

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 5742 OF 2016

AJINATH NAMDEO GAWADE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Niteen V. Gaware.

AGP for Respondent Nos.1 & 2 : Mr. S. N. Kendre

Advocate for Respondent Nos.5 to 108, 110 to 135 : Mr. A. A. Nimbalkar.

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CORAM : **T. V. NALAWADE, J.**

DATE : 25th October, 2016.

ORDER:

. The petition is filed to challenge the order made by the District Co-operative Election Officer, who is the Returning Officer for elections of Committee of Respondent No.4, a Co-operative Society. The District Election Officer has made order in favour of Respondent Nos.5 to 135 and their names are included in final voters list prepared for election, which is to take place for the term 2016-17 to 20121-22. Both the sides are heard.

2 The program for finalization of voters list was published by the District Co-operative Election Officer on 20th April, 2016. The provisional voters list was published on 21st April, 2016. The objection in respect of provisional voters list were to be filed between 21st April,

2016 and 30th April, 2016. The date 10th May, 2016 was fixed for giving decision on the objections. The final voters list was to be prepared and published on 16th May, 2016.

3 The names of present Respondent Nos.5 to 135 were not present in the provisional voters list and so Respondent No.3 took objection and requested to include the names of these persons in the final voters list. It was contended that these persons were members of the society and they were shown in the voters list in the previous election also. The present Petitioner who is also member of the society contended that the persons who were excluded had not paid necessary share capital and so they were not entitled to vote in the election in view of the provisions of Section 26. After hearing both the sides, the Returning Officer made order in favor of Respondent Nos.5 to 135.

4 It was submitted for the Petitioner by the learned counsel that long back resolution was made by the Society and share capital was increased. It was submitted that even notice was published by pasting copy in the office of the society and so it was necessary to deposit the remaining part of share capital in view of amended by-laws and as that was not done before the cut off date for the present

election, these persons are not entitled to vote in the present election.

5 On the other hand, the learned counsel for Respondent No.3 who had taken objection submitted that no separate notices were given to these persons and they were not asked to deposit the remaining part of share capital and in view of this circumstance, their names cannot be deleted. He submitted that those persons are still shown as the members of the society and unless and until the procedure given in proviso to Section 26 of the Maharashtra Co-operative Societies Act is followed, these persons cannot be prevented from voting in the election. He submitted that if the resolution was made by the Society long back then it was necessary for the present Petitioner to explain as to why till last election these persons were allowed to vote and their names were shown in the voters list.

6 This Court has carefully gone through the record produced showing that total members were 994 and eligible members were shown as 549 by the Society when the list was submitted to the Authority for the purpose of election. The provisional voters list was prepared on the basis of this list supplied by the society. As per the record only due to non payment of remaining part of share capital, which is now Rs.100/- per member, whereas in the past it was Rs.10/-

per member, these names were not shown by the society in the list supplied to the Authority. As there is no record to show that the procedure was followed as given in Section 26 of the Act, this Court holds that the District Co-operative Election Officer has not committed any error in including the names of these persons in voters list. This Court sees no reason to interfere in the order made by the Authority. In the result, the petition stands dismissed. The votes of Respondent Nos.5 to 135 are to be counted and the result is to be declared.

7 The learned counsel for the Petitioner requested for continuation of stay. It is refused.

[T. V. NALAWADE, J.]

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