

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

913 WRIT PETITION NO. 9647 OF 2016

**RAMESH VITTHAL BHUJADI
VERSUS
THE DISTRICT DEPUTY REGISTRAR CO OPERATIVE
SOCIETIES AHMEDNAGAR AND OTHERS**

Shri. S.S. Gangakhedkar, Advocate, holding for Shri. D.B. Kale, Advocate, for petitioner.

Shri. S.K. Tambe, Assistant Government Pleader, for respondent Nos.1 and 2.

Shri. S.K. Kadam, Advocate, for respondent Nos.1 and 4.

CORAM: T.V. NALAWADE, J.

DATE : 16 SEPTEMBER 2016

ORDER:

1) The petition is filed to challenge the order of the District Deputy Registrar, Cooperative Societies, by which the objection taken to the inclusion of names of 73 persons in voters list is rejected. Advocate Shri. S.K. Kadam, has appeared for respondent Nos.1 and 4. Both the sides are heard.

2) The District Cooperative Election Officer, who also happens to be the District Deputy Registrar, Cooperative Societies, declared programme for preparation of final voters list on 3-8-2016 in respect of the elections to the managing committee of respondent No.3. The provisional voters list was published on 4-8-2016. Present petitioner filed objection against inclusion of names of 73 persons in the list on the ground that they were not fulfilling the eligibility conditions like having 10 R agricultural land within the jurisdiction of the society. The petitioner was called upon by the authority on 23-8-2016 to substantiate his contention.

3) The petitioner is a member of the society and he produced one certificate issued by the Talathi of the village to the effect that in village Rahuri Budruk these persons have no land. This certificate dated 26-8-2016 is considered and after that order of following nature is made by the District Cooperative Election Officer.

“Voters in the list supplied by the petitioner (at Sr. Nos.1 to 73) were members from prior to 1-4-2014, relevant date, and further they have deposited the requisite amount of share capital and so there is no substance in the objection.”

4) The provision on the basis of which the objection was taken is section 26(1) of the Maharashtra Cooperative Societies Act and it runs 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 by-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 by-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."

The proviso two shows that the procedure of giving notice needs to be followed. In the present case, at the time of the consideration of the objection it was noticed that the requisite share capital amount was already paid and so there was no force in the first ground with regard to the payment of the request amount of share capital. So far as the other ground like these persons were not having 10 R portion of agricultural land within the jurisdiction of the society is concerned, some procedure needs to be followed in that regard also. If the membership is to be terminated on that ground, notice to those persons needs

to be given and inquiry needs to be held by the authority like Assistant Registrar Cooperative Societies under section 11 of the Act. No such notice was issued to those persons to ascertain as to whether they were agriculturists. Even in the present proceeding those persons are not made party respondents.

5) The provision of section 25-A of the Maharashtra Cooperative Societies Act runs as under :-

"25-A. Removal of names of members from membership register. The committee of a society shall remove from the register of its members the name of a person who has ceased to be a member or who stands disqualified by or under the provisions of this Act for being the member or continuing to be the member of a society:

Provided that, if the society does not comply with the requirement of this section, the Registrar shall direct such society to remove the name of such person, and the society shall be bound to comply with such direction."

Provisions of rule 6(3) of the Maharashtra Cooperative Societies (Election to the Committees) Rules, 2014 run as under :-

"6. Provisional list of voters for copy societies having individuals as members :

(1)

(2)

(3) Four copies of the authenticated provisional lists of voters in print as well as preferably in digital form shall be delivered by the committee of the society to the District Cooperative Election Officer or Taluka or Ward Cooperative Election Officer, or as directed by the SCEA, one hundred and twenty days before the date of expiry of the term of the committee. Copies of such lists shall be displayed on the notice board of the society. the District Cooperative Election Officer or Taluka or Ward Cooperative Election Officer within ten days from its receipt shall invite claims and objections from the members of the society."

6) The list containing the names was supplied and the objection could have been taken and considered under rule 11(1) to (3) of the Maharashtra Cooperative Societies (Election to Committee) Rules, 2014 and they run as under :-

"11. Claims and objections to the provisional list of voters and the final list of voters for the societies having society or societies and individuals as members. (1) When any provisional list of voters is published for inviting claims and objections, any omission or error in respect of name or address or other particulars in the list may be brought to the notice of the District Cooperative Election Officer or Taluka or ward Cooperative Election Officer in writing by any member of the society concerned who is a voter or any representative authorized to vote on behalf of such society during office hours within ten days from the date of publication of the provisional list of voters.

(2) Any member of the society concerned making a claim or raising objection shall do so by a separate petition, which shall be presented to the District Cooperative Election Officer or Taluka or Ward Cooperative Election Officer during office hours, before the last date published for inviting claims and

objections. Such claims or objections shall be preferred in writing and state the grounds on which the claim is based or the objection is raised, as the case may be.

(3) The District Cooperative Election Officer or Taluka or Ward Cooperative Election Officer shall, after making such enquiries as deemed necessary in this regard, consider each claim or objection, and give his decision thereon in writing to the persons concerned within ten days from the last date prescribed for receiving the claims and objections and final voters list should be published within the period of fifteen days from the last date prescribed for receiving the claims and objections. The list as finalized by the District Cooperative Election Officer or Taluka or Ward Cooperative Election Officer after deciding all claims and objection shall be final list of voters."

7) The aforesaid provisions show that only after giving of notice and hearing to the concerned members, their names could have been deleted from the provisional voters list. No such notices were given. Fortunately the District Cooperative Election Officer has held that their names cannot be deleted from the voters list. So no interference is warranted in the order. The petition stands dismissed.

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

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