

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4684 OF 2016

Kailash Gampu Kote and Another ..PETITIONERS

VERSUS

State of Maharashtra and Others ..RESPONDENTS

WITH

WRIT PETITION NO. 5437 OF 2016

Datta Laximan Dhage and Others ..PETITIONERS

VERSUS

State of Maharashtra and Others ..RESPONDENTS

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Mr. S.B. Ghatol Patil, Advocate for petitioners in both petitions.
Mr. A.P. Basarkar, A.G.P. for Respondent No.1 in both petitions.
Mr. S.K. Kadam, Advocate for Respondent Nos. 2 to 4 in both petitions.
Mr. B.N. Magar, Advocate for Respondent No.5 in both petitions.
Mr. S.H. Panchal, Advocat for Respondent No.6 in WP 4684/16.
Mr. R.A. Shedge, Advocate for Respondent No.6 in WP 5437/16.

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**CORAM : T.V. NALAWADE, J.
DATED : 06th DECEMBER, 2016**

ORDER :

1. Both the petitions are filed to challenge the order made by District Deputy Registrar, Co-operative Societies by which direction is given to remove the names of the present petitioners from the voters list.
Heard both sides.

2. The election program for Respondent No.6 – Society was declared on 15th March, 2016. The provisional voters list was published. The objection was taken by few members to the inclusion of names of present petitioners in the voters list. Show cause notices were issued to each of them and hearing was given. The matter was taken up to the District Deputy Registrar and there was hearing was given. The District Deputy Registrar has held that there is virtually no record to show that present petitioners were made members of the society and so aforesaid order came to be made.

3. Submissions made by learned Counsel for petitioner show that petitioners are relying on the circumstance like their names were there in the voters list prepared for election of the year 2005-06 to 2010-11. They are relying on some receipts showing that share capital of Rs.10/- and membership fees of Rs.1/- was paid by them. In view of the record which is necessary to ascertain as to whether they have become members, this Court adjourned the matter from time to time and direction was given to Secretary and opportunity was given to the petitioner to show relevant record like Kird, resolution of board of directors, audit report of the relevant period, share certificate register, etc. The record was shown to this Court though there is dispute raised about this record by making

contentions that this record is falsely created. The record does not show that names of present petitioners are appearing in the share certificate register. In Kird, there are no corresponding entries in respect of receipts produced by the petitioners. Learned Counsel for petitioner submitted that in the audit report of 1997-98, increase in membership was shown and it can be inferred that due to making payment of membership fees by present petitioners, the number of members were increased. This submission is not acceptable as even after exclusion of names of present petitioner from the list the number tallies with the number noted by the auditor when audit was done in the year 1998-99. The submission made by learned Counsel for petitioner that their names were in the previous voters list, objection taken in past was rejected and so their names cannot be deleted, cannot be accepted. Only because in one election their names were there does not mean that they are entitled to continue in membership register and entitle to vote in each and every election even when there is no record to show that they were made members of the society.

4. Opportunity was given to learned Counsel for petitioner to go to the concerned office and collect the voters list for the year 2000-01 and also produce the audit reports which may support their contentions.

Learned Counsel produced correspondence issued by the Assistant Registrar showing that list of voters prepared in the year 2000-01 is not available. If at all they were really made members in the year 1998 by accepting subscription to the share capital, their names could have appeared in previous voters list or some audit report. Though their names were in the voters list of 2005-06, this circumstance is not sufficient to infer that they were really made members. Such things happen in the society and many times persons are shown in voters list even when they are not made members. Now enquiry is made for present purpose and it is found that they were never made members of the society.

5. Learned Counsel for petitioner placed reliance on some directions issued by the State Co-operative Election Authority and submitted that once names are included in the voters list, they cannot be excluded. This submission cannot be accepted. Opportunity was given to present petitioners to show that they were made members but they have no record to show that they were really made members. If they are not members, their names need to be deleted. Necessary procedure was followed.

6. This Court holds that it is not possible to interfere in the order made by the District Deputy Registrar and both petitions stand dismissed. Interim relief is vacated. Votes of present petitioners are not to be counted and result is to be declared. Liberty to file election petition. Civil Application is disposed of. Those 48 votes which are kept separate are to be preserved for statutory period of two months for filing dispute. After that if no order is received from the Court, it is to be destroyed. All the contentions are kept open for the dispute.

(T.V. NALAWADE, J.)

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