

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1273 OF 2021
WITH
CIVIL APPLICATION NO. 2178 OF 2021

Sushil s/o Suresh Rewadkar and another ...Petitioners

versus

The State of Maharashtra and others ...Respondents

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Mr. N. R. Pawade, advocate for the petitioners
Mr. K. B. Jadhavar, A.G.P. for respondent No.1 and 4
Mr. S. K. Kadam, advocate for respondent No.2 and 3
Mr. V. D. Hon, senior counsel i/by Mr. P.D. Bachate, advocate for
respondent No.6
Mr. A. B. Girase, advocate for interveners i.e. for applicants in civil
application No. 2178 of 2021.

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CORAM : V. K. JADHAV, J.
DATED: 10th FEBRUARY, 2021

PER COURT :-

1. Being aggrieved by order dated 15.01.2021 passed by respondent No.2 by which the objection raised by petitioner No.1 for inclusion of name of respondent No.6 in the provisional voters list prepared for the elections of Parbhani District Central Co-operative Bank Limited (for Short "the Bank") was turned down, the petitioner No.1, who is original objector, has preferred this writ petition.

2. Learned counsel for the petitioners submits that the name of the petitioner No.1 was recommended by petitioner No.2 society for representing petitioner No.2 society in the ensuing election of the

Bank . However, the name of petitioner No.1 was not included in the provisional voters list. The name of respondent No.6 was included in the provisional voters list at Sr. No.27 though his name was not recommended by the petitioner society. Learned counsel submits that respondent No.6 has prepared forged proposal and submitted the same to respondent No.2. Thus, petitioner No.1 has submitted objection. However, respondent No.2 without verifying the allegations made by petitioner No.1 rejected the objection mainly on the ground that the proposal for recommending the name of respondent No.6 was earlier in time. Learned counsel submits that copy of resolution dated 24.2.2020 passed in favour of respondent No.6 herein is having no seal and stamp of the society. Furthermore, it is signed by the Vice Chairman of the society as the Chairman. Learned counsel submits that the notice of the managing committee meeting at page No. 13 does not bear signature of any person. Furthermore, in the proceeding, it has not been specifically mentioned as to why the meeting was called by the Vice Chairman. Furthermore, the forwarding letter mentioning the name of respondent No.6 as delegate is also signed by the Vice Chairman and the Secretary, however, the Secretary has denied his signature over the notice of meeting at page 13 and further denied that any such resolution was passed recommending the name of respondent No.6 as delegate of the society. Learned counsel submits that the documents annexed to the petition unerringly point out that petitioner No.2 society has validly recommended the name of petitioner No.1

as delegate of the society by passing resolution in the managing committee meeting and forwarded the name of petitioner No.1 under the signature of Chairman and Secretary. The said resolution, at page 21, bears seal and stamp of the society so also all the columns are duly filled up.

3. I have heard learned counsel Mr. Kadam for respondent Nos. 2 and 3, who has supported the impugned order passed by the respondent No.2 Election Officer.

4. Mr. Hon, learned senior counsel i/by Mr. Bachate, learned counsel for respondent No.6, submits that the managing committee of petitioner No.2 society consists of 13 members. Learned senior counsel submits that the Chairman of the society has no majority on his side and the said resolution recommending the name of respondent No.6 as delegate is supported by 7 members out of 13. The Chairman of the society instead of holding legal meeting had threatened the Secretary and illegally concealed the proceeding book, stamp etc. of the society. The Secretary of the society has made complaint in this regard to the Assistant Registrar, Co-operative Societies, Sonpeth, Tq. Sonpeth, District Parbhani, wherein he had narrated the high handed act of the Chairman of society.

5. Learned senior counsel submits that since the meeting of the managing committee members of the society for sending the name of

delegate scheduled on 24.2.2020 and looking to the fact that the record has been forcibly taken by the Chairman from the Secretary, the Assistant Registrar in the fitness of things, at the request of the majority members of the society had permitted them to conduct the meeting in his office. There was quorum for conducting the said meeting and the Assistant Registrar has followed due process and there is no illegality. Therefore, the resolution dated 24.2.2020 is legally passed in favour of respondent No.6. Learned senior counsel thus submits that even the Secretary of the society was present in the meeting dated 24.2.2020 which was conducted in the office of the Assistant Registrar and in his presence, the resolution was passed whereby name of respondent No.6 was recommended as delegate for the elections of Bank.

