

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1973 OF 2021

Tatyasaheb Murlidhar Adsul

...Petitioner

versus

The State Co-operative Election Authority
Maharashtra State, Pune and others

...Respondents

.....

Mr. K. J. Suryawanshi, advocate for the petitioner
Mr. V.H. Dighe, advocate for respondent Nos. 1 and 2
Mr. S.P. Deshmukh, A.G.P. for respondent Nos.3 and 4
Mr. D.J. Choudhari, advocate for respondent No. 5
Mr. L. H. Kawale, advocate for respondent No.6
Mr. C.V. Thombre, advocate for respondent Nos. 7 and 8

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CORAM : V. K. JADHAV, J.
DATED: 11th FEBRUARY, 2021

PER COURT :-

1. Being aggrieved by order dated 18.03.2020 passed by the respondent No.2 thereby allowing the objection raised by the respondent No.8 herein, the petitioners have preferred this writ petition.

2. Learned counsel for the petitioner submits that the respondent No.2 has issued notification dated 18.12.2019 calling resolutions of the member societies for nomination of their representatives. Respondent No.2 has given instructions that the representative should not be defaulter as per the provisions of Section 27(10) and Section 73CA (1) (i) (f) of the Maharashtra Co-

operative Societies Act 1960 (for short "Societies Act"). The said resolutions of the representatives were to be submitted on or before 16.01.2020. However, thereafter the elections were postponed and under the interim orders of this court, the process of preparation of voters list was continued.

3. Learned counsel for the petitioner submits that respondent No.4 authority has appointed Administrator on respondent No.7 society. Respondent Nos.6 and 7 did not call special meeting of the society for nominating the representative of the society to participate in the elections of respondent No.5 bank. Learned counsel submits that respondent Nos. 7 and 8 prepared false and bogus documents to show that the special general body meeting of the society was called on 30.01.2020 by issuing notice dated 21.01.2020 and the notice dated 21.1.2020 is signed by respondent No.8 as Chairman of the meeting, though he was not appointed as Chairman of any meeting. Thereafter, the said meeting was conducted. The name of respondent No.8 is nominated as representative of the society to participate in the process of elections of respondent No.5 bank. Respondent No.8 has submitted the alleged resolution dated 30.01.2020 to respondent No.2 for inclusion of name in the voters list of respondent No.5 bank. Respondent No.5 bank has asked respondent No.6 authorized officer about resolution dated 30.01.2020 and the authorized Officer has submitted report in writing to respondent No.5 on 18.2.2020 mentioning that he has not called

and conducted the special general body meeting of the society to nominate the name of representative. The petitioner has submitted application dated 14.2.2020 to respondent No.5 bank contending that no meeting has been conducted to nominate the name of representative in terms of the provisions of Section 76 of the Societies Act and as such, not to include the name of representative on the basis of false resolution. However, respondent No.5 bank has prepared the provisional voters list and it was submitted to respondent No.2 on 20.2.2020 in which the name of respondent No.8 was not included in the said list so prepared by respondent No.2 on 29.2.2020. Thereupon, the respondent No.8 has made application on 9.3.2020 to respondent No.2 requesting to include his name in the voters list alleging therein that the Secretary of the society had called special general meeting on 30.01.2020 and in the said meeting his name has been nominated as representative of respondent No.6 society.

4. Learned counsel for the petitioner submits that respondent No.8 has obtained loan from respondent No.6 society and he is defaulter of the said society. Respondent No.7 Secretary has submitted a list of the defaulter members with respondent No.5 bank. The name of respondent No.8 herein is included in the said defaulter list. Learned counsel submits that in terms of the provisions of section 27(10) and 73 CA (1) (i) (f) of the Societies Act, respondent No.8 herein is not entitled to participate in the elections. Learned

counsel submits that though respondent bank has shown relevant documents to respondent No.2 contending therein that the Administrator of respondent No.6 society has not called and conducted the special general body meeting of the society and further respondent No.8 is defaulter and there is recovery certificate against him, his name cannot be included in the voters list. However, without considering the relevant documents on record respondent No.2, illegally allowed the objection of respondent No.8 by order dated 18.3.2020 to include the name in the voters list.

5. Learned counsel for respondent No.8 submits that respondent No.4 has appointed the Administrator. The Chairperson has called meeting on 30.01.2020 under his signature alongwith the Secretary i.e. respondent No.7. Learned counsel submits that the Chairperson and respondent No. 7 are competent to call meeting of the society for the purpose of nominating the representative of the society. The said meeting was attended by 44 members. By passing resolution in the meeting, unanimous decision was taken to nominate respondent No.8 as representative of the society. However, the administrator, malafide given report stating that he has not signed the notice and proceeding of the meeting.

