

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5890 of 2021

Shri.Jalindar Tukaram Kharat ... **Petitioner**

Vs.

1.The State of Maharashtra
2. State Co-operative Election Authority
3. District Co-operative Society Election Officer
4. Satara District Central Co-operative Bank Ltd.
5. Shri.Jaikumar Bhagwanrao Gore
6. Kailasvasi Gorakhnath Panipuravatha Sahakari Sanstha Maryadit, Varkute, Malavadi, Taluka Man, Dist. Satara. ... **Respondents**

AND

WRIT PETITION NO. 5891 of 2021

Jalindar Tukaram Kharat ... **Petitioner**

Vs.

1.The State of Maharashtra
2. State Co-operative Election Authority
3. District Co-operative Society Election Officer
4. Satara District Central Co-operative Bank Ltd.
5. Shri.Jaikumar Bhagwanrao Gore
6. Kailasvasi Gorakhnath Panipuravatha Sahakari Sanstha Maryadit, Varkute, Malavadi, Taluka Man, Dist. Satara. ... **Respondents**

Mr.Anil Anturkar, Senior Advocate i/b. Mr.Amol Gatne, for the Petitioner in WP 5890/2021.

Mr.Anil Anturkar, Senior Advocate i/b. Mr.Sugandh Deshmukh, for the Petitioner in WP 5891/2021.

Mr.Dilip Bodake, for Respondent Nos.2 and 3 in WP 5890/2021 and 5891/2021.

Mr. A. P. Vanarase, AGP for the State in WP 5890/2021.

Ms.Vaishali Nimbalkar, AGP for the State in WP 5891/2021.

Mr.G.S.Godbole i/b. Mr.Aditya P. Shirke and Mr.Shivraj Patne, for Respondent No.4 in WP 5890/2021 and WP 5891/2021.

Mr.Vijay Patil i/b. Mr.Siddharth R. Karpe, for Respondent no.5 in WP 5890/2021.

Mr.Vishwajeet Sawant i/b. Mr.Vishwajeet Mohite with Mr.Dipak Jadhav, for Respondent No.5 in WP 5891/2021.

CORAM : G.S. KULKARNI, J.

RESERVED ON : 27 September 2021

PRONOUNCED ON : 1 October 2021

JUDGMENT:

1. Both these petitions raise common questions of fact and law, hence, are being decided by this common judgment.

2. At the stage of preparation of a provisional voters list for elections to the managing committee of a federal society, whether the federal society has any authority to decide on the legality of the membership of a member nominated/appointed by its member society so as to not include him in the provisional voters list, is the issue which falls for consideration in these petitions. In the present case the federal society is the Satara District Central Co-operative Bank Ltd. (for short '**the bank**')-respondent no.4 in both the petitions.

3. The challenge in these two petitions is to two similar orders both dated 20 September 2021 passed by the 'District Co-operative Society Election Officer and the Divisional Joint Registrar Co-operative Societies', Kolhapur Division, Kolhapur, arrayed as respondent no.3 (for short '**the Election Officer**'), who has held that the non- inclusion/deletion of respondent no.5 in the first petition namely of Shri.Jaikumar Bhagwanrao Gore being a nominee of respondent no.6-Kailasvasi Gorakhnath Panipuravatha Sahakari Sanstha Maryadit, Varkute, Malavadi, Taluka Man, District Satara, and the non-inclusion/deletion of Respondent No.5, in the second writ petition namely of Shri. Ranjeetsinha Hindurao Naik-Nimbalkar, nominee of Shri.Sant Sawatamali Pani Puravatha Sahakari Sanstha Maryadit Varkute, Malavdi, Taluka-Man, District Satara, is an act of the federal society -the bank without jurisdiction. By the impugned order, the Election Officer has upheld the objections, raised by the said nominees of these primary societies against the non-inclusion/deletion of their names from the provisional voters list, as forwarded by the bank and published by the Election Officer and has directed the inclusion of their names in the final voters list.

4. The factual antecedents are required to be noted:

On 6 May 2020 the term of the erstwhile managing committee of the bank came to an end. It needs to be noted that this was the period in

the midst of the global COVID-19 pandemic which had engulfed our country with effect from March,2021. Thus, immediately the process to hold fresh elections could not be commenced and the same was generally extended.

5. The Election Officer by his communication dated 11 February 2021 informed the 'District Co-operative Election Officers', of a programme for preparation of voters list, for election to be held of the District Central Co-operative Banks. Such programme was to commence *inter-alia* on 15 February 2021 namely the date on which the District Election Officer was to call for resolutions of the member societies, nominating their members; the programme was supposed to end with the preparation of the final voters list on 5 April 2021. Respondent no.6 societies in both these petitions, being the member societies of the bank, by their letters dated 18 February 2021 addressed to the Election Officer, forwarded their respective resolutions nominating their members, namely Shri.Jaikumar Bhagwanrao Gore-respondent no.5 in the first petition and Shri.Ranjeetsinha Hindurao Naik-Nimbalkar - respondent no.5 in the second petition (for convenience collectively referred as "**respondent no.5**") for inclusion of their names in the provisional voters list. Along with such letters copies of the society's resolutions and the other relevant documents were enclosed and forwarded to the Election Officer. The election programme, however,

was further deferred due to the pandemic. By a fresh notification dated 13 August 2021 a new programme for preparation of the final voters list was notified by the State Co-operative Election Authority. The new programme as notified is as under:-

