IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1878 OF 2021

1. Sahebrao S/o Keshavrao Deshmukh,
Age : 51 years, Occu. Agri. & Chairman of
Jaibhavani Dhanya Adhikosh Seva Sahakari
Sanstha, Ltd., Sonna,
R/o. Sonna, Tq. and District Parbhani.

2. Dattarao s/o Shankarrao Shinde,
Age : 50 years, Occu. Agri. & Chairman of
Ashtyavinayak Dhanya Adhikosh Seva Sahakari
Sanstha, Ltd., Narsapur,
R/o. Narsapur, Tq. and District Parbhani.

3. Gajanan S/o Prabhakar More,
Age : 57 years, Occu. Agri. & Chairman of
Sai Dhanya Adhikosh Seva Sahakari
Sanstha, Ltd., Shahapur,
R/o. Shahapur, Tq. and District Parbhani.

4. Sau. Manda Rameshrao Deshmukh,
Age : 52 years, Occu. Agri. & Chairman of
Trimurti Dhanya Adhikosh Seva Sahakari
Sanstha, Ltd., Nagapur,
R/o. Nagapur, Tq. and District Parbhani.

5. Suresh S/o Bapursaheb Deshmukh,
Age : 55 years, Occu. Agri. & Chairman of
Parvati Dhanya Adhikosh Seva Sahakari
Sanstha, Ltd., Parbhani,
R/o. Parbhani, Tq. and District Parbhani.

6. Uttam S/o Govindrao Deshmukh,
Age : 45 years, Occu. Agri. & Chairman of
Shanbho Mahadev Dhanya Adhikosh Seva Sahakari
Sanstha, Ltd., Zadgaon,
R/o. Zadgaon, Tq. and District Parbhani.

7. Maina Narayan Ballal,
Age : 45 years, Occu. Agri. & Chairman of
Baliraja Dhanya Adhikosh Seva Sahakari
Sanstha, Ltd., Sahajpur Jawala,
R/o. Sahajpur Jawala, Tq. and District Parbhani.

8. Vinod S/o Sakharamji Deshmukh,
Age : 51 years, Occu. Agri. & Chairman of
Deokrupa Dhanya Adhikosh Seva Sahakari
Sanstha, Ltd., Lohagaon,
R/o. Lohagaon, Tq. and District Parbhani. … **Petitioners**

Versus

1. The State of Maharashtra,
Through its Secretary of Co-operative and
Textile Department, Mantralaya,
Mumbai – 32.

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 Ltd.,
Parbhani, Tq. and District Parbhani. … **Respondents**

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Mr. V. A. Bagal, Advocate for Petitioners.
Mr. S. P. Deshmukh, AGP for Respondent-State.
Mr. S. K. Kadam, Advocate for Respondent Nos.2 and 3.
Mr. M. S.Deshmukh, Advocate for Respondent No.4.

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WRIT PETITION NO.1877 OF 2021

1. Trimbak S/o Gopalrao Ghogare,
Age : 48 years, Occu. Agri.

Vividh Karyakari Seva Sahakari
Society Ltd., Suppa (G),
R/o. Borda, Tq. Gangakhed,
District Parbhani.

2. Balasaheb S/o Trimbakrao Mundhe,
Age : 46 years, Occu. Agri.
Vividh Karyakari Seva Sahakari
Society Ltd., Borda,
R/o. Borda, Tq. Gangakhed,
District Parbhani.

3. Dyaneshwar S/o Kachru Tathe,
Age : 42 years, Occu. Agri. & Chairman of
Vividh Karyakari Seva Sahakari
Society Ltd., Maletakli, Tq. Selu,
District Parbhani. … **Petitioners**

Versus

1. The State of Maharashtra,
Through its Secretary of Co-operative and
Textile Department, Mantralaya,
Mumbai – 32.

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 Ltd.,
Parbhani, Tq. and District Parbhani. … **Respondents**

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Mr. V. A. Bagal, Advocate for Petitioners.
Mr. K. B. Jadhavar, AGP for Respondent-State.
Mr. V. H. Dighe, Advocate for Respondent Nos.2 and 3.
Mr. M. S. Deshmukh, Advocate for Respondent No.4.

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CORAM : V. K. JADHAV, J.
DATE : 03.02.2021.

