

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.5005 OF 2016**Navnath S/o Ramdas Kothawale and others Vs. The State
Cooperative Election Authority and others.**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.V.D.Salunke, advocate for the Petitioners.
 Mr.S.P.Sonpawale, A.P.P.for the State.
 Mr.S.K.Kadam, advocate for Respondent No.3.
 Mr.P.S.Dighe, advocate for Respondent No.4.

**CORAM : S.V.GANGAPURWALA AND
K.K.SONAWANE, JJ.**
Date : 06.05.2016.

PER COURT :

1. Heard.
2. Mr.Salunke, the learned counsel for the petitioners contends that the provisional voters list was published. The names of the petitioners were not included in the provisional voters list from the non-borrower members category. The petitioners had raised an objection. The reason for not inclusion of the names of the petitioners is that increase share amount is not paid. The petitioners are not issued any demand notice by the Society. As such they can not be said to be defaulters. Unless demand notice is

issued as laid down U/s 26 of the Maharashtra Cooperative Societies Act, the petitioners can not be said to be defaulters. The learned counsel relies on the judgment of the Division Bench of this Court in W.P.No.9182/2015 dated 22.9.2015. The learned counsel submits that the petitioners had been to the office of the Respondent No.4 to deposit the amount. However, the same was not accepted. Even on 25.4.2016, the Returning Officer had asked the Secretary to accept the amount from the petitioners but the same was not accepted. The petitioners on 28.4.2016 have deposited the amount. According to the learned counsel, their names are required to be included in the voters list.

3. Mr.Dighe, learned counsel for Respondent No.4 submits that the petitioners had not raised any objection to the provisional voters list. As such now can not challenge the final voters list. The signatures on the application relied by the petitioners and the Valikpatra also differs. This would show that the petitioners had not raised any objection to the provisional voters list. Having not raised any objection to the provisional voters list, the petitioners now can not turn around and contest the voters list. The learned counsel further submits that in February 2016, i.e. 25.2.2016, the Respondent No.3 had published a notice in the Grampanchayat office of village Kalegaon, informing all the members of the society to deposit the remaining amount towards share within fifteen days

of the publication of notice. The said mandate of Section 26 of the Act is complied. Even petitioners were aware of the publication of the public notice demanding payment of increased share amount. The averments made in the petition, so also their application would substantiate the said fact. Learned counsel further submits that the election programme has already proceeded further and the petitioners have an alternate remedy of filing Election Petition. The learned counsel further submits that there is already a decision of the Returning Officer on objection raised by one person and the same is not challenged. In absence to the challenge to the said Writ Petition, the prayer of the petitioners can not be considered.

4. Mr.Kadam, learned counsel for the Returning Officer submits that 30 petitioners had raised objection. Request was made to the Returning Officer, to accept the amount. The Returning Officer could not have accepted the amount, as such had written to the Secretary to accept the amount. As the amount is not paid, voters list is finalised on 27.4.2016.

5. We have considered the submissions canvassed by the learned counsel for respective parties.

6. It is not disputed that individual demand notices were not served upon these petitioners for payment of increased share amount. The Division Bench of this Court in W.P.No.9182/2015, vide judgment and order dated 22.9.2015, has observed as under :

“According to us, a notice within contemplation of second proviso to Section 26(1) of the Act, shall be served on each of the members, in the manner provided under the bye-laws of the respective societies in relation to tender of notice of communication.”

7. The Division Bench of this Court in above referred judgment has held that issuance of public notice would not be in compliance of 2nd proviso to Section 26(1) of the Maharashtra Cooperative Societies Act, and individual notices will have to be served. In the present case, it is not disputed that no individual notices were served upon the petitioners.

8. The petitioners have nowhere accepted that they had knowledge that the public notice was published and was read by them.

9. The Returning Officer has filed affidavit and has accepted that 30 persons had raised objection. There is no reason to disbelieve the affidavit filed by the Returning Officer an independent person, owing no allegiance to any party.

10. It does not appear that any decision on the objection raised by the petitioners to the provisional voters list was passed or communicated to the petitioners. The petitioners are only claiming the relief that their names be included in the voters list, so that they can vote and they have raised the objection since the date the

provisional list is published and immediately on 29.4.2016, have filed the present petition.

11. Considering the fact that the petitioners were never issued with the demand notice as contemplated under 2nd proviso to Section 26(1) of the Maharashtra Cooperative Societies Act, they can not be held to be defaulters and subsequently the said amount is also deposited. The same can not be relevant, but as already held that Section 26(1) is not complied, we have entertained the present petition.

12. Considering the above, the Writ Petition is allowed to the extent that the names of the petitioners be included in the voters list so as to enable them to vote, if otherwise, there is no legal impediment and the names of the petitioners shall not be refused to be included in the voters list only on the ground that increased share amount was not paid.

13. The Writ Petition is disposed of. No costs.

(K . K . SONAWANE , J .)

(S . V . GANGAPURWALA , J .)

Dt.06.05.2016.
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