

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2567 OF 2015**

Shree Ganesh Sahakari Dudhvyavasaik Sanstha Maryadit
..Petitioner
Vs.
Kolhapur Zillha Dudh Utpadak Sangh Maryadit Kolhapur & Anr.
..Respondents

**WITH
WRIT PETITION NO. 2568 OF 2015**

Shree Hanuman Sahakari Dudhvyavasaik Sanstha Maryadit
..Petitioner
Vs.
Kolhapur Zillha Dudh Utpadak Sangh Maryadit Kolhapur & Anr.
..Respondents

**WITH
WRIT PETITION NO. 2569 OF 2015**

Shree Hanuman Sahakari Dudhvyavasaik Sanstha Maryadit
..Petitioner
Vs.
Kolhapur Zillha Dudh Utpadak Sangh Maryadit Kolhapur & Anr.
..Respondents

**WITH
WRIT PETITION NO. 2570 OF 2015**

Shree Ganesh Mahila Sahakari Dudhvyavasaik Sanstha Maryadit
..Petitioner
Vs.
Kolhapur Zillha Dudh Utpadak Sangh Maryadit Kolhapur & Anr.
..Respondents

**WITH
WRIT PETITION NO. 2571 OF 2015**

Shree Mahalaxmi Sahakari Dudhvyavasaik Sanstha Maryadit
..Petitioner
Vs.

**Kolhapur Zillha Dudh Utpadak Sangh Maryadit Kolhapur & Anr.
..Respondents**

**WITH
WRIT PETITION NO. 2572 OF 2015**

**Shree Hanuman Sahakari Dudhvyavasaik Sanstha Maryadit
..Petitioner**

Vs.

**Kolhapur Zillha Dudh Utpadak Sangh Maryadit Kolhapur & Anr.
..Respondents**

**WITH
WRIT PETITION NO. 2573 OF 2015**

**Shree Late Sonabai Bhairy Kole-Patil Sahakari Dudhvyavasaik Sanstha
Maryadit ..Petitioner**

Vs.

**Kolhapur Zillha Dudh Utpadak Sangh Maryadit Kolhapur & Anr.
..Respondents**

**WITH
WRIT PETITION NO. 2587 OF 2015**

**Shree Kalamma Sahakari Dudhvyavasaik Sanstha Maryadit Tahsil & Anr
..Petitioner**

Vs.

**Kolhapur Zillha Dudh Utpadak Sangh Maryadit Kolhapur & Anr.
..Respondents**

**Mr. V. B. Rajure for the Petitioner in Writ Petition Nos.2567 of 2015 to Writ
Petition No.2573 of 2015**

Mr. Ruturaj Pawar for the Petitioner in Writ Petition No.2587 of 2015

**Mr. Y. S. Jahagirdar, Senior Advocate with Mr. Amit Borkar for the
Respondent No.1 in all and for the Respondent No.3 in Writ Petition
No.2587 of 2015**

**Ms M. S. Bane “B” Panel Counsel for the Respondent No.2 in all Petitions
except in Writ Petition No.2587 of 2015.**

CORAM : R. M. SAVANT, J.
DATE : 18th MARCH, 2015

P.C.

1 At the outset, the Learned Counsel Mr. Rajure appearing for the Petitioner tenders the last page of the communication dated 11-2-2015 which is now numbered as page No.19A in Writ Petition No.2567 of 2015. Leave to amend is granted, so as to annex the said last page. Amendment to be carried out forthwith.

2 The above Writ Petitions take exception to the order dated 2-3-2015 passed by the District Election Officer and Divisional Joint Registrar (Milk) Pune Division, Pune, by which order the objection applications filed by the Petitioner in each of the above Petitions came to be rejected. The said objection was in respect of non inclusion of the names of the Petitioner Societies in the provisional as well as the final list of voters.

3 The Petitioner Societies are class (C) societies who are the members of the Respondent No.1 which is a Zillha Dudh Utpadak Sangh Maryadit, Kolhapur, which is a class (A) society. The members of the Respondent No.1 are entitled to participate in the elections which are held for electing the Board of Directors of the Respondent No.1 society.

