IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2515 OF 2015

Shri Prakash Bhanudas Kavade & ors. ... Petitioner.

Versus

The Nashik District Central
Co-operative Bank Limited, Nashik & ors. ... Respondents.

Mr. Pramod N. Joshi, advocate for Petitioner.

Mr. V.V. Salunke, advocate for respondent No. 1.

Mr. Amit Borkar, advocate for respondent No. 2.

WITH

WRIT PETITION NO. 2580 OF 2015

Dr. Girish Dattatray Mohite. ... Petitioner.

Versus

The State of Maharashtra & ors. ... Respondents.

Mr. Suresh M. Sabrad, advocate for Petitioner.

Mr. A.B. Vagyani, G.P. a/w. Mr. C.P. Yadav, AGP for State.

Mr. Amit Borkar, advocate for respondent No. 2.

WITH

WRIT PETITION NO. 3583 OF 2015

Vinod Tarachand Aher. ... Petitioner.

Versus

The State of Maharashtra & ors. ... Respondents.

Mr. Suresh M. Sabrad, advocate for Petitioner.

Mr. A.B. Vagyani, G.P. a/w. Mr. S.S. Bhise, AGP for State.

Mr. Amit Borkar, advocate for respondent No. 2.

CORAM : B.R. GAVAI & A.S. GADKARI, JJ
DATE : APRIL 8, 2015

P.C.:

1 Rule. Rule made returnable forthwith. Heard by consent of the parties.

2 Since the questions raised in all these 3 petitions are common, they are heard together and decided by this common order.

3 The Petitioners claim to be the members of the respondent No. 4 bank which is District Central Co-operative Bank in Nashik District. The Petitioners claim to raise a general grievance on behalf of the thousands of members, who according to the Petitioners have been deprived of participating in the election to the respondent No. 4 committee.

4 The elections to the said committee are being conducted for the first time after amendment was made to Section 26 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as “the said Act”) on 14/2/2013. Vide the said amendment the concept of active and non-active members was brought on the statute book for the first time.

5 It is the contention of Shri Joshi, learned Counsel for the Petitioners that the Petitioners and the various Primary Cooperative Societies except the Primary Agricultural Credit Societies have been deprived of exercising their voting rights only on the ground that they

are non-active members, since they have not paid share capital of Rs. 5,000/-. It is the contention of the learned Counsel appearing on behalf of the Petitioners that the last proviso to sub-section 2 of section 26 provides that the said provision would not be applicable to the elections which are immediately being held after the amendment to the said Act and all existing members of the society will be eligible for voting, unless otherwise ineligible for voting.

6 Shri Joshi relies on the Judgment of the Apex Court in the case of **Pundlik v/s. State of Maharashtra & others reported in (2005) 7 SCC 181** in support of the proposition that even in election matters an interference would be warranted by this Court in its inherent powers and this Court would be empowered under Article 226 of the Constitution of India to interfere, since large number of voters have been kept out of voting list.

7 Learned Counsel also relies on the Judgment of the learned Single Bench of this Court in the case of **Rajan Dinkarrao Pharate &**

ors. v/s. State of Maharashtra & ors reported in 1997 (1) Mh.L.J. 543. Shri Joshi further relies on the Judgment of the learned Single Bench of this Court dated 31st March, 2015 in a bunch of Petitions being Writ Petition No. 3315 of 2015 and other connected Petitions in the case of **Gagangiri Vividh Karyakari Sahakari (Vikas) Seva Sanstha Maryadit & ors.**, wherein the learned Single Judge has held that the other resource societies apart from the Primary Agricultural Credit Cooperative Societies are also entitled to the same treatment as that of the Primary Agricultural Credit Cooperative Societies.

8 Per contra, Shri Borkar, learned Counsel appearing on behalf of the respondent No. 2 submits that the members who are not included in the voters lists are excluded not by virtue of amendment to Section 26, but since they stand disqualified in view of sub-section 10 of Section 27 read with Section 73CA(1)(i) of the said Act.

