

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION STAMP NO.10072 OF 2016

**Sambhaji Mahadev Pawar and ors. : Petitioners
versus
The State of Maharashtra and ors. : Respondents
ALONG WITH
WRIT PETITION NO.4109 OF 2016**

**Shoukat Aalam Patel and ors. : Petitioners
versus
Maharashtra State Cooperative
Election Authority, Pune-1 and ors. : Respondents
ALONG WITH
WRIT PETITION NO.4110 OF 2016**

**Bapusaheb Chintamani Ronge and ors. : Petitioners.
Versus
Maharashtra State Cooperative
Election Authority, Pune-1 and ors. : Respondents.**

**Mr. J Shekhar i/by J Shekhar & Co. for the Petitioners in Writ Petition
Stamp No.10072 of 2016
Mr. R P Pawar for the Petitioners in Writ Petition Nos.4109 of 2016 and
4110 of 2016
Mrs. S S Bhende, AGP, for the Respondent Nos.1 to 3 in Writ Petition
Stamp No.10072 of 2016 and for the Respondent Nos.1 and 2 in Writ
Petition Nos.4109 of 2016 and 4110 of 2016.
Mr. Y S Jahagirdar, Senior Advocate a/w Mr. R V Govilkar for the
Respondent No.4 in Writ Petition Stamp No.10072 of 2016
Mr. R V Govilkar a/w Mr. V D Sawant and Mr. R G Lad for the Respondent
No.3 in Writ Petition Nos.4109 of 2016 and 4110 of 2016.**

**CORAM : R. M. SAVANT, J.
DATE : 12th April 2016**

P.C.

1 The above Petitions raise a common challenge i.e. to the order
dated 29/03/2016 passed by the District Co-operative Election Officer cum

Regional Joint Director (Sugar), Pune Division, Pune by which order the objections of the Petitioners in the above Petitions to the non-inclusion of their names in the provisional voters list came to be rejected.

2 The Petitioners in the above 3 Petitions were the members of the Respondent No.4 – Sakhar Karkhana (i.e. Sugar Factory) in Writ Petition Stamp No.10072 of 2016. The bye laws of the Respondent No.4 came to be amended some time in the year 2011 as a result of which the face value of the shares of the Respondent No.4 was increased from Rs.5,000/- to Rs.10,000/-. The said amendment was by way of inclusion of Bye-Law No.6A in the bye laws of the Respondent No.4. The members were therefore required to make good the deficit on account of the increase in the face value of the shares of the Respondent No.4. If the members were not to do so, then the same was to be adjusted against the payments to be made to them for supply of sugarcane. The controversy in the present Petitions has been triggered on account of the elections which have been declared to the Respondent No.4. The election program is at present at the stage where the final list of voters has been published. In view of the fact that the Petitioners in the above 3 Petitions did not pay the deficit value of the shares. The Managing Committee of the Respondent No.4 took cognizance of the same and by a resolution dated 08/09/2015 resolved to place the matter of the membership of the Petitioners before the General Body of the Respondent No.4. The General Body Meeting

was accordingly slated for 28/09/2015 and amongst the subjects on the agenda was the subject at Item No.10 which was as regards the membership of the Petitioners who had not made good the deficit share value. The General Body of the Respondent No.4 has passed a resolution in the meeting dated 28/09/2015 whereby on account of non-compliance by the Petitioners in respect of payment of the deficit share value it was resolved to remove the names of the Petitioners from "I" Register of the Respondent No.4. It was further resolved that the share amount paid by the Petitioners would be remitted to their respective accounts. In terms of the resolution passed, the Respondent No.4 remitted the amount of Rs. Forty Six Lacs and odd in the respective accounts of the Petitioners and others similarly situated in the Pratibhadevi Nagari Sahakari Pat Sanstha. Thereafter in terms of the resolution dated 28/09/2015 it appears that the names of the Petitioners were removed from the "I" Register which is a register of members of the Respondent No.4. It appears that some of the members whose names have been removed have withdrawn the amount from their respective accounts in the said Pratibhadevi Nagari Sahakari Pat Sanstha. However, it is the case of the learned counsel for the Petitioners that none of the Petitioners in the above Petitions who are 653 in numbers have withdrawn the amount.