ORDER :-

1. Heard finally at admission stage by consent of the parties.

2. By way of present Writ Petitions, the petitioners challenging the order dated 15.01.2021 passed by respondent No.3, thereby the objection filed by the petitioners have been rejected and thereby the names of the petitioners societies are not included in the final voter list of respondent No.4 / Parbhani District Central Co-operative Bank Ltd. (herein after referred to as 'respondent No.4 / Bank').

3. The learned counsel for the petitioners submits that the petitioners are the Co-operative Societies registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 and Rules, 1961 (herein after referred to as the 'Societies Act, 1960'). The petitioners socieities are working in the territorial jurisdiction of respondent No.4 / Bank. The learned counsel submits that the petitioners societies have filed an application / proposal on 09.03.2016 seeking membership of respondent

No.4 / Bank along with all the necessary documents. However, respondent No.4 / Bank has not taken any decision on the above mentioned proposal / application filed by the petitioners for seeking membership, therefore, in the primary voter list of respondent No.4 / bank, the petitioners societies' names are not included. The learned counsel submits that the petitioners socieities remained unrepresented in the ensuing elections of respondent No.4 / Bank. The learned counsel submits that without considering the above mentioned facts and legal position, respondent No.3 by its impugned order dated 15.01.2021 rejected the applications / objections filed by the petitioners. The learned counsel submits that respondent No.3 has failed to consider the mandate of Section 22(2) of the Societies Act, 1960.

4. The learned counsel, Mr. S. K. Kadam for respondent Nos.2 and 3 submits that in terms of the provisions of Section 27(3) of the Societies Act, 1960, the period of three years provided in Section 27 Sub Section (3) of the Societies Act, 1960 is to be counted from the date of investment of the shares. In the instant case, the petitioners socieities have invested their funds in the share capital of respondent No.4 /

Bank on 20.05.2017. The learned counsel Mr. Kadam submits that the said period of three years is to be counted till 06.05.2020 and as such the period of three years is not completed on the said date, the Returning Officer has therefore, rightly rejected the objection raised by the petitioners.

5. I have also heard the learned AGP for the respondent / State and learned counsel Mr. M. S. Deshmukh for respondent No.4 / Bank.

6. Though the petitioners socieities have filed an application / proposal for seeking membership of respondent No.4 / bank on 09.03.2016, however, the petitioners socieities have purchased the share capital for membership of respondent No.4 / bank on 20.05.2017.

7. The provisions of Section 27 of the Societies Act, 1960 speak about voting powers of the members. Sub Sections (3) and (3A) of Section 27 of the Societies Act, 1960 are relevant for deciding the issue raised in the present writ petitions. Thus, Sub Sections (3) and (3A) of Section 27 of the Societies Act, 1960 are reproduced herein below :-

"27. Voting powers of members.

(1) .....

(2) .....

(3) A society which has invested any part of its funds in the shares of any federal society, may appoint one of its active members to vote on its behalf in the affairs of that federal society; and accordingly such member shall have the right to vote on behalf of the society:

Provided that, any new member society of a federal society shall be eligible to vote in the affairs of that federal society only after the completion of the period of three years from the date of its investing any part of its fund in the shares of such federal society:

(3A) An individual member of a society shall not be eligible for voting in the affairs of that society for a period of two years from the date of his enrollment as a member of such society:

Provided that, nothing in this sub-section shall apply in respect of a co-operative housing society and a co-operative premises society."

8. Thus, from bare reading of Section 27(3) and the proviso thereof, it is clear that the condition for eligibility of a member to vote in the affairs of a federal socieity is completion of three years from the date of its investing any part of its

funds in the shares of such federal society. So far as Sub Section (3A) is concerned, there is marked difference between a member of society and an individual member of the society. The individual member of the socieity is not eligible for voting in the affairs of the federal society for a period of two years from the date of its enrollment as a member of the society, whereas in case of member of society is concnerned, the completion of period of three years is required to be computed from the said date of investment.