Agenda to finalize the Draft Voters List for District Central Co-operative Bank		
1	Forwarding of the Resolutions of representatives by the District Co-operative Election Officer to the Bank	Dt. 17.08.2021
2	Date of presentation of the Draft voters list by the Bank to the District co-operative Election Officer for publication.	Dt. 25.08.2021
3	Date of publication of the Draft Voters list by the District Co-operative Election Officer [By Rule 11(1)]	Dt. 03/09/2021 At 11 a.m.
4	Last date for submission of objections on the Draft Voters List to the District Co-operative Election Officer [By Rule 11(2)]	Dt. 13.09.2021 During office hours
5	Final date to give decision by the District Co-operative Election Officer, on the objections submitted. [Rule 11(3)]	Dt. 22.09.2021
6	Date of publication of the final voters list by the District Co-operative Election Officer [Rule 11(4)]	Dt. 27.09.2021

6. As pleaded in the petition, the petitioner has claimed to be a voter of the bank, who says that prior to the declaration of the above programme by the Election officer, he objected to the inclusion of respondent no.5's name in the provisional voters list, by his letter dated 4 August 2021 (received by the bank on 14 August 2021), on the ground that these respondents were not members of their respective parent societies, hence, their nomination by the said societies, for

inclusion of their names in the voters list itself was illegal. The petitioner supported his case of non-inclusion of respondent no.5 on the basis of certain documents which, according to him, would show that respondent no.5 could not be a member of their respective parent societies *inter-alia* for the reason that the Respondent No 5 did not have any land in the operational area of their respective societies as also that the resolution nominating them for inclusion in the voters list was bogus as also for the reason that they were not members for their society for a period of two years on the cut of date i.e. as on 6 May 2020.

7. On the very same day, the General Manager and the Deputy Manager of the bank prepared an office note for consideration of the Chief Executive Officer of the bank requesting, that they be permitted to forward the petitioner's complaint to the Divisional Development Officer's, of the respective regions of these primary societies of which respondent no 5 were members, seeking information and providing a report to the bank on the issues as raised in the Petitioner's complaint. Such request was granted by the CEO of the bank, however, there is no date below the signature as made by the CEO on the said note.

8. On 18 August 2021, the General Manager and the Deputy Manager prepared a report, on the basis of the feed back they purportedly received from the Divisional Development Officers on the

petitioner's objection, to include names of respondent no.5 in the provisional voters list being prepared, for the ensuing elections of the managing committee of the bank for the period 2021-26. The report refers to the information received by the bank from the Divisional Development Officers who informed that both of these members (respondent no.5) were not the members of their respective societies, and hence, their names could not be included in the provisional voters list as per the provisions of Rule 10 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (for short the "**said Rules**"). The General Manager and the Deputy Manager accordingly sought an approval of the managing committee, not to include the names of respondent no.5 in preparation of the provisional voters list, and to add their names in the list of non eligible representatives of the member societies. Such request was approved by the Chief Executive Officer. By such *ex-parte* procedure adopted by the bank, the names of Respondent no. 5 were sought to be non-included and or omitted from the provisional voters list.

9. On 3 September 2021, a provisional voters list was published by the Election Officer with a note that the last date for receiving objections to the said provisional voters list would be 13 September 2021. Respondent no.5 raised objections to the provisional voters list by their respective applications dated 13 September 2021, contending that they

were appropriately nominated by their respective societies (Respondent No. 6 Societies) and that the bank had no authority under Rule 10 of the said Rules to come to any conclusion that they were not the members of their own society. Such objection of respondent no.5 was also replied by the bank by its letter dated 15 September 2021, by which the bank *inter-alia* reiterated the reasons as to why respondent no.5 was not qualified to be nominated as they were not the members of the respective societies and/or the documents produced by them were bogus. Such reply, however conspicuously did not refer to any complaint as made by the petitioner, on the basis of which such *ex-parte* inquiry was undertaken as also information obtained by the bank from the Divisional Development Officers. Also in the documents as placed for consideration of the Election Officer in support of such opposition, the bank did not submit the said report dated 18 August 2021 of the General Manager and the Deputy Manager, on the basis of which the bank had decided that respondent no.5 could not claim membership of their respective societies. By a detailed impugned order dated 20 September 2021, the Election Officer has upheld the objections raised by respondent no.5. Considering the rival contentions, the Election Officer has held that the respective societies of respondent no.5 had passed resolutions nominating respondent no.5 for their respective inclusion in the provisional voters list. He observed that despite such nomination,

the bank had undertaken an exercise to delete the names of respondent no.5 from the provisional voters list which according to him was without jurisdiction. He also held that even he would not have such jurisdiction in the capacity of an Election Officer to adjudicate on issues of membership *inter-se* between respondent no.5 and their respective societies. Accordingly, the Election Officer accepting the objections as raised by respondent no.5 to the omission and/or non-inclusion of their names from the provisional voters list, by the impugned order directed that the names of respondent no.5 be included in the final voters list, which is being challenged by the petitioner in these petitions.

10. On behalf of respondent nos.2 and 3 namely the State Co-operative Election Authority and the District Co-operative Society Election Officer reply affidavits are filed in both the petitions. Respondent no.3 has stated that the bank had no authority, not to include the name of any delegates / representatives of the member societies of the bank, on a pretext that such authorised representative were not the members of the parent society. It is stated that the decision of the bank was not in consonance with the Rules. It is stated that Rule 9(1) of the Rules provided that a provisional list of voters should be prepared by every society in the year in which the elections of such society were due to be held, and as per Rule 9 of the Rules the bank had no authority to delete the names of respondent no.5.

