”

4. A reading of the said order therefore discloses that a statement was made on behalf of each of the societies that they would file a Dispute in the competent Co-operative Court seeking declaration of their rights and further relief that the alleged termination by the petitioner society does not bind them. The order also discloses that it was clarified that merely because Collector has included their names in the final voters list that by no stretch of imagination would confer any right of membership on the said societies. However clause (d) can be said to be the defining clause which provided that the subject societies i.e. 18

societies may be permitted to vote at the ensuing elections but their votes would be kept separately and not counted until they resort to appropriate proceedings and obtain suitable directions with regard to their membership rights. Lastly, it has been recorded in the said order by way of recording made in clause (e) that the societies would seek appropriate interim reliefs on or before 15.03.2008. Hence, though the said 18 societies were allowed to vote, the same was made subject to said 18 societies obtaining appropriate orders or suitable directions with regards to their membership rights but subject to the said order or directions being obtained, their votes were to be kept separately and not counted.

5. It is an undisputed position that though the dispute has been filed on behalf of the 18 societies, no directions or orders have been obtained in so far as their membership rights are concerned though a period of about six years has elapsed and the tenure of the Board of Directors for the period 2008-2014 has come to an end. The votes of the said societies were therefore not counted. It is also an undisputed position that the dispute filed by the said 18 societies is as yet pending.

6. In view of the term of the Board of Directors coming to an end in the year 2014 that the election programme for conducting elections to the Board of Directors to the Petitioner society was announced pursuant to which a provisional list of voters was published in which the names of

the 18 societies were not appearing. An objection was therefore raised on behalf of the said 18 societies by the representative of the said 18 societies i.e. by one Nitin Jadhav (Patil) representing the Janubai Majoor Sahakari Sanstha Maryadit in respect of the non-inclusion of the names of the said 18 societies in the provisional list of voters. The said objection was raised before the District Co-operative Election Authority who by the impugned order dated 16.03.2015 has upheld the objection and directed the inclusion of the names of the 18 societies in the final list of voters. A reading of the impugned order discloses that the District Co-operative Election Officer has referred to the antecedent facts, a gist of which has been referred to herein above in the instant order. However, the District Co-operative Election Officer has upheld the objection on the ground that the Collector had directed the inclusion of the names of the 18 societies and this Court has also permitted the said 18 societies to vote. The Authority has also adverted to the fact that the said 18 societies have filed a dispute which is pending. As indicated above, it is the said order dated 16.03.2015 which is taken exception to by way of the above Petition.

7. Heard the Learned Counsel for the parties. The Learned Senior Counsel appearing for the Petitioner Shri. Y. S. Jahagirdar would contend that though the 18 societies were allowed to participate in election and allowed to vote in the last elections, the same was subject to

the conditions which were imposed by the Learned Single Judge in the order dated 27.02.2008 and which conditions were imposed as a consequence of the statement made on behalf of the said 18 societies in the said Writ Petition namely that they would file a dispute and apply for appropriate interim reliefs. Since the said 18 societies have failed to obtain any reliefs or directions though a dispute has been filed, their names cannot be included for the ensuing elections for the term 2015-2020. The Learned Senior Counsel would contend that the District Co-operative Election Officer though has referred to the order passed by a Learned Single Judge of this Court dated 27.02.2008 in Writ Petition No.1251 of 2008, the said order has been misconstrued and mis-interpreted to mean that since the dispute has been filed, the right of the said 18 societies to participate in the elections and to vote continues, though they have not obtained orders or directions in the said dispute. This is the substance of the submissions made on behalf of the Petitioner society.

8. Per contra, Shri. Amit Borkar the Learned Counsel for the Respondent No.6 would seek to draw distinction between the facts as were prevailing in the year 2008 and the facts as are prevailing now. The Learned Counsel would contend that though a statement was made that the dispute would be filed and application for appropriate interim reliefs would be filed, in view of the judgment of a Division Bench of this Court

reported in **2014(2) Mh.L.J. 24** in the matter of **Anil s/o Wamanrao Gawande Vs. Mahalaxmi Railway Karmachari Sahakari Griha Nirman Sanstha Ltd., Akola and others**, such a dispute in respect of expulsion or removal from membership is not maintainable, as there is no cause of action to file the dispute unless an approval is granted by the Registrar. The Learned Counsel would contend that applying the law laid down in the said judgment in *Anil s/o Wamanrao Gawande's case (supra)*, the inclusion of the names of the 18 societies in the final list of voters can be justified.

