IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1894 OF 2021

MADHAVRAO S/O RAMJI THAVRE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
CIVIL APPLICATION NO. 1472 OF 2021

DEEPAK S/O TUKARAM LATPATE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
CIVIL APPLICATION NO. 1667 OF 2021

KADYACHIWADI SHETKARI SAMUHA KRUSHI SAHITYA PURAVATHA AND DHANYA GODAM SEVA SAHAKARI SANSTHA LTD., KADYACHIWADI, TQ. GANGAKHED, DIST. PARBHANI THROUGH ITS REPRESENTATIVE
VERSUS
MAHADEVRAO S/O RAMJI THAVRE AND OTHERS

.....
Advocate for the Petitioners : Mr. Vishal A. Bagal
AGP for Respondent No.1 : Mr. R. D. Sanap
Advocate for Respondent Nos. 2 and 3 : Mr. S. K. Kadam
Advocate for Respondent No.4 : Mr. M. S. Deshmukh
Advocate for the Applicant in CA/1472/2021 :
Mr. Shahaji B. Ghatol Patil
Advocate for the Applicant in CA/1667/2021 :
Mr. Nilkanth R. Pawade
.....

CORAM : V. K. JADHAV, J.
DATED : 16TH FEBRUARY, 2021

PER COURT :-

1. By way of the present Writ Petition, the petitioner societies are challenging the order dated 15.01.2021 passed by respondent no.3-Election Officer, thereby the objections filed by the petitioners have been rejected. The petitioners are seeking direction against respondent no.3 to include their names in the final voter list of respondent no.4-Parbhani District Central Co-operative Bank Ltd. (for short, "respondent-Bank").

2. Learned counsel for the petitioners press the petition to the extent of petitioner nos. 1 and 4 societies and so far as the other petitioner societies (i.e. petitioner nos. 2, 3, 5 and 6) are concerned, the learned counsel for the petitioners has fairly conceded that those petitioner societies have invested in the share capital of the federal society after the cut-off date.

3. Petitioner nos. 1 and 4 are the co-operative societies registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 (for short, "Act of 1960") and the Rules 1961. The petitioner societies are working in the territorial jurisdiction of respondent no.4 Bank.

4. Learned counsel for the petitioners submits that the petitioner nos. 1 and 4 societies are eligible for being a member of respondent no.4 Bank. On 09.03.2016, the petitioner societies have filed applications/proposals for seeking membership of respondent no.4 Bank along with all the necessary documents. Learned counsel submits that petitioner nos. 1 and 4 societies have invested in the share capital of respondent no.4 Bank on 18.07.2014. However, respondent no.4 Bank has not taken any decision on the above mentioned proposals/applications seeking membership. Thus, the petitioner societies have filed application bearing no. 15 of 2017 before the Divisional Joint Registrar, Co-operative Societies, Aurangabad and considering the record before respondent no. 3 and in terms

of the provisions of Section 22 (2) of the Act of 1960 and the by-laws, respondent no.3 has allowed the application 15 of 2017 filed by the petitioners by order dated 17.05.2017 thereby directing respondent no.4 Bank to include the name of the petitioners in the list of respondent no.4 Bank as deemed members.

5. Learned counsel for the petitioners submits that the petitioners have filed Writ Petition No. 2019 of 2020 before this Court seeking direction to call the resolution of the petitioner societies to include names of their representatives in the voter list of the ensuing election of the respondent Bank. By order dated 26.02.2020, this Court has observed that 'the petitioners are the members of respondent no.3 Bank (respondent no.4 herein) in view of the order passed by the Divisional Joint Registrar and 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 voter list, which the Bank is required to submit by

05.03.2020 to respondent no.1, then provisional voter list is to be published, the petitioners can raise objection to that effect and can agitate their contention before respondent no.1. Similar observations were made under order dated 12.02.2020 in Writ Petition No. 2673 of 2020. In that event, all the contentions of the parties would be open for consideration'.

6. Learned counsel for the petitioners submits that the petitioners have submitted their resolutions along with all the necessary documents within the prescribed period, however, respondent no.3-Election Officer has published the primary voter list of respondent no.4 Bank without including names of the representatives of the petitioner societies.