4 At this stage, it is required to be noted that since the term of the Board of Directors of the Respondent No.1 was coming to an end in the year 2014, steps were taken to hold the elections to the Respondent No.1 society. In terms of the mandate of the Rules that were in force in the year 2012, the Collector, Kolhapur, who was the Returning Officer, at the relevant time published an election programme for preparation of the voters list of the Respondent No.1 society. A provisional list of voters was published on 21-6-2012 which admittedly did not contain the names of the Petitioner societies and other similarly situated societies. After going through the gamut of finalisation of the said voters list, the said provisional voters list was finalised on 18-7-2012 which also admittedly did not contain the names of the Petitioner societies. It appears that thereafter the State Government on 27-7-2012 in exercise of powers under Section 73(1)(b) of the Maharashtra Co-operative Societies Act, 1960, postponed the elections of all the Co-operative Societies in the State on the ground of drought in the State. The said postponement was till 30-11-2012. The aforesaid facts have been cited as they have some bearing on the issue raised in the above Petitions.

5 It appears that prior to the said exercise of finalising the voters list being completed by the Collector, it seems that on 30-6-2008, the Managing Committee of the Respondent No.1 society passed a resolution to place the subject of the expulsion of the Petitioner societies and similarly situated

societies in the General Body Meeting. It seems that on 14-8-2008, the General Body of the Petitioner societies passed a resolution to tender resignation of the membership of the Respondent No.1 society. On 25-9-2008 a notice of the General Body Meeting of the Respondent No.1 being held wherein the issue of expulsion would be taken up, was issued. The said meeting was to be held on 13-11-2008, however, prior thereto on 4-11-2008 the Petitioner societies communicated to the Respondent No.1 that the General Body of its society has already passed a resolution to tender resignation of its membership of the Respondent No.1 society and therefore requested to return the share amount. In the General Body Meeting of the Respondent No.1 society which was held on 13-11-2008, a resolution came to be passed expelling 186 societies from its membership which included the Petitioner societies and to forfeit their share amount. The said resolution was as per the procedure sent to the Deputy Divisional Registrar Co-operative Societies (Milk) Pune Division Pune, for his approval, who accordingly accorded the approval by his order dated 17-9-2009. It is upon the approval granted by the Deputy Divisional Registrar that the names of the Petitioner societies were deleted from the membership register and the share amount of the Petitioner societies was shown in the reserve fund of the Respondent No.1 society. The said expulsion was challenged by about 57 societies by way of Appeals before the Joint Divisional Registrar (Milk) which Appeals came to be dismissed. Thereafter the said 57 societies filed Revisions before the State Government which were placed before

the Hon'ble Minister for Co-operation, Government of Maharashtra. By order dated 20-4-2012, the Hon'ble Minister for Co-operation, Government of Maharashtra, was pleased to dismiss the said Revision Applications filed by the Petitioner societies and the similarly situated societies. Thereafter 4 Petitions were filed in this Court being Writ Petition No.7381 of 2012, Writ Petition No.7571 of 2012, Writ Petition No.830 of 2013 and Writ Petition No.831 of 2012, which Petitions were filed by totally 9 societies in total, who have also filed the instant Petitions.

6 In so far as the first two Petitions i.e. Writ Petition No.7381 of 2012 and Writ Petition No.7571 of 2012 are concerned, they had come up for admission before a Learned Single Judge of this Court (S.C.Dharmadhikari, J.) on 1-11-2012. The Learned Judge after commenting on the expulsion orders passed by the Divisional Joint Registrar as confirmed by the State Government, directed to list the said Writ Petitions for interim reliefs after 6 weeks. However, prior to the said direction, the Learned Judge also recorded the statement made on behalf of the Petitioner societies in the said Writ Petition that they would file an undertaking within three weeks in this Court, stated therein that each one of the Petitioner has not become a member of any federal societies and they are desirous of supplying milk only to the contesting Respondent No.4 Federal society. However, what is of importance in the context of the challenge raised in the present Petitions is paragraph 4 of the

said order dated 1-11-2012 which for ready reference is reproduced herein under :

“4. In the meanwhile, until further orders no steps which are coercive in nature and pursuant to the expulsion of the Petitioner shall be taken by the contesting Respondents.”