11. Also on behalf of respondent no.5 a reply affidavit has been filed in the first writ petition, supporting the impugned order. Respondent no. 5 has denied the documents being referred by the bank to put up a case against respondent no.5 to allege that respondent no.5 was not the member of his parent society. It is contended that at no point of time, the alleged complaint of the petitioner dated 4 August 2021 or the documents in that regard were placed before the Election Officer. Respondent No. 5 says that the case of the petitioner as asserted in the petition was wholly concocted and which was also not a case before the Election Officer. It is contended that the bank could not have exercised any *suo motu* jurisdiction to delete respondent no.5's name from the provisional voters list nor the letter dated 16 February 2021 of the Election Officer calling upon the Chief Executive Officer of the bank to undertake preparation of provisional voters list would confer any such jurisdiction. It is contended that such decision of the bank was patently illegal and contrary to the provisions of Rule 8 of the said Rules. It is further contended that sub-section (7) of Section 27 of the Maharashtra Co-operative Societies Act, 1960 (for short, "**the Act**") provided that in case of a federal society, the voting rights of individual members thereof shall be such as may be regulated by the rules made under the Act and by the bye-laws of the society. It is next contended that the decision of respondent no.4-bank to delete his name has been rightly set aside by

the Election Officer on the ground that the bank had no jurisdiction to delete the name of respondent no.5 as seen from the reading of Rules 8 to 11 read with Section 27 of the Act. According to respondent no.5 such jurisdiction also cannot be presumed by the bank under the said provisions. It is contended that the conduct of the petitioner and the officials of the bank were suspicious and an inquiry was required to be initiated for false and fabricated documents being annexed to the petition. It is accordingly, contended that the writ petitions be dismissed.

12. Mr. Anturkar, learned Senior Counsel appearing for the petitioner in assailing the impugned order passed by the Election officer would submit that the Election Officer has patently erred in law in overlooking the provisions of Rule 9, 10 and 11 of the Rules alongwith the provisions of Section 27 of the Act, as according to him a cumulative reading of these provisions clearly indicate that the bank would not merely be acting as a post office to consider nominations as made by its member societies, so as to include members of such societies who are not eligible to be nominated for inclusion in the provisional voters list. According to him, such provisions obligate the bank to undertake such inquiry and weed out the member which are ineligible.

13. Mr. Anturkar submits that it was incumbent under the provisions of the said rules for the bank to undertake necessary scrutiny as to

whether a person who has been nominated by the member society for inclusion in the provisional voters list is an eligible person. It is his contention that such exercise is implicit in Rule 10(2) of the said Rules.

14. Mr. Anturkar has submitted that the material on record which was revealed from the inquiry undertaken by it in pursuance of the complaint of the petitioner, was sufficient to indicate that respondent no.5 were not the members of their respective parent societies. It is his submission that if such material was to the knowledge of the bank, it could not have discarded such material to nonetheless include respondent no.5 in the provisional list of the voters. In support of his submission, Mr.Anturkar has placed reliance on the decision of the Division Bench of this Court in **Suresh Ambadasrao Varpudkar vs. District Co-operative Election Officer @ Divisional Joint Registrar, Aurangabad.**¹ to contend that the election officer did not have any jurisdiction to pass the impugned order.

15. Mr.Godbole, learned Counsel for the bank has supported the contentions as urged on behalf of the petitioners. He has drawn the Court's attention to various documents on record to contend that the documents which were available with the bank would show that respondent no.5 were not the members of their parent societies. It is

¹ Writ Petition No. 3454 OF 2015, decided on 27/3/2015

submitted that even assuming that they were the members, they had not completed statutory period of being members for a period of two years prior to the cut off date. It is his submission that such material could not have been discarded by the bank and the bank could not have acted as a mere spectator, so as to place respondent no.5 in the provisional voters list. It is also his submission that Rules 9, 10 and 11 of the Rules certainly would cast an obligation on the bank to verify that an appropriate person is included in the voters list as nominated by the member society. It is his submission that the bank rightly disbelieved the resolution passed by the parent society of respondent no.5 in nominating respondent no.5 to be included in the provisional voters list, in exercise of such powers of scrutiny/ verification. Mr.Godbole submits that there was abundant material as pointed out from the audit report of the societies as also from the resolutions of these societies to conclude that respondent no.5 were not lawful members of their respective societies. It is submitted that if the impugned order is upheld, the same would nullify Section 27 of the Act as also it would be contrary to the spirit of Rules 9 to 11 of the said Rules. It is also his submission that in view of the material before the Court, the Court can mould the relief and direct an inquiry to be undertaken by the Registrar under Section 11 of the Act as there was sufficient reason to indicate from the documents on record that neither of them (respondent no.5)

were having anything to do within the jurisdiction of their respective parent societies, when the societies were lift irrigation societies. Mr.Godbole would, hence, submit that the petitions deserve to be allowed.

16. Per contra, Mr.Patil learned counsel for respondent no.5 in the first petition and Mr.Sawant, learned senior counsel for respondent no.5 in the second petition in supporting the impugned order at the outset would submit that the petitioner has no locus standi to maintain these petitions. It is also submitted that the petitioner has not approached this Court with clean hands as the documents which are annexed to the petition which were never before the Election Officer, when he passed the impugned order. It is their submission that the petitions deserved to be dismissed on this ground alone. It is next submitted that the bank did not have any jurisdiction to decide a question of their clients' membership of their parent societies. It is submitted that the provisions of the Election Rules can never be employed to undertake any such inquiry much less the provisions of Rules 9 to 11. It is submitted that the election officer has rightly held that such action on behalf of the bank being wholly without jurisdiction. According to them, in any case, such an action on the part of the bank was unilateral and *ex-parte* to their clients that too on the basis of false material which was never put to their clients before a decision was taken by the bank to delete the

