

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION STAMP NO.9141 OF 2015

Avej Mohammad Yusuf Kokani : Petitioner.
Versus
Apurva Prashant Hire and ors. : Respondents.

**ALONG WITH
WRIT PETITION STAMP NO.9178 OF 2015**

Kokni Habib Hasan Mohammad : Petitioner.
VERSUS
Deoram Sawaliram Dahale and ors. : Respondents.

**ALONG WITH
WRIT PETITION STAMP NO.9179 OF 2015**

Kokani Ramzan Mohammad Yusuf : Petitioner.
Versus
Apurva Prashant Hire and ors. : Respondents.

Mr. Y S Jahagirdar, Senior Advocate with Mr. Appasaheb S Desai and Mr. R S Ghadge for the Petitioner in Writ Petition Stamp No.9141 of 2015.

Mr. A S Desai with Mr. R S Ghadge for the Petitioners in Writ Petition Stamp Nos.9178 of 2015 and 9179 of 2015.

Mr. Ravi Kadam, Senior Advocate i/by Shriniwas S Patwardhan with Mr. Ruturaj Pawar for the Respondent No.1 in Writ Petition Stamp Nos.9141 of 2015 and 9179 of 2015 and for the Respondent No.2 in Writ Petition Stamp No.9178 of 2015.

Mr. Shailesh D Chavan i/by Mr. Vivek V Salunke for the Respondent No.2 in Writ Petition Stamp No.9141 of 2015 and 9179 of 2015 for the Respondent No.4 in Writ Petition Stamp No.9178 of 2015

Mr. A D Kango AGP for the Respondent Nos. 3 to 5 & 8 in Writ Petition Stamp Nos.9141 of 2015 and 9179 of 2015, and for the Respondent Nos. 5 to 7 & 10 in Writ Petition No.9178 of 2015.

CORAM : R. M. SAVANT, J.

DATE : 15th April 2015

P.C.

1 The above Writ Petitions take exception to the orders all dated 20/3/2015 passed by the Divisional Joint Registrar, Co-operative Societies, Nashik Division, Nashik by which orders, the objection raised by the Respondent No.1 herein to the names of the Petitioners appearing as representatives of the Societies in question for participating in the elections to the Respondent - Nashik District Central Co-operative Bank Limited, Nashik came to be upheld and the Divisional Joint Registrar directed deletion of the names of the Petitioners from the final list of voters.

2 The process of holding the elections to the Respondent-Bank were commenced by the first stage of the election program announced by the State Election Authority vide communication dated 18/2/2015. In terms of the said communication the last date for forwarding the names of the delegates of the member societies was 20/2/2015. The concerned societies i.e. Devgaon Adivasi Vikas Seva Sahakari Society, Devgaon, Alwand Adivasi Vikas Seva Sahakari Society, Alwand and Samundi Navin Adivasi Vikas Seva Sahakari Society, Samundi accordingly communicated the names of the Petitioners in each of the Petitions as being their delegates to participate in the elections of the Respondent-Bank. The names of the Petitioners were accordingly included

in the provisional list of voters which was published.

3 The Respondent No.1 herein, who is also a member of a Society which is a member of the Respondent-Bank, took objection to the names of the Petitioners being included in the provisional list of voters before the Divisional Joint Registrar on the ground that since the societies of whom the Petitioners are the delegates are defaulters, the names of the Petitioners cannot be included in the voters list being the office bearers of the defaulting societies. Before the Divisional Joint Registrar the Societies in question i.e. Devgaon Adivasi Vikas Seva Sahakari Society, Devgaon, Alwand Adivasi Vikas Seva Sahakari Society, Alwand and Samundi Navin Adivasi Vikas Seva Sahakari Society, Samundi were parties. The Divisional Joint Registrar adjudicated upon the said objection and as indicate above has upheld the objection raised by the Respondent No.1 in Writ Petition Stamp Nos.9141 of 2015 and 9179 of 2015 and the Respondent No.2 in Writ Petition Stamp Nos. 9178 of 2015. The case of the Petitioners that they had resigned as Directors/Managing Committee Members of the concerned societies was not accepted by the Divisional Joint Registrar on the ground that the occurrence of the casual vacancy in the Managing Committee on account of the resignations of the Petitioners was not communicated to the Assistant Registrar, Co-operative Societies. The Divisional Joint Registrar further held that in terms of Section 73CA (1)(f)(i) of the Maharashtra Co-operative Societies Act, 1960, the Petitioners are not

entitled for their names being included in the final list of voters. As indicated above, it is the said orders all dated 20/03/2015 which are taken exception to by way way of the above Writ Petitions.

