

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

WRIT PETITION NO. 3936 OF 2021

Vividh Karyakari Seva Sahakari Sanstha,
Ambala Tal. Hadgaon Dist. Nanded
Through its authorized person/delegate
Shantabai W/o Sudhakar Pawar,
age 48 years occup. Agri. & Authorized Representative
of petitioner Society R/o Ambala Tal. Hagaon Dist. Nanded
...Petitioner

VERSUS

1. The State of Maharashtra
Through its Secretary,
Co-operation & Textile Department,
Mantralaya, Mumbai – 32
 2. The District Deputy Registrar,
Co-operative Societies, Nanded Dist. Nanded
 3. The Assistant Registrar Co-operative Societies,
Hadgaon Tal. Hadgaon Dist. Nanded
 4. The Maharashtra State,
Co-operative Election Authority,
Central Administrative Building, Shivaji Nagar, Pune
through its Secretary
 5. The District Co-operative Election Officer &
Divisional Joint Registrar, Co-operative Societies,
Latur, 2nd Floor, Central Administrative Building,
Latur Taluka and District Latur
 6. The Nanded District Central Co-op. Bank Ltd.,
Nanded, Head Office near Chhatrapati Shivaji Statue,
Chhatrapati Shivaji Chowk, Nanded
through its Chief Executive Officer.
- ...Respondents

AND
WRIT PETITION NO. 3984 OF 2021

Vividh Karyakari Seva Sahakari Sanstha,
Kaleshwar Tal. Hadgaon Dist. Nanded
Through its authorized person/delegate
Manikrao S/o Sakroji Kadam
age 47 years occup. Agri. & Authorized
Representative of petitioner Society
R/o Kaleshwar Tal. Hagaon Dist. Nanded

...Petitioner

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Nanded, Head Office near Chhatrapati Shivaji Statue,
Chhatrapati Shivaji Chowk, Nanded
through its Chief Executive Officer.

...Respondents

Mr. B.N. Gadegaonkar, Advocate for petitioners in both petitions
Mr. R.D. Sanap, Asstt. Govt. Pleader for Respts. No. 1 to 3/State
Mr. V.H. Dighe, Advocate for Respondents No. 4 & 5
Mr. R.K. Ingole, Advocate for respondent No.6

CORAM : N.J. JAMADAR, J.

Reserved for Orders : 2nd March 2021

Pronounced on : 8th March 2021

J U D G M E N T

As an identical issue arises for consideration in both these petitions in a substantially similar factual backdrop, these petitions are decided by a common judgment.

2. Rule. Rule made returnable forthwith. And, with the consent of the Counsels for the parties, heard finally at the stage of admission.

3. The principal challenge in these petitions is to the rejection of objection as regards the omission of names of the petitioner-societies from the 'provisional voters list' for election to the committee of the respondent No.6, the Nanded District Central Co-operative Bank Ltd., Nanded, by an order dated 3rd February 2021, passed by the District Co-operative Election Officer, the respondent No.5, under Rule 11 of the Maharashtra Co-operative

Societies (Election to Committee) Rules, 2014 (Rules 2014).

4. The facts in Writ Petition No. 3936 of 2021 are as under:

a) The petitioner is an Agricultural Co-operative Multipurpose society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 (The Act, 1960). The petitioner is a Society/Member of the respondent No.6-Bank. The petitioner-Society is entitled to cast vote in the election to the Management Committee of the respondent No.6 Bank. A provisional list of the voters for election to the committee of the respondent No.6 was published. However, the name of the representative of the petitioner society did not find mention therein.

b) It is the case of the petitioner that since the elections to the committee of the petitioner society were due in the year 2016, an Administrator came to be appointed by dissolving the then committee of the society. However, the elections to the committee of the petitioner society could not be held till March 2020. Eventually, post election, the committee of the society came to be constituted by the Notification dated 13th March 2020. However, in view of the pandemic, in the intervening period, the petitioner could not nominate its representative for the election to the committee of respondent No.6. The petitioner- society passed the resolution on

22nd January 2021 and nominated Smt. Shantabai Sudhakar Pawar as its representative for the election to the committee of the respondent No.6.

c) An objection was, thus, lodged with the respondent No.5 - the District Co-operative Election Officer and Divisional Joint Registrar, with a prayer to include the name of petitioner's representative in the voters list. By the impugned order, the respondent No.5 was persuaded to reject the objection on the count that the petitioner-society did not submit the nomination within the stipulated period.

5. In Writ Petition No. 3984 of 2021, Mr. Manikrao Sakroji Kadam came to be nominated as the representative of the petitioner-society by its resolution dated 25th January 2021. It came to be rejected by respondent No.5 by the impugned order dated 3rd February 2021.

6. In the backdrop of aforesaid facts, I have heard Shri Gadegaonkar, learned Counsel for the petitioners, Mr. V.H. Dighe, learned Counsel for respondents No. 4 & 5, Mr. R.K. Ingole, learned Counsel for respondent No.6-Bank and Mr. R.D. Sanap, learned Asstt. Govt. Pleader for the State, at some length.