9. Having heard the Learned Counsel for the parties, I have considered the rival contentions. As indicated above, the District Co-operative Election Officer has based his order relying upon the order dated 27.02.2008 passed by a Learned Single Judge of this Court in Writ Petition No.1251 of 2008. The District Co-operative Election Officer as can be seen from the impugned order in terms observed that this Court has also allowed the said 18 societies to vote in the earlier elections and therefore their inclusion in the final list of voters is warranted. In my view, the District Co-operative Election Officer has totally misconstrued and misinterpreted the order passed by the Learned Single Judge of this Court in Writ Petition No.1251 of 2008. In the said order dated 27.02.2008, it is made ex-facie clear that merely because the Collector has included the

names of the said 18 societies in the final voters list that by no stretch of imagination confers any right of membership on the said societies. The said 18 societies understood the situation in the like manner and therefore, a statement came to be made on behalf of the societies that they would file a dispute challenging their termination or removal from the membership register and further a statement came to be made that they would also apply for appropriate interim reliefs. The Learned Single Judge therefore had issued a direction that though the said 18 societies would be permitted to vote, their votes would be kept separate and not be counted unless they adopt appropriate proceedings and obtain suitable directions with regard to their membership rights. As indicated above, it is an disputed position that though a dispute has been filed, no directions or orders have been obtained by the said 18 societies in the said dispute. Hence, in so far as the factual position is concerned, it can be said that the factual position is the same as was prevailing in the year 2008 in view of the fact that no direction or order has been obtained by the said 18 societies in respect of their membership rights. The District Co-operative Election Officer has totally glossed over the essence of the said order dated 27.02.2008 and by merely adverting to one aspect of the order namely that the said 18 societies were allowed to vote without taking into consideration that their votes were to be kept separate and not counted

until they obtain appropriate directions or orders has upheld the objection raised on behalf of 18 societies and directed the inclusion of their names in the final voters list. In so far as the order passed by the Collector to which a reference is made by the District Co-operative Election Officer, the said order was also passed pending the application filed under Section 79A and therefore, cannot be said to confer any right in the 18 societies so as to contend that their names be included in the final list of voters. The order dated 27.02.2008 therefore makes it ex-facie clear that the exercise of their rights flowing out of the membership was contingent upon the said 18 societies obtaining appropriate orders or directions in the dispute that was to be filed. That having not been done by the said 18 societies, the District Co-operative Election Officer has erred in upholding the objection and directing the inclusion of their names in the final list of voters.

10. The Learned Counsel appearing on behalf of the Respondent No.6 which as indicated above is out of the said 18 societies laid much store on the judgment of the Division Bench of this Court in *Anil s/o Wamanrao Gawande's case (supra)*. The Division Bench in the said judgment has held that the only forum, where the validity or otherwise of a resolution of expulsion can be decided or gone into, is the Assistant Registrar of Co-operative Societies acting under Section 35 and the Co-

operative Court acting under Section 91 will have no jurisdiction to adjudicate upon the validity of such a resolution of expulsion of a member. In so far as the said judgment is concerned, the same would possibly aid the Petitioners in so far as their challenge to their termination or removal from membership is concerned. However, in so far as the instant matter is concerned, the District Co-operative Election Officer was required to adjudicate upon the objection as regards the non-inclusion of the names of the said 18 societies having regard to the directions as contained in the order dated 27.02.2008 passed in Writ Petition No.1251 of 2008 and therefore this Court is required to adjudicate upon the challenge raised to the said order passed by the District Co-operative Election Officer on the said basis. As indicated above, even before the Learned Single Judge, the issue as regards the expulsion was sought to be raised and submissions based on Section 35 and Rule 28 and 29 were sought to be made. However, the same was not pursued and as indicated above a statement came to be made on behalf of the said 18 societies that disputes would be filed and that application for interim reliefs would also be made. The Learned Single Judge having passed an order on the said basis, the Petitioners now cannot be permitted to get over the said order by relying upon the judgment of the Division Bench of this Court in *Anil s/o Wamanrao Gawande's case (supra)* in the matter of inclusion of their

names in the voters list. This Court is only required to consider whether the order passed by the District Co-operative Election Officer can be justified on the touchstone of the order dated 27.02.2008 passed in Writ Petition No.1251 of 2008. In so far as the said aspect is concerned, as observed herein above, the District Co-operative Election Officer has totally misconstrued and mis-interpreted the said order dated 27.02.2008 by directing the inclusion of the names of the said 18 societies in the final list of voters. Since this Court has not directed the removal of the names of the said 18 societies from the final list of voters and has only regulated their right to vote in terms of the conditions which have been imposed by this order. The contention of the Learned Counsel for the Petitioner that the same would amount to interference with the election process cannot be accepted. In my view, since the factual position prevailing today is as the same which was prevailing on 27.02.2008, in my view it would be just and proper to issue the following directions :-

- I) The said 18 societies would be permitted to vote at the ensuing elections for the term 2015-2020 of the Petitioner Sugar Factory, however their votes will be kept separately and not counted until they obtain appropriate directions or orders either in the pending dispute or such other proceedings as they adopt for ascertaining their

membership rights.

II) In so far as the challenge to their terminations /removal from the membership register is concerned, this Court does not express any opinion on the same and it would be before the appropriate forum either in the pending dispute or such other proceedings that would be filed for the same that the same would be decided.

III) Merely because the said 18 societies are allowed to vote, it should not be construed as any expression of opinion as regards their membership rights or as regards merits of the challenge to their termination/removal from the membership register. The said issue would be adjudicated independently on its own merits and in accordance with law. With the aforesaid directions, the Writ Petition is disposed of.

[R.M. SAVANT, J]