

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

WRIT PETITION NO.2911 OF 2021

Hadgaon Taluka Sahakari Kharedi
Vikri Sangh Ltd., Hadgaon,
District Nanded through its
Chairman and Authorized representative
Balasaheb Tukaram Shinde. ... **Petitioner**

Versus

The State of Maharashtra
through its Secretary and others. ... **Respondents**

...
Mr. S. B. Ghatol-Patil, Advocate for Petitioner.
Mr. S. P. Deshmukh, AGP for Respondents-State.
Mr. S. K. Kadam, Advocate for Respondent Nos.4 & 5.
Mr. R. K. Ingole, Advocate for Respondent No.6.

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CORAM : V. K. JADHAV, J.
DATE : 18.02.2021.

ORDER :-

1. Heard finally at admission stage by consent of the parties.
2. By this Petition, the petitioner is challenging the order dated 03.02.2021 passed by respondent – Election Officer, rejecting the objection of the petitioner filed for inclusion of his name in the final voters list for the elections of Nanded District

Central Co-operative Bank Ltd. (hereafter referred to as 'NDCC Bank') and thereby refused to include the name of the petitioner in the final voters list of the said NDCC Bank.

3. The learned counsel for the petitioner submits that respondent – Election Officer has rejected the objection raised by the petitioner mainly on the ground that the society of which, the petitioner is a nominee, is a defaulter of the NDCC Bank and thus the petitioner is not entitled for inclusion of his name in the voters list. The learned counsel submits that the society is not declared as a defaulter as per the law laid down by this Court. Thus, the order impugned is illegal and liable for quashed and set aside.

4. The learned counsel submits that for the elections of the NDCC Bank, respondent – Election Officer has started the process for preparation of voters list and invited the names of the representatives to be sent by its society. Accordingly, the meeting of petitioner – Society was held and the name of the petitioner, who is a office bearer of the said Society, is referred as a delegate to include his name in the voters list. The learned counsel submits that after publication of the provisional voters

list, it was found that the name of the petitioner – society is not included in the provisional voters list. Thus, the petitioner – society has raised the detailed objection to the voters list on 25.01.2021 itself and requested respondent – Election Officer to include his name in the final voters list.

5. The learned counsel submits that respondent being an Election Officer ought to have called the record of respondent No.6 – NDCC Bank, however, without going through record, applied his own legal mind to the objection and rejected the said objection on the ground that as per Section 73CA(A-1)(f) (ii) of the Maharashtra Co-operative Society Act, 1960 and Rules, 1961 (herein after referred to as ‘the Act’), the objection of defaulter society cannot be considered. The learned counsel for the petitioner submits that the petitioner – society is having its running account and the petitioner – society and its office bearer is not defaulter of respondent No.6 – NDCC Bank and as such there is no impediment to include the name of petitioner – society in the final voters list.

6. The learned counsel submits that respondent – Election Officer being an authority has not given an opportunity of

hearing to the petitioner before passing the impugned order. The learned counsel submits that, unless, after following due process of law, it is declared that the society is defaulter, name of the petitioner cannot be denied to be included in the voters list. The learned counsel submits that as long as the society is not declared as defaulter, the name of the petitioner is required to be included in the voters list. The learned counsel submits that in case, if the society was held as defaulter after following the due process of law, the general body members of the society could have called the meeting for recommending the name of any other member as a delegate of the society.

7. The learned counsel for the petitioner in order to substantiate his contentions placed his reliance on the following cases :

- (i) Ramesh Rajaram Patil Vs. Additional Commissioner and others, reported in 1995 (2) Bom. C. R. 264
- (ii) Gagangiri Vividh Karyakari Sahakari (Vikas) Seva Sanstha Maryadit and others Vs. District Co-operative Election Officer (Kolhapur District Central Co-operative Bank Ltd. And Divisional Joint Registrar Co-op. Societies, Kolhapur Division and others, reported in 2015 (5) Mh.L.J. 460.

8. The learned counsel submits that the petitioner – society would remain unrepresented in ensuing election of the NDCC Bank. Writ petition thus deserves to be allowed.

9. The learned counsel Mr. Kadam appearing for respondent nos. 4 and 5 submits that respondent – Election Officer has maintained the Roznama of the proceedings and the opportunity of the hearing was given to him. The learned counsel submits that the petitioner was present during the course of the hearing and as per respondent, he was given an opportunity of hearing before passing the impugned order.

10. The learned counsel Mr. Kadam submits that in terms of the provisions of Section 73CA(1)(f)(ii) of the Act that a person who is a defaulter of primary agricultural credit co-operative society or is an office bearer of the defaulter co-operative society, is not eligible for being appointed, nominated, elected, co-opted for being a member of the committee. The learned counsel submits that in the proclamation dated 18.12.2019, coloum No.2, it has been made clear that the concerned society shall observed the provisions of Section 73CA(1)(i)(f)(ii).

11. Apart from this, on 17.12.2019, the bank has also issued the proclamation published in the daily newspaper pointing out therein the defaulter societies to clear their dues for exercising their rights by sending the delegates in ensuing election of the NDCC Bank. The learned counsel submits that on 25.01.2021, the petitioner has submitted the objection and the Assistant Registrar of Co-operative Society, Hadgaon has been directed to submit his remarks pertaining to the said objections. Though the Assistant Registrar has called upon the society to submit the record, however, the society has not submitted the record. The learned counsel submits that on 25.01.2021, the NDCC Bank has submitted the report through its Chief Executive officer and it appears that the petitioner – society is the defaulter of huge amount of the loan borrowed by it. The learned counsel submits that respondent – Election Officer has therefore rightly passed the order. There is no substance in the Writ Petition. Thus, Writ Petition is liable to be dismissed.

12. I have also heard the learned AGP for the respondents-State Authority. I have heard the learned counsel appearing for the respondent-NDCC Bank. The learned counsel appearing

for the NDCC Bank on the basis of the record submits that petitioner – society is the defaulter society and the petitioner is the office bearer of the said society.

13. I have carefully considered the submissions advanced by the learned counsel for the respective parties. With their able assistance, I have perused the pleadings, the grounds taken in the petition, annexures thereto and the reply filed by the respondent.

14. Section 73CA prescribes the “disqualification of the committee and its members”. Section 73CA(1)(f)(ii), which is relevant for the present discussion is only reproduced herein below :

" 73CA. Disqualification of Committee and its members -

(1) ...

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) in the case of the District Central Co-operative Bank or of the State Co-operative Bank, a member, if he,-

(i) ...

- (ii) is a person who is a defaulter of a primary agricultural credit co-operative society or is an office bearer of a defaulting primary agricultural co-operative credit society;
- (iii) ..."

15. Rule 7 and Rule 10 of the Maharashtra State Co-operative Societies (Election to Committee) Rules, 2014 (herein after referred to as 'Rules 2014') prescribe the "particulars to be included in the provisional list of voters for the co-operative societies". The said Rules are reproduced herein below :

"7. Particulars to be included in the provisional list of voters for co-operative societies having individuals as members. -

The provisional list of voters in case of individual shareholders, shall contain the surname, name, father's or husband's name (in alphabetical order), if any, with address as recorded in the register or members in Form 'E-3' of every person entitled to be registered as voter with such other particulars as may be necessary to identify him."

"10. Particulars to be included in the provisional list of voters for the societies having society or society and individuals as members. -

(1) The provisional list of voters in case of individual members shall contain the surname, name, father's or

husband's name, age, gender (in alphabetical order) if any, with address recorded in the register of members in Form 'E-3' of every person entitled to be registered as voter with such other particulars as may be necessary to identify him.

