

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

18 WRIT PETITION NO. 3349 OF 2021

BALAJI S/O BHAURAO BHAGANAGARE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....

Advocate for Petitioners : Mr. Panditrao S. Anerao
AGP for Respondent Nos. 1 & 4 : Mr. R. D. Sanap
Advocate for Respondent No.2 : Mr. S. K. Kadam
Advocate for Respondent No. 3 : Mr. R. K. Ingole

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CORAM : V. K. JADHAV, J.
DATED : 22ND FEBRUARY, 2021

PER COURT :-

1. By consent of the parties, heard finally at admission stage.

2. By way of this petition, the petitioners are challenging the order dated 03.02.2021 passed by respondent no.2- Election Officer, rejecting the objection raised by the petitioners against deletion of name of petitioner no.1 from the provisional voter list for the election of respondent no.4- Nanded District Central Co-operative Bank Limited (for short, "NDCC Bank") and thereby refused to include name of petitioner no. 1 in the final voter list of the said NDCC Bank.

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3. Learned counsel for the petitioners submits that petitioner no.2 society held a meeting of its managing committee members on 16.01.2020 and passed a resolution recommending name of petitioner no.1 as its delegate. However, in the provisional voter list published on 14.01.2021 by the NDCC Bank, name of petitioner no.1 was disqualified. Petitioners therefore filed objection on 25.01.2021, requesting therein to include name of petitioner no.1 in the final voter list of NDCC Bank as the delegate of petitioner no.2-society. By the impugned order, respondent no.2-Election Officer rejected the objection raised by the petitioners on the ground that petitioner no.2-society, of which petitioner no.1 is the office bearer, is a defaulter of the NDCC Bank.

4. Learned counsel for the petitioners submits that respondent no.4 has issued orders/communication letters dated 23.02.2018 and 25.02.2019 informing thereby that the State Government has announced a scheme for drought areas for the years 2017-2018 and 2018-2019 respectively

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and the village Nandanvan came to be declared as drought zone area. This aspect has not been considered by the respondent authorities while declaring petitioner no.2-society as a defaulter. Learned counsel submits that thus, the order passed by respondent no.2-Election Officer is totally arbitrary in nature and liable to be quashed and set aside.

5. Learned counsel Mr. Kadam appearing for respondent no.2-Election Officer submits that in terms of the provisions of Section 73CA(1)(f)(ii) of the Maharashtra Co-operative Societies Act, 1960 (for short, "Act of 1960") and the Rules, 1961, 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, in column no.2, it has been made clear that the concerned society shall observe the provisions of Section 73CA(1)(i)(f)(ii).

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6. Learned counsel Mr. Kadam further submits that apart from the above, on 17.12.2019, the NDCC bank had also published the proclamation in daily newspaper pointing out therein that the defaulter societies to clear their dues for exercising their rights by sending delegates in the ensuing election of the NDCC Bank. Learned counsel submits that the Assistant Registrar, Co-operative Societies, Taluka Kandhar has submitted his report dated 26.01.2021 stating therein that the petitioner no.2-society is a defaulter and since petitioner no.1 is the office bearer of the said society, he is not eligible for inclusion of his name in the final voter list of the NDCC Bank. Learned counsel submits that respondent no.2-Election Officer has therefore rightly passed the order. There is no substance in the Writ petition. Thus, the Writ Petition is liable to be dismissed.

7. I have also heard learned AGP for respondent nos. 1 and 4 and learned counsel Mr. Ingole for respondent no.3-NDCC Bank. Learned counsel Mr. Ingole, on the basis of the record, submits that petitioner no.2-society is a defaulter

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society and petitioner no.1 is the office bearer of the said society.

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

9. Section 73CA prescribes “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, -

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- (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) ...”

10. Rule 7 and Rule 10 of the Maharashtra State Co-operative Societies (Election to Committee) Rules, 2014 (for short, “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.”

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

12. In the instant case, in terms of the particulars placed before respondent no.2-Election Officer, petitioner no.2-society is a defaulter society and as such, the office bearer of the 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).

13. In view of the above, I find no fault in the impugned order passed by respondent no.2-Election Officer. There is no substance in this Writ Petition. Hence, I proceed to pass the following order:

ORDER

The Writ Petition is hereby dismissed.

(V. K. JADHAV, J.)

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