

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2393 OF 2021

Smt. Usha Bhaginath Bhagat and 52 others ...Petitioners

versus

The State of Maharashtra and others ...Respondents

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Advocate for Petitioners : Mr. Niteen V. Gaware
AGP for Respondent No.1: Mr. K.B. Jadhavar
Advocate for Respondent Nos. 2 and 3 : Mr. S.K. Kadam
Advocate for respondent No.4: Mr. S.N. Gaikwad
Advocate for Respondents 5 to 7: Mr. S.T. Shelke
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CORAM : V. K. JADHAV, J.
DATED : 10th FEBRUARY, 2021

PER COURT:-

1. Heard learned counsel for the respective parties.
2. By this petition, the petitioners are challenging the legality and validity of the order dated 12.01.2021 passed by the respondent No.3, whereby deleting the names of the petitioners from the voters list of respondent No.4 society.
3. Learned counsel for the petitioners submits that the petitioners are duly and legally enrolled members of respondent No.4 society. They have been enrolled as members by following due process of law from the period ranging from 2014-15 to 2017-18. The petitioner

Nos. 1 to 17 have voted in the election of respondent No.4 society held in the year 2014-15. However, by impugned order dated 12.01.2021, the respondent No.3 has deleted the names of the petitioners from the voters list, illegally and arbitrarily. Learned counsel submits that the petitioners being eligible enrolled members of respondent No.4 society, in order to avail the financial assistance, had applied to respondent No.4 society and the managing committee members of respondent No.4 society have found their applications complete in all respects. Learned counsel submits that the name of the petitioners are continued in the membership register and said membership register is conclusive proof with regard to the membership of the petitioners.

4. Learned counsel for the petitioners submits that as the election of respondent No.4 society held in the year 2015, the term of the said committee came to be expired on 18.2.2020. Respondent Nos. 2 and 3 have taken steps for conducting the elections of respondent No.4 society on 17.01.2020. Respondent No.3 has published the programme for finalization of voters list. Respondent No.3 had called provisional voters list from respondent No.4 society. In terms of the provisions of section 27 of the Maharashtra Co-operative Societies Act 1960 (for short "Societies Act") and the Rule 6 of the Maharashtra Co-operative Societies (Election to Committee) Rule 2014 (for short "Rules of 2014") the provisional voters list was prepared. The cut-off date is two years prior to the expiry of the term of present managing

committee. Accordingly, respondent No.4 society submitted the names to be included in the voters list to the office of respondent No.3. Though the names of the petitioners were included in the provisional voters list, as they were legally enrolled as members, certain persons on account of political rivalry in the village had filed false and baseless objections on 23.01.2020 for deleting the names of the petitioners from the voters list. Though respondent No.4 society has submitted necessary documents to the office of respondent No.3 District Deputy Registrar, Co-operative Societies, Ahmednagar, however, those were not considered.

5. Learned counsel for the petitioners submits that the respondent No.3 has exceeded its powers under Rule 8 of the Rules of 2014 and virtually exercised the powers under Section 11 of the Societies Act, which is not permissible. Learned counsel submits that the jurisdiction of deciding the claims and objections to the voters list is limited to the extent of error with regard to the names and whether the voters list tallies with the membership register maintained by the society.

6. Learned counsel for the petitioners submits that in terms of the provisions of Section 38 of the Societies Act, every society shall keep a register of its members and enter therein the members as detailed in sub-section (1) of Section 38 of the Societies Act. Learned counsel submits that in terms of the sub-section (2) of section 38 of

the Societies Act, the register shall be *prima facie* evidence of the date on which any person was admitted to membership, and of the date on which he ceased to be a member. Learned counsel submits that the cessation of membership in terms of Section 25 of the Societies Act is only on resignation, or on transfer of the whole of his share or interest in the society to another members, or on his death, or removal or expulsion from the society.

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

- i) Dhondiba Parshuram Kakade vs Someshwar Sahakari Sakhar Karkhana Ltd. and others, reported in 1979 Mh.L.J. 311;
- ii) Dudhganga Vedganga Sahakari Sakhar Karkhana Ltd. vs. State of Maharashtra and others, reported in 2010 (1) All M.R. 788;
- iii) Dattatraya Kacharu Chine and others vs. State of Maharashtra and others, reported in 2006 (1) AIR Bom R 23;
- iv) Balasaheb s/o Kondiram Pawar and others vs. The State of Maharashtra and others, reported in 1999 (3) Bom.C.R. 136;
- v) Satwati Deswal vs. State of Haryana and others, reported in 2009 AIR (SC) (Supp.) 2956;
- vi) Unreported judgment of the Supreme Court in Civil Appeal No. 10690 of 2017 (State of Orissa and others vs. Chandra Nandi)

decided on 01.04.2019.