7. Learned counsel further submits that by order dated 15.01.2021, respondent no.3-Election Officer has rejected the objection filed by the petitioners on the ground that the order of deemed member is after the cut-off date i.e. 06.05.2017.

8. Learned counsel further submits that respondent no.3-Election Officer has failed to consider the mandate of Section 22(2) of the Act of 1960.

9. Learned counsel further submits that in view of the provisions of Section 27(3) of the Act of 1960, any new member society of the federal society shall be eligible to vote in the affairs of that federal society only after completion of three years from the date of its investing any part of its fund in the shares of such federal society. Thus, the petitioner societies have completed three years on 18.07.2017 from the date of investment in the share capital of the federal society and as such the petitioner societies are eligible to participate in the election of respondent no.4 Bank.

10. Mr. Kadam, learned counsel for respondent nos. 2 and 3 submits that in terms of Rule 19 of the Maharashtra Co-operative Societies Rules, 1961, certain conditions are prescribed to be complied with for admission as a member.

Learned counsel submits that even assuming that the petitioner societies have invested any part of its funds in the shares of respondent no.4 Bank, however, the application submitted by the petitioner societies for enrollment as a member is to be approved by the committee of respondent no.4 Bank subject to such resolution as the general body of members may, in pursuance of the powers conferred on it in that behalf from time to time, pass.

11. I have also heard learned AGP for respondent no.1.

12. Learned counsel Mr. M. S. Deshmukh appearing for respondent no.4 Bank submits that petitioner nos. 1 and 4 societies have invested their amount in the shares of the federal society on 18.07.2014 and the record is available to that effect. Even respondent no.4 Bank has taken a specific plea to that effect in their written statement submitted before the Election Officer. Learned counsel Mr. S. K. Kadam appearing for the respondent Election Officer has also accepted the same.

13. Learned counsel Mr. Ghatol appearing for the applicant in Civil Application No. 1472 of 2021 seeking intervention submits that false and fabricated applications are prepared only with the intention to show that the said applications seeking membership of respondent no.4 Bank came to be filed. Learned counsel submits that the Divisional Joint Registrar has passed a false and collusive order in the application bearing no. 15 of 2017. Even in the said order passed by the Divisional Joint Registrar, there is no mention about the starting point of membership.

14. Learned counsel Mr. Ghatol further submits that in terms of the provisions of Section 27 (3A) of the Act of 1960, the petitioner societies have not completed three years from the date of their investment in the share capital of respondent no.4 Bank and as such, they are not entitled to be incorporated in the provisional voter list of respondent no.4 Bank. Learned counsel submits that the petitioner

societies have never applied for membership of respondent no.4 Bank on 09.03.2016 as alleged.

15. Learned counsel Mr. Ghatol further submits that the writ petition is filed, when the election process had started in co-operative society, and thus liable to be dismissed. Learned counsel submits that it is well settled that preparation of voter list is the part of election process for constituting the management committee of the specific society. Learned counsel submits that thus, interference at this stage by exercising writ jurisdiction is unwarranted and uncalled for. Learned counsel submits that so far as petitioner nos. 1 and 4, whose claims are now pressed, they have not raised a specific plea either in their objection petition or in this Writ petition that they have invested in the share capital of respondent no.4 Bank in the year 2014. Learned counsel submits that in view of the same, the evidence about investment in the funds of the federal society in the year 2014, if submitted for the first time in this Writ

Petition without there being any plea, the same is liable to be discarded.

16. Learned counsel Mr. Ghatol, in order to substantiate his contention, places reliance on the following cases:

1. Janak Dulari Devi and Others v. Kapildeo Rai and Others, reported in AIR 2011 SC 2521.

2. Union of India (UOI) v. E.I.D. Parry (India) Ltd., reported in AIR 2000 SC 831.

3. Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Another v. State of Maharashtra and others, reported in (2001) 8 SCC 509.

17. Learned counsel Mr. N. R. Pawade appearing for the applicant in Civil Application no. 1667 of 2021 seeking intervention, has made submissions on the same lines. Learned counsel submits that in accordance with the provisions of the Act of 1960 and the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014, the

final voter list is also published and the election programme may be declared soon. Thus, the election of respondent no.4 Bank is set in motion and the prayer of the petitioners cannot be entertained at this belated stage.

