IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 WRIT PETITION NO.1668 OF 2021

Sant Damaji Appa Shetkari Samuh
Krushi Sahitya Puravtha and Dhanya
Godam Sahakari Sanstha,
at Arkhed, Tq. Palam, Dist. Parbhani
Through its Chairman
Tushar s/o Kashinath Dudhate
Age 28 years, Occ. Agriculture
R/o. Arkhed, Tq. Palam,
District Parbhani ...Petitioner

versus

1. The Divisional Joint Registrar,
Aurangabad/
District Co-operative Election officer
Parbhani

2. District Deputy Registrar
Co-operative Societies, Parbhani/
Returning Officer for the elections of
Parbhani District Central Co-operative
Bank Limited, Parbhani.

3. The Assistant Registrar
Co-operative Societies, Palam
Tq. Palam, District Parbhani

4. Parbhani District Central Co-operative
Bank Limited, Parbhani
District Parbhani ...Respondents

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Advocate for Petitioner : Mr. P.D. Bachate with Mr. A. D. Khot
AGP for Respondent No. 3: Mr. K.B. Jadhavar
Advocate for Respondent Nos. 1 and 2 : Mr. S.K. Kadam
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CORAM : V. K. JADHAV, J.
DATED : 3rd FEBRUARY, 2021

PER COURT:-

1. None appears for respondent No.4 bank though duly served. The petitioner has also filed affidavit of service to that effect.

2. By consent of the respective parties, heard finally at admission stage.

3. The petitioner is a Co-operative Society registered under the provisions of Maharashtra Co-operative Societies Act, 1960 (hereinafter for the sake of brevity referred to as “the Societies Act”). By way of present writ petition, the petitioner is challenging the legality, validity and propriety of the order dated 18.01.2021 passed by respondent No.1, thereby rejecting the objection raised by the petitioner for including the name of delegate of the petitioner society in the final voters list in the ensuing elections 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”).

4. The learned counsel for the petitioner submits that the petitioner society is registered on 05.08.2011. After registration of the petitioner society, the petitioner society has passed resolution in the general body meeting on 05.08.2011 for taking the membership of respondent No.4 Bank and accordingly the application for membership was filed on 05.08.2011. The petitioner society has also purchased the share capital for the membership of respondent No.4 Bank on 05.08.2011 itself. Learned counsel submits that in view of the provisions of section 27(3) of the Societies Act, any new

member society of a federal society shall be eligible to vote in the affairs of that federal society only after 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. Learned counsel submits that the petitioner society has completed three years on 04.08.2014 from the date of investment of its share in the federal society and as such, the petitioner society is eligible to take part in the elections of respondent No.4 Bank. Learned counsel submits that even respondent No.4 Bank has issued certificate on 19.3.2020 certifying therein that the petitioner society had paid the amount of shares on 05.08.2011 itself and further, as per the said certificate, respondent No.4 Bank has granted membership in favour of the petitioner society on 20.5.2017. Learned counsel submits that the petitioner society has passed resolution in the meeting for sending the name of delegate to include the said name in the voters list of respondent No.4 Bank and in view of the same, name of the petitioner society is required to be included in the provisional voters list of respondent No.4 Bank. Though respondent No.4 Bank has published the voters list on 16.3.2020, name of the petitioner society was not included in the provisional voters list. However, due to outbreak of COVID-19, the election programme of respondent No.4 Bank was postponed. Pursuant to the new election programme, the petitioner society raised objection on 6.1.2021 with a request for inclusion of name of the delegate of the petitioner society in the voters list. Learned counsel submits that respondent No.1 has not considered the date of investment of shares for computing the period of three years and rejected the objection raised by the petitioner on 18.01.2021.

Learned counsel for the petitioner, in order to substantiate his submissions, placed reliance on the following cases:-

1. ***Dudhganga Vikas Seva Sanstha Maryadit vs. Distt. Collector, Kolhapur and Others***, reported in **(2006) 5 SCC 250.**

2. ***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.**

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

4. ***Babaji Kondaji Garad and Others vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others***, reported in **AIR 1984 SC 192.**

5. Mr. Kadam, learned counsel for respondent Nos. 1 and 2 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 society has invested any part of its funds in the shares of respondent No.4 Bank, however, the application submitted by the petitioner society 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.

6. I have also heard learned A.G.P. for respondent No.3

7. 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 annexures thereto.

8. The petitioner society is registered on 05.08.2011. The petitioner society has also filed an application for membership of respondent No.4 Bank on 05.08.2011 and the petitioner society has also purchased the share capital for membership of respondent No.4 Bank on 1 05.08.2011 itself. These facts are not disputed by the other side.

9. 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."

10. 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.

11. In the case of ***Dudhganga Vikas Seva Sanstha Maryadit*** (supra) relied upon by learned counsel for the petitioner, 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."

12. In the case of ***Dhule Gramin Vikas Bhajipala Phal Phalawal Va Phule Kharedi Vikri Sahakari Sanstha Ltd.*** (supra), relied upon learned counsel for the petitioner, 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."

13. In the case of ***Amrutdhara Dudh Utpadak Sahakari Sanstha and Another*** (supra), relied upon by learned counsel for the petitioner, 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."

14. Learned counsel for the petitioner has further placed his reliance on the judgment in the case of ***Babaji Kondaji Garad and Others vs. Nasik Merchants Co-operative Bank Ltd., Nasik*** (supra) wherein, 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. Learned counsel submits that in the instant case, in the proviso of sub-section (3) of Section 27 the word "shall" is used and as such, the petitioner society is eligible to vote in the ensuing elections of respondent No.4 Bank.

15. So far as the sub-Rule (2) of Rule 9 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 relied upon by learned counsel for respondent Nos. 1 and 2, the period of three years as provided in sub-Section (3) of Section 27 of the Societies Act is to be computed from the date of enrollment of member to the date when the election of the managing committee members of the society becomes due. In sub-Rule (2) a reference has been given to sub-section (3) of Section 27 of the Societies Act. However, even if there is any inconsistency, needless to say that the Act prevails over the Rules.

16. It is pertinent to note that though the petitioner societies, in all writ petitions to be decided separately but on identical facts, with the same issue, were registered long back in the year 2011, 2013, 2014,

2015 respectively, however, respondent No.4 Bank has enrolled them as member on one and the same day i.e. on 20.5.2017. Thus, the only irresistible inference could be drawn is that care has been taken while enrolling those petitioner societies as members that they should not be eligible to vote in the ensuing elections of respondent No.4 bank in terms of the provisions of Section 27(3) of the Societies Act and the proviso thereof. It thus appears that prescribing common date of enrollment has been done with some oblique motive and I do not find any explanation for that.

17. 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 am of the considered opinion that the impugned order is not sustainable and the same is liable to be quashed and set aside. In view of the same, I proceed to pass the following order:-

O R D E R

I. Writ petition is hereby allowed in terms of prayer clause "B".

II. Writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

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