

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

WRIT PETITION NO. 11337 OF 2018

ANIKET GOVIND ALIAS BABASAHEB KADAM AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
CIVIL APPLICATION NO.12878 OF 2018
IN WP/11337/2018

BHAIRUNATH BALBHIM MORE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for the Petitioners : Shri Irpatgire A.N.
AGP for Respondents 1, 4 and 6 : Shri S.R.Yadav.
Advocate for Respondents 2 and 3 : Shri V.H.Dighe.
Advocate for Respondent 5 : Shri V.B.Jagtap.
Advocate for the Applicants/ Intervenors : Shri S.B.Ghatol Patil h/f Shri
R.V.Naiknavare.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 23rd October, 2018

Per Court:

1 Leave to add the Assistant Registrar, Cooperative Societies,
Tuljapur, District Osmanabad as respondent No.6. Addition be carried out
forthwith. The learned AGP waives service for this added Respondent.

2 On 20.10.2018, after hearing the learned counsel for the
respective sides, this Court has passed the following order :-

- "1. *The learned Advocate appearing on behalf of the Secretary/ Respondent No.5 seeks sometime to discuss with the Administrator appointed on the Society, as to whether these petitioners can be permitted to cast their votes in a separate ballot box. So also, whether, the proceeding under Section 11 of the Maharashtra Cooperative Societies Act can be undertaken by any Assistant Registrar of Cooperative Societies of any adjacent taluka to decide the issue of whether these petitioners have a valid membership or not. After the decision in the Section 11 proceedings depending upon the fate of these petitioners, the counting of votes can be done and the results can be declared.*
2. *Since the election programme has already been punished, S.O. to 23.10.2018 in the category of passing orders."*

3 These Petitioners, who are 60 in number and claim to be the members of Respondent No.5/Vividh Karyakari Seva Sahakari Society Limited, Kamegaon, Taluka and District Osmanabad, submit that their names were included in the voters lists of 2006 and 2015. It is submitted that under fortuitous circumstances, the elections to this Society were not conducted in 2006 and in 2015 as well. These Petitioners, therefore, did not get an opportunity of casting their votes in the said elections. They are before this Court in view of the impugned order dated 01.10.2018 passed by the District Cooperative Election Officer-cum-District Deputy Registrar, Cooperative Societies, Osmanabad, by which, the Petitioners are held to be non-members and their names are not included in the voters list.

4 The Petitioners place reliance upon the list of 330 voters

dated 31.03.2015, which is said to be a preliminary voters list wherein, these Petitioners are included. A certificate under the signature of the Secretary is attached below the said list at page 66 to indicate that these 60 Petitioners were included in the said list. The original I-register, which is produced by the Secretary of the Society, indicates that the names of these Petitioners are included. Such documents are retained in the custody of the Secretary.

5 The learned Advocate for Respondent No.5/ Society relies upon two affidavits filed by Mr.Sudhakar Damodhar Thorat, both dated 20.10.2018 by which, the Secretary submits that the Chairman of the Society, namely, Mr.Shivaji Dnyanoba Kapase has played the entire mischief. He is hand-in-gloves with the Petitioners and he got their names entered in the said list and in I-register. Though the Secretary is the custodian of the record, the entire documents used to be maintained by the Chairman. It is then stated that this petition may be dismissed as disputed questions have been raised.

6 Shri Dighe, learned counsel appearing on behalf of the State Cooperative Election Authority relies upon the affidavit filed by the Assistant Registrar, Cooperative Societies, Osmanabad dated 10.10.2018. It is submitted that Respondent No.5/ Society actually submitted the voters list consisting 215 members. He is not aware as to how the list of 215 members grew to 330 members. He is equipped with the list, which

contains 215 members and the names of these Petitioners are missing from the said list. He, therefore, submits that as it is unsure as to whether, these Petitioners are members of the Society, it would be improper to allow them to vote in the elections scheduled on 23.11.2018, which is one month from today.

7 The learned counsel appearing on behalf of two applicants in Civil Application No.12878/2018 seeking intervention, submits that it will have to be investigated as to whether, these Petitioners are actual members of the Society. It will have to be seen as to whether, they had paid their subscription fees, whether, they fulfill all conditions required for being eligible to be inducted as members of the Society and whether, they could be termed as being entitled to contest the elections and vote in the elections.

