

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

111 WRIT PETITION NO.3202 OF 2021

RAVINDRA VITTHAL KADUS AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr V D Sapkal Senior Advocate i/by
Mr Markad Dattraya R.

AGP for Respondents State: Mrs P V Diggikar
Advocate for Respondents 2 & 3 : Mr V H Dighe
Advocate for Respondent No.4 : Mr. N. v. Gaware

CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.

DATE : 1st March, 2021.

ORDER:

1. Mr. Sapkal, the learned Senior Advocate submits that final voters list published for election of respondent No.4 Vivid Karyakari Society is illegal. The society nor the election authority considered the amendment to section 27 of the Maharashtra Cooperative Societies Act, 1960. Proviso is added to sub section (1-A) of section 27 of the Act, 1960 wherein applicability of sub section (1-A) of section 27 of the Act, 1960 was exempted in respect of elections of the societies to be conducted on or before 31st March, 2021 and when voters list for conducting election has been finalized prior to the commencement of the Maharashtra Cooperative Societies (Second Amendment) Ordinance, 2020.

2. Mr.Sapkal the learned Senior Advocate submits that in view of the amendment, active as well as non active members would get right to be valid voters to the election of respondent no. 4 society. The society, in ignorance of the amendment, submitted the provisional voters list

excluding the name of the non active members, the same was illegal. Election authority also finalized the said voters list without considering amendment to section 27 of the Act. These non active members would have right to vote. The learned Senior Advocate submits that this court, in its writ jurisdiction can entertain the writ petition and correct the error committed by the respondents and in that case, judgment of the Apex Court in the case **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha Vs. The State of Maharashtra**, reported in AIR 2001 SC 3982 would not apply. Learned counsel, to buttress his submissions, relies on the following judgments.

- i. AIR 2007 SC 347 (Dudhganga Vikas Sewa Sanstha Maryadit Vs. District Collector, Kolhapur)
 - ii. Judgment of this Court in writ petition No.7199 of 2011 dated 23.09.11(Surekha Sanjay Kharade & ors. Vs. The District Deputy Registrar, Cooperative Societies, Ahmednagar.
 - iii. 2009 BCI 536 (Chandrakant Mahadev Patole & ors. Vs. State of Maharashtra and others)
 - iv. Judgment of this Court in Writ Petition No. 3551 of 2015 with connected matters dated 6th may, 2015 (Basawraj Vishwanath Sarne Vs. The State of Maharashtra)
3. Mr. Dighe, the learned Advocate for the Election Authority and Mr.Gaware, the learned Advocate for respondent no.4 submit that the petitioners have not disclosed the particulars of the persons to be included in the voters list. The interested persons are not made parties to the present petition. Those 362 persons whom the petitioners termed as non

active members and their names are not included have not raised any objection to the provisional voters list. The learned counsel further submits that the election programme has already been declared and the nominations are to be accepted from today, 1st March, 2021. The process of election has commenced.

4. The society submitted the provisional voters list. After considering the objection raised to the provisional voters list, the voters list has been finalized. Petitioner Nos. 2 and 3, it appears, did not raise objection to the the provisional voters list. Petitioner No.1 raised objection to the provisional voters list. The said objection is considered. Petitioner no.1 did not raise objection to the non inclusion of 362 members which the petitioners term as non active members and ought to have been included pursuant to the amendment to section 27 of the Act, 1960.

5. After the objections are considered, the voters list has been finalized. The petitioners, for the first time, it appears, in the present writ petition have raised objection of non inclusion of 362 non active members in the valid voters list. Election programme has been declared. Election process has been set into motion.

6. In absence of the petitioners raising objection to the provisional voters list vis a vis non inclusion of 362 persons in the provisional voters list, none of 362 members raising objection of their non inclusion in the voters list, the election process having set in motion and as election programme is declared and that the petitioners will have opportunity to

assail the same in the election dispute/petition as may be permissible and as observed in the case of **Shri Sant Sadguru Janardan Swami (supra)**, we are not inclined to exercise our writ jurisdiction.

7. Writ petition disposed of. No costs.

(SHRIKANT D. KULKARNI, J.)

(S.V.GANGAPURWALA, J.)

JPC