3 In terms of the election program, the provisional voters list was published on 10/03/2016. Since the names of the Petitioners were not

appearing in the said provisional list of voters, which was published, the Petitioners raised an objection to the same before the District Co-operative Election Officer cum Regional Joint Director (Sugar) (for short DCEO). Before the DCEO the objection of the Petitioners was opposed on behalf of the Respondent No.4 on the ground that the names of the Petitioners have been removed from the "I" Register and therefore their objection as regards non-inclusion of their names in the provisional voters list cannot be entertained.

4 The DCEO considered the said objection of the Petitioners as regards non-inclusion of their names in the provisional voters list. The DCEO adverted to the antecedent facts of the resolution dated 08/09/2015 passed by the Managing Committee of the Respondent No.4 and the resolution dated 28/09/2015 passed by the General Body of the Respondent No.4. The DCEO observed that since the removal of the names of the Petitioners has its basis in the said resolutions passed by the Managing Committee and the General Body of the Respondent No.4 and since as an Election Authority he did not have jurisdiction to adjudicate upon the legality and validity of the said resolutions, the DCEO rejected the objection of the Petitioners. The DCEO has adverted to the judgments cited on behalf of the Petitioners in the case of ***Dattatraya Kachru Chine and ors. v/s. State of Maharashtra and ors*** and in the case of ***Shree Vitthal Sahakari Sakhar Karkhana Ltd. v/s. Wadikuroli Vividh Karyakari Seva Society Ltd.*** and held that the said judgments would have no

application in the facts of the present case. As indicated above by the impugned order dated 29/03/2016, the DCEO has rejected the objection of the Petitioners.

5 On behalf of the Petitioners submissions were urged by learned counsel Shri Jagtap in Writ Petition Stamp No.10072 of 2016 and Shri R P Pawar in the Writ Petition Nos.4109 of 201`6 and 4110 of 2016. The principal contention of the learned counsel appearing on behalf of the Petitioners was that removal of the Petitioners by virtue of the said resolution dated 28/09/2015 is virtually an expulsion of the Petitioners without following the procedure prescribed by Section 35 of the Maharashtra Co-operative Societies Act (for short “the said Act”) and Rules 28 and 29 of the Maharashtra Co-operative Societies Rules (for short “the said Rules”). The contentions were also sought to be raised on behalf of the Petitioners as regards the manner in which the said resolution dated 28/09/2015 was passed. It was also the submission of the learned counsel for the Petitioners that without the demand being raised on the Petitioners and without they being given an opportunity to make good the deficit share value, the names of the Petitioners have been removed and thereby the removal is in breach of the principles of natural justice. Reliance was sought to be placed on behalf of the Petitioners on the judgment of a Division Bench of this Court reported in 2005(4) Mh. L.J. 243 in the matter of Dattatraya Kachru Chine and ors. v/s. State of

Maharashtra and ors. as also on the judgment of another Division Bench of this Court reported in **2014(2) Mh.L.J. 24** in the matter of **Anil s/o Wamanrao Gawande v/s. Mahalaxmi Railway Karmachari Sahakari Griha Nirman Sanstha Ltd. Akola and ors.**

6 Per contra, the learned Senior Counsel appearing on behalf of the Respondent No.4 in Writ Petition Stamp No.10072 of 2016 Shri Y S Jahagirdar would support the impugned order. It was the submission of the learned Senior Counsel Shri Jahagirdar that the expulsion is only one of the modes of cessation of membership and the other modes one of which is by “removal” can be found in Section 25A of the said Act. It was also the submission of the learned Senior Counsel Shri Jahagirdar based on Section 26 of the said Act that the Petitioners cannot be allowed to exercise their rights as they have not fulfilled their obligations in the matter of making good the deficit share value in terms of the amended byelaws. It was lastly contended by the learned Senior Counsel Shri Jahagirdar that considering the fact that there is no challenge to the resolutions dated 08/09/2015 and 28/09/2015 passed by the Managing Committee and the General Body of the Respondent No.4 as also considering the fact that the election program is at the stage where the final list of voters has been published, the interference by this Court in its writ jurisdiction under Article 227 of the Constitution of India is not warranted.

