

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

WRIT PETITION NO. 10236 OF 2016

Tamaswadi Vividh Karyakari Seva Sahakari
Sanstha Maryadit, Tamaswadi and Others ..PETITIONERS

VERSUS

State of Maharashtra and Others ..RESPONDENTS

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Mr. V.D. Sapkal, Advocate for petitioners.

Mr. S.K. Tambe, A.G.P. for Respondent Nos. 1, 2 and 4.

Mr. S.K. Kadam, Advocate for Respondent No.3.

Mr. U.V. Wagh, Advocate for Respondent Nos. 51, 60, 63, 73, 133 &134.

Mr. C.K. Shinde, Advocate h/f Mr. Manoj Dound, Advocate for
Respondent Nos. 16, 28, 30, 52, 55, 65, 75, 78, 121 and 137.

Mr. D.N. Bondkar Patil, Advocate h/f Mr. S.M. Gunjal, Advocate for
Respondent Nos. 10, 24, 20, 22, 49, 48, 114 and 141.

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CORAM : T.V. NALAWADE, J.

DATED : 26th OCTOBER, 2016

ORDER :

1. The petition is filed to challenge the order made by Divisional Joint Registrar, Co-operative Society, Nashik in Revision Application No. 20 of 2016. Both sides are heard.

2. The aforesaid revision was filed by the present Respondent Nos.5 to 162 to challenge the order made by Assistant Registrar, Co-

operative Societies, Nashik under Section 11 read with Section 25A of the Maharashtra Co-operative Societies, Act, 1960 (hereinafter referred to as 'the Act').

3. The election programme of Tamaswadi Vividh Karyakari Seva Sanstha, Tamaswadi was declared as the term of the present managing committee was expiring. For the said election, provisional voters list was published on 07th September, 2016. The objections to the list were to be filed before 16th September, 2016. Prior to the publication of provisional voters list, one proceeding which was pending before the Assistant Registrar against 303 persons was decided. The Assistant Registrar had held on 10th December, 2015 that 303 persons who were appearing in the membership register in the past were disqualified to continue as members. Due to this order, these 303 persons were not shown in the provisional voters list. The objection was taken to the provisional voters list by those persons before the Returning Officer. The Returning Officer was expected to give the decision of the objection on 26th September, 2016 and till that date the revision which was filed by more than 150 persons was pending before the Divisional Joint Registrar. The Divisional Joint Registrar gave decision of the revision on 29th September, 2016. The revision came to be allowed and the order made by Assistant

Registrar to declare that 303 members as disqualified came to be set aside. The Divisional Joint Registrar made order of remand of the matter to Assistant Registrar. This order is challenged in the present proceeding. On the basis of the said order, the petitioners of the revision petition who are respondents in the present proceeding came to be added in the voters list. One of them is contesting the election to the managing committee and his nomination is held as valid.

4. Learned Counsel for the petitioner submitted that necessary procedure was followed by Assistant Registrar and the persons who had filed revision before the Divisional Joint Registrar had not appeared before the Assistant Registrar to show that they were having 10 R land and so there was no other alternative before the Assistant Registrar than to pass the order of disqualification. Learned Counsel submitted that the society had also followed the procedure and individual notices were given to those persons and other members who were disqualified by Assistant Registrar, but these persons had failed to turn up and they failed to produce record to show that they are entitled to continue as members. Learned Counsel submitted that in view of this circumstance, the resolution was made by General Body of the society and then proceeding under Section 11 was filed before the Assistant Registrar.

5. The learned Counsel for petitioner submitted that when the order was made under Section 11 of the Act, appeal ought to have been filed under Section 152 of the Act but revision was filed and so order made in revision needs to be set aside. This point needs to be dealt with first. It appears that the order was made due to so called resolution made by the managing committee under Section 25A of the Act and so proceeding was not in fact proceeding under Section 11 of the Act. In any case, no such resolution of managing committee is produced and there is only resolution of general body. If order is made under Section 25A of the Act, revision is available under Section 154 of the Act. In view of the record which is available, it needs to be observed that Assistant Registrar presumed that managing committee had passed resolution and proceeding was started due to presumption of existence of the resolution under Section 25A of the Act.

6. The submissions made and the record show that petitioner wants to rely on resolution made by general body against these 303 persons. The record shows that general body had decided to refer the matter under Section 35 of the Act to Assistant Registrar. Section 35 of the Act runs as under:-

35. *Expulsion of members.*

(1) *A society may, by resolution passed by a majority of not less than three-fourths 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:*

Provided that, no resolution shall be valid, unless the member concerned is given an opportunity of representing his case to the general body, and no resolution shall be effective unless it is approved by the Registrar.