- vii) Ashish Kundanlal Jaiswal and another vs. Commissioner of State Excise, Maharashtra State and others, reported in 2008 (2) All M.R. 58
- vii) Pundlik vs. State of Maharashtra, reported in 2005 AIR (SC) 3746

7. Mr. Shelke, learned counsel appearing for respondent Nos. 5 to 7 i.e. the objectors, by referring the provisions of Section 27 (1A) of the Societies Act, which pertains to the voting powers of the members, submits that the active member, who subsequently fails to participate in the affairs of the society and to use the services up to the minimum level as specified, from time to time, in the by-laws, shall ceased to be an active member and shall not be entitled to vote.

8. At this stage, Mr, Gaware, learned counsel for the petitioners has pointed out amendment by way of proviso to Section (1A) wherein it is inserted that the provisions of sub-section (1A) shall not be applicable; *“(a) in respect of elections of societies to be conducted on or before the 31st March, 2021”*. Learned counsel submits that the said amendment by way of proviso to sub-section (1A) has brought into existence only due to outbreak of COVID-19 pandemic situation and subsequent lock down imposed for indefinite period.

9. Learned counsel for respondent Nos. 5 to 7 submits that

record has been created about the loan availed by the petitioners. Learned counsel submits that there is documentary evidence indicating that the society has violated the provisions of by-law No.4. Learned counsel submits that the petitioners are not active members and if their names are included in the final voters list, the inactive members would govern the management of the society.

10. Learned counsel for respondent Nos. 5 to 7, by placing reliance on the judgment of Supreme Court in the case of ***Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another vs. State of Maharashtra and others***, reported in ***2002 (1) Mh.L.J. 659*** submits that once the election process has been set in motion the High Court under Article 226 of the Constitution not to stay the continuation of the election process even though there may be some alleged illegality or breach of the rules while preparing the electoral roll and any such breach can be called in question after declaration of the result of the election by means of an election petition.

11. Mr. Kadam, learned counsel for respondent Nos.2 and 3 submits that the election of respondent No.4 society was due as the term of managing committee was expired on 8.2.2020. It was therefore, necessary to prepare the voters list for the purpose of holding the elections. Accordingly, the programme for preparation of the voters list was published on 17.01.2020. As per the said

programme, the provisional voters list was published on 18.01.2020 and the objections on the said provisional voters list were to be taken from 18.1.2020 to 27.1.2020. The objectors i.e. respondent Nos. 5 to 7 herein have raised objection to the provisional voters list on 23.01.2020. Hearing on the said objection was conducted on 6.2.2020. However, respondent No. 1 State of Maharashtra issued orders on 27.01.2020 and on 31.01.2020 thereby postponing the elections of all Co-operative societies in the State at the stage where it was. Accordingly, further process of preparation of final voters list was stopped by the authorities. Meanwhile, the respondent No. 4 society had filed writ petition No. 2292 of 2020 challenging the said order of postponement of elections. On 5.2.2020 by way of interim order, this Court has directed to proceed further for publication of the final voters list of the said society. The said writ petition alongwith other bunch of writ petitions came to be disposed of by this Court by setting aside the order of the Government dated 27.01.2020 and 31.01.2020. Thus, the election authority has taken hearing on 27.02.2020 and on 28.02.2020 on the objections raised by respondent Nos. 5 to 7. Respondent No.3 Election Officer has called the Secretary of respondent No.4 society and directed the District Deputy Registrar and the District Co-operative Election Officer to conduct the hearing in respect of the objections and submit report. Thus, the District Co-operative Election Officer has submitted report on 13.03.2020. However, due to outbreak of COVID-19 pandemic situation, the further process of passing orders in the matter was

postponed as the entire elections in the State of Maharashtra were postponed by the State Government as well as respondent No.2 herein. On 30.12.2020, the respondent No.2 again issued orders to start the programme at the stage where it was stopped and thereafter the impugned order came to be passed directing deletion of names of the petitioners from the final voters list of respondent No.4 society as per the reasons recorded in the report.

12. I have also heard learned A.G.P. for the respondent No.1 and Mr. S.N. Gaikwad learned counsel for respondent No.4 society.

13. I have carefully considered the submissions advanced by learned counsel for the respective parties. With their able assistance, I have perused the pleadings, annexures thereto and reply filed by the concerned respondents.

14. In terms of the provisions of sub-section (2) of Section 38 of the Societies Act, the register of members shall be prima facie evidence of the date on which any person was admitted to the membership. On perusal of the extract of membership register of respondent No.4 society, it appears that after passing due resolutions from time to time the petitioners have been enrolled as members and their names with all details as mentioned in sub-section (1) of section 38 of the Societies Act are entered in the membership register. Furthermore, there are details about availment

of loans and arrears thereof. It further appears that after taking due resolutions, the crop loan has been granted to the farmers holding the small area of lands.