7 Having heard the learned counsel for the parties, I have considered the rival contentions. As indicated above the bye laws of the Respondent No.4 were amended in the year 2011 as a consequence of which the face value of the shares of the Respondent No.4 was increased from Rs.5000/- to Rs.10,000/-. The bye laws as were then existing did not provide for any period within which to make the payment of the deficit share value implicit in the same was therefore the fact that the said liability was to be discharged within a reasonable time. It is required to be noted that though a period of almost 4 years was over by September 2015, the deficit in the share value was not made good by the Petitioners and others similarly situated members of the Respondent No.4. The Managing Committee of the Respondent No.4 had therefore to take a call in respect of the membership of the Petitioners and others similarly situated like them. The Managing Committee as per its resolution dated 08/09/2015 placed the subject as regards the membership of the Petitioners before the General Body of the Respondent No.4. The General Body of the Respondent No.4 in its meeting dated 28/09/2015 has accordingly passed a resolution to remove the names of the Petitioners as members. It is required to be noted that the same has been preceded by the notices dated 27/02/2015 and 23/06/2015 which were issued to the Petitioners and others similarly situated like them. In one of such notices i.e. the 2nd notice, the amount due against each of the Petitioners and others similarly situated like them was mentioned. The said resolution dated

28/09/2015 was given effect to by the Respondent No.4 by crediting the amount in the respective accounts of the Petitioners and others similarly situated like them in Pratibhadevi Nagari Sahakari Pat Sanstha as also removal of the names of the Petitioners and others from the “I” Register. Significantly the Petitioners have not challenged the said resolution dated 08/09/2015 and the resolution dated 28/09/2015 passed by the Managing Committee and the General Body of the Respondent No.4 respectively in the appropriate forum. Since the names of the Petitioners were removed from the “I” Register, consequently their names did not appear in the provisional list of voters which was published and which as indicated above has triggered of the present controversy.

8 In the context of the removal of the names of the Petitioners, it would be apposite to refer to Sections 25, 25A, 26 and 35 of the said Act so also Rules 28 and 29 of the said Rules.

“25. Cessation of membership

A person shall cease to be a member of a society on his resignation from the membership thereof being accepted, or on the transfer of the whole of his share or interest in the society to another member, or on his death, or removal or expulsion [from the society, or where a firm, company, any other corporate body, society or trust is a member, on its dissolution or ceasing to exist.]

25A. 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 or 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.

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.

(2) It shall be the duty of every member of a society,-

- (a) to attend at least one general body meeting within a consecutive period of five years,
- (b) to utilise minimum level of service at least once in a period of five consecutive years as specified in the by-laws of the society:

Provided that, a member who does not attend at least one meeting of the general body as above and does not utilize minimum level of services at least once in a period of five consecutive years, as specified in the by-laws of such society shall be classified as non active

member:

Provided further that, when a society classifies a member as a non-active member, the society shall, in the prescribed manner communicate such classification, to the concerned member within thirty days from the date of close of the financial year:

Provided also that, a non-active member who does not attend at least one meeting of the general body and does not utilize minimum level of services as specified in the by-laws, in next five years from the date of classification as non-active member, shall be liable for expulsion under section 35:

Provided also that, a member classified as non-active member shall, on fulfillment of the eligibility criteria as provided in this sub-section be entitled to be re-classified as an active member:

Provided also that, if a question of a member being active or non-active member arises, an appeal shall lie to the Registrar within a period of sixty days from the date of communication of classification:

Provided also that, in any election conducted immediately after the date of commencement of the Maharashtra Co-operative Societies (Amendment and Continuance) Ordinance, 2013, all the existing members of the society shall be eligible for voting, unless otherwise ineligible to vote.

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 forgoing 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.

Rule 28. Expulsion of Members.

