

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

48 WRIT PETITION NO.2491 OF 2021

PRATAPRAO GOVINDRAO PATIL AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. V D Hon Sr. Counsel I/b
Mr. Hon Ashwin V.

AGP for Respondent 1 : Mr S P Deshmukh

Advocate for Respondent 2 : Mr S K Kadam

Advocate for Respondent 3 : Mr. A M Gaikwad

Advocate for Respondent 4 : Mr. Panditrao S Anerao

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CORAM : V.K. JADHAV, J.

Dated: February 08, 2021

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PER COURT :-

1. Leave to add prayer clause 'B-1'. Addition be carried out forthwith.

2. Issue notice to the Respondents. The learned AGP waives notice for respondent no.1-State. Mr. S.K.Kadam, the learned counsel waives notice for respondent no.2. The learned counsel Mr. Gaikwad appears for respondent no.3 Bank and waives notice. The learned counsel Mr. Anerao appears for respondent no.4 on caveat, waives notice and filed affidavit-in-reply. The same is taken on record. The learned counsel
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appearing for other side have received the copy of the said reply.

3. Heard finally with the consent of the parties at admission stage.

4. By way of this writ petition, the petitioners are challenging the legality and validity of the order dated 3.2.2021 passed by the Respondent/District Co-operative Election Officer, whereby the said authority has allowed the objection raised by respondent no.4 against the inclusion of petitioner no.1's name in the provisional voters' list as a delegate of the petitioner no.2-Society in the ensuing the election of respondent no.3 Nanded District Central Cooperative Bank Limited (for short hereinafter called as 'respondent no.3-Bank').

5. By the Resolution dated 27.1.2020 the Managing Committee of the petitioner No.2-Society has unanimously decided to send the name of the petitioner no.1 as its delegate in the voters' list of respondent no.3 bank. Accordingly, provisional voters list was prepared

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by the respondent no.3-bank in accordance with the provisions of Rule 9 of the Election Rules, 2014. In the said provisional voters list, name of the petitioner no.1 was shown as a delegate of the petitioner no.2-Society at Serial No.28. On 25.1.2021 as per the re-scheduled programme of the election, respondent no.4 has preferred objection against inclusion of the name of the petitioner no.1 at Sr. no.28 as delegate of the petitioner no.2 Society. According to respondent no.4, petitioner no.1 is neither the member of the petitioner no.2-society nor agriculturist having minimum 10R of the land in the jurisdiction of the society. The respondent Election authority by impugned order dated 3.2.2021 has allowed the objection raised by respondent no.4. Hence, this writ petition.

5. The learned Senior Counsel appearing for the petitioners submits that respondent-election authority has exceeded the powers under Rule 11 of the Maharashtra Cooperative Societies (Election to Committee) Rules, 2014 (hereinafter for short referred to

'Rules of 2014') in entertaining the objection of respondent no.4. The learned Senior Counsel submits that respondent no.4 has no locus to raise the said objection. Respondent no.4 is neither the member of the petitioner no.2-Society nor is a Member of respondent no.3-Bank. Learned Sr. counsel submits that the respondent/Election authority ought to have considered the scope of Rule 11 of the Rules of 2014 regarding the claims and objection to the provisional voters' list. The learned Senior Counsel submits that in terms of the provisions of Rule 11 (3) the inquiry can be conducted only in respect of the resolution of the delegate and not in respect of enrollment of the Member or qualification of person as a Member of the Society.

5. Learned Senior Counsel submits that in terms of provisions of Section 11 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter for short referred to as 'Act of 1960') when any question arises whether a person is an agriculturist or not, or whether any person resides in the area of the operation of the

society or not, or whether a person is or is not engaged in or carrying on any profession, business or employment, etc, such question shall be decided by the Registrar and his decision shall be final, but no decision adverse to any such person shall be given without giving him any opportunity of being heard. Learned counsel submits that in the instant case, petitioner no.1 became member of the petitioner no.2 Society way back in the year 2008 by passing of the Resolution dated 25.4.2008 in the meeting of the Managing Committee of the Society and name of the petitioner no.1 is appearing at serial no.220 of the list of the members annexed to the said resolution. Learned Sr. counsel submits that as per the earlier bye-laws of the petitioner no.2-Society, as per clause no.4 about membership, any person resides at village Janapuri or within the area of 90 kilometers can be a Member of the petitioner no.2-Society, however, though 13 conditions are mentioned in clause no.5, however, there is no condition about holding of the minimum land admeasuring 10R within the operational area of petitioner no.2-Society. The learned Senior

