

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 6880 OF 2016
WITH
WRIT PETITION NO. 7084 OF 2016

Bapusaheb s/o. Namdeo Hirde
and others

....Petitioners.

Versus

The State of Maharashtra and
others

....Respondents.

Mr. Nitin V. Gaware, Advocate for petitioners.

Mr. S.R. Yadav, AGP for respondent Nos. 1 to 3.

Mr. V.D. Hon, Sr. Counsel i/b. A.V. Hon, Advocate for respondent
No. 4.

CORAM : T.V. NALAWADE, J.

DATED : 15th September, 2016.

ORDER :

1. The petitions are filed to challenge the order dated 23.6.2016 made by respondent No. 2 - the District Deputy Registrar of Co-operative Societies and District Co-operative Election Officer, Ahmednagar. By this order, the learned District Co-operative Election Officer has ordered to restore the names of 100 members of petitioner No. 4 - Society, which were deleted by the Society and which were not shown in provisional voters list. The elections are to be held for the years 2016 to 2021. Both the sides are heard.

2. The District Co-operative Election Officer, who happens to be District Deputy Registrar of Co-operative Societies, Ahmednagar published provisional voters list on 2.6.2016. Before the date fixed for raising objections and for making claims, two separate applications were filed before this officer and request was made to include the names of aforesaid 100 voters in the voters list. It was contended that the names of these persons were there in the previous voters list and without informing anything to them, their names were deleted by the Society. One application was signed by Mohan Taware, who was sitting Director and member of petitioner No. 4 - Society and it was for 100 members and other application was signed by Prakash Taware, another member of the Society and it was for 39 members. Before the aforesaid officer, the Chairman and Secretary of the Society filed objections to these applications by contending that these 100 members had not deposited required share capital amount and notices were given to them before deleting their names from the list of members.

3. The Assistant Registrar of Co-operative Societies made order on aforesaid two representations. The representation of Mohan Taware in respect of 100 members was rejected by him and representation of Prakash Taware was allowed to the extent

of name of Prakash Taware. But the representation given in respect of other 38 members by Prakash Taware was rejected by the learned Assistant Registrar. On the same day, the District Co-operative Election Officer allowed the two representations in entirety. This order was communicated to Society on 30.6.2016 and direction is given by the District Co-operative Election Officer to include these names in voters list. So, the two separate petitions are filed by the ruling members of the Society.

4. It was submitted for petitioners that when in General Body resolution was passed to delete the names of these persons from the list of members as they had not paid requisite share capital, there was no room for interfering in the provisional voters list prepared by the Society. It was submitted that the representations were signed by only two members of the Society and all the affected 100 members ought to have signed the representation. It was submitted that these circumstances are not considered by the District Co-operative Election Officer and further, circumstance that Assistant Registrar had rejected the representations on the basis of this record is also not considered by the District Co-operative Election Officer. It was argued that probably the District Co-operative Election Officer acted under some political influence.

5. Admittedly, in the previous voters list, name of all the 100 voters were there as they were members. It was submitted for the petitioners that due to amendment made in the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as 'the Act' for short) and the rules framed under it, the minimum share capital was increased to make it Rs. 100/- and as the increased amount was not deposited by these persons, their names were deleted. The election for the year 2016 to 2021 is first election which is taking place after the aforesaid amendment of 2014. This circumstance need to be kept in mind while considering the rival contentions.

6. Relevant portion of section 26 of the Act is 26 (1) and 26 (2) and the last proviso of 26 (2), which is as under :-

"26. Rights and duties of members

(1) A member shall be entitled to exercise such rights as provided in the Act, rules and bye-laws :

Provided that, no member shall exercise the rights until he has made such payment to the society in respect of membership, or acquired such interest in the society, as may be prescribed and specified under the bye-laws of the society, from time to time.

Provided further that, in case of increase in minimum contribution of member in share capital

to exercise right of membership, the society shall give a due notice of demand to the members and give reasonable period to comply with.

(2) It shall be the duty of every member of a society,-

(a) to attend at least one general body meeting within a consecutive period of five years :

Provided that, nothing in this clause shall apply to the member whose absence has been condoned by the general body of the society;

(b) to utilize minimum level of services at least once in a period of five consecutive years as specified in the bye-laws of the society;

Provided that,.....

Provided further that,.....

Provided also that,.....

Provided also that,.....

Provided also that,.....

Provided also that, in any election conducted immediately after the date of commencement of the Maharashtra Co-operative Societies (Amendment) Act, 2013, all the existing members of the Society shall be eligible for voting, unless otherwise ineligible to vote."

The second proviso of section 26 (1) of the Act shows that duty is cast on the Society to give notice and ask the members to

deposit the amount if their share amount is not as per the requirement given by amended provision. Further, reasonable opportunity, reasonable period needs to be given to such members for depositing the amount.

7. Section 35 of the Act and Rules 28 and 29 framed under the Act give power to the Society to expel the member and it was submitted for the Society that this provision was used. The relevant portion is section 35(1) and Rules 28 and 29 run as under :-

"35. Expulsion of membership

(1) A society may, by resolution passed by a majority of not less than three-fourth of the members entitled to vote who are present at a general meeting held for the purpose, expel a member for acts which are detrimental to the interest or proper working of the society."