6. The elected board of directors of petitioner No.2 society, who are 7 in numbers, have filed civil application No. 2178 of 2021 seeking intervention. Mr. Girsae, learned counsel for the interveners submits that the Chairman of the society has not filed the present writ petition. On 4.2.2021 the intervener applicants and the Chairman of the society were waiting for their advocate inside the compound wall and outside the office of the advocate, however, petitioner No.1 viz. Sushil Suresh Rewadkar and other 3 to 4 persons entered into the house of the advocate and forcefully abducted the Chairman of the society. The intervener applicants have immediately approached Mukundwadi police station and informed about the said incident.

Learned counsel submits that it is absolutely incorrect statement that managing committee members of the society has passed resolution in favour of petitioner No.1 herein thereby recommending his name as delegate of petitioner No.2 society. Learned counsel submits that the society has validly passed resolution recommending the name of respondent No.6 Hanuman Baliram Kadam.

7. I have also heard learned A.G.P. for respondent Nos. 1 and 4.

8. I have carefully considered the submissions advanced by learned counsel for the respective parties. With their able assistance, I have perused the pleadings, grounds taken in the petition, annexures thereto and reply filed by the concerned respondents.

9. There are two resolutions passed by the managing committee of petitioner No.2 society. It appears that there are two groups in the society and instead of fulfilling the object for which the society has been formed, they seem to have been indulged in the illegal activities. There are allegations and counter allegations. There are affidavits and counter affidavits. It is not clear from the documents supporting the name of respondent No.6 as delegate of the society that as to why the Vice Chairman of the society has presided over the meeting though the Chairman of the society was available. It appears that when it was pointed out that the resolution passed by the managing committee recommending the name of respondent

No.6 as delegate does not bear the seal and stamp of the society, counter affidavit has been filed to the effect that the Chairman has concealed the said stamp and seal of the society. It has been alleged that the Chairman of the society instead of holding legal meeting had threatened the Secretary and illegally concealed the proceeding book, stamp etc. of the society. However, in the intervention application filed by those members, who have supported the name of respondent No.6 have approached this Court with a case that in fact the Chairman of the society has not filed present writ petition and he was threatened by petitioner No.1 Sushil Suresh Rewadwar and others and forcefully abducted the Chairman of the society.

10. The Secretary Shri Saheshwar has filed his affidavit as directed to him. He has supported the resolution signed by the managing committee members recommending the name of petitioner No.1 as delegate of the society. According to him, he has not signed the resolution so also the forwarding letter recommending the name of respondent No.6 as delegate of the society. He has denied his signature on the said two documents. According to him, he has not put his signature alongwith the signature of Vice Chairman of the society on forwarding letter dated 25.2.2020 and also the alleged resolution at page Nos. 11 and 12 of the writ petition.

11. Even the recommendation of petitioner No.1 as delegate by

passing a resolution is also doubtful. The Secretary of the society has taken different stands at different stages. All these disputed question of facts neither can be answered in the summary enquiry by respondent Election Authority nor by this court by exercising the writ jurisdiction.

12. As per the guidelines issued by the Election Commission, if there are more than one resolution recommending the name of the delegate and if there is approach of preparing false resolution, the criminal action has been proposed. Thus, considering entire aspects of the case, the resolution recommending the name of respondent No.6 as delegate of petitioner No.2 society in the meeting conducted by the Vice Chairman is liable to be quashed and set aside. So also in the backdrop of disputed question of facts, referred to above, the recommendation of name of petitioner No.1 as delegate of the society cannot be upheld. In view of the above, I proceed to pass the following order:-

O R D E R

- I) Writ petition is allowed only to the extent that the name of respondent No.6 included in the voters list shall stands deleted.
- II) The respondent Returning Officer is hereby directed to file

criminal complaint against the Secretary and the members of the petitioner No.2 society in the concerned police station in terms of the guidelines issued by the Election Authority.

III. Writ petition is accordingly disposed of.

13. In view of disposal of writ petition, civil application No. 2178 of 2021 is also disposed of.

14. At this stage, Mr. Hon, learned senior counsel prays for stay to the effect of this order for a period of four weeks from today. However, considering the facts and circumstances of the case, I am not inclined to grant stay to this order. Prayer stands refused.

(V. K. JADHAV, J.)

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