

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

WRIT PETITION NO. 8191 OF 2016

Gangasinha Vithalrao Kadam and others ...PETITIONERS

versus

The State of Maharashtra and others ...RESPONDENTS

Mr. N.P. Patil, Jamalpurkar, Advocate for petitioners
Mr. A.B. Girase, GP for respondent No. 1
Mr. S.K. Kadam, Advocate for respondent No. 2
Mr. A.N. Irpatgire, Advocate for respondent No. 3

**CORAM : R.M. BORDE AND
K.K. SONAWANE, JJ.**

DATED : 19th AUGUST, 2016.

Order :-

1. The petitioners are making grievance in respect of deletion of names of 323 members/voters from the final voters' list on various grounds. The objection was raised in respect of deletion of names of large number of the voters. However, Returning Officer has rejected their objection, as such, they have approached to this court. According to the petitioners, names of 195 voters have been deleted although they were members and enrolled as voters during preceeding election. According to petitioners, 195 members, whose names are deleted from final voters' list, are in fact the members of the society and fulfill the requisite criteria for enlisting their names as members. Apart from this, according to the petitioners, those 195 members have exercised their right of voting during preceeding election.

2. An objection is also raised in respect of deletion of names of 62 members from the provisional voters' list on the ground of their failure

to deposit differential share amount. It is contended that society adopted decision to enhance value of the share amount, however, members 62 in number, failed to pay additional share amount. The petitioners contend that there was no demand notice to any of the member directing them to deposit differential amount. In view of section 26 of the Maharashtra Co-operative Society Act, a member shall be entitled to exercise such rights, as provided in the Act, rules, by-laws. Second proviso to Sub-section (1) of Section 26 of the Maharashtra Co-Operative Society Act, 1960 (for short "MCS Act") provides 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. In the instant matter, society admitted that no due notices of demand were issued to the members and no reasonable opportunity was given to them to comply with the same.

3. In this view of the matter, since second proviso to sub-section (1) of section 26 of the MCS Act has not been complied with by the Society, it cannot delete the names of 62 members on account of their failure to deposit differential share amount and the said action is erroneous and liable to be struck off. Order passed by the Returning Officer directing deletion of 62 members on account of their failure to deposit differential share amount is quashed. It is directed to the respondents to include the names of 62 members, whose names have been deleted for the aforesaid reason.

4. It is informed that names of 16 members, who were deleted on account of their failure to submit no dues certificate, have been included in the voters' list and as such, no directions in that regard need to be issued.

5. Learned counsel appearing for petitioners makes a grievance in respect of deletion of names of 12 members on the ground of default in payment of dues amount to the society. Learned counsel appearing for the society, on instructions, states that notices of demand were served on individual member and as such, on account of their failure to respond to the notice, they have been branded as defaulter. Since question raised needs investigation of facts, we direct the Assistant Registrar to enquire into the matter and issue appropriate directions after extending opportunity of hearing to the parties concerned. It is informed that names of 17 members have been deleted since they are resident of adjacent village. Such controversy also needs to be addressed before the Officer of the Co-operative Department.

6. So far as deletion of names of 195 members from the voters' list is concerned, it is the contention of the society that such of the members, who do not fulfill requirement of their enrollment as members, their names have been wrongly included in the voters' list during preceeding years. It is also contended that names of 195 members do not find place in the membership register. Factual controversy, as to whether 195 members whose names do not find place in the voters' list, have in fact fulfilled the requirement of their enrollment as members as laid down under bye-laws, is required to be

scrutinized by the Officer of the Co-operative department. Investigation based on scrutiny of record is not expected to be carried out by the High Court in exercise of extraordinary writ jurisdiction under Article 226 of the Constitution of India.

7. In the circumstances, we direct the Assistant Registrar, Co-operative Society, Latur to peruse record and ascertain as to whether 195 members whose names do not find place in the voters' list have fulfilled requirement laid down by bye-laws, in respect of enrollment as members. In the event of fulfillment of requirement of enrollment of members by such of those 195 members, the Assistant Registrar may recommend inclusion of their names in the voters' list and upon such recommendation, appropriate steps be taken for their inclusion in final voters' list and they shall be permitted to participate in the election process. In the event of refusal of the claim by the Assistant Registrar, such members shall not be entitled to participate in the process of election. It would be open for them to avail of appropriate remedies available in law after completion of process of election.

8. Learned counsel for petitioners undertakes to deposit deficit court fees within three months from today.

9. With aforesaid directions, writ petition stands disposed of.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[R.M. BORDE, J.]