9. In the case of ***Dudhganga Vikas Seva Sanstha Maryadit Vs. Distt. Collector, Kolhapur and others,*** reported in ***(2006) 5 SCC 250*** relied upon by the learned counsel for the petitioners, in para Nos. 7 and 8, the Supreme Court has made following observations:-

> *"7. A mere reading of section 27 makes it explicit that a society, which has invested any part of its fund in the shares of a federal society, may appoint one of its members to vote on its behalf in the affairs of the federal society. Proviso to sub-section (3) of Section 27 of the Act lays down the condition of eligibility which is to the effect that any new member of a federal society shall be eligible to vote in the affairs of the federal society only after the completion of the*

period of 3 years from the date of its investing any part of its fund in the shares of such federal society. We may also note sub-section (3-A) of Section 27 of the Act which relates to an individual member of a society. In his case it is provided that he shall not be eligible for voting in the affairs of that society for a period of two years from the date of his enrollment as a member of such society. The legislature has consciously employed in sub-sections (3) and (3-A) words which are of significance. In the proviso to sub-section (3) the period of 3 years is reckoned from the date of the society investing any part of its fund in the shares of a federal society, whereas sub-section (3-A) provides that the period of 2 years shall be computed from the date of enrollment of an individual as a member of such federal society.

8. Having regard to the plain words used in Section 27(3) of the Act, the appellant Society having invested its fund in the shares of Kolhapur District Central Cooperative Bank Ltd., Respondent 2 herein on 30-12-2002, it became eligible to vote in the affairs of the federal society after 30-12-2005. We are informed that the date of investment by the appellant Society and its enrollment as a member of the federal society is the same, namely, 30-12-2002. Ex facie, therefore, in terms of Section 27(3) of the Act, in April 2006 when the election was due to be held, the appellant Society was entitled to appoint one of its members to vote on its behalf in the affairs of the federal society Respondent 2, having completed the *period of 3 years from the date of its investment in shares of Respondent 2 society on 30-12-2005."*

10. In the case of ***Dhule Gramin Vikas Bhajipala Phal Phalawal Va Phule Kharedi Vikri Sahakari Sanstha Ltd. and others Vs. State of Maharashtra and others,*** reported in ***2007 (5) ALL MR 867***, relied upon by the learned counsel for the petitioners, the Division Bench of this Court, by referring the observations made by the Supreme Court in the case above i.e. ***Dudhganga Vikas Seva Sanstha Maryadit (supra)***, in para 18 of the judgment has made following observations:-

"18. We find from perusal of the provisions of Section 27(3) of the Act, 1960 that there is no ambiguity in its application. Considering the interpretation put up by the Apex Court and the Division Bench of the Bombay High Court in their judgment to the provisions of Section 27 of the Act read with Rule 4 of the Committee Rules it can be safely held that the members society of the federal society shall be eligible to vote in the affairs of the federal society after completion of period of three years from the date of its investing funds in the shares of the federal society."

11. In the case of ***Amrutdhara Dudh Utpadak Sahakari Sanstha and Another Vs. The State of Maharshtra and others***,

reported in ***2012 (3) ALL MR 850***, relied upon by the learned counsel for the petitioners, the learned Single Judge of this court (Coram : S. V. Gangapurwala, J.) in para 10 of the judgment has made the following observations:-

> *"10. Even sub section (3) of Section 27 of the said Act lays down that the society which has invested any part of its funds in the shares of the federal society, may appoint any of its members to vote on its behalf in the affairs of that federal society. The said sub section (3) of Section 27 of the said Act does not warrant that a specific membership has to be conferred on the society. It only mandates that the said Society should have invested any part of its funds in the shares of any federal society. In the present case, none of the respondents dispute the fact that the petitioners have invested part of their funds in the shares of the respondent no.4 -Society. The only embargo put on the rights of such a Society to vote is that it should have completed three (3) years from the date of its investing any part of its funds in the share of any federal society in view of proviso (3) to Section 27. In the present case, the petitioners have invested their part of the funds in the shares of respondent no.4 in the year 2002. Even the said restriction laid down in proviso would not apply in this case."*

12. In view of the above and considering the relevant provisions and the ratio laid down by the Supreme Court and the Division Bench of this Court and also the Single Judge of this Court, I do not find any error in the impugned order passed by the Respondent / Returning Officer in rejecting the objections raised by the petitioners socieities. There is no substance in both the Writ petitons. Hence, I proceed to pass the following order :

ORDER

Both the Writ Petitions are hereby dismissed.

(V. K. JADHAV, J.)

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