

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1268 OF 2021

Basheshwar Phale Bhaji Pala Kharedi Vikri
Sahakari Sanstha Ltd., Bobadi,
Taluka Jintur, District Parbhani,
Through its Representative
Ganesh S/o Sahebrao Kadam,
Age : 45 years, Occu: Agril.,
R/o Bobadi, Taluka Jintur,
District Parbhani.

Versus

1. The State of Maharashtra,
Through its Secretary,
Co-operation, Textile & Marketing
Department, Mantralaya,
Mumbai.
2. The Divisional Joint Registrar,
Aurangabad @ District Co-operative
Election Officer, Aurangabad,
Taluka and District Aurangabad.
3. The District Co-operative Registrar,
Co-operative Society, Parbhani,
Taluka and District Parbhani.
4. The Assistant Registrar,
Co-operative Society, Sonpeth,
Taluka Sonpeth, District Parbhani.
5. The Parbhani District Central
Co-operative Bank Ltd., Parbhani
Through its Chief Executive Officer.

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Mr. N. B. Khandare h/f Mr. N. R. Pawade, Advocate for the
Petitioner.

Mr. K. B. Jadhavar, AGP for Respondent-State.

Mr. S. K. Kadam, Advocate for Respondent No.2.

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CORAM : V. K. JADHAV, J.

DATED : 30TH JANUARY, 2021

PER COURT :-

1. This pertains to non-inclusion of the name of the petitioner in the provisional voter list prepared for the general election of the management committee of Parbhani District Central Co-operative Bank Ltd., Parbhani (for short, "DCC Bank").

2. The term of the managing committee of the DCC Bank (for short, "DCC Bank") was over and thus general election of the said Bank was commenced by publishing provisional voter list on 16.03.2020. The petitioner society was registered in the year 2011 under the provisions of the Maharashtra Co-operative Societies Act, 1960 (for short, "Act of 1960"). The petitioner society is a member of the DCC

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Bank since the date of establishment of the society continuously. Even the petitioner society has participated in the general election of the DCC Bank conducted in the year 2015.

3. By an order dated 21.05.2019, in terms of the provisions of Section 102 of the Act of 1960, the Registrar has issued an interim order, thereby directing to wind up the petitioner society.

4. On 21.02.2020, a resolution was passed and the proposal for recommendation of name of the petitioner was forwarded to the respondent authority. On 01.03.2020, the petitioner enquired about the status of the proposal forwarded by the society and learned from the authority that the Registrar has issued an interim order, thereby directing to wound the society. The petitioner society has placed the copies of the audit report and also the original record to substantiate that the society is functioning continuously. The Registrar, on perusal of the said record, satisfied himself and

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by order dated 17.03.2020, vacated the said interim order of winding up.

5. The petitioner society thereafter again passed a resolution in respect of recommendation of the name of the petitioner vide its resolution dated 20.12.2020. On 16.03.2020, the provisional voter list was published wherein name of the representative of the petitioner society was not mentioned. The petitioner society has therefore taken objection on 14.01.2021 along with a copy of the resolution dated 20.12.2020 before the respondent authority. However, respondent no.2, by order dated 18.01.2021, rejected the objection of the petitioner.

6. Being aggrieved by the order dated 18.01.2021 passed by respondent no.2, by which the objection raised by the petitioner for non-inclusion of the name of the petitioner in the provisional as well as final voters list prepared for the election of Parbhani DCC Bank was turned down, the

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petitioner, who is the original objector, has preferred this Writ Petition.

7. Learned counsel for the petitioner submits that by order dated 21.05.2019, the respondent has issued interim order directing the petitioner society to be wound up. The said order was passed under misconception that the society has ceased to work. Moreover, the said interim order was not communicated to the society though it is mandatory in view of the provisions of Section 102 (2) of the Act of 1960. The petitioner society has been working continuously. However, as the petitioner society learned about passing of the said interim order, it approached to the Registrar requesting to vacate the said interim order. The petitioner society has placed the audit report and the relevant original papers before the Registrar. Accordingly, the Registrar has vacated the said interim order. Learned counsel submits that even the liquidator was not appointed over the petitioner society in view of the provisions of Section 103 of the Act of 1960. Learned counsel submits that in terms of the provisions of

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Section 103 sub-section (3), only after a final order is passed confirming the interim order, the officers of the society shall vacate their offices and while the winding up order remains in force, the general body of the society shall not exercise any powers. In terms of Sub-section (2) of Section 103, in terms of the interim order, the officers of the society shall hand over to the liquidator the custody and control of all the property, effects and actionable claims to which the society is or appears to be entitled, and of all books, records and other documents pertaining to the business of the society and, shall have no access to any of them. Learned counsel submits that in the instant case, after passing of the said interim order dated 21.05.2019, no liquidator was appointed and the petitioner society was continuously functioning even thereafter. The learned counsel submits that in the ensuing election of the DCC Bank, the petitioner society has remained unrepresented and the same is also in the backdrop that subsequently, the interim order directing the society to wind up also came to be vacated.

