

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

**WRIT PETITION NO.9798 OF 2015
WITH
CIVIL APPLICATION NO.2942 OF 2015
IN
WRIT PETITION NO.9798 OF 2015**

Sou. Akkatai Shamgonda Patil And Others	.. Petitioners
Versus	
The District Co-operative Election Officer & District Deputy Registrar of Co-operative Societies and Others	.. Respondents

Mr. Vijay D. Patil a/w Mr. Ashish P. Pawar for Applicant in CAW No.2942/2015.
Mr. Amit Borkar i/b Mr. Ajit M. Savagave for Petitioner in WP No.9798 of 2015.
Mrs. V.S. Nimbalkar, Assistant Government Pleader for Respondent Nos.1 and 2.
Mr. S.R. Borulkar i/b Mr Sachin K. Hande for Respondent No.3.
Mr. Manoj Patil for Respondent Nos.4 to 24, 26 to 55, 57 to 85, 87, 88, 91 to 95.
Mr. Shyam Walve for Respondent No.41 and 75.

**CORAM : A.K. MENON, J.
DATED : OCTOBER 30, 2015**

P.C. :

. The above Writ Petition filed challenges the impugned order dated 19 September 2015, whereby Respondent No.1 rejected the written objections dated 11 September 2015 filed to the original voters filed before Respondent No.1 under the provision of Rule 8 of The Maharashtra Co-operative Societies (Election to Committee) Rules, 2014. It is case of the Petitioners that Respondent Nos. 4 to 95

are the persons who are not eligible to vote in the election of the Managing Committee of Respondent No.3-society. According to the Petitioners, the aforesaid respondents are not eligible for want of compliance of two basic requirements :- (a) not being residents of village and (b) not holding the requisite area of land.

2 According to the Petitioners, a list was published on 24 September 2015 and the aforesaid Respondents were not qualified. The written objections were submitted before the District Election Officer on 11 September 2015, as evident from the acknowledgment thereof, a copy of which is at Exhibit 'B' to the petition. In the said written objections, the Petitioners have pointed out the names of various persons who have been included in the Voters' List and specified the names of the villages, where they normally resided. The village in respect of which election is scheduled to be held is Terwad. These persons about whom written objections are taken, do not reside in Terwad. Such written objections also lists out names of various villagers who do not hold a minimum requirement of 10 R of land and some other who are defaulters. According to the petitioner those persons who are treated to be residing outside the village and those persons who do not qualify by virtue of minimum land holding

requirements are, according to the petitioner disqualified from voting. It is case of the Petitioners that if those persons are allowed to vote, it would be in violation of bye laws as well result in an illegality. On this basis, the Petitioners seeks quashing of the impugned order dated 19th September 2015.

3 Mr. Borkar, the learned Counsel appearing on behalf of the Petitioners submitted that after receiving the written objections, Respondent No.1 directed Respondent No.2 to carry out an enquiry into the written objections and enquiry report is said to be made on 18/19 September 2015. According to the Petitioners, Respondent No.2 has clearly opined that the written objections are valid as far as the number of persons mentioned in the said report are concerned. However, it is case of the Petitioners that despite the Registrar having so opined, Respondent No.1 has not accepted the report of the Registrar and has rejected the written objections. In these circumstances, it is prayed that the reliefs prayed for be granted.

4 On behalf of the Petitioners, Mr. Borkar, the learned Counsel had made application for ad-interim reliefs. The same came to be heard on 14 October 2015. Notices were issued to the

Respondents and in the meantime an ad-interim order was passed in terms of prayer – (e) of the Petition, which is reproduced herein below :-

- “1. Issue notice to the respondents, returnable on 28 October 2015.
2. Mrs. Nimbalkar, the learned AGP waives service on behalf of respondent Nos. 1 and 2. Mr. Patil the learned counsel waives service on behalf of respondent Nos.4 to 33, 36 to 43, 45 to 69 to 85, 87, 88, 91, 92 to 95. Hamdast permitted.
3. In the meantime there will be ad-interim order in terms of prayer clause-(e).”

5 By virtue of the said order, the votes of Respondent Nos. 4 to 95 were to be kept in separate ballot box and not to be counted pending/further order. After the above order was passed, one of the Respondents No.86 in the petition, has moved the Civil Application seeking recall of the order dated 14 October 2015 on the basis of that he was not heard in the matter when the order was passed. In the Civil Application, it is contended that the ad-interim order dated 14 October 2015 virtually amounts to grant of relief in the petition, in view of the fact that the elections are likely to be held on 8 November 2015 and the counting will follow immediately thereafter and if votes

of Respondent Nos. 4 to 95 are not counted, it would amount to great injustice and denial of their right to vote since having been cast, the votes must be counted otherwise the exercise is wasteful and the process for counting ought not to be interfered with. On this basis, Mr Vijay Patil, the learned Counsel appearing for the Applicant has urged that the order dated 14 October 2015 is required to be recalled in view of the present situation and the impending election. He submitted that Respondent Nos. 4 to 95 are admittedly the members of the society and there is no challenge to their membership or enrollment in the society. In that view of the matter, Mr. Patil, the learned Counsel submitted that effect of the order would be to deny voting rights to the members of the society without having heard them. This is in breach and in violation of the principles of natural justice. He submitted that as long as the aforesaid Respondents were members and continue to be members, they cannot be deprived of their rights of casting votes and by keeping a separate ballot box and not permitting the vote to be counted, would indirectly amount to denial of their right of casting the votes.

6 Mr. Patil further submitted that the election process has already started, there is no justification in interfering with the process

of the election and if the order dated 14 October 2015 is not recalled, it would amount to interference with the process of election. He submitted that only some of the Respondents were present when the Court passed an order and applicants and several others were deprived of a hearing. Mr. Patil, the learned Counsel appearing for the Applicants, relied upon Bye Laws of Vividh Karyakari Seva Sahakari Sanstha. According to Mr. Patil, the learned Counsel, bye law-24(5), clearly sets out members' right to vote and the fact that the members should exercise their right of voting. He relied upon bye laws- (24)(5), (5)(a) and (5)(d) and submitted that a reading of the aforesaid bye laws itself makes clear that right to vote vests in all the members and by virtue of the same, the aforesaid Applicants and Respondents 4 to 95 in the petition were entitled to cast their votes and the same cannot be interfered with.

7 Mr. Patil, the learned Counsel submitted that even otherwise, the Applicants should have been heard by Respondent No.2 on the written objections filed by the Petitioners. In the instant case, it is obvious that Respondent No.2 has not heard the Applicants/Respondent No.4 to 95, who did not have an opportunity of proving their eligibility before Respondent No.2 and that if such

opportunity was given the respondents concerned would have established that the objection were baseless. Assailing the report of the Respondent No.2 on the basis of a decision was given, but the findings are without any reasons, Mr. Patil said Respondents being members, the Registrar could not have arrived at these findings. He further submitted that the impugned order was passed correctly in consonance with the bye laws of the Society-Respondent No.3 correctly rejected the objections by virtue of the fact that aforesaid Respondents were members of the Society and by virtue of bye laws, the said members cannot be deprived of their right to vote.

8 In support of his submission, Mr. Patil, the learned Counsel for the appellants has relied upon the decision in case of **Shri Sant Sadguru Janardan Swami (Motigiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others, 2002(2) Bom. C.R.149**, and submitted that order dated 14 October 2015 undoubtedly interfered with the election process and it is cannot be assumed that keeping of the votes in a separate ballot box will all resolve the issues. Their right to chose the candidate of their liking will be negated if votes are kept in a separate ballot box and not counted. The same would amount to denial of

their rights to vote. He submitted that this Court have rightly held that the election process should not be stayed, although there may be allegations of illegality.

9 On the other hand, Mr. Borkar, the learned Counsel for the petitioners in support of case of the Petitioners submitted that in other cases, similar orders have been made, whereby the votes were directed to be kept in a separate ballot boxes subject to resolving the objections. In the present case he submitted that ad-interim order dated 14 October 2015 was justified. He relied upon the judgment of Division Bench of this Court in case of **Karbhari Maruti Agawan and Others Vs. State of Maharashtra and Others, 1994 Mh.L.J. 1527** and submitted that the Court had held that the various points to be considered while entertaining the writ petition. Under the circumstance the ratio clearly applies in the present case. One of the issues raised, whether the Registrar or any office subordinate to him exercising the powers of the Registrar would be competent to go into the question of qualifications of a member after the provisional list of voters was published and, if yes, what would be nature and scope of the enquiry to be made by him ?

