

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

WRIT PETITION NO.2802 OF 2021

Nagorao S/o Kerba Tekale.

... **Petitioner**

Versus

The District Co-operative Election Officer
of District Central Co-operative Bank,
Nanded and others.

... **Respondents**

...

Mr. V. D. Salunke, Advocate for Petitioner.
Mr. S. P. Deshmukh, AGP for Respondent/s-State.
Mr. S. K. Kadam, Advocate for Respondent No.1.
Mr. S. A. Patil, Advocate for Respondent No.3.
Mr. R. K. Ingole, Advocate for Respondent No.4.

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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 No.1 – Election Officer, rejecting the objection of the petitioner filed against deletion of his name from the provisional 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 No.1 – 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 for the year 2021-2026, respondent No.1 – 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 respondent No.3 – 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 on 14.01.2021, it was found that the name of the petitioner is deleted from the provisional voters list. Thus, the petitioner has raised the detailed objection to the voters list on 25.01.2021 itself and requested respondent No.1 – Election Officer to include his name in the final voters list.

5. The learned counsel submits that respondent No.1 being an Election Officer ought to have applied his own legal mind to the objection, however, respondent No.2 – Assistant Registrar has called the petitioner for hearing by issuing a notice dated 25.01.2021 and he has decided the objection on 26.01.2021. Respondent No.2 – Assistant Registrar has submitted the report to respondent No.1 – Election Officer as not to include the name of the petitioner in the voters list for the reason that respondent No.3 – Society is a defaulter of NDCC Bank. The learned counsel submits that in order to deprive the petitioner from exercising his voting rights, deliberately mischief has been played for declaring the society as a defaulter. The learned counsel submits that the Chairman of the NDCC Bank is a political opponent of the petitioner and in view of the

same, name of the petitioner has been removed from the voters list illegally.

6. The learned counsel submits that respondent No.1 – Election Officer being an authority has not given an opportunity of hearing to the petitioner before passing the impugned order. It appears that respondent No.1 – Election Officer has relied on the report submitted by the Assistant Registrar and passed the 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) Pandurang Baburao Lhase and others Vs. Returning Officer @ Co-operative Officer and others, reported in 2016(6) BCR 92.

(ii) Basawraj S/o Vishwanath Sarne Vs. The State of Maharashtra and another, reported in MANU/MH/0830/2015.

(iii) Gullapalli Nageswara Rao and others Vs. Andhra Pradesh State Road Transport Corporation and another, reported in AIR 1959 SC 308.

(iv) Meenaba Digvijaysinhji Jadeja Vs. Bhavnagar Municipal Corporation, reported in MANU/GJ/1189/2020.

(v) Antonio Fernandes Vs. State of Goa, reported in 2019(6) ALL MR 73.

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 submits that respondent No.1 – Election Officer has maintained the Roznama of the proceedings and the petitioner has made a rather bold statement that the opportunity of the hearing was not given to

him. The learned counsel submits that the petitioner was present during the course of the hearing and as per respondent No.2, 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 Maharashtra Co-operative Societies Act, 1960 and Rules, 1961 (hereafter referred to as '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, Mukhed 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 No.1 – 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 respondent/s-State Authority. I have also heard the learned counsel for the respondent-society. 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 respondent No.3 – 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 No.1 – 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 legality, if the respondent No.1 – Election Officer has called upon respondent No.2 to offer his remarks on the objections

raised by the petitioner. Even though respondent No.2 has submitted its remarks, however, it appears that respondent – N-DCC Bank has also submitted the report signed by its Chief Executive officer stating therein that the respondent No.3 – 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 respondent No.3 – 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 No.2 – Assistant Registrar, respondent No.3 – 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 No.1 – 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 No.1 – Election Officer about the opportunity of hearing was given to the petitioner, however, it cannot be overlooked that respondent No.1 – Election Officer is not the Presiding Officer of the Court so as to expect from him about the same.

19. *Pandurang Baburao Lhase and others Vs. Returning Officer @ Co-operative Officer and others*, reported in **2016(6) BCR 92**, relied upon by the learned counsel for the petitioner, the observations pertain to Section 27(10) denying the voting rights to the defaulting members of the society. In the case relied upon, declaring the petitioners as defaulters, without giving opportunity to them at the appropriate time, is said to be a breach of the provisions of law, apart from the basic principle of natural justice.

In the instant case, respondent No.3 – society is a defaulter society and as such in terms of the provisions of Section 73CA(1)(f)(ii), the office bearer of such a society is not eligible to vote in the election of the federal society. Thus, the case cited above, is altogether on different point and cannot be

made applicable to the facts and circumstances of the present case.

20. In a case *Basawraj S/o Vishwanath Sarne Vs. The State of Maharashtra and another*, reported in *MANU/MH/0830/2015*, the Division Bench had an occasion to consider Rule 10 and 11 of the Rules 2014 and in paragraph No.29 observed as follows :

"29. On consideration of the Rules, there can be no dual opinion that the District Cooperative Election Officer shall have to take his own decision, as mandated by the Rules. The objection raised by the petitioners that the order has been issued by the District Cooperative Election Officer without extending an opportunity of hearing to them and as such, the order passed is in breach of observance of principles of natural justice, is also required to be taken into consideration. It was the responsibility of the District Cooperative Election Officer to extend an opportunity of hearing to the petitioners before passing any adverse orders. Since the order has been issued by the District Cooperative Election Officer in breach of observance of principles of natural justice, same is required to be quashed and set aside."

In the instant case, respondent No.1 – Election Officer has taken his decision in terms of the provisions of the Act,

1960, particularly Section 73CA(1)(f)(ii), after giving an opportunity of being heard to the petitioner.

21. In a case *Gullapalli Nageswara Rao and others Vs. Andhra Pradesh State Road Transport Corporation and another* reported in *AIR 1959 SC 308*, in paragraph No.31 the Supreme Court has made the following observations :

"31. The second objection is that while the Act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure."

In the case cited above, the Supreme Court has criticized the divided responsibility in terms of the provisions of the Act and Rules. In the instant case, respondent No.1 – Election

Officer has given the opportunity of hearing to the petitioner. By calling the remarks of respondent No.2, does not mean that respondent No.1 – Election Officer has given his powers to respondent No.2 to hear the objection and decide the same. Respondent No.1 – Election Officer has decided the objection on his own as mandated by provisions of the Act of 1960 and the Rules thereof.

22. In view of the above, I find no fault in the impugned order passed by respondent No.1 – 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/-