names of their clients from the provisional list. It is their submission that valid resolutions passed by their parent societies, nominating their clients as the representatives of such societies for including their names in the provisional voters list could not have been nullified, purportedly under the garb of any verification, scrutiny or inquiry by the bank. It is submitted that such action has rendered ineffective not only the resolution passed by their parent societies nominating their members, but also has taken away the valuable right of their clients to represent their own society when validly nominated. It is their submission that such action as resorted by the bank was politically motivated for the reasons that the bank intention was to keep away their clients from the ensuing elections. It is also their submission that the entire story in the petitions is concocted. As also, the so called complaint of the petitioner dated 4th August 2021 was born only for the purposes of the present proceedings and which was never the record before the election officer. It is their submission that the petitioner's alleged complaint dated 4 August 2021, on the basis of which an *ex-parte* inquiry was conducted by the bank and the documents of alleged report dated 18 August 2021, are manufactured only for the purpose of the present proceedings. It is submitted that the illegality of the procedure adopted by the bank to remove/omit their clients name was writ large, inasmuch as, no notice was issued to their clients nor to their respective societies, before such

action could be taken. According to them, it was a dubious action on the part of the bank to omit the names of their clients from the provisional voters list. It is their contention that in these circumstances their clients rightly agitated the issue of inclusion of their names before the Election Officer, after publication of the provisional voters list and such objection has been rightly and lawfully accepted and upheld by the Election officer by the impugned order. It is next submitted that the bank had no authority to take any such action which would deny representation to the parent societies of their clients. It is submitted that the whole intention of the bank was to usurp the powers of the election officer, so that their clients are not included in the voters list. It is submitted that the bank could not have undertaken any exercise of this nature, which the election officer himself could not have undertaken. It is thus submitted that the bank had resorted to a patent illegality and had acted in breach of the principles of natural justice, as the bank had adopted the role of prosecutor as also of an adjudicator in not including the names of their clients. According to them, in any case the inquiry undertaken by the bank was a bogus inquiry. It is submitted that also the petitioner is a sham and bogus person who has been put up at the behest of the bank. Relying on the decision of the Division Bench of this Court in **“Shriram Ganpatrao Yawale Vs. Resident Deputy Collector, Amravati & Ors”**², it is submitted that that right to vote is to be

construed in the light of the provisions of Section 27(3) of the Act and the parent society is entitled to appoint one of its members to vote on its behalf, and that there was nothing in the language of Section 27(3) of the Act to hold that a member who is not eligible for voting in the affairs of the primary society, cannot be held as representative of the federal society. In supporting their other submissions Mr. Patil and Mr. Sawant have placed reliance on the decisions in (i) **Eknath Ashiram Alekar v/s. State of Maharashtra & others³**; (ii) **Akkatai Shamagonda Patil v/s. District Election Officer⁴**; and (iii) **Shriram Ganpatrao Yewle v/s. Dept. Collector and Ors.⁵**

17. Mr.Dilip Bodke, learned Counsel appearing for the State Co-operative Election Authority and the District Co-operative Society Election Officer (respondent nos.2 and 3 respectively) in supporting the impugned orders has referred to the reply affidavit which has already referred in the aforesaid paragraphs. It is his submission that the petitions deserve to be dismissed as the election officer has appropriately and in accordance with law passed the impugned orders.

Reasons and conclusion

18. On the above backdrop, it would be required to be examined 'whether the bank had any authority under the provisions of Rules 9 to

3 1989 (3) BCR 165

4 Writ Petition No.9798 of 2015 decided on 30/10/20215

5 2007 (Suppl 1) BCR 832

11 read with Section 27 of the Act', not to include the names of respondent No. 5 in the provisional voters list.

19. To appreciate the issues, at the outset the relevant statutory provisions are required to be noted which reads thus:-

"Provisions under the Act

Section 2(a-1) "active member" means a member who participates in the affairs of the society and utilises the minimum level of services or product of that society as may be specified in the bye-law.

27. Voting powers of members. - [(1) Save as otherwise provided in sub-section (2) to (7), both inclusive, no member of any society shall have more than one vote in its affairs; and every right to vote shall be exercised personally and not by proxy:

Provided that, in the case of an equality of votes the Chairman shall have a casting vote;]

[(1A) Notwithstanding anything contained in sub-section (1), an active member who subsequently fails to participate in the affairs of the society and to use the services upto the minimum level as specified, from time to time, in the by-laws, shall cease to be an active member and shall not be entitled to vote.]

(2) Where a share of a society is held jointly by more than one person, [the person whose name stands first in the share certificate, if present, shall have the right to vote. But in his absence the person whose name stands second, and in the absence of both, the person whose name stands next, and likewise, in the absence of the preceding persons the person whose name is next on the share certificate, who is present and who is not a minor, shall have the right to vote.]

[(3) A society which has invested any part of its funds in the shares of any federal society, may appoint one of its [active] members to vote on its behalf in the affairs of that federal society; and accordingly such member shall have the right to vote on behalf of the society:

Provided that, any new member society of a federal society shall be eligible to vote in the affairs of that federal society only after the completion of the period of three years from the date of its investing any part of its fund in the shares of such federal society:

[* * *]

(3A) An individual member of a society shall not be eligible for voting in the affairs of that society for a period of two years from the date of his enrollment as a member of such society.]:

[Provided that, nothing in this sub-section shall apply in respect of a co-operative housing society and a co-operative premises society.]

(4) A company or any other body corporate constituted under any law for the time being in force which has invested any part of its funds in the shares of a society may appoint any one of its directors or officers to vote on its behalf in the affairs of such society; and accordingly such director or officer shall have the right to vote on behalf of the company or body corporate.