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8. Learned counsel for the petitioner, in order to substantiate his contention, placed reliance in a case ***Vineshkumar Mavjibhai Parmar v. Dethali Gopalak Vividh Karyakari Sahakari Mandali Limited and Others***, reported in (2017) 1 SCC 273.

9. Learned counsel for the petitioner submits that the Supreme Court had an occasion to deal with a similar issue with reference to the provisions of the Gujarat Cooperative Societies Act, 1961 which provisions are *pari mataria* to the provisions of the Act of 1960.

10. Learned counsel Mr. S. K. Kadam appearing for respondent no.2-Election Officer submits that as per the schedule of the program of election of the DCC Bank, the provisional voter list was to be published on 16.03.2020 and the objections, if any, were invited till 26.03.2020 which is subsequently postponed due to outbreak of Covid-19. Learned counsel Mr. Kadam submits that at present, the final

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voter list is prepared and notified also. In view of the same, no interference is required in the impugned order.

11. Learned counsel Mr. Kadam further submits that in terms of the provisions of Sub-section (2) of Section 103 of the Act of 1960, the officers of the society shall have no access to any records and other documents pertaining to the business of the society and therefore, after passing of the interim order dated 21.05.2019, recommendation of the name of the petitioner cannot be made vide resolution dated 20.12.2020.

12. I have also heard learned AGP for the respondent State.

13. In order to provide for the orderly development of the co-operative movement in the State of Maharashtra, the law relating to the co-operative societies in the State was consolidated and amended by the enactment of Maharashtra Co-operative Societies Act, 1960. In the instant case, the

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petitioner society has approached this Court for non-inclusion of the petitioner society in the voter list for the election of the DCC Bank. Though the petitioner society raised objection, it was turned down mainly on the ground that the petitioner society has recommended the name of the petitioner as its representative to be included in the voter list during subsistence of the interim order passed by respondent no.2 directing the petitioner society to wind up.

14. In terms of the provisions of Section 102 of the Act of 1960, the Registrar may issue an interim order to the society directing it to be wound up. In terms of the provisions of Sub-section (2) of Section 102 of the Act of 1960, a copy of such interim order shall be communicated, in the prescribed manner, to the society calling upon it to submit its explanation to the Registrar within a month from the date of issue of such order and the Registrar, on giving an opportunity to the society and to the creditors of the society, if any, of being heard, may issue final order, vacating or

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confirming the interim order. Section 102 of the Act of 1960 is reproduced hereinbelow :

“102. (1) If the Registrar, -

(a) after an inquiry has been held under section 83 or an inspection has been made under section 84 or 89A or on the report of the auditor auditing the accounts of the society, or

(b) on receipt of an application made upon a resolution carried by three-fourth of the members of a society present at a special general meeting called for the purpose, or

(c) of his own motion, in the case of a society which-

(i) has not commenced working, or

(ii) has ceased working, or

(iii) possesses shares or member's deposits not exceeding five hundred rupees, or

(iv) has ceased to comply with any conditions as to registration and management in this Act or the rules or the by-laws,

is of the opinion that a society ought to be wound-up, he may issue an interim order directing it to be wound-up.

(2) A copy of such order made under sub-section

(1) shall be communicated, in the prescribed manner,

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to the society calling upon it to submit its explanation to the Registrar within a month from the date of the issue of such order, and the Registrar, on giving an opportunity to the society and to the creditors of the society, if any, of being heard, may issue a final order, vacating or conforming the interim order.”

15. In terms of the provisions of Section 103 (1), after passing of an interim order, the Registrar may also appoint a person to be liquidator of the Society and in terms of the provisions of Sub-sections (2) and (3), certain provisions are prescribed as to the business of the society to be transacted on appointment of the liquidator. Section 103 of the Act of 1960 is reproduced hereinbelow:

“103. (1) When an interim order is passed under the last preceding section or a final order is passed under that section, for the winding-up of a society, the Registrar may, in accordance with the rules, appoint a person to be Liquidator of the society, and fix his remuneration.