8 Reliance is placed on the judgment delivered by this Court in *Shivajirao Prataprao Chalukya vs. State of Maharashtra and others, 2009 (2) BCR 580*, wherein, it was concluded that mandatory requirements for becoming a valid voter have to be complied with and only then, a person can be said to be a valid voter.

9 The learned counsel for the Petitioners submits that the intervenors have cited the judgment of *Shivajirao Chalukya (supra)*, which has been subsequently set aside by the Honourable Supreme Court. It is further submitted that the Secretary is blaming the Chairman for self

serving purposes as both these persons now belong to rival factions.

10 Shri Dighe, learned Advocate, submits that a look at the affairs of the Society indicates that the said Society is in a mess and no elections have been held for the last about 15 years. He submits that the only way of streamlining the Society would be to permit the elections under certain conditions that can be imposed by this Court. If the elections are not held, this Society would be in a doldrums keeping in view the conduct of the members and elected representatives of the said Society. Presently, an Administrator has been appointed on the said Society.

11 I find that the Petitioners have approached this Court before the election programme was announced. Since the election programme has to be declared within a stipulated period from the date of finalization of the voters list, that the election programme was declared. I cannot turn a blind eye to the fact that about 60 members are held to be ineligible for voting and it appears that all these Petitioners belong to a particular group in the Society. It is almost a strength of 30%, which is being eliminated and kept away from the elections.

12 In such circumstances, this Court would have no option, but to consider the documents at a prima facie stage so as to ensure that ends of justice are met and a large number of voters of the Society are not prevented from participating in the elections, which is the apparent intention of a rival group, who is supported by the intervenors.

13 Considering the above and since the polling is one month away i.e. on 23.11.2018, I find it appropriate to permit these Petitioners to cast their votes, which would be preserved in a separate ballot box.

14 The learned counsel for the intervenors submits that Section 11 of the Maharashtra Cooperative Societies Act, 1960 would take care of all disputes pertaining to the membership of a particular individual and these intervenors or like minded people would come together and would file an application under Section 11 with the competent authority so that the membership of these Petitioners is thoroughly checked and verified.

15 The learned AGP submits that if the intervenors or similar persons are willing to initiate Section 11 proceedings, a particular time frame can be granted and the membership can be scrutinized. Subject to the result of such scrutiny, the counting of votes can occur under the supervision of the Returning Officer and the results can be declared.

16 In view of the above, this Writ Petition is disposed of with the following directions :-

- (a) The Respondent Nos.2 and 3/ Cooperative Election Authorities shall arrange for a separate ballot box to enable these 60 Petitioners to cast their votes in such a ballot box.
- (b) The said ballot box along with other ballot boxes shall be protected and preserved by the Returning Officer and the expenses for such activity would be borne by the Society.

- (c) Since the impugned order dated 01.10.2018 passed by the Returning Officer is being kept in abeyance and since these Petitioners have expressed an apprehension about the District Deputy Registrar, Cooperative Societies, Osmanabad, who is the District Cooperative Election Officer, the Section 11 proceedings to be filed by the intervenors or similar such persons, shall be lodged with the Assistant Registrar, Cooperative Societies, Taluka Tuljapur, District Osmanabad, Respondent No.6.
- (d) The Assistant Registrar, Cooperative Societies, Taluka Tuljapur, District Osmanabad is, therefore, directed to consider the Section 11 applications by hearing all the litigating/ aggrieved parties. It is expected that he would decide the issue of membership of these Petitioners expeditiously and in any case, on or before 28.02.2019.
- (e) Subject to the result of the proceedings under Section 11, the Returning Officer shall, thereafter, declare particular dates for carrying out the counting of votes and declaration of results and accordingly, shall declare the results on the said date.
- (f) Needless to state, if the Petitioners are held to be ineligible or non members of the Society, the Returning Officer shall preserve the ballot box in which, they have separately voted

and shall destroy the said votes after 60 days of the declaration of election results, without including them while counting the votes. It goes without saying that if the Petitioners are held to be valid members, their votes would be counted and preserved separately since the parties are likely to indulge in further litigation in that regard.

- (g) All expenses, as noted above, for preserving such ballot boxes, would be borne by the Society and the same would be paid to the office of the Returning Officer as and when demanded.

17 The pending Civil Application does not survive and stands disposed of.

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(RAVINDRA V. GHUGE, J.)