

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

Writ Petition No.8406 of 2016

* Lahudas s/o. Ramrao Munde,
Age 55 years,
Occupation : Service,
R/o. Ambajogai, Tq. Ambajogai,
District Beed. **.. Petitioner.**

Versus

- 1) The State of Maharashtra
Through its Secretary,
Co-operative Department,
Mantralaya, Mumbai - 32.
- 2) The Maharashtra State
Cooperative Election Authority,
Pune.
- 3) District Co-operative Election Officer
& District Deputy Registrar,
Co-operative Societies, Beed.
- 4) The Assistant Registrar
(Cooperative Societies)
Ambajogai, Tq. Ambajogai
District Beed.
- 5) The Returning Officer,
Vij Kamgar Sahakari Patsanstha Ltd.
Ambajogai, Tq. Ambajogai,
District Beed.
- 6) Vij Kamgar Sahakari Patsanstha Ltd.
Mukundraj Colony, Ambajogai,
Taluka Ambajogai, District Beed.
Through its Secretary.
- 7) Arjun Vishnupant Ambad,
Age : Major, Occupation Retired.

- 8) Pralhad Bapurao Etekar,
Age : Major, Occupation Retired.
- 9) Bhagwan Narharrao Kadam,
Age : Major, Occupation Retired.
- 10) Pralhad Pandurang Kamble,
Age : Major, Occupation Retired.
- 11) Gangadhar Rajaram Kothule,
Age : Major, Occupation Retired.
- 12) Pandurang Baburao Kichme,
Age : Major, Occupation Retired.
- 13) Namdeo Ramrao Gayake,
Age : Major, Occupation Retired.
- 14) Sheshrao Namdeorao Gundare,
Age : Major, Occupation Retired.
- 15) Sambhaji Manaji Gitte,
Age : Major, Occupation Retired.
- 16) Narhari Limbaji Chaudhari,
Age : Major, Occupation Retired.
- 17) Harichandra Narharrao Dhawale,
Age : Major, Occupation Retired.
- 18) Arjun Dhondiram Thorat,
Age : Major, Occupation Retired.
- 19) Pathan Nazir Ahmed Haji Usman Khan,
Age : Major, Occupation Retired.
- 20) Angad Nivrutti Fad,
Age : Major, Occupation Retired.
- 21) Mohd. Masud Ali,
Age : Major, Occupation Retired.

- 22) Balbhim Chaburao Mane,
Age : Major, Occupation Retired.
- 23) Jivraj Annasaheb Munde,
Age : Major, Occupation Retired.
- 24) Dnyanoba Bajirao Machave,
Age : Major, Occupation Retired.
- 25) Pandhari Patloma Munde,
Age : Major, Occupation Retired.
- 26) Sopan Vishwanath Yadav,
Age : Major, Occupation Retired.
- 27) Laxminarayan Rajligam Yelmelkar,
Age : Major, Occupation Retired.
- 28) Babu Ganpati Waghmare,
Age : Major, Occupation Retired.
- 29) Uttam Govindrao Waghmare,
Age : Major, Occupation Retired.
- 30) Baliram Ramrao Wakde,
Age : Major, Occupation Retired.
- 31) Ashok Gunajirao Wahul,
Age : Major, Occupation Retired.
- 32) Shaikh Mustafa Shaikh Nabisab,
Age : Major, Occupation Retired.
- 33) Shankar Digambar Sakhare,
Age : Major, Occupation Retired.
- 34) Prakash Rambhau Sathe,
Age : Major, Occupation Retired.
- 35) Manik Vitthalrao Saware,
Age : Major, Occupation Retired.

- 36) Manik Annasaheb Shirsat,
Age : Major, Occupation Retired.
- 37) Dilip Vitthalrao Solanke,
Age : Major, Occupation Retired.
- 38) Limbaji Khelba Sontakke,
Age : Major, Occupation Retired.
- 39) Ramling Gangadharappa Burande,
Age : Major, Occupation Retired.
- 40) Sahebrao Manikrao Newal,
Age : Major, Occupation Retired.
- 41) Gopal Hariprasad Sharma,
Age : Major, Occupation Retired.
- 42) Khandu Maroti Vaidya,
Age : Major, Occupation Retired.
- 43) Pandit Limbaji Tekale,
Age : Major, Occupation Retired.
- 44) Bharat Gundiba Sitap,
Age : Major, Occupation Retired.
- 45) Dagadu Shivram Kamble,
Age : Major, Occupation Retired.
- 46) Manohar Shivram Lange,
Age : Major, Occupation Retired.
- 47) Dashrath Irappa Kamble,
Age : Major, Occupation Retired.
- 48) Sopan Kundlik Chimale,
Age : Major, Occupation Retired.
- 49) Kalidas Amrutrao Sarange,
Age : Major, Occupation Retired.

