

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

WRIT PETITION NO.2829 OF 2021

Seva Sahkari Society Ltd., Nakhegaon,
Through its Chairman
Kisan Dama Rathod.

... **Petitioner**

Versus

The Divisional Joint Registrar, Latur /
District Co-operative Election Officer,
Nanded and others.

... **Respondents**

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Mr. D. P. Munde & Mr. U. B. Deshmukh, Advocate for Petitioner.
Mr. K. B. Jadhavar, AGP for Respondents-State.
Mr. V. H. Dighe, Advocate for Respondent No.1.
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 for inclusion of his name in the 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, 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 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 on 14.01.2021, it was found that the name of the petitioner

– society was not included in 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.3 – 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.3 – 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 petitioner – 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.

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 in a case ***Pandurang Baburao Lhase and others Vs. The Returning Officer @ Co-operative Officer and others***, reported in ***2016(6) BCR 92***.

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. Dighe submits that respondent No.1 – Election Officer has maintained the Roznama of the proceedings. The learned counsel submits that the petitioner was present during the course of the hearing and he was given an opportunity of hearing before passing the impugned order.

10. The learned counsel Mr. Dighe 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, Mahur has been directed to submit his remarks pertaining to the said objection. 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 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 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 illegality, if the respondent No.1 – Election Officer has called upon respondent No.3 to offer his remarks on the objection raised by the petitioner. Even though respondent No.3 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 No.3 – 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 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.

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, petitioner – 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 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/-