15. Though learned counsel for respondent Nos. 5 to 7 objectors by referring the provisions of Section 27(1A) of the Societies Act vehemently argued that the petitioners are not active members and merely the record is created, however, in terms of amendment to proviso to sub-section (1A), the said proviso of Section (1A) is not applicable to the elections of the Societies to be conducted on or before 31.3.2021. Section 27 (1A) alongwith the proviso is relevant in the present matter, which is reproduced herein below:-

“27. Voting powers of members

(1)

(1A) Notwithstanding anything contained in sub-section (1), an active member who subsequently fails to participate in the affairs of the society and to use the services up to the minimum level as specified, from time to time, in the by-laws, shall cease to be an active member and shall not be entitled to vote.

Provided that, the provisions of this sub-section shall not be applicable ;-

(a) in respect of elections of societies to be conducted on or before the 31st March, 2021.

(b) where voters list for conducting the elections has been finalized prior to the commencement of the Maharashtra Co-operative Societies (Second Amendment Ordinance 2020.)”

16. In view of the above, I do not find any substance in the submissions made on behalf of the objectors that the petitioners are not active members and thus they have no voting rights. This particular amendment has been brought into existence with sole object that due to outbreak of COVID-19 pandemic situation and due to subsequent imposition of lock-down, if the activities of the society and its members are hampered then the effect of the provisions of Section (1A) of Section 27 of the Societies Act will not be applicable in respect of the elections of the societies due to be conducted on or before 31st March, 2021.

17. On perusal of the impugned order, it appears that the names of the petitioners are deleted mainly on the ground that there are certain irregularities in the process of sanctioning the loan and further they are not active members. Rule 8 of the Rules of 2014 is reproduced herein below:-

“8. Claims and objections to the provisional list of voters and the final list of voters for cooperative societies having individuals as members. -

(1) When the provisional list of voters is published for

inviting claims and objections, any omission or error in respect of name or address or other particulars in the list may be brought to the notice of the concerned District Co-operative Election officer or Taluka or Ward Co-operative Election Officer in writing by any member of the society during office hours within ten days from the date of publication of the provisional list of voters.

(2) Every claim or objection shall be in writing and state the grounds on which the claim is based or the objection is raised, as the case may be.

(3) The District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer shall, or as directed by the SCEA, after making such enquiries as deem necessary in this behalf, consider each claim or objection, and give his decision thereon in writing to the persons concerned within ten days from the last date prescribed for receiving the claims and objections. Thereafter final voters list should be published within the period of fifteen days from the last date prescribed for receiving the claims and objections. The list finalized by the election officer after deciding all claims and objection shall be final list of voters.

(4) The copies of the final list of voters shall be displayed on the notice board of the District Co-operative Election Officer and also on the notice board of the society at least ten days before the declaration of the election programme and in no case later than fifteen days from the finalization of claims and objections. The District Co-operative Election Officer may also cause it to be published on the official website of the SCEA, if any."

18. It is thus clear that the claims and objections to the provisional voters list of the Co-operative society having individuals as members, any omission or error in respect of name or address or any other

particulars in the list may be brought to the notice of the concerned District Co-operative Election Officer in writing by any member of the society during the office hours within ten days from the date of publication of provisional list of voters. Rule 11 of the Rules 2014 prescribes the provisions about enquiry for each of such claims and the decisions thereon. I find much substance in the submissions made on behalf of the petitioners that respondent No.3 has widened the scope of the said enquiry and by exceeding the limits, deleted the names of the petitioners from the voters list.

19. Furthermore, considering the affidavit of respondent No.3, the District Deputy Registrar, Co-operative Societies, it appears that the election of the society was postponed due to outbreak of COVID-19 pandemic situation from time to time and as such, the ratio laid down in the case of ***Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another vs. State of Maharashtra and others (supra)*** relied upon by learned counsel appearing for respondent Nos. 5 to 7 i.e. the objectors may not be applicable to the facts and circumstances of the present case.

20. It appears that there are in all 53 petitioners, whose names are deleted from the voters list for no substantial reason. The petitioner Nos. 1 to 17 have voted in the elections of respondent No.4 society in the year 2014-15. Thus, considering entire aspects of the case, the impugned order certainly calls for an interference. Hence the

following order:-

O R D E R

I) The writ petition is allowed in terms of prayer clause "B".

21. At this stage, Mr. Shelke, learned counsel appearing for the objectors i.e. for respondent Nos. 5 to 7 prays for stay to this order. However, considering the facts and circumstances of the case, I am not inclined to grant stay. Hence, the prayer to grant stay to this order stands refused.

(V. K. JADHAV, J.)

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