7 It is required to be noted that the challenge to the orders of expulsion was principally founded on the fact that though the Petitioner Societies had sought to tender their resignations which fact was also communicated to the Respondent No.1 society. The Respondent No.1 society has accepted the resignations and has expelled them as also sought to forfeit the share amount of the Petitioner societies. In the said Petitions, a reference to the bye-law was also made which according to the Petitioner in the said Writ Petitions provides that the share capital of the expelled member shall be either returned to the members or to be forfeited. It was sought to be contended on the said basis that the Respondent No.1 who is the Respondent No.4 in the said Petitions has wrongly exercised discretion without any reason and illegally forfeited the share capital of the Petitioner society thus causing huge financial loss and prejudice to the Petitioner societies and its members. Hence a grievance has been made in the said Writ Petitions that when the Petitioners have tendered their resignations, the said resignations have not been accepted and that the Respondent No.1 society by expelling them, is seeking to forfeit the share amount of the Petitioner societies. This is in so far as the said two

Petitions being Writ Petition No.7381 of 2012 and Writ Petition No.7571 of 2012 are concerned.

In so far as the Writ Petition No.830 of 2013 and Writ Petition No.831 of 2013 are concerned, the said Writ Petitions were filed later in point of time and therefore whilst issuing notice in the said Writ Petitions a Learned Single Judge of this Court (B.R.Gavai, J.) has whilst issuing notice, by way of ad-interim reliefs has directed that no coercive steps should be taken against the Petitioner thereby granting ad-interim reliefs in the same terms as granted in the other two Petitions i.e. Writ Petition No.7381 of 2012 and Writ Petition No.7571 of 2012.

8 The Maharashtra Co-operative Societies Act came to be amended on 14-2-2013 by virtue of the mandate imposed by 97th amendment to the Constitution of India. It is pursuant thereto that the amended Maharashtra Co-operative Societies Elections to Committee Rules 2014, were notified on 11-9-2014. It is in terms of the Amended Act and the Rules that the elections were now required to be held and accordingly the election programme for holding elections to the Board of Directors of the Respondent No.1 society was published on 11-2-2015. The provisional voters list was published on 11-2-2014 which did not include the names of the Petitioner societies as also similarly situated societies. The Petitioner societies objected to their non

inclusion in the provisional list of voters. The said objection as indicated above was principally founded on the order dated 1-11-2012 passed by S.C.Dharmadhikari, J. in the said two Petitions i.e. Writ Petition No.7381 of 2012 and Writ Petition No.7571 of 2012. It was the case of the Petitioner societies that in view of the said order and especially in view of the directions contained in paragraph 4 of the said order, the names of the Petitioner societies were required to be included in the provisional voters list. The said objection was considered by the Respondent No.2 herein i.e. the District Election Officer who observed that there is no stay granted by any authority or by this Court to the expulsion of the Petitioner societies and therefore the names of the Petitioner societies could not be included in the provisional list of voters and accordingly rejected the objection applications filed by the Petitioner societies. It appears that thereafter on 7-3-2015 a final list of voters has been published and thereafter the election programme for the second phase that is from filing the nomination to voting has been declared on 17-3-2015. The election programme is at the stage where from yesterday i.e. 17-3-2015, the nominations are to be filed which is to go on till 23-3-2015. As indicated above, it is the said order dated 2-3-2015 which is taken exception to by way of the above Petition.

9 The principal contention urged by the Learned Counsel for the Petitioners, Mr. Rajure and Mr. Pawar is that in view of the interim order

passed in the said Writ Petitions the names of the Petitioner societies were required to be included in the provisional list of voters. The Learned Counsel appearing for the Petitioner societies whilst advancing the said submissions has sought to place reliance on clause 4 of the order dated 1-11-2012 passed by S.C.Dharmadhikari J. The Learned Counsel would interpret the words “no coercive steps pursuant to the expulsion” to mean that the expulsion of the Petitioner societies has been stayed and therefore the Petitioner societies for all purposes are deemed to be members and their names are therefore required to be included in the provisional list of voters. This is the substance of the submissions which have been urged on behalf of the Petitioners.

10 Per contra, the Learned Senior Counsel Mr. Y. S. Jahagirdar, appearing on behalf of the Respondent No.1 society would contend that paragraph 4 would have to be interpreted in the context of the challenge which was raised to the order of expulsion. The Learned Senior Counsel would contend that before the Learned Single Judge, S.C.Dharmadhikari, J., the factum of the Petitioner not being allowed to resign, being expelled, and thereafter their share amount which was sought to be forfeited was highlighted. The Learned Senior Counsel would therefore contend that it is in the light of the said facts that paragraph 4 of the order dated 1-11-2012 would have to be interpreted. The Learned Senior Counsel would also contend that the District Election Officer having regard to his powers and duties as such