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Counsel submits that even though assuming that after 2015 and onwards, if the bye-laws of the petitioner Society came to be amended and condition about the minimum holding of 10R land in the operational area of the petitioner no.2-Society stands included, however, in terms of the provisions of section 11 of the Act of 1960, said question is required to be decided by the Registrar. The learned Sr. Counsel submits that in the instant case, the respondent Returning Officer has considered the opinion given by the Assistant Registrar Co-operative Societies, Tq. Loha, however, said report/opinion submitted by the Assistant Registrar is at Exh.E page 25-A wherein the Assistant Registrar has only mentioned that the documents pertaining to 7/12 extract and residence certificate are not placed before the authority, and as such, necessary inquiry is required to be conducted for verification of those documents. Learned counsel submits that respondent returning officer has thereafter undertaken the inquiry himself and allowed the objection raised by respondent no.4. Respondent Returning Officer has merely observed

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in the impugned order that, prima facie, it appears that the petitioner no.1 has no agricultural land in the operational area of petitioner no-2 Society.

6. Learned Senior Counsel in order to substantiate his contentions placed reliance on the following cases :-

- i. Nitin Sadashiv Meher Vs. Mahim V.K. S.S. Ltd., reported in 2008 SCC online Bom 993 & 2009 (1) Mh.L.J. 480.
- ii. Ashok Indrajit Jawalge Vs. State of Maharashtra and ors. reported in 2006 SCC online 890 & 2007 (1) Mh.L.J. 17.
- iii. Dhondiba Parshuram Kakade Vs. Someshwar SSK Ltd., reported in 1974 SCC Online Bom 154 & 1979 Mh.L.J. 311.
- iv. Vasantrao Annasaheb Ubale Vs. State of Maharashtra and ors. reported in 2003 (Supp) Bom.C.R. 440 & 2003 (1) Mh.L.J. 313.

7. The learned counsel appearing for respondent no.4 submits that as per the record, residential proof and agricultural land in the name of the petitioner was not found in the operational area of petitioner no.2-Society. On the basis of the report of the Assistant Registrar dated 28.1.2021 the election authority and the Divisional Joint Registrar, Co-operative Societies, Latur

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passed the impugned order dated 3.2.2021. Learned counsel submits that petitioner no.1 is not the voter of the previous election of the DCC Bank held in the year 2015 to 2020. Learned counsel submits that petitioner no.1 is not residing in the operational area of petitioner no.2-Society and he is not having 10R land within the operational area of the Society. Thus, the order impugned is proper, correct and legal and calls for no interference.

8. Learned counsel appearing for respondent no.4 in order to substantiate his contention placed reliance on the judgment in the case of **Babasaheb Gokul Shinde Vs. State of Maharashtra** reported in **2017 (2) Mh.L.J. 2017**.

9. I have also heard the learned counsel Mr. S K Kadam appearing for respondent no.2-Election Authority. I have also heard the learned AGP for the Respondent-State and the learned advocate appearing for the respondent No.4 Nanded DCC Bank.

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10. I do not find any controversy that in the year 2008 petitioner no.1 became the member of the petitioner no.2-Society. I have perused the copy of the Resolution Exh.E dated 25.4.2008. It appears that the Managing Committee of the petitioner no.2-Society has passed the resolution unanimously and enrolled various new members. On perusal of extract of the Register of the Members, it appears that name of the petitioner no.1 is at Serial No.220.

11. In terms of Rule 11 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (hereinafter for short called as 'Rules 2014') the District Co-operative Election Officer is required to consider the claims, objections to the provisional list of voters and final list of the of voters for the societies, if it is raised in writing by any particular member of the society concerned, who is voter or any representative authorized to vote on behalf of such society.

Rule 11 of the Rules 2014 reproduced herein below :-

“11. Claims and objections to the provisional list of voters and the final list of voters for the societies having society or societies and individuals as members :-

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- (1) When any 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 District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer in writing by any member of the society concerned who is a voter or any representative authorized to vote on behalf of such society during office hours within ten days from the date of publication of the provisional list of voters.
- (2) Any member of the society concerned making a claim or raising objection shall do so by a separate petition, which shall be presented to the District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer during office hours, before the last date published for inviting claims and objections. Such claims or objections shall be preferred 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, after making such enquiries as deemed necessary in this regard, 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 and 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 as finalized by the District Co-operative Election Officer or Taluka or Ward Co-operative 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.
- (5) If any change in the final voters list in accordance with sub-rule 4 of rule 10 is required, the District Co-operative Election Officer or the person authorized by him, after making such inquiry as he deems fit, make necessary changes in the final voter list.”

In the instant case, respondent no.4 is neither the Member of the petitioner no.2-Society nor enrolled as individual member of the respondent-Bank. The learned

Senior Counsel has thus rightly questioned the locus of the respondent no.4 to raise objection.

