

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4719 OF 2021

- PETITIONERS:** 1] Dilip Motiram Andhare,
aged about 58 years, Occ. Retired,
R/o. Sane Guruji Nagar, Akola,
Tq. And Dist. Akola.
- 2] Vijay Vishwanath Bhore,
aged about 58 years, Occ. Retired,
R/o. Barshitakli, Tah. Barshitakli,
Dist. Akola.
- 3] Rekha Arun Wankhade,
Aged about 58 years, Occ. Retired,
R/o. Barshitakli, Tah. Barshitakli,
Dist. Akola.
- 4] Mohan Mahadeo Shegokar,
Aged about 58 years, Occ. Retired,
R/o. Akot, Tah. Akot,
Dist. Akola..
- 5] Dilip Damodhar Gawande,
Aged about 58 years, Occ. Retired,
R/o. Akot, Tah. Akot,
Dist. Akola.
- 6] Geeta Ganesh Ghavat,
Aged about 58 years, Occ. Retired,
R/o. Dabki Road, Akola, Tah. &
Dist. Akola.
- 7] Ramesh Baliram Nalinde,
Aged about 58 years, Occ. Retired,
R/o. Barshitakli, Tah. Barshitakli,
Dist. Akola.

- 8] Arun Mahadeo Wankhade,
Aged about 58 years, Occ. Retired,
R/o. Barshitakli, Tah. Barshitakli,
Dist. Akola.
- 9] Shridhar Sakharam Yadav,
Aged about 58 years, Occ. Retired,
R/o. Balapur, Tah. Balapur,
Dist. Akola.
- 10] Shankar Natthuji Zade,
Aged about 58 years, Occ. Retired,
R/o. Patur, Tah. Patur,
Dist. Akola.
- 11] Jyoti Ambadas Thorve,
Aged about 58 years, Occ. Retired,
R/o. Patur, Tah. Patur,
Dist. Akola.
- 12] Govardhan Janrao Waghode,
Aged about 58 years, Occ. Retired,
R/o. Akot, Tah. Akot,
Dist. Akola.
- 13] Pralhad Madhavrao Sontakke,
Aged about 58 years, Occ. Retired,
R/o. Akot, Tah. Akot,
Dist. Akola.
- 14] Alka Madhukar Chavhan,
Aged about 58 years, Occ. Retired,
R/o. Telhara, Tah. Telhara,
Dist. Akola.
- 15] Punjabrao Manikrao Kukde,
Aged about 58 years, Occ. Retired,
R/o. Telhara, Tah. Telhara,
Dist. Akola.

- 16] Purushottam Narayan Kedar,
Aged about 58 years, Occ. Retired,
R/o. Dabki Road, Akola, Tah. &
Dist. Akola.
- 17] Ganesh Bhaurao Deshmukh,
Aged about 58 years, Occ. Retired,
R/o. Dabki Road, Akola, