

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1246 OF 2015

Suresh V. Kakad :: **PETITIONER**

-: Versus :-

The State of Maharashtra
and others. :: **RESPONDENTS**

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Shri A. S. Manohar, Advocate for the petitioner.
Ms T. Khan, A.G.P. for respondents No. 1 & 3.
Shri N. V. Fulzele, Advocate for respondent No.2.
Shri N. K. Ambilwade, Advocate for respondent No.4.
Shri A. S. Kilor, Advocate with Shri A. R. Ingole, Advocate for respondents No. 5 to 35.
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CORAM : B. P. DHARMADHIKARI
AND S. B. SHUKRE, JJ.
DATED : 31 MARCH, 2015

P. C. :

1. The challenge is to inclusion of names of respondents No. 5 to 35 as voters in final voters list. Election programme of respondent No.4-Co-operative society has been published on 18/02/2015 and the tenure of elected body is from 2014-15 to 2019-20.

2. Submission of petitioner is, objection was raised to inclusion of certain names as members on 24/02/2015 and it

has been accepted erroneously only in part. Contention that these persons have not deposited full share value or did not hold minimum area of land has not been gone into. It is further submitted that effort of these persons to show that their names figured in 1994 list as members is erroneously accepted because in 2008 list these names are not there.

3. Our attention is drawn to order passed by Election Officer to urge that it does not record any reasons. It is pointed out that on 26/02/2015 the petitioner could collect the documents from the Revenue Authorities which show that respondents No. 5 to 31 do not possess necessary land.

4. Learned Advocate Shri Kilor for respondents No. 5 to 31 and learned A.G.P. for respondents No. 1 and 3 have opposed the petition. They submitted that disputed questions have been raised before this Court for the first time. According to them the objection about area of land possessed by respondents No.5 to 31 was not raised before the Returning Officer. Our attention is invited to the provisions contained in Bye-laws of the Society to show that land area of at least 10 R. is required to be possessed by only new members and it does not apply to the old members. It is further submitted that a person ceases to be a member only when he ceases to hold any

land. Thus, submission is, particular area of land as such need not be held by any person so as to enable him to become a member or to continue as a member. Our attention is drawn to Annexure-R-5-1 (page No.35) to show that names mentioned therein are taken from the old register of members, which were in vogue on 30/3/1994. The receipts showing cash payment by these persons in February, 2015 and October, 2014 are also pressed into service.

5. Perusal of election programme shows that provisional voters list was published on 18/02/2015, objection to it was to be considered on 26/02/2015 and final voters list has been then published on 27/02/2015. The stage of allotment of symbols to the contesting candidates and publication of their list was fixed on 27/3/2015. Now, the election is scheduled to be held on 05/4/2015.

6. We have noted that total number of members is 291 and out of them objection is raised about 31 members only. Perusal of objection raised on 24/02/2015 shows that the applicants therein had then raised objection to about 37 names. They have requested the Returning Officer to look into accounts of the Society pointing out that it contained erasures. They have requested the Authority to verify the rules and also

to ascertain whether receipts find mention in the cash book. They have also pointed out need to look into resolutions of the Society.

7. Thus, there is no express mention of the stand that these members do not possess necessary shares or hold minimum area of land in their possession in accordance with the Bye-laws.

8. The objection so put-forth has been looked into by the Returning Officer and it has been partly allowed. The Returning Officer has deleted the names of six persons from the voters list and thereafter final voters list has been published on 27/02/2015.

9. In this situation, it is apparent that certain disputed questions arise for consideration of this Court. The documents filed by the respondents show that names of those persons figure in the list of members as on 30/3/1994. The said document, on the face of it, mentions that deficit amount of share price was paid by those members and accepted by the Society.

10. The provisions of Bye-laws to which our attention has been drawn contemplate removal of member after he ceases to hold any land.

11. In this situation, we find disputed questions arise and also one of the questions would be whether by inclusion of 31 members, election can be said to be materially effected. Hence at this stage, we are not inclined to interfere in writ jurisdiction. Accordingly we dispose of the petition with liberty to the petitioner to take such other steps which are open in law after the election is over. All his challenges are kept open.

Writ petition is disposed of accordingly. No costs.

JUDGE

JUDGE