7. Mr. Gadegaonkar, learned Counsel for the petitioners, strenuously urged that an indefeasible statutory right of petitioners-societies to participate in the election to the committee of respondent No.6-bank is infringed by the impugned orders passed by the respondent No.5. In the facts of the case, according to the learned Counsel for the petitioners, the petitioners-societies cannot be divested of the said right, especially in the backdrop of the prevailing pandemic situation. The circumstances were indisputably beyond the control of the petitioners-societies. During the period stipulated for submitting the names of the representatives, an Administrator was at the helm of affairs of the petitioners-societies. After the committees came to be constituted, the petitioners-societies have passed the resolutions to nominate its representatives. Thus, the impugned orders are wholly unsustainable.

7. In opposition to this, it was urged on behalf of respondents No. 4 & 5 that the action of the respondent No.5 is totally justifiable. The petitioners-societies did not submit the nominations even during the extended period provided therefor. Once, the voters list is finalized, it is impermissible to make inclusion in it, urged the learned Counsel for respondents No. 4 & 5.

8. The following un-controverted facts bear upon the determination:

The initial period for forwarding the nominations of the representatives for the election to the committee of respondent No.6 was from 18th December 2019 to 31st January 2020. A further period was provided from 12th March to 18th March 2020. The provisional voters list was to be published on 20th March 2020. Indisputably, the committee of the petitioners-societies came to be constituted by the Notification dated 13th March 2020. On the count of the situation which prevailed in the intervening period, the provisional voters list was published on 14th January 2021. In Writ Petition No. 3936 of 2021, the objection was lodged on 20th January 2021. In Writ Petition No. 3984/2021, the objection was lodged on 25th January 2021.

9. In the aforesaid factual backdrop, it has to be seen whether the impugned orders warrant any interference. For a legitimate answer, it may be appropriate to note the provisions contained in Rule 10 (2 & 3) and Rule 11 (1 & 3) of the Election Rules, 2014;

" 10. Particulars to be included in the provisional list of voters for the societies having society or

society and individuals as members. -

(1).....

(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 bye-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)

11. Claims and objections to the provisional list of voters and the final list of voters for the societies having society or societies and individuals as members. - (1) When any provisional list of voters is published for inviting claims and objections, any omission or error in respect of name or address or other particulars in the list may be brought to the notice of the District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer in writing by any member of the society concerned who is a voter or any representative authorized to vote on behalf of such society during office hours within ten days from the date of publication of the provisional list of voters.

(2)

(3) The District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer shall, after making such enquiries as deemed necessary in this regard, consider each claim or objection, and give his decision thereon in writing to the persons concerned within ten days from the last

date prescribed for receiving the claims and objections and final voters list should be published within the period of fifteen days from the last date prescribed for receiving the claims and objections. The list as finalized by the District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer after deciding all claims and objection shall be final list of voters.”

9A. Sub-rule (2) of Rule 10 prescribes the period within which the members-societies shall send the names of the representatives duly authorized to vote at the election on behalf of the society. In case of an objection to the provisional voters list, the concerned society or member shall lodge objection within ten days from the date of the publication of the provisional voters list. The District Co-operative Election Officer is enjoined to decide such objections and finalize the voters list under sub-rule (3) of Rule 11.

10. In the light of aforesaid statutory provisions, it is imperative to note that it is not the case that the committees of the petitioners-societies were not in office during the extended period of 12th March to 18th March 2020, provided for sending names of the representatives. Undoubtedly, the Administrator was at the helm of affairs during the initial period of 18th December 2019 to 31st January

2020. It is also not the case that the committees of the petitioners-societies had not had meeting after constitution of the committees. In Writ Petition No. 3936/2021 there is an averment that after the declaration of the result of the elections, the first meeting of the society was held on 20th March 2020 wherein chairman of the society was elected. In Writ Petition No. 3984/2021 also there is an averment that the first meeting of the society after the declaration of the result was held and Mr. Raju Jadhav was elected as chairman of the society, though the date of the first meeting is not mentioned. In this view of the matter, I find it rather difficult to accede to the submission on behalf of the petitioners-societies that the societies were not in a position to nominate its representatives during the stipulated period.

11. The learned Counsel for the petitioners, placed reliance on an Order passed by this Court in Writ Petition No. 3046 of 2021 on 17th February 2021 wherein it was noticed that there was lapse on the part of the Administrator and, thus, the petitioner-society therein cannot be deprived of the right to nominate its representative to vote in the election of the federal society-respondent No.6 herein. In fact, it was directed that a special general body meeting of the society be convened to be presided

over by Administrator of the said society and a resolution be passed therein to nominate the representative of the society.

12. Evidently, the aforesaid order came to be passed in the peculiar facts of the said case. One, it was categorically recorded that the petitioner-society was not at fault and the Administrator was at fault. Two, the election programme was yet not declared.

13. I am afraid to draw an inference, in this case, that there was no lapse on the part of the petitioners-societies. The committee of the society was very much in office during the extended period, provided for nomination of the representatives. In fact, in both the cases, the petitioner-society has passed the resolution nominating its representative after the provisional voters list was notified. Had the resolution been passed even before the provisional voters list was notified, different considerations would have come into play.

14. In this backdrop, no fault can be found with the impugned orders which proceed on the premise that the petitioners-societies have not nominated their representatives within the stipulated period. As the election programme for election to the committee of respondent No.6 has been declared, the process of election has commenced and the period for submitting nomination is

also over, it may not be permissible to interfere otherwise also. Hence the petitions deserve to be dismissed. Thus, the following order.

O R D E R

- I. The petitions stand dismissed.
- II. In the circumstances, there shall be no order as to costs.
- III. Rule discharged.

(N.J. JAMADAR)
JUDGE

Madkar