(2) *No member of a society who has been expelled under the foregoing sub-section shall be eligible for re-admission as a member of that society, or for admission as a member of any other society, for a period of one year from the date of such expulsion:*

Provided that, the Registrar may, on an application by the society and in special circumstances, sanction the re-admission or admission, within the said period, of any such member as a member of the said society or of any other society, as the case may be.”

7. Thus in fact the proceeding was started under Section 35 of the Act and not even under Section 11 of the Act. The provision of Section 25A of the Act can be used only when a member ceases to be a member or when a member stands disqualified by or under provisions of

the Act and he cannot continue as member of the society. In view of the provisions of Section 11 which gives power to Registrar to decide some questions in detail enquiry, it can be said that such decision needs to be taken on the basis of material produced by the concern before the Registrar (Assistant Registrar). When there is resolution of general body and the matter falls under Section 35, only approval needs to be given by Registrar as provided under Section 35. The provisions of Section 11 runs as under:-

11. Power of Registrar to decide certain questions.

When, any question arises whether a person is an agriculturist or not, or whether any person resides in the area of operation of the society or not, or whether a person is or not engaged in or carrying on any profession, business or employment, or whether a person belongs or does not belong to such class of persons as declared under sub-section (1A) of Section 22 and has or has not incurred a disqualification under that sub-section, such question shall be decided by the Registrar and his decision shall be final, but no decision adverse to any such person shall be given without giving him an opportunity of being heard.”

8. The aforesaid provisions like Sections 11, 25A and 35 operate in different fields. It appears that the petitioners want to use the record

of notices given at the instance of the managing committee to the members. This record cannot be called as record of notices in respect of subject which was to be placed before the general body. In any case, even copy of the said notice given to each member is not produced and only copies of acknowledgment of post are produced. If resolution was to be passed by general body, such individual notices were necessary to each such members and it was necessary to give them opportunity to have their say before the general body. Apparently, such procedure was not followed but resolution was passed and decision was taken to refer the matter to Assistant Registrar. These circumstances were argued first time in this proceeding and they are not considered by Assistant Registrar and even by Divisional Joint Registrar. Thus initiation of proceeding before the Assistant Registrar was not under Section 11. Learned Assistant Registrar was under misconception that there was already some resolution and on the basis of that resolution he was taking step like approval. When proceeding is started under Section 11, the burden lies on applicant to prove that opponents of that proceeding are disqualified for some reason. The burden is not on opponent to produce the record. This aspect was not considered by Assistant Registrar. The submissions made show that no record was collected by society from revenue authority to ascertain that these persons were not holding the land. In

the present matter, it was the submission for respondent that they are members of the joint Hindu family and they are holding the land jointly with other members of joint Hindu family and this aspect can be considered. Without touching to these merits it needs to be observed that order made by Assistant Registrar was itself under misconception and it could not have been upheld by Divisional Joint Registrar.

9. There is dispute over the bye-laws framed by society. Learned Counsel for respondent has produced copy of bye-laws showing that when the respondents were made members, there was no eligibility condition that member should have agricultural land. As per the old bye-law, according to him any resident of that village who was ready to pay the share capital by purchasing one unit could have been made member and accordingly respondents were made members. On the same line he further submitted that even if bye-laws are changed and members are required to purchase the share of higher value like Rs.100/-, in the present matter, there needs to be first allotment of share and then demand notice needs to be given to such old members to ask them to pay remaining amount. There is force in this submission. In that regard, provision of Section 26 of the Act also needs to be kept in mind. In any

case, this matter could not have been considered under Section 11 of the Act as such matter falls under Section 26 of the Act. Learned Counsel submitted that Section 26 shows that if any member had acquired interest in the society, he cannot be prevented from voting. He submitted that in the past, by making such payment these persons had acquired interest and if bye-laws challenged subsequently, it is necessary to follow aforesaid procedure. This point need not to be decided in the present proceeding but there is force in this contention made for respondent.

10. The learned Counsel for petitioner submitted that in the past, there was bye-law due to which member was required to hold 21R portion of agricultural land for becoming member. He has produced copy of bye-law to that effect but there is also copy of bye-law amended after the constitutional amendment of 2013 and now member is required to hold 10R portion of agricultural land. In any case, in view of aforesaid circumstances, it is not necessary for this Court to consider as to whether respondent or other persons who were declared as disqualified by Assistant Registrar were really holding 10R portion of land on the date when list was to be submitted by society to the authority for publication of provisional voters list. It can be said that society had taken decision to

refer the matter to the Assistant Registrar for approval under Section 35 of the Act. The said reference was under Section 35 of the Act and observation with regard to the procedure which needs to be followed under Section 35 of the Act is already mentioned. So apparently the resolution was not made after following the necessary procedure.