Any member who has been persistently defaulting payment of his dues or has been failing to comply with the provisions of the by-laws regarding sales of his produce through the society, or other matters in connection with his dealings with the society or who, in the opinion of the committee, has brought disrepute to the society or has done other acts detrimental to the interest or proper working of the society may, in accordance with the provisions of sub-section (1) of Section 35, be expelled from the society. Expulsion from membership may involve forfeiture of shares held by the member.

Rule 29. Procedure for expulsion of members.

(1) Where any member of a society proposes to bring a resolution for expulsion of any other member, he shall give a written notice thereof to the Chairman of the society. On receipt of notice or when the committee itself decides to bring in such resolution, the consideration of such resolution shall be included in the agenda for the next general meeting and a notice thereof shall be given to the member against whom such resolution is proposed to be brought, calling upon him to be present at the general meeting to be held not earlier than a period of one month from the date of

such notice and to show cause against expulsion to the general body of members. After hearing the member, if present, or after taking into consideration any written representation which he might have sent, the general body of members shall proceed to consider the resolution.

(2) When a resolution passed in accordance with sub-rule (1) is sent to the Registrar or otherwise brought to his notice, the Registrar may consider the resolution and after making such enquiries as he may deem fit, give his approval and communicate the same to the society and the member concerned. The resolution shall be effective from the date of such approval.”

Section 25 postulates the circumstances in which there is a cessation of the membership and one of the circumstances is “of removal”. In so far as Section 25A is concerned, the said Section can be said to be a Section which postulates the consequence of cessation of membership and the consequence is removal of name from the membership register of a person who has ceased to be a member of the society. Thereafter Section 26 posits the rights and dues of the member. The 2nd proviso to Section 26(1) 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 member and give reasonable period to comply with the same. Hence in terms of Section 26 a member can exercise his rights only if on account of increase in contribution he makes good the deficit. The Society in question however has to issue a demand notice. In the instant case notices have been issued to the Petitioners On 27/02/2015 and 26/03/2015. In so far Section 35 is concerned, the same

governs expulsion of members and further posits the requirement of the resolution to be passed by 3/4th of the members entitled to vote and who are present in the General Meeting held for the said purpose. The provision further provides that the resolution of expulsion becomes effective only after its receives approval from the Registrar. Rules 28 and 29 of the said Rules govern the expulsion of a member and the procedure in the matter of expulsion of a member. Hence a conjoint reading of Section 25A and Section 25 of the said Act makes it clear that cessation of membership can be on account of “removal”.

9 In the instant case, the removal of the Petitioners as the members is ascribable to the factum of the Petitioners not complying with the amended bye laws in making good the deficit share value. Since the Petitioners have not supplied sugarcane to the Respondent No.4, there could be no adjustment against the amount payable for the supply of sugarcane. It is not possible to accept the contention urged on behalf of the Petitioners that in fact the resolution passed on 28/09/2015 has the effect of expulsion of the Petitioners and the said expulsion has been done without following the procedure for the same. As indicated above, the cause for passing the resolution in the General Body Meeting dated 28/09/2015 for removal of the Petitioners as members was on account of the fact that the Petitioners did not comply with the bye laws in the matter of making good the deficit share value, as the face value of

the shares was increased pursuant to the amendment of the bye laws of the Respondent No.4. The removal of the Petitioners had therefore nothing to do with any of the circumstances mentioned in Rule 28 of the said Rules. It is required to be noted that the said resolution dated 28/09/2015, whereby a decision is taken to remove the Petitioners as members of the Respondent No.4, is holding the field, since as yet there is no challenge raised to the said resolution. The DCEO has rejected the objection of the Petitioners precisely on the ground that he did not have the jurisdiction to consider the legality and validity of the said resolutions dated 08/09/2015 and 28/09/2015 for which the Petitioners would have to adopt appropriate proceedings before the appropriate Court.

10 In so far as the judgments cited (supra) on behalf of the Petitioners, in my view, the said judgments have no application, having regard to the fact that the Petitioners have been removed as members and not expelled as members.

11 In my view, having regard to the stage at which the election program is at present as also for the reasons afore-stated, there is no warrant to interdict in the writ jurisdiction of this Court under Article 227 of the Constitution of India. The above Writ Petitions are accordingly dismissed.

[R.M.SAVANT, J]