

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1760 OF 2021

Deepak Keshavrao Bodkhe

...Petitioner

versus

The State of Maharashtra and others

...Respondents

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Mr. D. A. Mane, advocate for the petitioner

Mr. S. P. Deshmukh, A.G.P. for respondent Nos.1, 3 and 4.

Mr. S. K. Kadam, advocate for respondent No. 2

Mr. V. N. Upadhye, advocate for respondent No.5 and 6.

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CORAM : V. K. JADHAV, J.

DATED : 16th FEBRUARY, 2021

PER COURT:-

1. By consent, heard finally at admission stage.
2. By this writ petition, the petitioner is challenging the order dated 22.1.2021 passed by respondent No.2 thereby rejecting the objection dated 13.1.2021 taken by the petitioner in respect of the inclusion of name of respondent No.6 in the provisional voters list.
3. Learned counsel for the petitioner submits that respondent No.5 is member society to the federal society and thus in view of the provisions of Section 27(10) and 73CA (1) (i) (f) and the circular dated 31.12.2019 issued by the Assistant Registrar, Co-operative Societies, Kannad, if the concern society is a member of the federal society, then the said society shall forward the name of any person

as representative. Learned counsel submits that in view of the same; in the meeting of the managing committee members scheduled on 14.1.2020 out of 12 members of the managing committee, 9 were present and voted in favour of the resolution, which is passed to recommend the name of respondent No.6 as representative of the society in the ensuing elections of Aurangabad District Central Co-operative Bank Limited (for short "the Bank"). Learned counsel submits that out of those 9 members, 6 members are admittedly defaulter of their parent societies as on the date of passing of the resolution i.e. on 14.1.2020. Learned counsel submits that in terms of the provisions of section 27(10) of Maharashtra Co-operative Societies Act, 1960 (for short "the Societies Act"), those managing committee members cannot participate and vote in the affairs of the society and thus, resolution, if passed, is illegal and against the provisions of law.

4. Learned counsel for the petitioner submits that the respondent society consist of 606 members. Out of which, 223 members were defaulter on the date of passing of the resolution. Admittedly, no notice was issued by the managing committee before calling meeting dated 14.1.2020 thereby informing the members of the society for recommending the name as member, who is not defaulter of the society to be forwarded as representative. However, the name of respondent No.6 since appeared in the provisional voters list, the petitioner has raised objection before respondent

No.2. Respondent No.2 is empowered to conduct summary enquiry while deciding the objection raised by any of the member in respect of inclusion of name of concern person in the provisional voters list. However, by order dated 22.1.2021 respondent No.2 has rejected the objection raised by the petitioner, which is not proper, correct and legal.

5. Learned counsel Mr. S. K. Kadam, appearing for respondent No.2 Election Officer has supported the order passed by the Election Officer. Learned counsel submits that section 27 of the Societies Act prescribes the voting powers of the member society and in terms of Section 27(10) of the Societies Act, if a member has taken a loan from the society, such member shall, whenever he is a defaulter, as provided in the explanation to clause (i) of sub-section (1) of Section 73CA has no right to vote in the affairs of the society. The defaulter is not eligible for being appointed, nominated, elected, co-opted for being member of the committee. Learned counsel Mr. Kadam submits that the petitioner has submitted a list of defaulters, however, it is not clear as to whether the said list is authentic one and there is no further order of the concerned authority declaring those members of the society or managing committee members, as defaulters. Learned counsel submits that in terms of the provisions of Section 77 (1) of the Societies Act, no act of a society or a committee, done in good faith in pursuance of the business of the society shall be deemed to be invalid by reason only of some defect subsequently

discovered in the organization of the society, or in the constitution of the committee, or in the appointment or election of an officer, or on the ground that such officer was disqualified for his office. Learned counsel submits that undisputedly the respondent No.6 is not defaulter, as she has cleared dues on 13.1.2020 and the managing committee has passed resolution in the special meeting on 14.1.2020 recommending the name of respondent No.6.

6. I have heard learned counsel for respondent Nos. 5 and 6, who adopted the submission made by Mr S.K. Kadam, learned counsel for respondent No.2. I have also heard learned A.G.P. for respondent Nos. 1, 3 and 4.

7. The petitioner has raised objection about inclusion of name of respondent No.6 in the voters list for the reason that the committee members, who have recommended the name of respondent No.6, are defaulters and as such, there is no valid resolution recommending the name of respondent No.6.

8. In terms of the provisions of section 27(10) r.w. Section 73CA of the Societies Act, the said committee members, who alleged to be the defaulters, are not declared by any competent authority as defaulters and that they are ineligible to participate in the business of the society. Furthermore, so far as respondent No.6 is concern, whose name has been recommended as delegate of the society, is

not defaulter. In view of the same, I find no fault in the order passed by the respondent Election Officer. There is no substance in this writ petition. The writ petition is liable to be dismissed. Hence, I proceed to pass the following order:-

O R D E R

Writ petition is hereby dismissed.

(V. K. JADHAV, J.)

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