11. On facts also some argument was advanced by both the sides. Learned Counsel for respondent drew the attention of this Court to many discrepancies. He pointed out to Court that the record of service of notices created by society is highly suspicious and similar record of services of notices which can be found in the file of the Assistant Registrar is also highly suspicious. He pointed out many acknowledgment and due to those instances, this Court found force in the submission. The Divisional Joint Registrar has also formed opinion that sufficient opportunity is not given to the members who are declared as disqualified by Assistant Registrar. The service record shows that when the members are ladies and they were illiterate and in the past they had given thumb impression, the record of post office about service of notice on those members found in the file of Assistant Registrar shows that signatures were made by or for those ladies and they were in Devanagari or in

English. The record shows that one person had accepted the envelopes of notices for many such persons. The said person is not known to anybody. This circumstance was also sufficient for remanding the matter. Learned Counsel for petitioner placed reliance on reported case as **1993 BCI 81 (Aurangabad Bench) (Ramkishan Bhanudas Shinde and Others Vs. State of Maharashtra and Others)**. In this case, procedure which is required to be followed for preparation of final voters list and scope for interference in the election process to the Court is discussed. The facts of the present matter are altogether different. Even before the declaration of the election program or publication of provisional voters list proceeding was pending under Section 11 of the Act and it is the case of the petitioners that only due to the order made by Assistant Registrar, the names of 303 persons were deleted and they were not shown in the provisional voters list. In view of this circumstance, it can be said that order of Divisional Joint Registrar ought to have been followed by the returning officer. This Court holds that there was no other alternative to returning officer than to comply the order made by the Divisional Joint Registrar.

12. Reliance was placed on other case reported as **2000 (2) MLJ 306 (Shivaji Marotrao Suryawanshi Vs. State of Maharashtra and**

Others). The submissions were made on the basis of observations made by this Court that this Court can make order and direct the returning officer to make correction in final voters list. This Court holds that this Court has such power but in view of aforesaid peculiar facts of the present matter, it is not possible to make order against the persons against whom disqualification was sought before the Assistant Registrar.

13. For respondent, reliance was placed on two cases. Decision given in SLP (C) No. 22902 of 2011 and Civil Appeal No. 1629 of 2016. It was submitted that considering the scope of jurisdiction given to this Court under Article 226 and 227 of the Constitution of India, this Court is not expected to make order in favour of person who were not party before the Divisional Joint Registrar. This submission was made when this Court expressed that if 303 members were declared as disqualified by Assistant Registrar and if there are aforesaid circumstances, all the 303 persons need to be allowed to vote in this election. This Court holds that observations made by the Apex Court in this case are of no help. If the proceeding was filed against 303 persons and there are aforesaid circumstances, the 303 persons who had voted in the past and who were there in the register of members, cannot be prevented from voting as

necessary procedure was not followed to delete their names from register of members and procedure was not followed to ascertain the eligibility to vote.

14. Learned Counsel for respondent pointed out to this Court that in the present matter, directors who are in power have misused their power and they have shown that proceeding is filed by society when they are interested in getting the decision in respect of order made by Divisional Joint Registrar. It was submitted that no record at all was there to show that resolution was made by the managing committee to authorise one Baban Khedkar – Vice-chairman to file proceeding. It was submitted that in the past, the previous Chairman and Vice-chairman resigned from their posts but elections for the post of Chairman and Vice-chairman were not held and due to that it cannot be said that Baban Khedkar was Vice-chairman of the society. It was submitted that the proceeding is not in interest of society but it is in the interest of few directors who want to see that some members who may not vote in their favour are prevented from voting. He submitted that huge amount must have been spent even on stationary for filing the present proceeding as more than 160 respondents are there and the compilation contains as many as 877 pages.

15. Submission was made that financial burden cannot be imposed on society for such act of few directors. There is force in this submission. Learned Counsel for petitioner submitted that nothing is taken from society on expenses like stationary, printing, cost of notices, etc. and society will be paying only fees of counsel. This submission cannot be accepted. In view of nature of dispute, this Court holds that the directors who have filed present proceeding need to bear the expenses of the present proceeding. They are prevented from spending the amount of society on the present proceeding.

16. With these observations, the petition stands dismissed. However, it is made clear that all the 303 persons against whom disqualification proceeding was started before the Assistant Registrar are entitled to vote in the election. Returning officer to take steps accordingly.

(T.V. NALAWADE, J.)

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