(5) Where a firm has invested any part of its funds in the shares of a society, any one of its partners [appointed by the firm] shall be entitled to vote in the affairs of the society on behalf of the firm.

(6) A local authority or public trust which has invested any part of its funds in the shares of a society, may appoint any of its members or trustees, to vote on its behalf in the affairs of that society; and accordingly such persons shall have the right to vote on behalf of the local authority or the public trust, as the case may be.

(7) In the case of a federal society, the voting rights of individual members thereof shall be such as may be regulated by the rules made under this Act and by the bye-laws of the society.

(8) No nominal [* *] [* *] member shall have the right to vote [and no such member shall be eligible to be a member of a committee or for appointment as a representative of the society on any other society].

[(9) No nominee of the Government or of any financing bank on the committee of any society shall be entitled to vote at any election of officers of such committee such as, the President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or any other officer by whatsoever designation called, who holds the office by virtue of his election to that office.]

[(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 subsection (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.

(11) The agricultural credit society may issue suitable orders for the purpose of carrying out the provisions of sub-section (10).]

Provisions Under the Rules

Rule 9:- Provisional list of voters for the societies having society or society and individuals as members

(1) A provisional list of voters shall be prepared by every society in the year in which the elections of such society are due to be held. The active members who have completed minimum two years as members from the date of their enrollment [up to the date of expiry of terms of existing managing committee] and in case of society being a active member who has completed minimum three years from the date of enrollment [to], the date of expiry of period of existing managing committee; shall be included in the provisional list as laid down in section 27. If different constituencies are provided in the bye-laws, the names of voters shall be arranged consistency-wise as laid down in the bye-laws.

(2) The period of three years provided in sub-section (3) of section 27 of the Act is to be counted from the date of enrollment of member to the date when election of the managing committee of the society becomes due;

Provided that, in case of societies where the elections could not be held before the expiry of the term of the committee due to unforeseen conditions or any other reason, provisional list of the voter shall be prepared on the basis of the date fixed by the SCEA;

Provided further that, provisional list of voters of the society having its first elections due after term of expiry of the provisional committee under section 73(1A)(a) shall comprise of all the members as on the date of election when due:

Provided also that, the provisional list of the voters of the society on which an authorized officer is appointed under section 77A or an administrator is appointed under section 78A shall be prepared on the basis of the date fixed by the SCEA.

(3) Four copies of the authenticated provisional lists of voters shall be delivered in print as well as preferably in digital form by the committee of the society to the District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer, or as directed by the SCEA one hundred and twenty days before the date of expiry of the term of committee. Copies of such lists be displayed on the notice board of the society. The District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer shall, within ten days from its receipt, call for inviting claims and objections from the members of the society.

(4) If any committee fails to deliver copies of the provisional list of voters to the election officer before the due date, the District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer shall himself or through any person authorized by him in this

behalf, prepare such provisional list of voters and the expenditure incurred therefor shall be recovered from the committee responsible therefor, as arrears of land revenue.

(5) In the event of the District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer taking action under the last preceding sub-rule, he shall also cause copies of the provisional list of voters to be displayed on his notice board and on the notice board of the District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer and of the society within 10 days from the date of receipt of such list from the society for inviting claims and objections from the members of the society;

Provided that, such list may be published on the official website of SCEA and the Co-operation Department.

Rule 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 voter 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 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 Co-operative 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 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, the list shall contain the name of the affiliated societies, their registration numbers and addresses [and the name of representative if any].

(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 of making nominations.

Rule 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 of 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) Any member of the society concerned making a claim or raising objection shall do so by a separate petition, which shall be presented to the District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer during office hours, before the last date published for inviting claims and objections. Such claims or objections shall be preferred in writing and state the grounds on which the claim is based or the objection is raised, as the case may be.

(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.

(4) The copies of the final list of voters shall be displayed on the notice board of the District Co-operative Election Officer and also on the notice board of the society at least ten days before the declaration of the election programme and in no case later than fifteen days from the finalization of claims and objections. The District Co-operative Election Officer may also cause it to be published on the official website of the SCEA, if any.

(5) If any change in the final voters list in accordance with sub-rule (4) of rule 10 is required, the District Co-operative Election Officer or the person authorized by him, after making such inquiry as he deems fit, make necessary changes in the final voter list.”

20. It is thus seen that Section 27 provides for voting powers of members. Sub-section (1A) of Section 27 provides that notwithstanding anything contained in sub section (1), if an active member subsequently fails to participate in the office of the society and to use the services up to the minimum level as specified, from time to time, in the by-laws, shall cease to be an active member and shall not be entitled to vote.

21. It needs to be noted that by Maharashtra Act no 30 of 2020 the following proviso came to be inserted below sub-section (1A) :

“Provided that, the provisions of this sub-section shall not be applicable ,-

(a) in respect of elections of societies to be conducted on or before the 31st March 2021; and

(b) where voters list for conducting the elections has been finalized prior to the commencement of the Maharashtra Co-operative Societies (Fourth Amendment) Act,2020”

Thereafter by Maharashtra Act No. 11 of 2021 the above proviso as inserted by the 2020 amendment came to be deleted and was substituted by the following proviso :-

“Provided that, the provision of this sub-section shall not be applicable in respect of elections of societies to be conducted on or before the 31st March 2022.”

By virtue of the amendments to sub-section (1A) of section 27 the stipulation that an 'active member' would cease to be an active member, so as to make him disentitled to vote in the circumstances as provided in subsection (1A), were initially not to be applied, in respect of elections firstly to be conducted on or before 31 March 2021 (later on deleted) and secondly by virtue of the Second Amendment (supra) in respect of elections of society to be conducted on or before 31 March 2022.

