

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

986 WRIT PETITION NO.1752 OF 2021
WITH CA/1573/2021 IN WP/1752/2021

NAVNATH ASHRUBA GHOLVE AND OTHERS ..PETITIONERS

VERSUS

THE STATE OF MAHARASHTRA THR ITS SECRETARY AND
OTHERS ..RESPONDENTS

...

Mr. V. D. Salunke, Advocate for the Petitioners.
Mr. D. R. Kale, Incharge GP for Respondents-State.
Mr. S. K. Kadam, Advocate for Respondent Nos.2 and
3.
Mr. P. D. Bachate h/f Mr. D. S. Bagul, Advocate for
Applicant in CA.

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987 WRIT PETITION NO.1753 OF 2021
WITH CA/1571/2021 IN WP/1753/2021

VIVIDH KARYAKARI SEVA SAHAKARI SOCIETY LIMITED
PARDI AND OTHERS ..PETITIONERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. V. D. Salunke, Advocate for the Petitioners.
Mr. D. R. Kale, Incharge GP for Respondents-State.
Mr. S. K. Kadam, Advocate for Respondent Nos.2 and
3.
Mr. D. J. Choudhari, Advocate for Respondent No.4.
Mr. P. D. Bachate h/f Mr. D. S. Bagul, Advocate for
Applicant in CA.

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**CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

DATED : 17th FEBRUARY, 2021.

PER COURT:-

1. At the request of the learned counsel for the petitioner, leave to amend respondent no.2

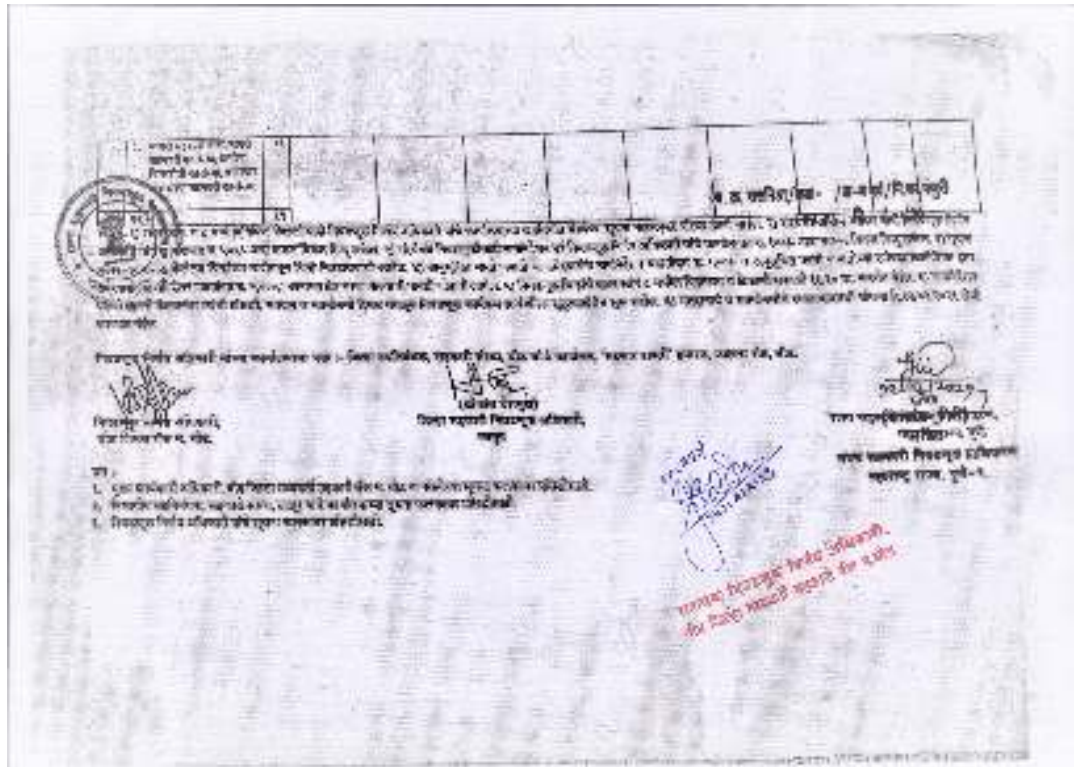
2. The grievance in these petitions is against the finalization of the voters list without including the names of the nominees of the petitioner-Societies to the election of District Central Co-operative Bank Limited, Beed.

3. The petitioners in Writ Petition No.1752/2021 are the members of the respondent nos.4 to 7-Vividh Karyakari Societies and the petitioners in Writ Petition No.1753/2021 are Vividh Karyakari Societies and members of the District Central Co-operative Bank Limited, Beed. The grievance of these petitioners is that the voters list is finalized without including the names of the nominees of the Vivid Karyakari Societies.

4. The election programme of the respondent-DCC Bank, Beed (Federal Society) is declared on 15.02.2021. The programme of the election of the Federal Bank is reproduced hereunder:

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[illegible][illegible]



5. The petitioners approached this Court much prior to the publication of the election programme by filing the present writ petitions wherein notices are issued.

6. Writ Petition No.1752/2021 it appears is filed on 13.01.2021 and Writ Petition No.1753/2021 is filed on 18.01.2021.

7. The prima dona contention of petitioners it appears is that the Administrators are appointed over these Vividhi Karyakari Societies for more than three to four years, though according to the Statute Administrator cannot continue for a period of more than one year. It is the contention of Mr. Salunke, learned counsel that the term of the Managing Committee was over, as such the

Administrator is appointed under Section 73(A). The Managing Committees are not superseded.