- 50) Venkat Pandurang Karad,
Age : Major, Occupation Retired.
- 51) Suryakant Rangnath Panchal,
Age : Major, Occupation Retired.
- 52) Fulchand Ramrao Suryawanshi,
Age : Major, Occupation Retired.
- 53) Manmath Vishwanath Swami,
Age : Major, Occupation Retired.
- 54) Dilip Baburao Abhange,
Age : Major, Occupation Retired.
- 55) Shrikant Nagnathrao Khindare,
Age : Major, Occupation Retired.
- 56) Kishan Patloba Gitte,
Age : Major, Occupation Retired.
- 57) Sopan Dagadu Gagane,
Age : Major, Occupation Retired.
- 58) Vasant Dhondiba Gagane,
Age : Major, Occupation Retired.
- 59) Shansank Subhashrao Jewalikar,
Age : Major, Occupation Retired.
- 60) Shobha Ulhasrao Tak,
Age : Major, Occupation Retired.
- 61) Baburao Ramji Dhakne,
Age : Major, Occupation Retired.
- 62) Umesh Panditrao Duse,
Age : Major, Occupation Retired.
- 63) Pundlik Kondiba Pachpinde,
Age : Major, Occupation Retired.

- 64) Eknath Sakharam Panchal,
Age : Major, Occupation Retired.
- 65) Dhananjay Bhagwanrao Moholkar,
Age : Major, Occupation Retired.
- 66) Sadashiv Raosaheb More,
Age : Major, Occupation Retired.
- 67) Devidas Digambar Mandlik,
Age : Major, Occupation Retired.
- 68) Gulab Dashrath Lokhande,
Age : Major, Occupation Retired.
- 69) Mahadu Nilkant Shinde,
Age : Major, Occupation Retired.
- 70) Limbaji Raghoji Surwase,
Age : Major, Occupation Retired.
- 71) Prabhuling Vaijnath Swami,
Age : Major, Occupation Retired.
Respondent Nos.7 to 71 through
respondent No.6 - Secretary,
Vij Kamgar Sahakari Patsanstha
Ltd. Ambajogai,
Taluka Ambajogai, District Beed. .. **Respondents.**

Shri. S.K. Chavan, Advocate, holding for Shri. S.J.
Salunke, Advocate, for petitioner.

Shri. A.P. Basarkar, Assistant Government Pleader, for
respondent Nos.1 and 4.

Shri. S.K. Kadam, Advocate, for respondent Nos.2,3 and 5.

Shri. V.D. Salunke, Advocate for respondent No.6.

Shri. A.R. Tapse, Advocate, for respondent Nos.18, 35, 38,
41 and 44.

CORAM: T.V. NALAWADE, J.

DATE : 22 AUGUST 2016

JUDGMENT:

1) Rule. Rule made returnable forthwith. Heard both sides by consent for final disposal. Notice of the present petition was published in news paper to give opportunity to respondent Nos.7 to 71 as the proceeding mainly is against them. One learned counsel filed appearance for respondent Nos.18,35,38,41 & 44. As everything is the matter of record and the election process is going on this Court asked both sides including the learned counsel representing some of the contesting respondents to argue the matter for final disposal. The learned counsel for society strongly opposed the petition.

2) The petitioner is member of respondent no.6, a credit cooperative society which was initially formed by the employees of Maharashtra State Electricity Board. Now the employer of the members of the society is a Corporation.