(2) On issue of the interim order, the officers of the society shall hand over to the Liquidator the custody and control of all the property, effects and actionable

claims to which the society is or appears to be entitled, of all books records and other documents pertaining to the business of the society and, shall have no access to any of them.

(3) When a final order is passed confirming the interim order, the officers of the society shall vacate their offices, and while the winding-up order remains in force, the general body of the society shall not exercise any powers.

(4) The person appointed under this section as Liquidator shall, subject to the general control of the Registrar, exercise all or any of the powers mentioned in section 105. The Registrar may remove such person and appoint another in his place, without assigning any reason.

(5) The whole of the assets of the society shall on the appointment of Liquidator under this Section vest in such Liquidator, and notwithstanding anything contained in any law for the time being in force, if any immovable property is held by a Liquidator on behalf of the society, the title over the land shall be complete as soon as, the mutation of the name of his office is effected, and no Court shall question the title on the ground of dispossession, want of possession or physical delivery of possession.

(6) In the event of the interim order being vacated, the person appointed as Liquidator shall hand over the property, effects and actionable claims and books,

records and other documents of the society to the officers who had delivered the same to him. The acts done, and the proceedings taken by liquidator, shall be binding on the society, and such proceedings shall, after the interim order has been cancelled under the preceding section, be continued by the officers of the society.”

16. In the instant case, though on 21.05.2019 the interim order directing the petitioner society to be wound up was passed by the Registrar concerned, however, no record is placed pointing out that there was sufficient compliance of Sub-section (2) of Section 102 of the Act of 1960. The petitioner has consistently stated in his objection and even before the respondent authorities that a copy of such interim order was neither communicated to him in the prescribed manner, nor a liquidator was appointed in terms of the interim order directing the petitioner society to be wound up. It is not brought to my notice that after passing of the interim order directing the petitioner society to be wound up, the Registrar has appointed a liquidator. On the other hand, it reveals from the available record that by subsequent

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order dated 17.03.2020 the Registrar concerned has withdrawn the earlier interim order directing the petitioner society to be wound up. It is thus clear that the petitioner society remained unrepresented in the ensuing election of the DCC Bank.

17. The Hon'ble Supreme Court, in the case of ***Vineshkumar Mavjibhai Parmar*** (Supra), relied upon by learned counsel for the petitioner, in the similar set of facts, after considering the provisions of Sections 107 and 108 of the Gujarat Co-operative Societies Act, 1961, which are *pari materia* to the provisions of Sections 102 and 103 of the Act of 1960, in para no. 25 of the Judgment, has made the following observations:

“25. The Gujarat Legislature expressly provided under the Societies Act for the curtailment of certain rights of the officers of the societies facing liquidation proceedings. It must be remembered that at the same time it also declared that such officers cease to be the officers of the Society only when a final order of winding up is passed. In a given case if the Registrar

after an appropriate enquiry following the interim order of winding up decides not to finally wind up the society, the officers of the society would once again be entitled to exercise all the rights associated with it and perform all the functions attached to the office. Therefore, merely because the officers of Credit Society facing liquidation are disabled from enforcing certain rights attached to the office or perform certain obligations appended to the office, it does not necessarily follow that they are disabled from performing every function entrusted by law to such office.”

18. In the instant case, the Registrar, after an appropriate enquiry following the interim order of winding up, has decided not to finally wind up the society. Even as per the record available and in terms of the submissions made on behalf of the parties, a liquidator was also not appointed following the interim order. In view of the same, if the petitioner society has recommended name of its representative on 21.02.2020 and even exercised the right of recommending name of the representative after vacating the interim order of winding up, the petitioner society is not disabled from performing every function. This aspect should
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have been considered by the respondent authority while rejecting the objection raised by the petitioner society. Further more, in terms of the provisions of Sub-sections (2) and (3) of Section 103 of the Act of 1960, after reading it conjointly, only after a final order is passed confirming the interim order, the officers of the society are required to vacate their offices. Moreover, in the instant case, the Registrar has also not appointed a liquidator following the interim order of winding up.

19. In view of the above, the petitioner society cannot remain unrepresented in the ensuing election of the DCC Bank and therefore, the order impugned is liable to be quashed and set aside. Hence the following order:

ORDER

The Writ Petition is allowed in terms of prayer clauses “A” and “B” and disposed off accordingly.

(V. K. JADHAV, J.)

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