

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1197 OF 2021

Rajendra s/o Rangnathrao Deshmukh
Age 50 years, Occ. Agriculture
R/o. Kavtha, Tq. Shengaon
District Hingoli

...Petitioner

versus

1. The State of Maharashtra
Through its Secretary of Co-operative
and Textile Department
Mantralaya, Mumbai
2. The State Co-operative Election
Authority, Maharashtra State,
Pune
3. The District Co-operative Election
Officer of the Parbhani District
Central Co-operative bank Ltd.
Parbhani @ Divisional Joint Registrar
Co-operative Societies, Aurangabad
4. The Managing Director,
Parbhani District Central Co-operative
Bank Limited, Parbhani
Tq. and District Parbhani
5. The Secretary
Vividh Karyakari Society Ltd.
Kavtha, Tq. Shengaon,
District Hingoli
6. Himat s/o Ramaji Karbal,
Age 50 years, Occ. Agri and
Chairman of the V.K.S.S. Limited Welture
R/o. Welture, Tq. Shengaon
District Hingoli

...Respondents

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Advocate for Petitioner : Mr. Vishal A. Bagal
AGP for Respondent No.1: Mr. S.B. Pulkundwar
Advocate for Respondents 2 and 3 : Mr. V.H. Dighe
Advocate for Respondent No.4 : Mr. M.S. Deshmukh
Advocate for respondent No.6 : Mr. L.H. Kawale
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CORAM : V. K. JADHAV, J.
DATED : 3rd FEBRUARY, 2021

PER COURT:-

1. By consent, heard finally at admission stage.
2. By way of present writ petition, the petitioner is challenging the order dated 18.01.2021 passed by respondent No.3 whereby the name of the petitioner is removed from the final voters list of respondent No.4 Parbhani District Central Co-operative Bank Limited, Parbhani (hereinafter for the sake of brevity referred to as "respondent No.4 Bank").
3. The petitioner is a member and valid voter of respondent No.5 society. The petitioner is elected Chairman of respondent No.5 society. Respondent No.3 has issued letter on 27.12.2019 inviting therein the resolution from all Vividh Karyakari Seva Sahakari Societies and other societies within the jurisdiction of respondent No.4 Bank till 5.7.2020 for preparation of provisional voters list for the election of respondent No.4 Bank. In view of the same, respondent No.5 society has passed resolution on 23.01.2020 whereby the name of the petitioner has been forwarded as delegate/representative of the society in the elections of respondent No.4 Bank. The name of petitioner is included in the provisional voters list of respondent No.4 Bank at Sr. No. 40 in the societies constituency Shengaon, District

Hingoli. On 16.01.2021 respondent No.6 has submitted objection against the petitioner before respondent No.3 stating therein that respondent No.5 society is defaulter society and as such, the name of the petitioner be removed from the voters list of respondent No.4 Bank. All documents were submitted before respondent No.3 to show that respondent No.5 society is not defaulter society. However, by impugned order dated 18.01.2021 respondent No.3 has sustained the objection and removed the name of petitioner from the final voters list of respondent No.4 Bank.

4. Learned counsel for the petitioner submits that the Loan Officer of respondent No.4 Bank has issued certificate dated 30.01.2020 stating therein that respondent No.5 society is not defaulter and there are no dues with respondent No.5 society. Learned counsel submits that respondent No.5 society is having two account numbers and accordingly respondent No.5 society had deposited entire amount on 24.11.2020 with respondent No.4 Bank. Respondent No.4 Bank has also issued a chart in respect of recovery of loan amount and on perusal of the same, it clearly reveals that respondent No.5 society is not the defaulter society.

5. Learned counsel for respondent No.6 objector submits that respondent No.5 society is defaulter society and the present petitioner is Chairman and in terms of the provisions of Sections 27(10) and 73CA(1) (I), (f)(ii) of Maharashtra Co-operative Societies

Act 1960, the petitioner is not eligible to participate in the ensuing election of respondent No.4 Bank as delegate/representative of respondent No.5 society. Even though respondent No.5 society was defaulter, the said society has passed a resolution on 23.01.2020 nominating the present petitioner to represent the respondent No.5 society in the election of respondent No.4 Bank. Learned counsel submits that after considering the documents on record and after hearing the arguments of both sides, respondent No.3 has passed the impugned order on 18.01.2021 allowing the objection raised by respondent No.6 herein and deleted the name of the petitioner from the voters list. Learned counsel submits that the petitioner has admitted that there are two loan accounts of respondent No.5 society and an amount of Rs.7,63,488/- was due against the said society. Learned counsel submits that though the petitioner has contended that respondent No.5 society has deposited amount of Rs.14,18,700/- on 24.11.2020 with respondent No.4 Bank, however, the receipts produced on record at Exh. C-1 (Collectively), show that respondent No.5 society has not deposited the said amount and on the contrary, the said amount has been deposited by third persons in their individual names. Further, those receipts were not produced by the petitioner before respondent No.3 authority at the time of hearing of objection. Learned counsel further submits that the loan account numbers mentioned in those receipts are different compared to the loan account number mentioned in para 10-A of the petition.

6. This Court had heard this petition for some time on 2.2.2021 and also perused various documents annexed to the petition; particularly no dues certificate issued by the Loan Officer of respondent No.4 Bank and directed the learned counsel appearing for respondent No.4 Bank to take specific instructions. However, learned counsel had submitted that respondent No.4 Bank was not responding. Thus, this Court had directed the counsel appearing for respondent No.4 Bank to keep the concerned person of the respondent No.4 Bank present on the same day i.e. on 02.02.2021 at about 4.30 p.m..

7. Mr. Deshmukh, learned counsel for respondent No.4 bank, on instructions, from the concerned officer of respondent No.4 Bank and after going through the record submits that the certificate issued by the Loan Officer of respondent No.4 Bank dated 30.01.2020 stating therein about no dues as against the respondent No.5 society is genuine certificate. Furthermore, the deposit receipts at Exh. C-1 (Colly.) at page 19-A are also not disputed.

8. Mr. Dighe, learned counsel appearing for respondent No.3 Returning Officer submits that the impugned order allowing the objection came to be passed only on the basis of written statement filed by the Chief Executive Officer of respondent No.4 Bank.

9. Thus, considering entire aspects of the case, I do not find that the respondent No.5 society is defaulter society. The petitioner himself in the capacity as Chairman so also the other persons, who are also members of respondent No.5 society have deposited the amount towards loan and deposit receipts to that effect are placed on record at Exh. C-1 (Colly). Furthermore, the Loan Officer of respondent No.4 Bank has also issued no dues certificate as against respondent No.5 society. In view of the same, the impugned order passed by respondent No.3 is not sustainable. Thus, I am inclined to allow this writ petition. Hence, the following order:-

O R D E R

- I. Writ petition is allowed in terms of prayer clause "B".
- II. Writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

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