18. Learned counsel Mr. M. S. Deshmukh appearing for the respondent no.4 Bank submits that the observations made by the Supreme Court in the case of ***Shri Sant Sadguru Janardan Swami*** (Supra), relied upon by learned counsel Mr. Ghatol for the intervenor in Civil Application No. 1472 of 2021, are further diluted and it is held that interference by the writ court is permissible if the election process was not in conformity with the relevant statutory provisions. Learned counsel, in order to substantiate his contention, placed reliance on the following cases:

1. Pundlik v. State of Maharashtra, reported in 2005 AIR SCW 4371.

2. Dattatraya Kachru Chine and others v. State of Maharashtra and others, reported in 2005 (4) Mh. L.J. 243.

3. Chandrakant Mahadev Patole & Others v. State of Maharashtra & Others, reported in 2010 ALL MR (Suppl) 457.

4. Ahmednagar Zilla S.D.V. & P. Sangh Ltd. and Another v. State of Maharashtra and Others, reported in (2004) 1 SCC 133.

19. 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 and the annexures thereto.

20. The provisions of Section 27 of the Societies Act speak about voting powers of the members. Sub-sections (3) and (3A) of Section 27 of the Societies Act are relevant for deciding the issue raised in the present writ petition. Thus, sub-sections (3) and (3A) of Section 27 of the Societies Act 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."

21. 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 society 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 society and an individual member of the society. If it is a member society, what is important and relevant is the date of investing any part of its funds in the shares of such federal society i.e. respondent No.4 Bank in the present case. Thus, completion of period of three years is required to be computed from the said date of investment. So far as the sub-section (3A) pertaining to an individual members of the society is concern, he shall not be 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 that society. Thus, for an individual member, the criterion is the date of enrollment as member of such federal society.

22. In the case of ***Dudhganga Vikas Seva Sanstha Maryadit vs. Distt. Collector, Kolhapur and Others***, reported in **(2006) 5 SCC 250**, 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."

23. 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, 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."*

24. In the case of ***Amrutdhara Dudh Utpadak Sahakari Sanstha and Another vs. The State of Maharashtra and Others***, reported in **2012 (3) ALL MR 850**, 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."*

25. In the case of ***Babaji Kondaji Garad and Others vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others***, reported in **AIR 1984 SC 192**, in para 10 of the judgment, the Supreme Court has considered the use of expression "shall" by the Legislature and observed that the intention of the Legislature in using the word "shall" manifest its intention. In the instant case, in the proviso of sub-section (3) of Section 27 the word "shall" is used and as such, the petitioner nos. 1 and 4 societies are eligible to vote in the ensuing elections of respondent No.4 Bank.

26. It is pertinent to note that though petitioner nos. 1 and 4 societies are registered long back, however, respondent no.4 Bank has enrolled them as member on one and the same date i.e. on 20.05.2017. Even respondent no.4 Bank has admitted by pointing out the record and even respondent no.4 Bank has mentioned the said fact in its

reply filed before the Election Officer that petitioner nos. 1 and 4 societies have invested their funds in the share capital of respondent no.4 Bank way back in the year 2014. Thus, completion of period of three years is required to be computed from the said date of investment. So far as the other petitioners i.e. petitioner nos. 2, 3, 5 and 6 are concerned, learned counsel for the petitioner societies has fairly conceded that the those petitioner societies have invested funds in the share capital of the federal society in the year 2018 and as such those societies have not completed three years from the date of their investment.

27. 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, I am of the considered opinion that the impugned order to the extent of petitioner nos. 1 and 4 is not sustainable and the same is thus liable to be quashed and set aside. Hence, I proceed to pass the following order:

ORDER

I. The Writ Petition is partly allowed to the extent of petitioner nos. 1 and 4 in terms of prayer clause “B”.

II. The Writ Petition is hereby dismissed to the extent of petitioner nos. 2, 3, 5 and 6.

III. The Writ petition is accordingly disposed off.

(V. K. JADHAV, J.)

vre/-