

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10091 OF 2016

1. Ashok Nivrutti Tanawade,
Age : 50 years, Occu : Agri.,
2. Tulshiram Appa Pawar,
Age : 70 years, Occu: Agri.,
3. Laxmibai Kamlakar Kesbhat,
Age : 55 years, Occu: Agri.,
4. Vimal Laxman Pandule,
Age : 52 years, Occu : Agri.,
5. Ujwala Prakash Tanawade,
Age : 38 years, Occu : Agri.,
6. Ajay Sharad Deshpande,
Age : 55 years, Occu : Agri.,
7. Usha Rajendra Pandule,
Age : 35 years, Occu : Agri.,
8. Satish Sudhakar Tanawade,
Age : 50 years, Occu : Agri.,
9. Uttam Bhagwan Shelar,
Age : 50 years., Occu. Agri.,
10. Vitthal Fakira Pawale,
Age : 66 years, Occu : Agri.,
11. Baba Vajir Shaikh,
Age : 36 years, Occu : Agri.,
12. Jafer Vajir Shaikh,
Age : 37 years, Occu : Agri.,
13. Ananda Manik Tanawade,
Age : 43 years, Occu : Agri.,
14. Baliram Nivrutti Tanawade,
Age : 41 years, Occu : Agri.,

15. Nanibai Ankush Tanawade,
Age : 40 years, Occu : Agri.,
16. Kisan Ankush Tanawade,
Age : 35 years, Occu : Agri.,
17. Sindhubai Narayan Tanawade,
Age : 38 years, Occu : Agri.,
18. Rajendra Ankush Tanawade,
Age : 30 years, Occu : Agri.,
19. Vimal Keshav Tanawade,
Age : 36 years, Occu : Agri.,
20. Bhagubai Babasaheb Kesbhat,
Age : 75 years., Occu : Agri.,
21. Kamlabai Nivrutti Tanawade,
Age : 37 years, Occu : Agri.,
22. Narmada Sudhakar Tanawade,
Age : 45 years, Occu : Agri.,
23. Subhadra Kakasaheb Tanawade,
Age : 52 years, Occu : Agri.,
24. Jagannath Suryabhan Tanawade,
Age : 43 years, Occu : Agri.,
25. Tukaram Manik Tanawade,
Age : 41 years, Occu : Agri.,
26. Bhagwan Suryabhan Tanawade,
Age : 39 years, Occu : Agri.,
27. Kesharbai Manik Tanawade,
Age : 45 years, Occu : Agri.,
28. Sanjay Ankush Tanawade,
Age : 55 years, Occu : Agri.,
29. Chagan Keshav Tanawade,
Age : 43 years, Occu : Agri.,
30. Abidabi Kasam Shaikh,
Age : 39 years, Occu : Agri.,

31. Sangita Radhakisan Tanawade,
Age : 38 years, Occu : Agri.,

32. Kishor Appa Pawar,
Age : 45 years, Occu : Agri.,

All 1 to 32 R/o. Pingewadi,
Tq. Shevgaon,
Dist. Ahmednagar.

...PETITIONERS

VERSUS

1. The State of Maharashtra,
Through Secretary,
Co - operation and Textile Dept.,
Mantralaya, Mumbai - 32.

2. The District Co - Operative
Election Officer &
The District Deputy Registrar,
Co - operative Societies,
Ahmednagar.

3. The Taluka Co - operative Election
Officer, The Asstt. Registrar,
Co - operative Societies, Shevgaon,
Tq. Shevgaon, Dist. Ahmednagar.

4. Pingewadi Vividh Karyakari
Seva Sahakari Society,
Pingewadi, Tq. Shevgaon,
Dist. Ahmednagar.
Through its' Secretary.

5. The Commissioner,
State Co - operative election
Authority Pune.

... RESPONDENTS

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Advocate for Petitioners : Shri Parnere Satish B.
AGP for Respondent 1 : Shri Kutti P.N.
Advocate for Respondents 2, 3 & 5 : Shri Kadam S.K.
Advocate for Respondent 4 : Shri Bade Patil K.D.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: October 07, 2016

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ORAL JUDGMENT :-

1. Leave to correct the prayer clause and add the date of the impugned order 26.9.2016. Addition be carried out forthwith.
2. I have heard the learned Advocate for the respective parties for quite sometime.
3. Rule.
4. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
5. The petitioners are objecting to their exclusion from the valid voters' list and the rejection of their objections by respondent No. 2 - District Cooperative Election Officer and the District Deputy Registrar ("DCEO"), Cooperative Societies.
6. The programme for finalization of the voters' list was declared by the communication dated 6.9.2016, issued by the DCEO. The provisional voters' list was to be published on 7.9.2016. Objections were to be raised in between 7.9.2016 till 3.00 pm on 16.9.2016.

Decision on the objections was to be announced at 4.00 pm on 26.9.2016 and the final voters' list was to be declared at 11.00 am on 30.9.2016.