3) The programme of election is declared of the aforesaid society by the Assistant Registrar, Cooperative Societies, Beed. The provisional voters list was published on 5-7-2016 and persons interested were expected to take objection or make claims prior to 14-7-2016. The present petitioner took objection that there were 68 voters shown in the provisional list who were not eligible to vote as they were retired employees of the Corporation and as per the bye-laws they were not active members. The objection was also taken before the District Deputy Registrar even prior to the declaration of the election and said representation was sent to the Assistant Registrar, Cooperative Societies for consideration and decision. Along with the application the list of the retired persons, respondent Nos.7 to 71 was supplied and the date of retirement was also informed. It is not disputed that these respondents have retired. The Returning Officer accepted similar representation from present petitioner on 14-7-2016. By order dated 19-7-2016 the Returning Officer rejected the application by giving reason that the society had still shown these persons as member and the amount of share capital was not returned to them by the society.

4) The aforesaid decision of rejection of the application filed before the Returning Officer is under challenge. The learned counsel for the Returning Officer and the learned Assistant Government Pleader have also supported the order made by the Returning Officer.

5) The learned counsel for the petitioner took this Court through the bye-laws of the aforesaid society. The bye-laws show that any person of the aforesaid institution who is permanent employee can apply to become member of the society (bye-law No.D.1.1.1). In the same bye-law, the definition of active member is given and the definition shows that the member must have attended at least one general body meeting during last 5 precedent years and he ought to have taken loan at least on one occasion during last 5 preceding years and he ought to have deposited the amount in his account of the society in the proportion shown in this bye-law. This bye-law further shows that if member was not active member as defined in this bye-law, then he will not have right to vote. The other portion of the same bye-law shows that after retirement from service the member can become nominal

member but he cannot take loan from the society and he will not have right to vote.

6) The learned counsel for the petitioner took this Court through the Rules framed under the Maharashtra Cooperative Societies Act. They show that different forms are prescribed for filling information regarding nominal member and active member. On the other hand, learned counsel for the respondents, retired employees, showed to this Court the provision of Section 24 of the Cooperative Societies Act and submitted that if a person is not member, he cannot be given share in the profit of the society. He submitted that the society had given dividend to these respondents. Learned counsel also submitted that the share capital was not returned by the society and so long as the share capital remains with the society, these respondents need to be treated as active members of the society and they cannot be deprived of their right to vote.

7) The scheme of the bye-laws shows that the society was created for permanent employees, employees who were appointed as against permanent post and who

were actually working with the Corporation and only such employees were to have control over the society.

8) The aforesaid bye-law shows that immediately after retirement of any member from the service he ceases to be active member. Giving of nominal membership is possible if he makes application and he cannot become nominal member automatically. Only because the share capital remains with the society, such retired employee cannot get right to vote in view of the scheme of the bye-laws.

9) It appears that the persons who are presently having control over the society want to see that retired persons are able to vote. The argument was advanced by learned counsel for the society in support of the retired employees.

10) The learned counsel for the respondent placed reliance on a case reported as **AIR 2001 SC 3982 (Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sasntha v. State of**

Maharashtra) and submitted that preparation of electoral roll is an intermediate stage in the process of election of the managing committee and if the election process is set in motion, the High Court is not expected to stay the continuation of the election process even when there is some illegality or irregularity regarding breach of the rules while preparing electoral roll. There cannot be dispute over the proposition of the Apex Court in the case cited supra. The facts of the said matter were totally different. This Court is not interfering in the election process and it is only question of eligibility of few persons to vote in the election. The aforesaid eligibility conditions are such that the society ought to have deleted the names of respondent Nos.7 to 71 from voters list. At least, the Returning Officer ought to have taken such step when the grievance was raised in that regard and when there are specific rules leaving no option than to delete the retired persons from the voters list. Thus the retired persons cannot be allowed to vote in the election. Asking the petitioner and other members to go to the Court to challenge the election itself on this ground would not be proper in such a case. The objection was raised at proper

stage but the society did not take action. This Court holds that in view of the facts of the present matter, the order made by the Returning Officer of rejection of the application filed by the petitioner needs to be set aside and further order needs to be made to remove the names of respondent Nos.7 to 71 from the final voters list. In the result, the following order :-

11) The petition is allowed. The order made by the Returning Officer is hereby set aside. The names of the respondent Nos.7 to 71 from the voters list stand deleted. They are not be allowed to vote in the election. The process of election to go on. The learned counsel representing the Returning officer to communicate the order to the Returning officer. Authenticated copy is allowed to the learned counsel for the Returning Officer and the learned counsel for the petitioner. Rule is made absolute in the above terms.

Sd/-
(T.V. NALAWADE, J.)

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