4 The learned Senior Counsel appearing for the parties for and against the removal of the names of the Petitioners from the voters list would make submissions relying upon the Sections 73CB(14), 73CA of the said Act, and Rule 10(4) of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014. The learned Senior Counsel appearing on behalf of the Petitioners would contend that under Section 73CB (14) of the said Act no consequences are prescribed for non-intimation of the casual vacancy in the Managing Committee to the Assistant Registrar of the Co-operative Societies, and therefore, the said provision could not be relied upon for removal of the names of the Petitioners from the voters list. The learned Senior counsel appearing on behalf of the Respondent No.1 would contend that if the mandate of Section 73CB(14) is not complied with in the matter of communication of the occurrence of the casual vacancy in the Managing Committee, the consequences as contemplated under Section 73CA(1)(f) would resultantly have to follow. It is the submission of the learned Senior Counsel appearing for the Respondent No.1 that if such an interpretation is not given to Section 73CB(14), the object of Section 73CA(1)(f) of the said Act would be lost as the person who is disqualified to be a delegate, by a back door

method by way of submitting his resignation would seek to get over the disqualification as contemplated by Section 73CA(1)(f) of the said Act..

5 In so far as the societies in question, which are the members of the Respondent-Bank are concerned, it is undisputed that they are the defaulters of the Respondent-Bank, and therefore, in terms of Section 73CA(1)(f)(i) a person representing the society, which is a defaulter, is not entitled to be included in the list of voters. In so far as Section 73CB(14) is concerned, the same casts a mandate on the committee of every co-operative society in the matter of informing any casual vacancy occurring in the committee or its office bearers within fifteen days of the occurrence of such vacancy. In the instant case as the orders disclose, the Assistant Registrar, Co-operative Societies informed the Divisional Joint Registrar that no such communication was received from the Managing Committee of the societies in question. If that be so, the natural corollary of the same would be that the case of the Petitioners that they had resigned could not be accepted and consequentially the rigors of Section 73CA(1)(f)(i) of the said Act would come into play viz. that a person representing a defaulter society is disqualified from being included in the list of voters.

6 After the matter was substantially heard and the dictation of the instant order had started, the learned Senior Counsel for the Petitioners, on the

instructions of the Advocate on record, stated that the representative of the Respondent No.6 i.e. the member society is personally present in Court, and further stated that the Respondent No.6 and the other two member societies have prepared the affidavits in reply in all the above three Petitions, to which affidavits is annexed the communication addressed by each of the societies to the Assistant Registrar, Co-operative Societies intimating the occurrence of the casual vacancy on account of the resignation of the Petitioners. In my view, it is not possible to accept what has been stated in the said affidavits for the following reasons :- Though the impugned orders have been passed on the basis of Section 73CB(14) of the said Act namely that the occurrence of casual vacancy has not been communicated, the above Writ Petitions do not contain any averments or no case is pleaded that there is a compliance of Section 73CB(14) of the said Act by the concerned societies, secondly, the societies were very much parties before the Divisional Joint Registrar before whom also such a case was not put up or record produced, in the above Petitions also though the Petitioners claim to be the delegates of the concerned societies, no submissions were advanced on the said basis till the attention of this Court was sought to be drawn to the affidavits in reply which were to be filed on behalf of the concerned societies. Lastly the affidavits were not tendered soon after the above Petitions were called out and as indicated above were sought to be tendered after this Court had started dictating the order. This Court has therefore not taken the said affidavits on record. In my view, therefore, the

case of the Respondent No.6 as also the Petitioners now sought to be propounded does not inspire confidence of them having resigned and the occurrence of casual vacancy which has arisen on account of their resignations being communicated to the Assistant Registrar, Co-operative Societies. This has also to be viewed in the context of the fact that under the guidelines issued by the State Government in respect of the defaulter societies, they can be represented by an ordinary member nominated by the Managing Committee, it is probably to fit their case within the said guidelines that the said theory is now sought to be propounded.

7 As and by way of a final submission it was sought to be contended by the learned Senior Counsel appearing on behalf of the Petitioners that on account of the impugned orders the societies would now go un-represented in the elections to the Respondent-Bank and they therefore may be allowed to nominate an ordinary member as a delegate. In my view, the situation being of their own making, the societies or the Petitioners cannot try to take advantage of the same and now contend that they be allowed to be represented by an ordinary member. The societies could have done so, at the first instance i.e. when sending the names of the delegates but cannot now be permitted having regard to the fact that the election process having already commenced and the societies having already nominated the Petitioners as delegates who are disqualified. The eventualities in which the delegate can be changed are

mentioned in Rule 10(4) of the Election to Committee Rules. There are only two eventualities in which the delegate can be changed. The instant case does not fit in, any of the two eventualities. The learned Senior Counsel for the Respondent No.1 is therefore right in contending that the change if allowed at this stage would be in violation of the said Rule.

8 In that view of the matter no case for interference in the writ jurisdiction of this Court under Article 227 of the Constitution of India is made out. The above Writ Petitions are accordingly dismissed.

[R.M.SAVANT, J]