9 The learned Counsel for the respondent submits that the bank apart from giving notice to the individual members regarding the

default had also issued advertisement in two prominently published newspapers namely Gavkari and Desdoot, calling upon them to clear the default by 21st March, 2015. It is further submitted that they are also informed by the said notice, that non-clearing of the default by the said date would result in non-inclusion of their names in the voters' list. He submits that as a matter of fact, pursuant to the said notice, about 300 members have cleared the default and their names are also included in voters' list. The learned Counsel submits that in one of the petitions a copy of the advertisement is annexed and as such it is clear that the Petitioners were aware about the notice issued by the bank.

10 No doubt, by now it is settled law that this Court would be slow in interfering in the electoral process. However, as held by the Apex Court in the case of **Pundlik(supra)**, this Court would not be unjustified in invoking its powers under 226 of the Constitution of India in an appropriate case. The Hon'ble Apex Court in the said case found that on account of malafide or arbitrary exercise of the

authorities, large number of eligible voters were sought to be kept away out of the electoral process and as such an interference was justified.

11 In that view of the matter, we are not non-suiting the petitioners on the ground of commencement of the election process, but proceed to consider the contentions raised by the learned Court for the parties, on their own merits.

12 For appreciating rival controversies, it will be necessary to refer to Section 26, sub-section 10 of Section 27 and relevant portion of section 73C(3)A of the said Act, which reads thus :

> "Section 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.

(2) It shall be the duty of every member of a society,-

(a) to attend at least one general body meeting within a consecutive period of five years:

Provided that, nothing in this clause shall apply to the member whose absence has been condoned by the general body of the Society;

(b) to utilise minimum level of services at least once in a period of five consecutive years as specified in the by-laws of the society:

Provided that, a member who does not attend at least once meeting of the general body as above and does not utilise minimum level of services at least once in a period of five consecutive years, as specified in the by-laws of such society shall be classified as non-active member:

Provided further that, when a society classifies a member as a non-active member, the society shall, in the prescribed manner communicate such classification, to the concerned member within thirty days from the date of close of the financial year:

Provided also that, a non-active member who does not attend at least one meeting of the general body and does not utilise minimum level of services as specified in the by-laws, in next five years from the date of classification as non-active member, shall be liable for expulsion under section 35:

Provided also that, a member classified as non-active member shall, on fulfillment of the eligibility criteria as provided in this sub-section be entitled to be re-classified as an active member:

Provided also that, if a question of a member being active or non-active member arises, an appeal shall lie to the Registrar within a period of sixty days from the date of communication of classification:

Provided also that, in any election conducted immediately after the date of commencement of the Maharashtra Co-operative Societies (Amendment) Act, 2013, all the existing members of the society shall be eligible for voting, unless otherwise ineligible to vote."

27 Voting powers of members- (1)…..
(2)…..
(3)…..
(4)…..
(5)….
(6)….
(7)….

(8)….
(9)….
(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 have 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."

73CA. Disqualification of committee and its members......
(1) Without prejudice to the other provisions of this Act or the rules made thereunder in relation to the disqualification of being member of a committee, no person shall be eligible for being appointed, nominated, elected, co-opted or, for being a member of a committee, if he-
(i) is a defaulter of any society;
Explanation.- For the purposes of this clause, the term "defaulter" includes -

(a)....
(b)....
(c)....
(d)....

(e)....
(f) in the case of District Central Co-op 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;
(iii) is a person who represents a society whose Managing Committee is superseded."

13 It is not in dispute that after amendment to the said Act in 2013, by which sub-section 2 of section 26 has been brought on the said Act, for the first time the concept of active membership has been brought on the statute book. To be an active member one has to attend atleast one general body meeting within a consecutive period

of five years. There are various provisos to the said sub-section. One of the provisos provide for classification of members as a non-active members. The other proviso provides for rectification of lacuna and reclassification as an active member and another one also provides for an appeal to Registrar. However, most relevant for the purpose of the present petition would be the last proviso. The last proviso provides that in the election to be conducted immediately after the commencement of the amendment act, all the existing members of the society would be eligible for voting unless otherwise ineligible to vote. It is thus clear that a member cannot be deprived of right to vote on the ground of classification as a non-active member. However, at the same time, a member has to be otherwise eligible to vote. It thus be clear that if under any of the provisions of the said Act, a member is found ineligible, he would not be entitled to vote in the elections.

14 Section 27 deals with voting powers of a member. Sub-section 10 thereof provides that if a member has taken loan from the society,

such member whenever he is defaulter as provided in the explanation to clause (i) of sub-section 1 of section 73A, has no right to vote in the affairs of the society.