22. Sub-section (3) of Section 27 which is of relevance provides that the society which has invested any part of its funds in the shares of any federal society, may appoint one of its active members to vote on its

behalf in the affairs of that federal society and accordingly such member shall have the right to vote on behalf of the society. The word 'active as appearing in the said sub-section was incorporated by an Amendment Act 16 of 2013 with effect from 14 February 2013. The proviso below sub-section (3) ordains that any new member society of a federal society shall be eligible to vote in the affairs of the federal society only after the completion of the period of 3 years from the date of its investing any part of its funds in the shares of such federal society. Sub-section (3A) provides that an individual member of the society shall not be eligible for voting in the affairs of that society for a period of 2 years from the date of enrollment as a member of such society. Proviso below sub-section (3A) ordains that nothing in this sub-section shall apply in respect of a co-operative housing society and a co-operative premises society.

23. Thus, in the context of the present proceedings the relevant provision is sub-section (3) of Section 27 which concerns a society which has invested any part of its funds in the shares of any federal society, who may appoint one of its active members to vote on its behalf in the affairs of the federal society, as in the present case on such appointment being made by the member society, the member so appointed shall have the right to vote on behalf of the society. In the present case respondent No. 5 falls within sub-section (3) as respondent No. 5 was nominated by

his society which is a member society of the bank to participate in the elections of the federal society. There is an apparent distinction between the provisions of sub-section (3) and provisions of sub-section (3A) inasmuch as sub-section (3) clearly provides for '*participation of one society which has invested funds in the shares of a federal society to vote on behalf of such society in the affairs of the federal society*'; whereas subsection (3A) provides that '*an individual member of a society shall not be eligible for voting in the affairs of the society of which he is a member, for a period of 2 years from the date of his enrollment as a member of such society*'; Considering the implications of sub-section (3) and (3A) of Section 27 of the Act and its applicability to the facts of the present case, there does not appear to be any role attributed under Section 27 to the federal society to undertake any scrutiny and/or verification on the decision of its member society in appointing its member as provided for in sub-section (3) to vote in the affairs of the federal society namely the bank in the present case. To read into such provision, any role of the federal society to scrutinize or verify or sit in appeal over any decision of the member society would amount to reading something in the provision which the legislature itself has not provided for. It is therefore difficult to accept Mr.Anturkar's and Mr.Godbole's submission that Section 27 recognizes a role of the federal society to re-verify the appointment / nomination made by a member

society in exercising its right to vote in the affairs of a federal society. Also per se sub-section (3) of Section 27 does not provide for any requirement of a minimum two years of membership as on the cut of date. Thus reading such embargo into the said provision would amount to making an addition not intended by the legislature. In any event substantive provisions of law cannot be controlled by any executive instruction or any subordinate legislation.

24. Now coming to the provisions of the Rules. Rule 9 provides for preparation of provisional list of voters for the societies having society or societies and individuals as members. Rule 9 provides that a provisional list of voters should be prepared by every society in the year in which the elections of such society are due to be held. It provides that the active members who have completed minimum two years as members from the date of their enrollment up to the date of expiry of the term of the existing managing committee, and in case of society being a active member who has completed minimum three years from the date of enrollment to the date of expiry of period of the existing managing committee, shall be included in the provisional list as laid down in section 27 of the Act. Sub-rule (3) of Rule 9 provides that four copies of the authenticated provisional lists of voters should be delivered in print as well as preferably in digital form by the committee of the society interalia to the District Co-operative Election Officer and copies of such

lists be displayed on the notice board of the society. The Election Officer thereafter, within ten days from receipt of such lists, shall invite claims and objections from the members of the society.

25. Rule 10 provides for particulars to be included in the provisional list of voters for the societies having societies or society and individuals as members. On behalf of the petitioners submissions are made on the provisions of sub-rule (2) of Rule 10, hence, this sub-rule is required to be discussed. Sub-rule (2) *interalia* provides that where a society or firm is the member of Society, the District Co-operative Election Officer shall publish a date for calling the name of the representative, 150 days prior to the date of expiry of the term of the office of the Committee, and such society shall send the name of the representative duly authorized to vote at the election on behalf of the society or firm, so as to reach the office of the District Co-operative Election Officer or other officers as specified, at least 120 days prior to the date of expiry of term of office of the Committee. It further provides that the representative authorized by the member society shall be an active member of the member society. Sub-rule (3) of Rule 10 provides that 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, where the representative is so authorized. It is provided that 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 the other named officer. On a cumulative reading of sub-rule (2) and (3) of Rule 10 it is quite apparent that it is an obligation of the society to forward directly to the election officer the names of its members who would represent the society to be included in the draft voters list. In fact sub-rule (4) of Rule 10 keeps an option open to the society which has communicated the name of its representative to change the name of its representative in the circumstances as specified therein. It is thus more than clear from a reading of Rule 10 along with its sub-rules that there is no role whatsoever of the federal society like the bank to have any scrutiny of the nominations as made by its member societies for inclusion of their nominees in the provisional voters list. The wordings in the penultimate and the last line of the sub-rule (2) when it says that the '*representative authorised by the member society shall be an active member of the member society*' cannot be read to be of a consequence which would give any foothold to the federal society to embark on an enquiry, or undertake a verification or scrutiny, to find out whether the person so nominated is an active member of his parent society. To read any such enquiry by the federal society, as urged on behalf of the petitioners would run contrary to the whole mechanism as provided for in Rule 10,

apart from doing violence to the plain language and purport of the said Rule.

