

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4053 OF 2015

Rayat Vividh Karyakari Sahakari (Vikas)
Seva Sanstha Maryadit and another. ... Petitioners.
V/s.

The District Co-operative Election Officer
(Kolhapur District Central Co-operative Bank
Ltd.) and Divisional Joint Registrar, Co-operative
Societies, Kolhapur and others. ... Respondents.

Mr. Y. S. Jahagirdar, Senior Counsel a/w Mr. P. S. Dani, Senior Counsel
i/by R. P. Pawar for the petitioner.

Mr. Vikas Mali, A.G.P. for respondent No.1.

Mr. A. A. Kumbhakoni, Senior Counsel i/by Mr. A. B. Borkar,
for respondents No. 5 to 22.

**CORAM : NARESH H. PATIL AND
S.B. SHUKRE, JJ.**

DATED : 7th July 2015.

PC.

Heard.

2. A group of petitions was filed before the learned Single Judge bearing Writ Petition No.3315 of 2015 and others. The petitioners therein had challenged the order passed by the District Co-operative Election Officer rejecting objection to the inclusion of name of the respondent-society in the provisional list of voters prepared for holding election to the

Board of Directors of Kolhapur District Central Co-operative Bank Limited. The learned Single Judge by an order dated 31st March 2015 dismissed the petitions.

3. The Division Bench of this Court in Writ Petition No. 3583 of 2015 (*Vinod Tarachand Aher Vs. The State of Maharashtra & others*) dealt with the issue concerning election to District Central Co-Op. Bank in Nashik district while interpreting the provisions of Section 73CA of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as “the said Act) and in paragraph-19 has observed as under.:

“19. In so far as the order passed in Writ Petition No. 3315 of 2015 is concerned, we find that although the learned Single Judge has referred to provisions of Section 73CA, the import of the said provision has not been considered. In any case, the view taken would not bind us...”

4. Learned Senior Counsel for the petitioner submitted that in view of the observations of the Division Bench to the effect that the view of the learned Single Judge is not binding on the Division Bench which decided Writ Petition No. 3583 of 2015, the respondents-societies cannot be permitted to participate in the election and exercise their right to vote. Learned Senior Counsel referred to the provision of Section 73CA(1)(i)(f) of the said Act and rules framed thereunder. Learned Senior Counsel further submitted that the view expressed by the Division Bench is binding. In view of the observations made by the Division Bench, the respondents-societies, being multipurpose credit co-operative societies,

cannot be permitted to participate in the election and exercise their right to vote.

5. Learned Senior Counsel appearing for the respondents-societies submitted that in the judgment learned Single Judge had dealt with the issue concerning the election declared for constituting the Board of Directors of District Central Co-operative Bank, Kolhapur. The learned Single Judge interpreted the provisions of Section 73CA(1)(i)(f) of the said Act and by an order permitted such of the societies to participate in the election. Neither the judgment delivered by the learned Single Judge has been set aside by a higher Court nor it has been reviewed.

6. Learned senior counsel Shri Kumbhakoni appearing for the respondent- societies submitted that the learned single Judge considered the issue as to whether multipurpose credit co-operative societies could be permitted to participate in the election process by sending their representative. The learned single Judge dealt with the issue concerning the subject election and permitted the respondent societies to participate in the election. Whereas the Division Bench dealing with the issue concerning the election of other bank i.e. District Central Co-operative Bank, Nashik has merely observed that the view of the learned single Judge expressed while disposing of W.P.No.3315/2015 would not binding on the Division Bench. In that view of the matter, right accrued by the respondent- societies cannot be denied impliedly.

7. Section 73CA of the said Act refers to disqualification of committee and its members. One of the clauses concerning disqualification, which is relevant for our purposes, is clause (f) of sub-section (A1) of section 73CA, which reads as under:

“(f) in the case of District Central Co-operative Bank or of the State Co-operative Bank, a member, if he,-
(i) is a person who represents a society other than a primary agricultural credit co-operative society on the board of a District Central Co-operative Bank or the State Co-operative Bank, if the society to whom he represents has committed a default towards the payments of such Bank for a period exceeding ninety days;
(ii) is a person who is a defaulter of a primary agricultural credit co-operative society or is an office bearer of a defaulting primary agricultural co-operative credit society;...”

8. The respondent- societies are multipurpose credit co-operative societies. Such of the societies were permitted by learned single Judge to participate in the election process by sending their representative. Rule 10 of the rules framed under the said Act refers to classification and sub-classification of the societies. Clause 8 thereof refers to multipurpose co-operative societies.

9. We have perused both the orders passed by Division Bench and learned single Judge. The learned single Judge had interpreted the provisions of the Act and the Rules framed thereunder and had even considered the fact that the election process was already set in

motion and at that stage objection was taken. In paragraphs- 7 and 8 of the order, the learned single Judge has observed as under:

“7. Another ground on which I am disinclined to interfere with the order passed by the District Co-operative Election Officer is the fact that the 2nd phase of the election program has been announced which has been preceded by the final voters lists being published. Hence any interference at this stage would amount to interfering with the election process.

8. In that view of the matter, no case for interference with the impugned order is therefore made out. The above Writ Petitions are accordingly dismissed. Needless to state that after the elections are over, if the occasion so arises and the Petitioners challenge the elections on the ground of inclusion of the names of the Respondent No.3 in each of the above Petitions, the said proceedings would be tried on their own merits and in accordance with law.”

10. In the facts of the case, we are of the considered view that the observations made by the Division Bench dealing with the case concerning different bank i.e. District Central Co-operative Bank, Nashik could not dis-entitle the respondent- societies from participating in the election process. That right is accrued to them under the orders passed by learned single Judge. The said view of learned single Judge dealing with specific issue regarding election was not set aside or altered or modified. We, therefore, find substance in the submission advanced by learned senior counsel appearing for the respondent- societies. More over, it would not be appropriate to interfere at this stage when the election

process is now completed except the results of the subject constituency which are yet to be declared. Under the interim orders of the Court, the ballot papers were separately kept. Any aggrieved party is not remedy-less. Under the election law, they may resort to alternate remedy as may be available in law after the results are declared. In this view of the matter, we find that no interference is warranted. We are not inclined to invoke our extra ordinary writ jurisdiction.

11. Writ Petition is dismissed. The interim order stands vacated.

12. At this stage learned Senior Counsel for the petitioners prayed for continuation of ad-interim relief granted by this Court for some time. The request so made is opposed by learned Senior Counsel for the respondents. However, we continue the ad-interim relief already granted by this Court for further period of three weeks from today.

(S.B. SHUKRE, J.)

(NARESH H. PATIL, J.)