12. Section 11 of the Maharashtra Co-operative Societies Act, 1960 reads thus :-

“11. Power of Registrar to decide certain questions :-

When, any question arises whether a person is an agriculturist or not, or whether any person resides in the area of operation of the society or not, [or whether a person is or is not engaged in or carrying on any profession, business or employment, or whether a person belongs or does not belong to such class of persons as declared under sub-section (1A) of section 22 and has or has not incurred a disqualification under that sub-section,] such question shall be decided by the Registrar [and his decision shall be final, but no decision adverse to any such person shall be given without giving him an opportunity of being heard.]”.

13. In the instant case, respondent no.4 has raised objection about two points i.e. i] petitioner no.1 is not residing in the operational area of the society and; ii] petitioner no.1 is not an agriculturist having minimum 10R of the land in the area of the operation of the society in terms of the bye-laws of the society.

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14. On perusal of the impugned order, it appears that respondent/Election officer has referred the report of the Assistant Registrar, copy of the said report is annexed to the petition at 'Exh.E' page 25-A. It appears that Assistant Registrar in his report has mentioned that 7/12 extract and the claim about residence could not be scrutinized for want of papers and the necessary inquiry with verification of the documents is required to be conducted. It further appears that the respondent-election officer though is a Divisional Joint Registrar Co-operative Societies Latur by post, however, as a election officer, conducted inquiry on his own. It further appears from the perusal of the impugned order that respondent-election officer has recorded the opinion prima facie since the inquiry about claims and objections was yet to be conducted.

15. In a case Dhondiba Parshuram Kakde Vs. Someshwar SSK Ltd., (supra), relied upon by the learned Senior Counsel appearing for the petitioner, the Supreme Court after noting the submissions almost in

identical facts, in paragraph nos.13, 43 and 44 has made following observations :-

“13. Mr. Singhvi, the learned counsel appearing on behalf of the petitioners, challenged the impugned order dated February 16, 1974 passed by the Collector on two grounds. Firstly, Mr. Singhvi contended that the Collector was not entitled to publish a fresh election programme but was bound merely to continue the process subsequent to the filing of the claims of the 115 persons who had objected to the non-inclusion of their names in the provisional voters' list. Secondly, Mr. Singhvi contended that the Collector had no jurisdiction to decide the question of the validity of membership in exercise of the powers conferred on him by Rule 6 and thereby virtually to alter or amend the Register of Members of the respondent No. 1-Karkhana. Mr. Singhvi elaborated that the power given to the Collector under Rule 6 is a restricted and limited power, in the summary exercise whereof, unlike the power of a civil Court, he could not virtually change the Register of Members, as he purported to do in this matter.

43. Thus, under Rule 6(1), all that the Collector is entitled to, and permitted to do is to ensure the identity of the voter, concerned, and if per chance, the identity is not sufficiently established in the provisional voters' list to take steps within the ambit of Rule 6(1) to see that it is. There is nothing in Rule 6(1) which empowers the Collector to hold a detailed inquiry, as was done in the instant case, whether a person is qualified to be on the Register of Members, and if not to delete his name from the provisional list of voters. Under [Section 38\(2\)](#) of the Societies Act, the Register of Members is prima facie evidence of membership. It is not open to the Collector to upset that Register by holding an inquiry under Rule 6(1), which contemplates a very summary inquiry, confined only to the aspects set out in that rule and nothing else.

44. The combined effect of Rules 4, 5 and 6 is that the powers of the Collector under Rule 6, though not without responsibility, are more in their nature, mechanical. He has to act as a guard or watch-dog and ensure that the identity

of every person whose name appears in the provisional voters' list tallies with the person in the Register of Members. The intention behind, and the scope of these three rules is to ensure that every person whose name appears in the Register of Members, should also appear in the voters' list, so that no person in the Register of Members is left out from the provisional voters' list by reason of some omission or error in respect of the particulars enumerated in Rules 5 and 6.”

16. In the case Balasaheb Gokul Shinde Vs. State of Maharashtra and ors (supra) relied upon by the learned counsel for respondent no.4, there were independent proceedings under section 11 read with 25-A of the Co-operative Societies Act, 1960. Those proceedings came to be initiated before the declaration of the programme of the election and decision in the said proceedings under section 11 had also come out prior to the declaration of the programme. In the backdrop of this fact, this Court has held that the society ought not have been shown petitioners as voters in the said election.

17. In the instant case, there is no inquiry as contemplated under section 11 of the Act of 1960 by the Registrar and in view of the same, the order impugned is not sustainable in the eyes of law.

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18. Thus, considering the entire aspect of the case, I proceed to pass the following order.

ORDER

1. Writ Petition is hereby allowed in terms of prayer clauses 'B' and 'B-1'.
2. Writ Petition is accordingly disposed off.

(V.K. JADHAV, J.)

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