26. Moreover a combined effect of Rule 9 and Rule 10 brings about an intriguing position on the fairness of the process to include members in the provisional voters list. At the outset it can be seen from the very title of the rule that it provides for 'provisional list of voters for the societies having society or society and individuals as members.' The rule hence would be required to be read in the application not only to a society as a member but also to an individual member when read carefully. On one hand Rule 9(1) provides for provisional voters list to be prepared by every society in the year in which elections of such society are due to be held. In saying so, it further provides that the active members who have completed minimum two years as members from the date of their enrollment, upto the date of expiry of the term of the existing managing committee; and in case of society being an active member who has completed minimum three years from the date of, to the date of expiry of the period of the existing managing committee; shall be included in the provisional list as laid down in Section 27. Sub-rule (3) provides that copies of the authenticated provisional lists of voters shall be delivered to the District Election Officer one hundred twenty days before the expiry of the term of the committee. Thus, what Rule 9 provides is what

a society in the normal course would be doing in a year in which elections of such society are due to be held.

27. On the other hand, Rule 10 however makes a departure from what Rule 9 provides inasmuch as Rule 10(2) casts an obligation on the member societies of a society. It provides that where a society or a firm is the member of society, the District 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 the office of the committee. It provides that such society shall send the name of the representative duly authorised to vote at the election on behalf of the society or firm, so as to reach it to the office of the said election officer at least one hundred and twenty days prior to the date of expiry of the term of office of the committee. It also provides that the representative authorised by the member society shall be an active member of the society. It is vital to note as to what is provided for in sub-rule (3) which provides that while communicating the name of the representative to the society, the affiliated society shall enclose a copy of the resolution of the annual general meeting of the society or its committee where the representative is so authorised. It further casts an obligation on the society when the sub-rule provides that “the society includes in the list of voters the names of all such representatives as have been communicated to it before the date fixed for publication of provisional

list of voters, by the election officer”. Further by virtue of sub-rule (4) the society is permitted to change the name of its representative in the circumstances as provided. A reading of Rule 10 depicts the vital mechanism and the process by which a member society would participate and gain representation in the election by directly forwarding to the election officer the names of the representative being authorised by such society alongwith the resolutions of the society. Thus on a harmonious reading of Rules 9 and 10, there is hardly any scope to accept a proposition that the federal society, namely the bank in the present case, can at all interfere in the decision taken by the member society by its resolution to nominate or authorise a particular member to be included in the voters list.

28. In so far as Rule 11 is concerned, it provides for 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. Sub-rule (1) of Rule 11 provides that when any provisional list of voters is published for inviting claims and objections, any omission or error in respect of name or address of other particulars in the list may be brought to the notice of the District Co-operative Election Officer or other named 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 within ten days from the date of publication of the provisional

list of voters. Sub-rule (2) of Rule 11 confers authority on the Election Officer that 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 to be published within the period of 15 days from the last date prescribed for receiving the claims and objections.

29. It is such action as taken under Rule 11 is the subject matter of the present proceedings, as the objection which was raised by respondent no.5 before the Election Officer, has been decided by him by the impugned order. Thus, even in regard to the applicability of Rule 11, it is the sole jurisdiction of the Election Officer. A plain reading of sub-rule (1) and (2) of Rule 11 also would not indicate any role of scrutiny or enquiry vested in a federal society when the Election officer is exercising jurisdiction to decide any claim, objection or an omission from the provisional voters list. In any event, this is a case where the bank contrary to the provisions of Rule 9 and 10 had taken upon itself to undertake a scrutiny of the nomination of respondent no. 5 as forwarded by their respective societies and had deleted and or not included respondent no.5 in the provisional voters list.

30. Having analysed and discussed the effect and operation of Section 27 read with Rule 9, 10 and 11 of the said Rules, it is quite certain to me, that once the member society of a federal society has nominated its member to be included in the provisional voters list, the federal society would not have any authority or jurisdiction under the said provisions to omit and/or not include the nomination and/or appointment of a member made by a member society. In the absence of any such authority in law, it is difficult to ascertain, as to how the bank assumed jurisdiction to delete the inclusion of respondent no.5. It is clear that the bank assumed unto itself such jurisdiction, although not conferred by law, rendering its action of non-inclusion of respondent no.5 in the provisional voters list, being patently illegal. Accordingly, it has been rightly interfered by the Election Officer in passing the impugned order and by directing inclusion of respondent no.5 in the final voters list. In my opinion, there can be no other interpretation of the cumulative reading of Section 27 and Rules 9, 10 and 11 of the said Rules. For these reasons, it is difficult to accept any of the submissions as urged by Mr.Anturkar and Mr.Godbole as noted above, in their attempt to assail the impugned order passed by the Election Officer.

31. Now coming to the decision of the Division Bench of this Court in **Suresh Ambadasrao Varpudkar** (supra) on which reliance is placed by Mr. Anturkar, in my opinion such reliance is not well founded. In the

said case the District Co-operative Election Officer had directed deletion of the name of the petitioner from the final list of the voters, sustaining objection as raised by respondent nos.3 and 4 in the said case on the ground that the place of residence of the petitioner fell outside the area of operation of the society. It is in this context, the Division Bench had considered Rule 11 of the said Rule and the law in that regard as laid down in “**Dhondiba Parshuram Lokade and others Vs. Someshwar Sahakari Sakhar karkhana Ltd and others**”⁶, “**Rajan Dinkarrao Pharate and ors. Vs. State of Maharashtra and ors.**”⁷, as also in “**Karbhari Maruti Agawan and ors. vs. State of Maharashtra and ors.**”⁸ to hold that the election officer would not have any jurisdiction to embark on an inquiry as to whether the nominee delegate of a co-operative society was the resident of a particular area or not and /or whether the said village fell within the area of operation of primary society or not as such issue fell outside the jurisdiction of the District Co-operative Election Officer. It was held that these are matters on which the inquiry can be undertaken under Section 11 of the Act which conferred powers on the Registrar.

