

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

971. WRIT PETITION NO.2019 OF 2020
WITH
CIVIL APPLICATION No. 2562 of 2020
WITH
CIVIL APPLICATION No. 2563 of 2020
IN
WRIT PETITION No. 2019 of 2020

Swapnil Krushi Upyogita Sahitya Purvatha Seva
Sahakari Sanstha Maryadit, Kodri
Tal. Gangakhed Dist. Parbhani

...Petitioner

VERSUS

The District Co-operative Election Officer,
District Central Co-op. Bank, Parbhani &
the Divisional joint Registrar, Co-operative Societies,
Aurangabad and others

...Respondents

Mr. V.D. Salunke, Advocate, with Mr. M.V. Salunke, Adv. for petitioner
Mr. S.K. Kadam, Advocate for respondent No.1
Mr. S.G. Karlekar, Asstt. Govt. Pleader for respondent No. 2
Mr. M.S. Deshmukh, Advocate for respondent No.3
Mr. S.B. Ghatol Patil, Advocate for applicant in C.A. No. 2562/2020
Mr. D.J. Choudhary, Advocate for applicant in C.A. No. 2563/2019

CORAM : S.V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.

DATE : 26th February, 2020

ORDER :

1. The present petition is filed seeking direction to call the

resolution of the petitioners-societies to include names of their representatives in the voters list of the ensuing election of the Parbhani District Central Co-operative Bank and to include names of representatives of the petitioners-societies in the provisional voters list for the election of the District Central Co-operative Bank, Parbhani.

2. Mr. Salunke, learned Advocate for the petitioners, strenuously contended that the petitioners are deemed members of respondent No.3-bank. The petitioners on 9th March 2016 applied to the respondent No.3 seeking membership. The same was not considered by the respondent No.3. The respondent No.3 did not communicate to the petitioners the fate of their application even after lapse of three months. The petitioners filed an application before the Divisional Joint Registrar, Co-operative Societies, Aurangabad. The Divisional Joint Registrar under Order dated 18th May 2017 allowed the application of the petitioners and declared that the petitioners have become deemed members of the respondent No.3-society. The said order is not challenged by the respondents and it has become final. The learned Counsel submits that the same would relate back to the date of the application i.e. 9th March 2016. The learned Counsel submits that 27th February 2020

is the last date for calling the resolutions nominating delegates from the members of the respondent No.3. The respondent No.3 did not issue such communication to the petitioners for sending resolutions i.e. for forwarding resolutions by the petitioners-societies. The petitioners are deemed members. As the petitioners are members, it is incumbent upon the respondent No.3 to call for the resolutions for the petitioners-societies. The learned Counsel relies on Section 27(3) and Rule 9 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014, to contend that the period of three years provided in sub-section (3) of Section 27 of the Act is to be counted from the date of enrolment as the member. The words of the provisions are unambiguous and no other meaning can be attached to it. The judgments relied upon by the respondents are prior to the Rules 2014, and, as such, are not applicable to the facts of the present case.

3. According to the learned Counsel, the petitioners being members of respondent No.3, the resolutions are required to be called by respondent No.3 from the petitioners and if any person/party has objection, they can raise objection to the provisional voters list.

4. Mr. Deshmukh, learned Counsel for the respondent No.3-

bank accepts that the order of the Divisional Joint Registrar, Co-operative Societies, is not assailed by the bank or any party and all petitioners are the deemed members. He further submits that the petitioners have deposited fees much latter and not before the cut off date, as applicable to the societies.

5. Mr. Choudhari, learned Counsel and Mr. Ghatol-Patil, learned Counsel for the interveners, submit that Section 23(1-A) of the Maharashtra Co-operative Societies Act, 1960 is relevant to be considered. If the society refuses to accept the application from an eligible person for admission, or the payment made by him in respect of membership, such person may tender an application in such form as may be prescribed together with payment in respect of membership, if any, to the Registrar. In the present case, the petitioners did not apply with the payment in respect of membership to the Registrar, the same was paid much latter than the order was passed by the Divisional Joint Registrar for declaring the petitioners as deemed members. The language of Section 27(3) of the Act is clear. A member of the society is eligible to vote only after completion of period of three years from the date of investing any part of its fund in the shares of such federal society. In the present case, the three years from the date of investing funds would lapse

of majority of the members in the year 2021.

6. The learned Advocates relied on the following judgments:

- I. Dudhganga Vikas Seva Sanstha Maryadit Vs. Dist. Collector, Kolhapur and others [2006(5) Mh.L.J. 325],*
- II. Dhule Gramin Vikas Bhajipala Phal Phalawal Va Phule Kharedi Vikri Sahakari Sanstha Ltd., Dhule and others Vs. State of Maharashtra and others [2008(1) Mh.L.J. 171]*
- III. Pratap Nagarik Sahakari Patsanstha Ltd. Vs. Collector and others [2011(6) Mh.L.J. 277]*
- IV. Shriram Ganpatrao Yawale Vs. Resident Deputy Collector & others [2007(Supp.) Bom.C.R. 832]*
- V. Ashok Indrajit Jawalge Vs. State of Maharashtra and others [2007(1) Mh.L.J. 17]*
- VI. Sandip Vasantrao Lahare Vs. State of Maharashtra and others [2005(2) Mah L R 697]*

7. The learned Advocates for the interveners further submit that the provision of the statute is abundantly clear.

8. Mr. Kadam, learned Advocate for respondent No.1, submits that the provisional voters list is not yet published. Respondent No.3 will submit the voters list to respondent No.1 on 5th March 2020. The respondent No.1 would publish the provisional voters list on 16th March 2020 and objections will be called upto 26th March 2020. The decision will be taken on the objections by the respondent No.1 on 7th April 2020 and final voters list would be published on 13th April 2020. Any person aggrieved by the provisional voters list can raise objection. Even the person, whose name is not appearing in the provisional voters list, can also raise objection contending that he is a member and entitled to vote. According to the learned Advocate, at that stage petitioners can raise objection if their names are not included in the provisional voters list. The learned Counsel submits that similar order is passed in Writ Petition No. 2673 of 2020.

9. We have considered the submissions. It appears that the petitioners are the members of the respondent No.3-bank in view of the order passed by the Divisional Joint Registrar. The bone of contention would be the right of the petitioners to vote, as provided under Section 27(3) read with Rule 9 of the Rules 2014. If the respondent-bank does not send names of petitioners in the

voters list, which the bank is required to submit by 5th March 2020 to respondent No.1, then provisional voters list is to be published, the petitioners can raise objection to that effect and can agitate their contention before the respondent No.1. Similar observations were made under order 12th February 2020 in Writ Petition no. 2673 of 2020. In that event, all the contentions of the parties would be open for consideration.

10. In view of the fact that, the petitioners have an opportunity to raise objections if their names are not appearing in the provisional voters list, we are not inclined to pass orders on merits.

11. The writ petition is accordingly disposed of with aforesaid observations and directions. No costs.

12. In view of disposal of the writ petition, all pending civil applications stand disposed of.

(SHRIKANT D. KULKARNI)
JUDGE

(S.V. GANGAPURWALA)
JUDGE