IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

915 WRIT PETITION NO. 2042 OF 2021

1. Vaijnath s/o Shankarrao Hattiambire
Age 48 years, Occ. Agriculture and
Chairman of Mahatma Jyotiba Phule
Magasvargiya Yantramag Industrial
Co-Op. Society Limited, Palam,
R/o. Palam, Tq. Palam, Dist. Parbhani

2. Dr. Pratibhatai Shrirang Sable,
Age 45 years, Occ. Secretary of
Samrat Nagari Sahakari Patsanstha
Ltd. Gangakhed,
R/o. Gangakhed, Dist. Parbhani ..Petitioners

versus

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

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 Limited, Parbhani
District Parbhani ...Respondents

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Advocate for Petitioners : Mr. V.A. Bagal
AGP for Respondent No. 1: Mr. S.B. Pulkundwar
Advocate for Respondent Nos. 2 and 3 : 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 petitioners have also filed affidavit of service to that effect.

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

3. The petitioners are members of Co-operative Societies, which are 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 petitioners are challenging the legality, validity and propriety of the order dated 15.01.2021 and 18.01.2021 passed by respondent No.3, thereby rejecting the objection raised by the petitioners for including their names as delegates of the societies to which they represent, in the final voters list for 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 petitioners submits that the societies to which the petitioners represent are the registered societies. After registration of the petitioner societies, the petitioner societies have passed resolution in the general body meeting for taking the membership of respondent No.4 Bank and accordingly the applications for membership were filed on 1.12.2014 and on 3.1.2013 respectively. The petitioner societies have also purchased the share

capital for the membership of respondent No.4 Bank on 1.12.2014 and on 3.1.2013 itself, respectively. 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 societies have completed three years on 30.11.2017 and 2.1.2016 respectively from the date of investment of its share in the federal society and as such, the petitioner societies are eligible to take part in the elections of respondent No.4 Bank. Learned counsel submits that even respondent No.4 Bank has issued certificate certifying therein that the petitioner societies have paid the amount of shares on 1.12.2014 and on 3.1.2013, respectively and further, as per the said certificate, respondent No.4 Bank has granted membership in favour of the petitioner societies on 20.5.2017. Learned counsel submits that the petitioner societies have passed resolutions for sending the names of delegates to include the said names in the voters list of respondent No.4 Bank and in view of the same, names of the petitioner societies are 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 societies were not included in the provisional voters list. Thus, the petitioners have filed objection on 18.3.2020, 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 societies again raised objection on 5.1.2021 with similar request for inclusion of names of the delegates of the petitioner societies in the voters list. Learned counsel submits that respondent No.3 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 15.1.2021 and on 18.1.2021.

Learned counsel for the petitioners, 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. 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.

6. I have also heard learned A.G.P. for respondent No.1

7. I have carefully considered the submissions advanced by learned counsel/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 societies are registered Co-operative Societies. The petitioner societies have also filed applications for membership of respondent No.4 Bank on 01.12.2014 and 03.01.2013 respectively and the petitioner societies have also purchased the share capital for membership of respondent No.4 Bank on on 01.12.2014 and 03.01.2013 respectively 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 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."

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 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."*

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 petitioners 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.2 and 3, 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 fine 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 orders are not sustainable and the same are 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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