10 The Collector would have in normal course directed or sought for a report of the Registrar on the aspect of names of persons in the members' list and therefore, in the voters' list. Mr. Borkar, relied upon paragraph-19 and submitted that the Registrar had powers to exercise and verify whether the person is qualified to be member or not and whether such powers can be exercised after process of preparation of list of voters is started. He relied upon the provisions of Section 11 of Maharashtra Co-operative Societies Act, 1961. Mr.Patil, the learned Counsel on the other hand submitted that Division Bench of this Court has in the matter of **Mr. Shantaram Runjali Aher Vs. The Vasantrao Dada Patil Sah Sakhar Karkhana Ltd and others, W.P. No.5539 of 2002**, order dated 24.10.2002 observed that the Hon'ble Supreme Court has in its judgment in case of **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha & Another, 2002(2) Bom.C.R.149**, held that preparation of the electoral roll is being an intermediate stage in the process of election of the managing committee of a specified society and the election process having been set in motion, the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of Rules while preparing the electoral roll. The

Supreme Court has approved the decision of Someshwar Sahakarai Sakhar Karkhana Ltd., Sinesgwarbagar Vs. Shriniwas Patil, Collector, Pune, 1992(1) Bom.C.R.590 and as also disapproved decision in Karbhari (*supra*), and found that Karbhari was no longer good law. Mr. Patil, the learned Counsel, therefore, submitted that ad-interim order should be rejected in view of the fact that there is no challenge to the membership of the aforesaid persons.

11 Having heard the learned Counsel at length and having perused with their assistance, the pleadings of petition and the Civil Application, and the case law cited, it is evident that the Respondent Nos. 4 to 95 being the members of the society, the fact which is not disputed by the Petitioners. The admitted position is that the aspect of membership of the said Respondents is no longer in question. The fact that their membership is valid is evident from the fact that though and the aforesaid persons have joined as Respondents, there is no challenge to their membership in Respondent No.3-society per-se. However, the only objection is as to their names being entered in the Voters' list. According to Mr. Borkar, the learned Counsel, the Respondent No.4 to 95 were not eligible to vote in view of the obvious fact that they are residents of the another village and

they do not own requisite area in the village in question i.e. Terwad, Taluka-Shirol, District Kolhapur. However, having seen the provision of Section 11, which provides for the powers of the Registrar and includes the power to rule on the eligibility, such power is to be exercised on the disputed issues including as to membership. It would have been necessary for Respondent No.2 to give an opportunity to Respondent Nos. 4 to 95 of being heard in the matter before having decided adversely.

12 In the instant case, this opportunity has been clearly not given. It is not case of the Petitioners that Respondents were heard in the matter before passing of the order. Before making a report to Respondent No.1, reference ought to have been made by Respondent No.2 to necessary inquiries if any, made pursuant the written objections and that the Registrar had granted an opportunity to the aforesaid Respondents to be made aware of the objections and offer them opportunity of showing cause. On a perusal of the report dated 18 September 2015, this requirement is not clearly followed.

13 In the circumstances, I am of the view that the Registrar was not justified in summarily upholding the written objections. In any event, it appears that the order impugned in the petition was

passed on the basis that the Respondents concerned were members of the society and were entitled to vote as correctly submitted by Mr. Patil, the learned Counsel for the applicants. The bye laws of the Society clearly give those rights to members and the Respondents cannot be deprived their rights to vote while being members. The fact that the ad-interim order is, therefore, amount to interference with the intermediate stage of the election process. In the facts of the present case, therefore, I am of the view that there will be no justification in continuing the ad-interim order and placing the votes in a separate ballot box and without being counted. If votes are not counted, it will result in great injustice and deprive the concerned respondents of their rights. In fact it will amount depriving the members of their basic right to vote. It is always open for the Petitioners to adopt legal remedies available to them in law without being influenced by the observations in this order. In the circumstances, I pass the following order.

: O R D E R :

- (I) Writ Petition is dismissed.
- (II) The ad-interim order dated 14 October 2015 will stand vacated. Civil Application No.2942 of 2015 stands disposed accordingly.

- (III) There shall be no order as to costs.
- (IV) Parties to act on a copy of this order duly authenticated by the Associate of the Court.
- (V) The Additional Assistant Government Pleader may in the meanwhile communicate this Order to the Respondent 1 to 3.

(A.K. MENON, J)