6. Learned counsel for respondent No.8 submits that respondent No.8 has already cleared the dues of respondent No.7 society. He is not defaulter of respondent No.7 society. Copy of receipt dated

12.9.2017 issued by respondent No.7 society is placed on record. Learned counsel submits that respondent No.2 has rightly considered the objection raised by respondent No.8 and directed to include his name in the voters list. Thus, the order passed by respondent No.2 is legal, proper and correct.

Learned counsel for respondent No.8, in order to substantiate his submissions, placed reliance on the following judgments:-

- i) Shriram Mukundrao Korde vs. State of Maharashtra and others, reported in 2015 (3) Bom.C.R. 129;
- ii) Pundlik Chingalaba Kaje vs. State of Maharashtra and ors. Reported in 2006 (2) ALL MR 684;
- iii) Balaso Tukaram Patil and others vs. Chhatrapati Rajaram Sahakari Sakhar karkhana Ltd. And others, reported in 2015 (7) Bom.C.R. 943;
- iv) M.I.D.C. Prkalpgrast Majur Kamgar Sahakari Sanstha Maryadit vs. Amravati District Labour Co-operative Society's Union and another, reported in 2016 (5) Mh.L.J. 390;

7. I have also heard Mr. Dighe, learned counsel for respondent Nos. 1 and 2, learned A.G.P. for respondent Nos 3 and 4 and Mr. Kawale learned counsel for respondent No.6.

8. I have carefully considered the submissions advanced by learned counsel for the respective parties. With their able assistance,

I have perused the pleadings, grounds taken in the petition, annexures thereto and reply filed by the concerned respondents.

9. Undisputedly, the Administrator was appointed on the respondent society. I find no substance in the allegations that the general body meeting of the society was not validly called and that name of respondent No.8 was not recommended in the general body meeting. It appears that notice dated 21.01.2020 calling special general body meeting is signed by the Secretary and the Chairperson. On perusal of the proceedings, it appears that by majority i.e. by 44 members, unanimously recommended the name of respondent No.8 as delegate of the society.

10. Respondent No.2 has issued notification dated 18.12.2019 calling resolution of the members societies to nominate their representatives. They have been instructed in the said notification that the representative should not be defaulter as per the provisions of Section 27(10) and Section 73CA (1) (i) (f). The provisions of Sections 27 (10) and 73CA (1) (i) (f) of the Societies Act, are relevant for resolving the issue in this matter, which are reproduced herein below:-

“27. Voting powers of members.-

(1) to (9)

(10) *If a member has taken a loan from the society, such member shall, whenever he is a defaulter, as provided in the Explanation to clause (i) of sub-section (1) of Section 73CA have no right to vote in the affairs of the society.*

Provided that, a member shall not be deemed to be a defaulter, if he has discharged his obligation to deliver his marketable produce to the marketing or processing society and the value of such produce is not less than the amount of his dues, even if the actual settlement of his dues, either in whole or in part, takes place at a later stage."

"73-CA. Disqualification of committee and its Members-

(1)

(i) is a defaulter of any society;

Explanation: For the purposes of this clause, the term "defaulter" includes

(a) to (e)

(f) in the case of District Central Co-operative bank or of the State Co-operative Bank, a member, if he,-

(i) is a person who represents a society other than a primary agricultural credit co-operative society on the board of a District Central Co-operative bank or the State Co-operative bank, if the society to whom he represents has committed a default towards the payments of such Bank of a period exceeding ninety days.

(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) is a person who represents a society whose Managing Committee is superseded.”

11. In the instant case, respondent No.8 is defaulter of the society. By communication dated 11.03.2020, copy of the same is marked at Exh. L page 46 of the petition, the Chief Executive Officer of the respondent bank has informed the respondent Election Officer that respondent No.8 herein is defaulter of the society to the tune of Rs.15,984/-. However, respondent No.2 Election Officer has not considered the objection raised and even communication as referred to above. It thus appears that though respondent No.8 is defaulter of the society his name has been included in the voters list. Further the meeting does not get sanction of the administrator and it is doubtful that meeting has been called validly.

12. The ratio laid down in the cases relied upon by learned counsel for respondent No.8, in my view, are not applicable to the facts and circumstances of the present case.

13. In view of the same, the order dated 18.3.2020 passed by respondent No.2 allowing the objection of respondent No.8 is liable to be quashed and set aside. Hence, I proceed to pass the following

order:-

O R D E R

- I) Writ petition is hereby allowed in terms of prayer clauses "B" and "C".
- II) Writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

rlj/