

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

**WRIT PETITION NO. 3088 OF 2021**

Dattatraya s/o. Balaji Patil .. Petitioner  
Age. 50 years, Occ.Agriculture,  
R/o. Bet Mogra, Tal.Mukhed,  
Dist. Nanded.

Versus

1. The State of Maharashtra .. Respondents  
Through – Secretary,  
Cooperation & Textile Department,  
Mantralaya, Mumbai - 32.
2. The District Cooperative Election  
Officer & Divisional Joint Registrar,  
Co-operative Societies, Latur.  
District Latur.
3. Seva Sahakar Society Ltd.,  
Bet Mogra, Tal. Mukhed,  
Dist. Nanded.  
Through its Secretary.
4. Nanded District Central Co-operative  
Societies Ltd., Nanded.  
Through its Managing Director.
5. Hanumantrao Vyankatrao Patil  
Age. 55 years, Occ. Agri.,  
R/o. Betmogra, Tal. Mukhed,  
District Nanded.

Mr.D.J. Choudhari, Advocate for the petitioner.  
Mr.R.D. Sanap, AGP for respondent/State.  
Mr.S.K. Kadam, Advocate for respondent No.4.  
Mr.V.D. Salunke, Advocate for respondent No.5.

CORAM : N.J.JAMADAR, J.  
RESERVED ON : 05.03.2021  
PRONOUNCED ON : 16.03.2021

**J U D G M E N T :-**

01. The petitioner takes exception to an order passed by respondent No.2 – the District Co-operation Election Officer dated 3<sup>rd</sup> February, 2021, whereby the respondent No.2 rejected the objection of the petitioner to the inclusion of name of respondent No.5 in the voters' list for election to the committee of Nanded District Central Co-operative Societies Ltd., Nanded – respondent No.4.

02. The petition arises in the backdrop of the following facts.

a) The election to the Committee of respondent No.4 was set in motion. The respondent No.3, a society – member of respondent No.4, resolved to send respondent

No.5 as its delegate to participate in the election process. The name of respondent No.5 thus came to be included in the provisional voters' list prepared under Rule 9 of the Maharashtra Co-operative Societies Election to Committee Rule, 2014 [Rule 2014]. On 25<sup>th</sup> January, 2021, the petitioner lodged an objection with respondent No.2 to the inclusion of the name of respondent No.5 in the voters' list on two counts; (i) the respondent No.3 society was a defaulter (ii) its delegate, Hanumantrao Vyankatrao Patil, respondent No.5, was an inactive member of the said society, as he had not availed loan or services from the said society since 2014. He was, thus, ineligible to be a voter or candidate for the election to the committee of respondent No.4.

b) The respondent No.2 conducted enquiry under Rule 11 of the Rules 2014, and by the impugned order rejected the objection on the ground that relevant material indicating that respondent No.5 was included in the list of members classified as inactive member of respondent

No.3 society was not placed on record.

c) Being aggrieved, the petitioner has invoked the writ jurisdiction of this Court.

03. Heard Mr.D.J. Choudhari, learned Counsel for the petitioner, Mr.R.D. Sanap, learned AGP for respondent No.1/State, Mr. S.K. Kadam, learned Counsel for respondent No.2, Mr.K.J. Suryawanshi, learned Counsel for respondent No.4 and Mr. V.D. Salunke, learned Counsel for respondent No.5.

04. Mr.Choudhari, learned Counsel for the petitioner strenuously submitted that the Returning Officer failed to discharge the solemn duty cast on him under Rule 11 of the Rules, 2014. The objection of the petitioner, which was specific and nested in the provisions of the Act 1961 and the bye-laws of the society, was rejected on an untenable ground that the Secretary of respondent No.3 – society did not appear before the Returning Officer and

the concerned authority had not produced the relevant record. This approach of the Returning Officer, according to learned Counsel for the petitioner, is wholly unsustainable. The Returning Officer is enjoined to discharge the functions in conformity with the provisions of the Act, 1961 and Election Rules 2014. Thus, the objection could not have been rejected on evasive grounds, submitted Mr. Choudhari.

05. Mr.Choudhari invited the attention of the Court to the bye-laws of the society, especially bye-law No.6 (10)(a), which incorporates the qualification for being an active member of the society. Placing reliance on the certificate dated 15.01.2021, whereby it was certified that respondent No.5 had repaid the loan, which he had availed, on 16<sup>th</sup> September, 2014, and since then no loan was advanced to respondent No.5 by respondent No.3 – society. Thus, in the face of such record, the Returning Officer committed a grave error in rejecting the objection and, therefore, it is a fit case to exercise

the writ jurisdiction, urged Mr. Choudhari.

06. In opposition to this, Mr.S.K.Kadam, learned Counsel for the Returning Officer supported the impugned order as there is no material to indicate that respondent No.5 was declared as a non-active member by following the procedure prescribed by the provisions of the Act, 1965, and as envisaged by by-laws.

07. Mr.V.D.Salunke, learned Counsel for respondent No.5, stoutly submitted that the objection of the petitioner that respondent No.5 was an inactive member is unworthy of consideration as the classification as an active or inactive member is not a matter of a mere formality. It entails consequences. Therefore, under section 26 of the Act, there are explicit provisions which prescribe the procedure for classifying a member as a non-active member, with a right of appeal, in case of a dispute over the classification as an active or non-active member. It was further submitted that since the

election program has commenced, after finalization of voters' list, at this juncture, interference may not be legally permissible.