(2) Where a society or firm is the member of Society, the District Co-operative Election Officer or the Taluka or Ward Co-operative Election Officer shall publish a date for calling the name of representative, one hundred and fifty days prior to the date of expiry of term of office of the Committee. And such society shall send the name of representative duly authorized to vote at the election on behalf of the society or firm, so as to reach it to the office of the District Cooperative Election Officer or Taluka or Ward Co-operative Election Officer at least one hundred and twenty days prior to the date of expiry of term of office of the Committee. The representative authorized by the member society shall be an active member of the member society.

(3) While communicating the name of the representative to the society the affiliated society shall enclose a copy of the resolution of the annual general body meeting of the society or its committee as provided under its by-laws, where the representative is so authorized. The society shall include in the list of voters the names of all such representatives as have been communicated to it before the date fixed for publication of the provisional list of voters by the District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer. In addition to the names of

representatives, the list shall contain the name of the affiliated societies, their registration numbers and addresses with names of the constituency, if any, to which they belong.

(4) A society which has communicated the name of its representative shall, by like resolution, be permitted to change the name of its representative only in case of death of the representative or where there is newly elected committee of the member society not later than five days before the last date for making nominations.”

16. Further form E-3, which is to be prepared in terms of the provisions of Rule 7 and Rule 10 as above, the requisite details as per the said form are required to be furnished by the Chief Executive Officer.

17. In the instant case, in terms of the particulars placed before respondent – Election Officer, the petitioner – society is a defaulter society and as such the office bearer of a defaulting society is not eligible for being appointed, nominated, elected, co-opted or, for being a member of the committee in terms of the provisions of Section 73CA(1)(f)(ii).

18. In terms of Rule 11(3) of Rules 2014, the Election Officer, after making such enquiries as being necessary in this regard, consider each claim or objection, and give his decision

thereon in writing. In view of the above, I do not find any illegality, if the respondent – Election Officer has called upon respondent – Assistant Registrar to offer his remarks on the objection raised by the petitioner. Even though respondent – Assistant Registrar has submitted its remarks, however, it appears that respondent – NDCC Bank has also submitted the report, signed by its Chief Executive officer stating therein that the petitioner – society is a defaulter society of which the petitioner is the office bearer. Though the learned counsel for the petitioner has vehemently submitted that the petitioner may not be knowing about the status of the society as a defaulter society, however, it is difficult to believe that the office bearer of petitioner – society has no information as to whether the society is a defaulter or not. Furthermore, it is also pertinent that despite the notice given by respondent – Assistant Registrar, petitioner – society has not placed the requisite documents. I do not find any substance in the submissions made on behalf of the petitioner that no opportunity of hearing was given. I have perused the roznama maintained by respondent – Election Officer and it appears that the petitioner was present during the course of hearing

and he was given the opportunity of being heard. The learned counsel for the petitioner though vehemently submitted that there is no whisper in the order passed by respondent – Election Officer about the opportunity of hearing was given to the petitioner, however, it cannot be overlooked that respondent – Election Officer is not the Presiding Officer of the Court so as to expect from him about the same.

19. In a case *Gangangiri Vividh Karyakari Sahakari (Vikas) Seva Sanstha Maryadit and others Vs. District Co-operative Election Officer (Kolhapur District Central Co-operative Bank Ltd. and Divisional Joint Registrar Co-op. Societies, Kolhapur Division and others*, reported in *2015 (5) Mh.L.J. 460*, this Court held that objection to inclusion of name of respondent no.3 Society on ground that said society is defaulter and being a Multipurpose co-operative society would not be entitled to the exemption which is available under sub-clause (f) of section 73-CA (1).

Thus, the issue involved in the case cited above is altogether different and cannot be made applicable to the facts and circumstances of the present case.

20. In view of the above, I find no fault in the impugned order passed by respondent – Election Officer. There is no substance in this Writ Petition. Hence, I proceed to pass the following order :

ORDER

Writ Petition is hereby dismissed.

(V. K. JADHAV, J.)

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vmk/-