28. Expulsion of members

Any member who has been persistently defaulting payment of his dues or has been failing to comply with the provisions of the bye-laws regarding sales of his produce through the society or other matters in connection with his dealings with the society or who, in the opinion of the committee, has brought disrepute to the society or has done other acts detrimental to the interest or proper working of the society or for the reasons

mentioned in section 26 of the Act may in accordance with the provisions of sub-section (1) of section 35, be expelled from the society. Expulsion from membership may involve forfeiture of shares held by the member.

29. Procedure for expulsion of members

(1) Where any member of a society proposes to bring resolution for expulsion of any other member he shall give a written notice thereof, to the Chairman of the society. On receipt of notice or when the committee itself decides to bring in such resolution, the consideration of such resolution shall be included in the agenda for the next general body meeting and a notice thereof shall be given to the member against whom such resolution is proposed to be brought, calling upon him to be present at the general body meeting, to be held not earlier than a period of one month from the date of such notice and to show cause against expulsion to the general body of members. After hearing the member, if present, or after taking into consideration any written representation which he might have sent, the general body of members shall proceed to consider the resolution.

(2) When a resolution passed in accordance with sub-rule (1) is sent to the Registrar along with application, the Registrar may consider the resolution and after due inquiry and giving

reasonable opportunity of being heard to such member give his decision within ninety days from the date of receipt of application and communicate the same to the society and the member concerned. The resolution shall be effective from the date of such approval."

It can be said that power to delete the names on the ground like present one is also given due to amendment, but in that case also, the opportunity needs to be given to the said members to represent their case. Further, if such resolution was passed, then it needs to be approved by the Registrar. In this regard, Rule 28 and 29 of the Act in which procedure for expulsion of members is given need to be kept in mind. These rules show that independent notice needs to be given to each member and opportunity needs to be given to each member to present his case if such resolution is moved against him.

8. In the present matter, it is admitted that no approval of Registrar was obtained for deleting names of 100 members. Further, there is no record to show that independent notices were given to them and opportunity was given to them to present their case before General Body. Thus, if at all there was resolution, the necessary procedure was not followed and there was no approval of Registrar for deleting the members. Due to

this single circumstance also, the authority could have given direction to the Society to include the names of these 100 members and make correction in the list.

9. In support of the case that resolution was passed in General Body of the Society, the record of General Body dated 7.9.2014 was produced by the Society. The record shows that there was subject like deleting the names of members who had not paid requisite share capital. However, this record also does not show that the list of such persons was supplied to General Body in advance and separate notices were given to the members against whom resolution was to be moved. Only list is attached to the resolution to mention 100 names. However, this list is also highly suspicious in nature. Page No. 14 of this register shows that the names from Sr. No. 75 to 100 were subsequently added and that inference even can be drawn by ordinary prudent man. Separate pages were used for mentioning all the other names, but on this page the names at Sr. No. 75 to 100 were subsequently added even when there was no space for adding their names. This record also does not show that the resolution was sent to the Registrar for approval. Further, it is not disputed that name of Prakash Taware, who had made representation is not appearing in this list. His representation

was allowed by Assistant Registrar. In view of these circumstances, there was no other alternative before the authority than to direct the Society to restore the names of 100 members in voters list.

10. The contention of the petitioners that Assistant Registrar had already made order and new order ought not have made by the District Co-operative Election Officer is not at all acceptable. In Rule 8 of Maharashtra Co-operative Societies (Election to Committees) Rules 2014, it is mentioned that District Co-operative Election Officer can conduct the elections of the Society. The record of the present matter shows that this Officer had published the provisional voters list and he was expected to give decision on the claims and objections with regard to the provisional voters list. The provisions of Rule 8 and 11 of aforesaid Rules show that any member of Co-operative Society can bring to the notice of District Co-operative Election Officer any omission or error in the voters list. In view of these circumstances, nothing wrong can be inferred in the order made by the learned District Co-operative Election Officer.

11. The learned counsel for petitioners placed reliance on the case reported as **2014 MCR 629 (Aurangabad Bench)** **[Alka d/o. Ramkisan Narke and Ors. Vs. The Divisional**

Joint Registrar, Co-operative Societies, Aurangabad]. In view of the facts of that case, the orders made by the Assistant Registrar and Deputy Joint Registrar were set aside. The decision cannot be taken as ratio. Reliance was placed on another case reported as **2007 (3) Bom.C.R. 157 (Nagpur Bench) [Kawadu Undruji Kundawar Vs. Additional Collector & Ors.]**. The powers of this Court under Articles 226 and 227 of Constitution of India to interfere in the process of election and direction to correct the mistakes committed in preparation of voters list are discussed. There is no dispute over the proposition made in the case cited supra. In the present matter, the correction is made by competent authority and so, there is no need to interfere in the decision given by the competent authority. On the same point, reliance was placed on some reported cases like **AIR 2004 SC 1329 [Ahmednagar Zilla S.D.V. and P. Sangh Ltd. and Anr. Vs. State of Maharashtra & Ors.]**, **AIR 2000 SC 2977 [Election Commission of India Vs. Ashok Kumar]**. There is no dispute over the propositions made in the aforesaid cases also.

12. The discussion made above shows that only out of political motive and without following procedure, the names of 100 persons were deleted by the ruling members of the Society.

There was illegality in the said deletion and so, correction was necessary. Correction is made by the competent authority and it was permissible under the provisions of law already quoted. Thus, no error is committed by the authority in directing the Society to restore the names of 100 persons in the voters list.

13. In the result, petitions are dismissed. Interim relief is vacated. The learned counsel requests for continuation of interim relief. That relief is also refused.

[T.V. NALAWADE, J.]

ssc/