08. Mr. Choudhari joined the issue by canvassing a submission that this Court would be within its right in declaring the respondent No.5 as ineligible to participate in the election process, once it is demonstrated that respondent No.5 is not qualified to vote. The fact that election process has commenced, in such circumstances, according to Mr. Choudhari, does not operate as an impediment.

09. To lend support to aforesaid submission Mr. Choudhari placed a strong reliance on a Division Bench judgment of this Court in the case of Karbhari Maruti Agawan and ors. Vs. State of Maharashtra & Ors., AIR 1994 Bom 304, wherein it was, inter-alia, observed as under :-

"12. A valid list of voters is the basis of a valid election. Though a challenge to the voters' list many times involve questions of facts, if sufficient material

is placed before the High Court prima facie establishing that qualified voters have been excluded and unqualified voters have been included in the voters' list and when the machinery as provided by the Act is available for the enquiry and if such enquiry can be ordered to be completed within shortest possible time so that the elections can take place on or about the scheduled date, this Court would be justified in entertaining challenge to the voters' list."

10. I have given anxious consideration to the rival submissions. At the outset, it may be apposite to note that the Returning Officer on the basis of the statement made on behalf of respondent No.4-Bank found, as a fact, that respondent No.3 society was an active society – member of respondent No.4-Bank. The controversy, thus, revolves around the alleged ineligibility suffered by respondent No.5 on the ground of being a non-active member of respondent No.3 – society.

11. Section 26 of the Act, 1960 incorporates the rights and duties of a member of the co-operative society. Sub-section (2), with which we are primarily concerned, reads as under :-

**"26. Rights and duties of members. - (1) xxxxxxxxxx**

(2) It shall be the duty of every member of a society,

(a) to attend at least one general body meeting within a consecutive period of five years:

Provided that, nothing in this clause shall apply to the member whose absence has been condoned by the general body of the Society;

(b) to utilise minimum level of services at least once in a period of five consecutive years as specified in the by-laws of the society:

Provided that, a member who does not attend at least one meeting of the general body as above and does not utilise minimum level of services at least once in a period of five consecutive years, as specified in the by-laws of such society shall be classified as non-active member:

Provided further that, when a society classifies a member as a non-active member, the society shall, in the prescribed manner communicate such classification, to the concerned member within thirty days from the date of close of the financial year:

Provided also that, a non-active member who does not attend at least one meeting of the general body and does not utilise minimum level of services as specified in the by-laws, in next five years from the date of classification as nonactive member, shall be liable for expulsion under section 35:

Provided also that, a member classified as non-active member shall, on fulfillment of the eligibility criteria as provided in this sub-section be entitled to be re-classified as an active member:

Provided also that, if a question of a member being active or non-active member arises, an appeal shall lie to the Registrar within a period of sixty days from the date of communication of classification:

Provided also that, in any election conducted immediately after the date of commencement of the Maharashtra Co-operative Societies (Amendment) Act, 2013, all the existing members of the society shall be eligible for voting, unless otherwise ineligible to vote."

12. Clause (b) of sub-section (2) enjoins a member to utilize minimum level of services at least once in five consecutive years as specified in the bye-laws of the society. The first proviso provides for classification of the members, who do not attend at least one general body meeting within a consecutive period of five years [under clause (a)] and do not utilize minimum level of services [under clause (b)], as non-active members. The second proviso, in turn, casts an obligation on the society to communicate the member concerned his classification as a non-active member within 30 days from the date of close of the financial year. Fourth proviso envisages re-classification as an active member once the cause of classification is remedied. Under the fifth proviso an appeal lies to the Registrar within a period of 60 days from the date of communication of classification.

13. It is evident that the legislature has taken

care to incorporate checks and balances for classification as a non-active member. The right of appeal is also provided against unjust or wrongful classification. The legislature was alive to the mischief which can be brought about by classification of a member as a non-active member. The provisions of Section 27 of the Act indicate the consequence which the classification as a non-active member entails. Sub-section (1A) of Section 27 of the Act reads as under:-

"(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 upto 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 31<sup>st</sup> March, 2021; and

(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."

[emphasis supplied]

14. From a bare perusal of aforesaid sub-section, it becomes abundantly clear that the member who fails to

utilise services up to the minimum level, as specified in the bye-laws, shall cease to be an active member and shall not be entitled to vote. The classification as an active or non-active member of the society is, thus, impregnated with the potentiality of prejudice to right to vote.

15. In the case at hand, evidently, under the bye-laws No.6(10) also, on which strong reliance was placed by the learned counsel for the petitioner, provisions have been made for classification of member as an inactive member and communication of such classification to the member concerned. There is a reference to the right of appeal under section 26 of the Act,[extracted above] in the said bye-laws.

16. Indisputably, no material was placed before respondent No.2 to indicate that the procedure envisaged by the bye-laws for declaration as a non-active member was followed and there was compliance with the provisions

contained in Section 26 of the Act in the matter of classification as a non-active member and communication thereof. The grievance of the petitioner that the Secretary of respondent No.3-society, on purpose, did not attend the proceedings before the Returning Officer and produce the record, does not advance cause of the petitioner. The said fact could have been brought on record by the petitioner in the same manner in which the certificate that respondent No.5 had not availed loan after the year 2014 was placed on record. In absence of the concrete material to evidence classification as a non-active member, the Returning Officer could not have sustained the objection.

17. In the aforesaid view of the matter, no fault can be found with the impugned order. The prayer to remit the matter back to the Returning Officer, in the context of the stage to which the election process has reached, also does not merit acceptance. The petition, therefore, deserves to be dismissed.

18.       Hence, the following order.

          The petition stands dismissed.

          Rule discharged.

          No costs.

**[ N . J . JAMADAR , J . ]**