32. On the other hand Mr. Patil’s reliance on the decision of the Division Bench of this Court in **Eknath Ashiram Alekar & others versus State of Maharashtra & others** (supra) is of relevance. In such decision considering similar provisions although under the Maharashtra Specified

6 1979(0) BCI 43

7 1997(Supp.) Bom.C.R.203

8 1994 Mh.L.J. 1527

Co-operative Societies (Election to Committees) Rules, 1971 namely Rules 4 and 6 of such Rules, the Division Bench observed that the question of challenge to membership of the persons, who are already included in the list of voters, is not at all covered by the provisions of Sub-Rule (5) or Sub-Rule (6) of Rule 6 of the 1971 Rules. The question before the Court was in regard to the inclusion of names of 3,387 persons and the list of voters which was being objected on various grounds including a ground that they were not operating in the area of the sugar factory in question.

33. In so far as Mr.Patil's reliance on the decision of **Ek Nath Ashiram Alekar** (supra) is concerned, the Court in a similar context referred to the decision in **Dhondiba Parshuram Lakade and others v. Someshwar Sahakari Sakhar Karkhana Ltd. and others**⁹ wherein while considering the provisions of the 1971 rules, regarding the election to specified co operative society viz. the sugar factory, the Court held that the Collector cannot under Rule 6(1) embark on an enquiry into the entitlement to membership of persons shown in register of members. The Court held that it cannot be said that the question of membership of the persons shown in the register of the sugar factory was open to challenge before the Collector in an enquiry into the validity of the electoral roll under Rule 6(1) of the 1971 Rules. The position in the present case is not too

different. If contention as urged by Mr. Anturkar and Mr. Godbole is accepted, the effect would be to sustain an enquiry and interference in the provisional voters list as held by the bank, which would be in the teeth of the provisions of Section 27 and the scheme of rules 9, 10 and 11 of the Rules.

34. In **Akkatai Shamagonda Patil v/s. District Election Officers** (supra) the learned Single Judge was considering a challenge to an order passed by the Election Officer rejecting the written objection to the inclusion of 90 voters in the voters list. The petitioners had contended that such persons were not eligible to vote in the election of the managing committee of the co-operative society on several grounds including the ground that residence of these persons was outside the operational jurisdiction of the society, there was also a ground that the minimum holding of such persons was not as per the requirement of the society. The Court examining the relevant provisions of the Act and the Rules, held that such jurisdiction would be not available to the Collector as under Section 11 of the Act such power was conferred on the Registrar to rule on the eligibility on the issue of membership.

35. In “**Shriram Ganpatrao Yawale Vs. Resident Deputy Collector, Amravati & Ors**”, the learned Single Judge of this Court interpreting the provisions of Section 27(3) and (3A) has held that the language of sub-

section (3) itself shows that a primary society which has right to vote in affairs of a federal society can appoint one of its members to vote on its behalf and after such appointment, such member gets rights to vote on behalf of his society. If the legislature wanted such member to be appointed by a primary society to vote on its behalf in the affairs of the federal society also should have completed two years from the date of enrollment as a member of such primary society, the legislature could have made that provision in sub-section (3) itself. It is thus clear that any requirement of membership for minimum two years to become eligible, to be nominated by a member society for inclusion of the nominees name in the voters list to be prepared for the elections of a federal society is not the requirement of sub-section (3) of Section 27.

36. Adverting to the position in law as discussed above, in my clear opinion, in the facts of the present case, it was not permissible for the bank not to include the names of respondent no.5 in the provisional voters list, on the purported objections as raised by the petitioner. The nature of the objections as raised by the petitioner including on the tenure of the membership of the nominee members, certainly required a substantive enquiry touching the issues of eligibility and membership of Respondent No 5, which could be undertaken only by the Registrar, under Section 11 of the Act when invoked in a manner known to law. In such exercise the parties would be required to be heard on such issues

and only after considering the rival pleas and the materials, an appropriate decision could be taken by the Registrar. It would be preposterous to presume that an inquiry as serious as this would be undertaken behind the back of the member society and as also the nominee member, and in breach of principles of natural justice. It would also be against the democratic principles of fair representation as echoed by these statutory provisions. If the course of action as adopted by the bank is recognized, the consequences are eminently arbitrary and disastrous.

37. Lastly, Mr. Godbole's contention that this Court ought to mould the relief and order an inquiry against respondent no.5 under Section 11 of the Act, would be required to be stated to be rejected. The writ Court would certainly not pass an order on the basis of such seriously disputed materials and facts. It is always open to the bank to resort to any procedure as available in law, if it is so aggrieved.

38. The effect of non inclusion of respondent no.5 in the provisional voters list, was not only drastic for respondent no.5, but it also adversely affected the substantive rights of the member societies of the bank, of which respondent no.5 was the member and that too without such societies being heard. This is certainly not the legislative scheme of the provisions of Section 27 and the Rules as discussed above.

39. The upshot of the above discussion is that the petitions must fail. They are accordingly rejected. No order as to costs.

40. At this stage, on behalf of the petitioner a prayer is made that the interim relief as granted by this Court (A.K. Menon, J.) on 24 September, 2021 and continued thereafter, be continued for one week.

41. The request is rejected.

42. The Election Officer is free to continue with the further electoral process.

(G.S. KULKARNI, J.)