cannot enter into an exercise of adjudicating whether the names of the Petitioner have been rightly or wrongly included. The Learned Senior Counsel in support of the said contention would seek to place reliance on the Division Bench judgment of this Court in the matter of **Dhondiba Parshuram Lakade & Ors. Vs. Someshwar Sahakari Sakhar Karkhana**¹ wherein the powers of the Returning Officer and the scope of an inquiry that is to be made by him pursuant to an objection raised, has been enumerated. The Learned Senior Counsel would contend that the inquiry which is contemplated is of a summary nature and has to be conducted on the basis of the existing list of members and the Inquiry Officer therefore cannot include a person as a member whose name does not appear in the register of members. The Learned Senior Counsel would also draw the courts attention to the fact that when the exercise to hold the elections in the year 2012 would carried out by preparing the final voters list, the names of the Petitioner societies were not appearing in the provisional voters list at that time to which no objection was taken as also the final voters list was not challenged by the Petitioner and therefore the Petitioner societies cannot now make a grievance about the same.

11 Having heard the Learned Counsel for the parties, I have considered the rival contentions. In the instant case, the question is as to whether the names of the Petitioner societies are required to be included in the provisional list of voters. It is an undisputed position that the Petitioner

1 1979 Mh.L.J. 311

societies have been expelled as members of the Respondent No.1 society and that the challenge to the expulsion is presently pending before this Court in Writ Petition No.7381 of 2012 and Writ Petition No.7571 of 2012 and the other two Petitions. As indicated above, in the said Petitions ad-interim order has been granted and by way of directions as contained in paragraph 4 of the said order, the Respondent No.1 has been restrained from taking coercive steps pursuant to the expulsion. Since much store has been laid on the import of the directions as contained in paragraph 4 on behalf of the Petitioner, it would be necessary to address the said issue. As rightly contended by the learned Senior Counsel appearing for the Respondent No.1 society that the said directions contained in paragraph 4 restraining the Respondent No.1 from taking coercive steps would have to be interpreted in the context of the challenge raised in the said two Petitions. As indicated above the expulsion orders and the action sought to be taken of forfeiture of the share amount of the Petitioner societies has been challenged on the ground that though the Petitioner societies had resolved to resign from the membership of the Respondent No.1 which resolution was also communicated to the Respondent No.1. The Respondent No.1 has ignored the said resolution and has decided to expel the Petitioner societies and thereafter forfeit the share amount which is otherwise required to be refunded, if a member resigns. It is in the said context that the directions that no coercive steps to be taken pursuant to the expulsion would have to be interpreted. If so interpreted it would be that the Respondent No.1 was only

restrained from forfeiting the share amount of the Petitioner societies which otherwise would be entitled to be refunded to them if their resignations are accepted.

12 It is also required to be noted that when the said two Writ Petitions were filed the finalisation of the voters list in the earlier round i.e. as per the old Act and the Rules was very much in the field. However, the Petitioner in the said two Writ Petitions have not adverted to the said fact in the said two Petitions. The non mentioning of the said fact is also indicative of the fact that the interim reliefs which were sought by the Petitioner are only referable to the coercive action of forfeiture of the share amount of the Petitioner societies and the words coercive steps therefore cannot be extended to mean that the Petitioner would be entitled to participate in the elections to the Respondent No.1 society when the issue of expulsion is pending before this Court. As already mentioned hereinabove in the earlier round the names of the Petitioner were not appearing in the provisional voters list as also in the final list, but no objection was raised by the Petitioner to the provisional list or even the final list was not challenged. Hence at this stage, it can be said that the Petitioner having not challenged the factum of their names not appearing in the provisional list or final list which was published in the earlier round i.e. as per old Act and the Rules, are now disentitled to contend that their names were required to be included in the provisional list of members, in view of the

directions as contained in clause (4) of the said order dated 1-11-2012.

13 In so far as the observations of the District Election Officer that he does not have the jurisdiction to include the names of the Petitioner societies in the list. The said observations cannot be faulted with if the parameters of the inquiry which is to be held by the Returning Officer is to be considered a laid down in the Judgment of the Division Bench of this Court in **Dhondiba Parshuram Lakade's** case (supra), the District Election Officer obviously cannot include the name of a person whose name does not appear in the membership register of the Respondent No.1 society. Since all the Petitioner societies in the above Petitions are similarly situated and have challenged the identical orders passed by the District Election Officer, for the reasons aforestated, no case for interference with the impugned orders passed by the District Election Officer is made out. The Writ Petitions are accordingly dismissed.

[R.M.SAVANT, J]