7. These petitioners, who were included in the disqualified voters' list as was provisionally declared, had raised their objections on 14.9.2016. They were disqualified on the ground that the increased share capital from Rs.10 to Rs.100, considering the effect of the 97th Amendment to the Maharashtra Cooperative Societies Act, 1960, was unpaid by the petitioners. Due to the non-payment of the increased share capital, they were not included in the provisional voters' list and consequentially in the final voters' list.

8. The objections of these petitioners were rejected by the DCEO vide the impugned order dated 26.9.2016 on the ground that the deficit share capital was not paid.

9. It is the contention of the petitioners that they had submitted a demand draft for an amount of Rs.25,000/- and tendered the same to the respondent society which was refused to be accepted. Subsequently they submitted the demand draft to the concerned Bank in which the respondent No.4 society held an account. By communication dated 9.9.2016, the Branch Manager of the said Bank informed the petitioners that the society had directed the Bank not

to accept the demand draft. These contentions of the petitioners are not refuted by the society.

10. The petitioners have relied upon Section 26(1) of the MCS Act, 1960 to contend that the requisite notice about rise in share capital and for payment of the deficit amount was not issued by the society and as such, the petitioners were kept in the dark.

11. This Court, by its judgment dated 10.8.2016, in Writ Petition No.8616 of 2016 in the matter of Navnath Tukaram Jadhav and 96 others Vs. The State Cooperative Election Authority, Maharashtra State, Pune, has concluded in paragraph Nos. 4 to 6 as under:-

“4. Program for finalisation of voters list as well as for electing the Managing Committee of the society was published by the Returning Officer under the directions of State Election Authority on 07.07.2016. The date prescribed for publication of voters list as per the program was 11.07.2016 whereas objections were permitted to be raised between 11.07.2016 to 15.07.2016. As per the program of election, decision on objections was required to be taken on 16.07.2016. The program prescribes, in observance of the various stages of election, that voting shall take place on 14.08.2016. Petitioners contend that respondent no.5 raised objection in respect of entitlement of petitioners to continue as members of the society in view of their

failure to deposit the increased share amount within stipulated period. It is contended that initial share value of Rs. 10/- has been increased and the members are obliged to deposit the additional value of the share. It is contended that petitioners did not deposit additional share value and as such, are not entitled to participate in the process of election. The objection raised by respondent no. 5 was considered favourably and the Election Officer directed deletion of their names. It is the contention of petitioners that firstly they have deposited the additional share value with the District Central Cooperative Bank in the account of the society and secondly, there was no demand made by the society for deposit of additional share value and as such, petitioners did not incur any disability.

5. *Learned counsel for respondent no. 4 - society, states on instructions that notice of demand in respect of increased share amount was not made. Apart from this, before taking adverse decision, the Returning Officer did not extend an opportunity of hearing to petitioner and as such, the decision rendered by the Returning Officer is liable to be quashed and set aside. Section 26 of the Maharashtra Cooperative Societies Act, 1960, provides that a member shall be entitled to exercise such rights as provided in the Act, rules and regulations. Proviso to subsection 1 to section 26 provides 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 bylaws of the society, from time to time. Second proviso to*

subsection 1 to section 26 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, admittedly, the society has not issued notice of demand to petitioners and as such, petitioners cannot be denied right to participate in the process of election.

6. For the reasons recorded above, writ petition deserves to be allowed and the same is accordingly allowed. Decision rendered by the Returning Officer directing deletion of names of petitioners from the voters list is quashed and set aside. Petitioners shall be entitled to participate in the process of election to the extent of casting vote in the election on the prescribed date. Rule is accordingly made absolute. In the facts and circumstances of the case, there shall be no order as to costs.”

12. The society contends that the only reason for not including the petitioners in the final voters' list is on account of non-payment of the deficit share capital.

13. Shri Kadam has relied upon the affidavit-in-reply filed by the Assistant Registrar, Cooperative Societies and Taluka Cooperative Election Officer, Shevgaon, stating therein that 14 amongst the 31 petitioners, mentioned at page No.52 are entitled to be included in

the final voter's list.

14. In the light of the above, the claim of the 17 petitioners for inclusion in the final voters' list is at issue.

15. Notwithstanding the rival contentions of the petitioners and the respondent / Society, it is admitted that a notice was not served on these petitioners under Section 26(1). So also, the second proviso to Section 26(1) mandates that the members should be given a reasonable period to comply with the direction to deposit the increase in the share capital. This opportunity was not given to the petitioners. So also, they attempted to pay the said deficit share capital on 4.8.2016, which was much prior to the cut off date for preparation of the voters' list, which is 2.10.2016. The communication by the Branch Manager of the Bank further supports the case of the petitioners that the society had instructed the Bank to refuse acceptance of the said demand draft.

16. In the light of the above and considering the conclusions drawn by the learned Division Bench of this Court in paragraph Nos.4 to 6 of its judgment, reproduced above, the impugned order dated 26.9.2016 passed by the DCEO is quashed and set aside. These petitioners would be included in the final voters' list forthwith and they would be entitled to participate in the election process only to

the extent of casting their votes in the elections which are now scheduled on 14.11.2016 as per the statement made by Shri Patil, the learned Advocate.

Needless to state, this order shall be restricted only to the extent of these petitioners and to the extent of their participation as directed above.

17. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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