15 Section 73CA provides for disqualification of the committee and its member. Sub-section (1) provides that without prejudice to the other provisions of the Act or the rules made thereunder in relation to the disqualification of being member of a committee, no person shall be eligible for being appointed, nominated, elected, co-opted or for being a member of a committee, if he is a defaulter of any society. The explanation to the said clause provides various eventualities in which a member has to be termed as defaulter. Since we are dealing with a District Central Cooperative Bank, explanation (f) would be relevant for the present purpose. Explanation (f) provides that in the case of District Central Co-operative Bank, a member shall be disqualified, if he is a person who represents a society other than a primary agricultural credit cooperative 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 90 days. It further provides that a person who is defaulter of a primary agricultural co-operative credit society or is an office bearer of defaulting primary agricultural co-operative credit society shall also be disqualified.

16 No doubt that section 73CA deals with disqualification of committee and its members. However, clause 10 of Section 27 which deals with right to vote specifically refers to explanation to clause (i) of sub-section (1) of section 73CA. It can thus clearly be seen that the legislature by reference has brought explanation to clause (i) of sub-section (1) of Section 73CA, in sub-section 10 of section 27. As such the provisions as contained in explanation to clause (i) of sub-section (1) of section 73CA will have to be read as if it is a part of sub-section 10 of section 27, in so far as voting right is concerned. Explanation (f) to clause (i) of sub-section(1) of Section 73CA carves out the class of a “primary agricultural credit co-operative society” as against “other primary society”. The Statute itself has given special treatment

to the primary agricultural credit co-operative societies. The Statute itself provides that though primary agricultural credit co-operative society is disqualified, it will still have voting right. The only rider is that in case of primary agricultural credit co-operative society, its representative cannot be a person who is defaulter of primary agricultural credit co-operative society or is an office bearer of defaulting primary agricultural credit co-operative society. However, in case of all other primary society except the primary agricultural credit co-operative society, its representative not being entitled to voting if the society to whom he represents has committed default towards payment of bank for a period exceeding 90 days. It thus be clear that the Legislature in its wisdom has carved out a special class of primary agricultural credit co-operative societies as against the other primary societies for giving a special treatment. The provisions of the said Act are not challenged by any of the Petitioners. As such, we have not called upon to consider the validity or otherwise of such a classification. In that view of the matter, on plain reading of a statutory provisions, we do not find that the challenge by the petitioners, on the ground of discrimination deserves to be entertained.

17 Apart from that, from the submissions made by the District Central Co-operative Bank, it is clear that the bank had given wide publicity by a notice published in the prominent newspaper dated 2/2/2015, the societies who were defaulter were informed that though the societies are defaulter upto 31/12/2014, if they clear the default up to 22/2/2015, they can send their representative for the purpose of voting. The learned Counsel for the Bank has categorically stated that 300 societies have taken advantage of the said notice and cleared the dues and their names are also included in the provisional voters' list. It is pertinent to note that provisional voters' list has been published on 2/3/2015, i.e. almost after a month from publication of the notice in newspapers. It is not the case of the Petitioners that in pursuance to the notice published by the bank in the newspapers, they have cleared their dues and still their names are not included in the provisional voters' list.

18 In so far as the Judgment of the learned Single Judge in the case of **Pharate (supra)**, in the said case though the last date of payment of increased share capital was enhanced by the society, the voters' list was published much prior to the extended date, thereby excluding 90 per cent of the members from the voters' list. In that view of the matter, learned Single Judge (as His Lordship then was) held that the said persons could not have been declared to be disqualified. As such the said Judgment is not applicable to the facts of the present cases.

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. Since we have taken the aforesaid view upon interpretation of the provisions of Section 26, sub-section 10 of section 27, and explanation (f) to clause (i) of sub-section (1) of

Section 73CA, we find that the Legislature itself has carved out a special class of primary agricultural credit co-operative society as against other society for giving a special treatment. In that view of the matter, we find that the contention raised by the Petitioners of discrimination is not sustainable in law.

20 The Petitions are without any substance and as such are dismissed. Rule is discharged accordingly.

(A.S. GADKARI, J) **(B.R.GAVAI,J)**