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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8420 OF 2015

Budhargad Taluka Shekari Sahakari Sangh Ltd
through its Manager (Pro)
Shri Shivaji Rajaram Sokasane

.. Petitioner

Vs.

District Deputy Registrar of the
Co-operative Society and the District
Co-operative Election Officer Kolhapur and others .. Respondents

Mr.A.V.Anturkar, Senior Advocate i/b Mr.Tanaji Mhatungade, for the
Petitioner.

Ms.Vaishali Nimbalkar, AGP for Respondent No.1 – State.

CORAM : R. G. KETKAR, J.

DATE : 21st AUGUST, 2015

P.C. :

. Heard Mr.A.V.Anturkar, learned Senior Counsel for the
petitioner and Ms.Vaishali Nimbalkar, learned AGP for respondent
No.1 at length.

2. By this Petition under Article 227 of the Constitution of
India, the petitioner has challenged the order dated 05/08/2015
passed by respondent No.1, District Deputy Registrar of the Co-
operative Society and District Co-operative Election Officer, Kolhapur.
By that order, respondent No.1 has directed the petitioner to include
names of 23066 individual members and 467 institutional members
in the final voters list.

3. In support of this Petition, Mr.Anturkar submitted that Rule 8 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (for short Rules) provides for filing of the objections in writing by any member of the society to the provisional list of the voters in respect of any omission or error of name or address or other particulars in the list to bring to the notice of the concerned District Co-operative Election officer. He submitted that the said rule was interpreted by the Division Bench of this Court in the case of *Dhondiba Parshuram Lakade Vs. Someshwar Sahakari Kakhar Karkhana*, **1979 Mh.L.J.311**. The Division Bench of this Court has construed Rule 6 of the Maharashtra Specified Co-operative Societies Elections to Committees Rules 1971. Rule 6 is parimateria with Rule 8 of the Rules. He submitted that the Division Bench has held in paragraph 40 as under.

“Thus, under Rule (1), all that the Collector is entitled to, and permitted to, do is to ensure the identity of the voter concerned, and if per chance, the identity is not sufficiently established in the provisional voter's list to take steps within the ambit of Rule 6(1) to see that it is. There is nothing in Rule 6(1) which empowers the Collector to hold a detailed inquiry, as was done in the instant case, whether a person is qualified to be on the Register of Members, and if not to delete his name from the provisional list of voters. Under section 38(2) of the Societies Act, the Registrar of Member's is prima facie evidence of membership. It is not open to the Collector to upset that Registrar by holding an inquiry under Rule 6(1), which contemplates a very summary inquiry, confined only to the aspects set out in that Rule and nothing else.”

4. Mr.Anturkar submitted that under Rule 6(1), all that the Collector is entitled to, and permitted to, do is to ensure the identity of the voter concerned, and if per chance, the identity is not sufficiently established in the provisional voter's list to take steps within the ambit of Rule 6(1) to see that it is. There is nothing in Rule 6(1) which empowers the Collector to hold a detailed inquiry for finding out whether a person is qualified to be on the Register of Members, and if not to delete his name from the provisional list of voters. He submitted that by the impugned order, respondent No.1 has directed the petitioner to include names of 23066 individual members and 467 institutional members in the final voters list on the ground that written notice was not given to these members. Mr.Anturkar submitted that in fact the petitioner had issued public notice dated 14/12/2013 in 'daily Mahasatta' which is a widely circulated newspaper in the locality where these members are ordinarily residing. He submitted that the impugned order is liable to be set aside.

5. Ms.Nimbalkar supported the impugned order. She submitted that respondent No.1 passed the impugned order as no opportunity was given to the members by issuing written notice.

6. I have considered the submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. Section 26(1) of the Act reads as under :

26. Rights and duties of members

(1) A member shall be entitled to exercise such rights as provided in the Act, rules and by-laws:

Provided that, no member shall exercise the rights, until he has made such payment to the society in respect of membership, or acquired such interest in the society, as may be prescribed and specified under the by-laws of the society, from time to time:

Provided further that, in case of increase in minimum contribution of member in share capital to exercise right of membership, the society shall give a due notice of demand to the members and give reasonable period to comply with.

(emphasis supplied)

7. Perusal of 2nd proviso lays down that in case of increase in minimum contribution of member in share capital to exercise right of membership, the society has to give due notice of demand to the members and give reasonable period to comply with it. In the present case, bye-law No.3 was amended and the face value of the share of individual member was increased to Rs.200/- from Rs.25/- and as far as institutional members are concerned, face value of share was increased to Rs.2,000/- from Rs.100/- and members were called upon to pay remaining amount on or before 31/03/2014. However, no material is produced on record to indicate that as per 2nd proviso to Section 26, notices were issued to the individual members as also institutional members calling upon them to comply requisition in the notice by paying the deficit amount of share. In view of 2nd proviso to Section 26, I do not find that first respondent

committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)