8. The learned counsel submits that Administrators failed to conduct the meetings, though the meetings were called the Administrators remained absent. The Administrators were the employee of the Federal Society, as such had committed all the misdeeds. The enquiry was conducted. The Authorities issued show cause notice to Administrators as to why penalty of Rs.5000/- should not be imposed upon them for their acts and misdeeds. According to the learned counsel, it is only the Administrators who can conduct the meeting. The Administrators failed to pass the Resolutions. The petitioners are not at fault. They may be allowed to participate in the election atleast to the extent of voting rights.

9. We have also heard Mr. Kadam, learned counsel for the Election Authority. He submits that election programme has been declared and now election programme cannot be changed.

10. The learned A.G.P. submits that upon conducting the enquiry it transpired that the Administrators appointed over these Vividh Karyakari Societies were guilty of dereliction and as such show cause notice is issued to them as to why penalty of Rs.5000/- should not be imposed. However, the learned A.G.P. submits that the election process has proceeded further.

11. Mr. Bagul, learned counsel for intervenor submits that petitioners are at fault. The objections were raised to the provisional voters list. The objections were rejected in March 2020, the same has not been challenged. The order has become final. The Administrators had conveyed meetings, but as chaos was created by the members of the Vividh Karyakari Societies the resolutions could not be passed. The Administrators cannot be said to be at fault. According to the learned counsel as per Section 73(C)(A), more particularly, (1)(F), the petitioners are ineligible even to vote in the election of the Federal Society being members of the superseded society. The learned counsel submits that the petitioners are guilty of laches on their part. They cannot take the advantage of their own wrong and now they cannot participate in the election process.

12. We have considered the submissions canvassed by the learned counsel for the respective parties.

13. It appears that, the Managing Committees of these Vividh Karyakari Societies represented by the petitioners were not superseded, but upon completion of their term the Administrators are appointed resorting to Section 77(A) of the Maharashtra Co-operative Societies Act. In view of that, the Clause 73(C)(A)(1)(F)(iii) may not apply.

The order of supercession of committees as required under Section 78(A) is not passed.

14. The Show Cause Notice issued by the Assistant Registrar to the Administrator is self-eloquent. The Show Cause Notice states that the Administrators were intimated by the Divisional Joint Registrar, Co-operative Societies, Latur referring to Section 27(10) and Section 73(C)(A)(1)(i)(F) to pass the Resolution. The Administrators did not take a meeting within stipulated period. The Show Cause Notice further states that the Administrators were required to submit Resolutions by 12.02.2020, but the said Resolutions were not passed nor the nominees were intimated vide Resolutions. The Show Cause Notice sought explanation from Administrators as to why penalty of Rs.5000/- should not be imposed upon them. The report is also given by the Assistant Registrar to that effect.

15. We may not rely upon the contentions of the rival parties because there is word against word. However, considering the report of the Authorities prima facie it appears that there was an act of non-feasance on the part of the Administrators. Of course, this is not a final conclusion, but only a prima facie observations on the basis of the show cause notice and the report. These observations would not take away the rights of the Administrators to defend case or any enquiry that may be initiated against them.

16. However, as prima facie it appears that petitioners were not at fault, we have considered the petitions.

17. The election programme has been declared on 15.02.2021. The voting is to take place on 28.03.2021. The election programme is sacrosanct. The Court should not interfere with the election programme. The Courts would not stall the election process. In view of that, we are not considering the case of petitioners so far as contesting the elections are concerned.

18. The voting is to take place on 28.03.2021. The petitioners had approached this Court much earlier to the declaration of the election programme, however, it was only because the instructions were to be received from the Government side, the matters were adjourned. Considering the fact that the petitioners had approached this Court before the declaration of the election and that the petitioners cannot be said to be at fault, more particularly on the basis of the report of the Government Officers, we would consider these petitions to the extent of voting right.

19. In light of that, we pass the following order:

ORDER

- A. The Resolution is required to be passed in the General Body / Special General Body meeting for which the notices are to be issued. We are told that the Secretaries of all the Vividh Karyakari Societies before this Court are functioning. We direct that the Secretaries of the Vividh Karyakari Societies (parties to the present petitions) shall issue notice calling for the special General Body meeting. Considering the exigency, seven days notice shall be given by him conveying the Special Body Meeting for passing Resolutions nominating the delegatee of the Vividh Karyakari Societies to vote for the election of the Federal Society. The meeting shall be presided over by the Assistant Registrar, Co-operative Societies or his representative.
- B. The notice shall be issued for conveying the Special Body Meeting of the Vividh Karyakari Societies (parties to the present petitions) on 20.02.2021.
- C. The Authority of the Co-operative Department shall nominate the Assistant Registrar or its representative to preside over the meeting. The Resolutions may be passed nominating the delegatee of Vividh Karyakari Societies (parties to the petitions) for being a voter to the election of the Federal Society.
- D. We make it clear that, considering the peculiar facts of the case as discussed above, we have passed the present order.
- E. We hope and trust that the Special General

Body meeting shall be held accordingly.

F. The Election Authority shall include the name of the delegatee sent to it under the resolution of the Vividh Karyakari Societies as prescribed under the Rules.

20. Writ Petitions are disposed of. No costs.

21. In view of disposal of writ petitions, present civil applications are disposed of.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE