

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10739 OF 2021

Vasant s/o Shankar Bhavsar,
died through L.Rs.
Yogesh Vasant Bhavsar,
Age 47 years, Occ. Agriculture,
R/o. Faizpur, Tq. Yawal, Dist.
Jalgaon.

... **Petitioner.**

VERSUS

1) State of Maharashtra,
Through The Secretary
Co-Operation, Textile and Marketing
Mantralaya, Mumbai.

2) District Co-Operative Election Officer,
@ Divisional Assistant Registrar,
Co-Operative Society, Nashik Division,
Nashik.

3) The Jalgaon District Central Co-Operative
Bank Limited, through its Chief
Executive Officer.

4) Prashant s/o Liladhar Chaudhari,
Age 53 years, Occ. Agriculture,
R/o. Sangvi (Bk) Tq. Yawal, Dist.
Jalgaon.

... **Formal Party**

5) Govind s/o Puna Mahajan,
Age 43 years, Occ. Agriculture,
R/o. Hingona, Tq. Yawal, Dist.
Jalgaon.

... **Formal Party**

6) Rajesh s/o Jayram Patil,
Age 35 years, Occ. Agriculture,
R/o. Nhavi, Tq. Yawal, Dist.
Jalgaon.

... **Formal Party.**

... **Respondents.**

...

Advocate for the Petitioner : Mr. A. K. Tiwari.
A.G.P for the Respondent Nos. 1 & 2 : Mr. Y.G. Gujrathi.
Advocate for Respondent No. 3 : Mr. Vinod Patil.

CORAM : MANGESH S. PATIL, J.
DATE : 18.11.2021.

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. Learned A.G.P waives service for the respondent Nos. 1 and 2. Learned advocate Mr. Patil waives service for the respondent No. 3. At the joint request of the parties the matter is heard finally at the stage of admission.

2. The petitioner is aggrieved by the decision returned by the respondent No. 2 rejecting his objection to the provisional voters list published under Rule 11 of the Maharashtra State Co-Operative Societies (Election to the Committee) Rules, 2014 (hereinafter 'Election Rules') in respect of the elections to the respondent No. 3-Bank under the Maharashtra Co-Operative Societies Act, 1960 (hereinafter 'the Act').

3. The learned advocate Mr. Tiwari for the petitioner submits that the petitioner's father was the member of the respondent No. 3-Bank and was holding some shares. By submitting an application dated 01.01.2016 (Exh. 'C') his father had requested the respondent No. 3-Bank to transfer his shares in the name of the petitioner. Accordingly, an application in the prescribed form for transfer of shares (Exh. 'D') was also tendered. In spite of the fact having been brought to the notice of respondent No. 2, he has refused to entertain the objection. The order, therefore, is illegal and may be quashed and set aside.

4. The learned advocate Mr. Tiwari would further refer to the decision in case of **Amrutdhara Dudh Utpadak Sahakari Sanstha & Anr. Vs. State of Maharashtra & Ors.; 2012(3) ALL M.R. 850** and submits that since the petitioner had tendered the application for membership as is required by the Act and the Rules framed thereunder, since nothing was communicated to

him, by virtue of sub Section 2 of Section 22 he is deemed to be a member of the Society and the respondent No. 2 ought to have considered this aspect as well.

5. The learned A.G.P submits that the respondent No. 2 was expected to hold the enquiry in a summary manner under Rule 8 of the Elections Rules. When there was a factual dispute concerning the membership of the petitioner, the remedy for the petitioner would have been to raise a dispute under Section 91 of the Act.

6. The learned A.G.P would further point out that the respondent No. 2 in the impugned order has specifically noted that formal application for enrollment as a member was filed by the petitioner on 27.07.2021 and requisite fees for transfer of shares was also paid on the same day. Even though the petitioner had indulged in some correspondence with the Bank for transfer of shares in the year 2016, there was no record before him to demonstrate as to when the shares were actually transferred in the name of the petitioner and, therefore, has rightly concluded that in view of the provisions of Section 27(3A) of the Act, he was not entitled to vote for a period of two years from the date of his enrollment as a member.

7. I have carefully considered the rival submissions. Suffice for the purpose to observe that a power vested in the District Co-Operative Election Officer under Rule 8 of the Election Rules is summary one. He has to decide the proceeding in a summary manner and could not have indulged in the complex disputed questions of facts.

8. Suffice for the purpose to rely upon the decision of the Division Bench of this Court in the matter of **Dhondiba Parshuram Kakade Vs. Someshwar Sahakari Sakhar Karkhana Ltd. And Others**; 1979 Maharashtra Law Journal, 311 and the following observations from paragraph No. 43 would be relevant :

“43. It must also be remembered that the scope of the inquiry by the Collector under Rule 6 is not only limited in nature, but is also of an extremely summary nature. Under Rule 4(2), the voters list must reach the Collector by July 15 and copies of the voters list must be displayed by July 20. Under Rule 6(2), the claimant or objector who makes a petition before the Collector must do so by July 31 and under Rule 6(4) the Collector must give his decision on such claim or objection within ten days, namely by August 10. These four dates, namely July 15, July 20, July 31 and August 10 emphasise the summary nature of the inquiry contemplated by Rule 6. There is nothing in this rule from which it can even remotely be inferred that the Collector is authorised or empowered to hold a detailed inquiry as done in the instant case, call for documents to establish eligibility to membership, examine or cross-examine witnesses or otherwise dwell on the question whether a member deserves to be included in the Membership Register or not. The fact that the inquiry under Rule 6, is of a summary nature is also reflected from the fact that against his decision, no appeal has been provided. This emphasises that the inquiry, such as it is, under Rule 6 is not only a very summary inquiry, but also mechanical (though not without responsibility), limited only to the aspects set out in the rule itself and no more.”

True it is that the matter before the Division Bench was pertaining to a case under the Maharashtra Specified Co-Operative Societies (Elections to Committees) Rules, 1971. The provision of Rule 6 of those rules is analogous to Rule 8 of the Election Rules. If this is so, no fault can be found with the observations and the conclusions in the impugned order rejecting the petitioner's objection for want of sufficient material.

9. In the matter of **Amrutdhara Dudh Utpadak Sahakari Sanstha (supra)** in some what similar set of facts, in view of provisions of sub Section 2 of Section 22 of the Act the petitioners therein were found to have acquired the membership of the Society. However, as can be appreciated, there was no dispute regarding filing of application for membership and payment of

necessary fees and its stage. That is not the fact situation in the matter in hand. Here is a serious dispute as to if and when the petitioner had tendered the application and can be said to have acquired the membership.

10. The impugned order specifically mentions on the basis of the record, that the respondent No. 2 had found the requisite application was tendered by the petitioner on 27.07.2021 and even the fees therefor was paid on the same day. Pertinently, these observations and stand of the Bank before the respondent No. 2 has not been specifically disputed/controverted in the petition. There are absolutely no pleading in this regard.

11. In view of such state of affairs, I find no perversity or illegality in the order under challenge. Needless to state that the petitioner would have his own remedies to raise a dispute under Section 91 of the Act.

12. The Writ Petition is dismissed.

13. The Rule is discharged.

(MANGESH S. PATIL, J.)

mkd/-