

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST.) NO.2996 OF 2015

Babasaheb Bapusaheb Patil and ors. .. Petitioners
V/s
The State of Maharashtra and ors. .. Respondents.

.....
Mr. Prajakt M. Arjunwadkar, for petitioners.
Mr. S.D. Rayrikar, AGP, for respondent Nos. 1 and 2.
Mr. C.G. Gavnekar a/w Mr. Suhas Deokar, for respondent No.4.

.....
CORAM : ANOOP V. MOHTA, J.
DATE : FEBRUARY 11, 2015

ORAL JUDGMENT :

Rule. Rule is made returnable forthwith. Heard finally
by consent of the parties.

2) The petitioners' objection to their exclusion in the voters' list of the society-respondent No.4 have been considered/accepted by the Returning Officer-respondent No.4, in view of the provisions of the Maharashtra Co-operative Societies Act, 1960. However, by the present petition, the action of respondents of finalising the voters' list by deleting the other 804 members has been challenged and thereby sought declaration that the final list of the voters published on 20 January 2015 be declared as illegal and bad in law, further pray to

prepare and republish the revised final voters' list, who have been members in the list of voters as on 31 October, 2012. Thereby, also pray to set aside the communication dated 17 January, 2015. The prayer is also made to stay the process of election programme as declared by respondent No.5 on 13 January, 2015 based upon the impugned final voters' list.

3) The learned counsel appearing for respondent No.4- society has raised a preliminary objection, apart from their reply/objections to the averments so made by the petitioners by affidavit dated 10 February 2015. The relevant para-4 is as under :

This Respondent further states that the Petitioners have no locus to maintain this petition as the names of the 3 Petitioners are already included in Final Voters List published on 20.01.2015 and the names of the Petitioner No.1 appears at Sr. No. 8 and name of the petitioner No.3 at Sr. No.20 in the Supplementary List and the name of the Petitioner No.2- Prakash Sadashiv Patil at Sr. No.286 and shown as Defaulter and therefore, the present Writ Petition which makes a grievance against the deletion of the Voters from the provisional and/or final list cannot be maintained at the instance of the

Petitioners.

4) The relevant rules which have been in force with effect from 11.09.2014 called The Maharashtra Co-operative Societies Election to the Committee Rules, 2013 (The rules), Part-III (Preparation of Electoral Roll), ranging from Rules 6 to 11 deal with the aspect of publication of a provisional list of voters by the society, having individuals as members, the procedure of providing the particulars of the members to the provisional list of voters, and claims and objections to be heard by the concerned District Co-operative Election Officer within the prescribed period. This Chapter also provides the obligations of the society to publish the provisional list of the voters. It is obligatory on the part of the society to give particulars of individual member with necessary identity enabling them to treat as 'registered voters'. The provisions are also made for inviting the claims and objections and/or omission or error in respect of the names, address, particulars in the provisional list of voters, so that final list of the voters, as required, can be published for the purpose of election and/or other related matters. This is certainly in the background of the M.C.S. Act, acts, rules and the by-laws of the society, which deals and govern with various kinds of members and

their statutory rights including a publication of their names in the final list and to vote for the society election.

5) The relevant Sections 26 and 27 and provisions of the Maharashtra Co-operative Societies Act, 1960 are 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 also that, in any election conducted immediately after the date of the commencement of the Maharashtra Co-operative Societies (Amendment) Act, 2013, (Mah.XVI of 2013), all the existing members of the society shall be eligible for voting, unless otherwise ineligible to vote.

27. Voting powers of members-[(1) Save as otherwise provided in sub-sections (2) to (7), both inclusive, no member of any society shall have more than one vote in its affairs; and every right to vote shall be exercised personally, and not by proxy :

[(10) If a member has taken a loan from the society, such member shall, whenever he is a defaulter, as provided in the Explanation to clause (I) of sub-section (1) of section 73CA has no right to vote in the affairs of the society:]

Provided that, a member shall not be deemed to be a defaulter, if he has discharged his obligation to deliver his marketable produce

to the marketing or processing society and the value of such produce is not less than the amount of his dues, even if the actual settlement of his dues, either in whole or in part, takes place at a later stage.

(11) The agricultural credit society may, issue suitable orders for the purpose of carrying out the provisions of sub-section (10)].

6) There is no issue in the matter that after hearing the case/objections of the members the voters' list of the society has been finalised. However, in the present petition, general prayers are made against all others whose names were deleted by following due procedure of law by the concerned society initially and confirmed by Authority lateron. The members, whose names were deleted, did not raise specific objections at the relevant stage of proceedings after provisional list published by the society. The society itself by following the due procedure of law by giving individual notices, because of their respective defaults de-listed them. The issue even if any whether they are defaulters or not needs to be objected and/or raised by the concerned members only. The society and the Authority are under obligation to consider the objections raised by the individual member as the rules as referred above contemplate "the hearing and decision to be given for and against the member concerned". This itself means, if there is no objection raised by the

defaulter and/or member who is de-listed from the provisional list or other list at appropriate time, no third person and/or other member on their behalf, specially when they are declared defaulters, insists to include their names, when they themselves never took appropriate steps within the statutory period. There is nothing on record to show that all other members have given any power of authority and / or provided them an authority in writing to raise such objection on their behalf.

7) The M.C.S. Act, the rules and by-laws, therefore, need to be seen and referred before considering such objections on behalf of other third person than the defaulters members, to disturb and/or interfere with the final voters list confirmed by the Authority in accordance with law. I am inclined to accept the preliminary objection as raised and decline to accept the submissions so raised by the learned counsel for the petitioners that one member or some members can raise objection, specially when it is the case of deletion of names of the members being the defaulters. The provisions are made available for such defaulters and/or such deleted members to raise objections and after completion of formality have also right of inclusion in the voters list and/or members list if case is made out.

The point is that such members must take steps within a reasonable time. The other members in my view cannot be permitted to canvas or advance their case of default and/or similar case, especially for want of any authorisation and/or specific provisions in by-laws and/or under the Act for such procedure.

8). The learned counsel appearing for the petitioners has strongly relied upon a case of ¹Balasaheb s/o Kondiram Pawar Vs. The State of Maharashtra, 1991(1) ALL MR 279, the judgment of this Court passed by a Single Judge of this High Court in support of his contention that any one member can raise the objection for other members for inclusion or deletion of the names in the final voters' list. This judgment in my view has no assistance to the petitioners in view of the position apart from the admission facts on record so mentioned, there was no such issue raised in that petition. The facts and circumstances were totally distinct. The default of the members in the present case not raised any objection about de-listing of their names on the ground of defaults. The locus of such third person/members in this background to file such objection and insist for others' inclusion without removing the tag 'defaulter' by those

1 Balasaheb s/o Kondiram Pawar Vs. The State of Maharashtra, 1991(1) ALL MR 279

defaulter members, in my view, not permissible. Therefore, general observations of this judgment in now way supports the submissions raised by the petitioners in support of this petition.

9) Taking overall view of the matter, the present petition is dismissed. The interim orders granted, if any, stands vacated. Rule is made discharge accordingly. No costs.

(ANOOP V. MOHTA, J.)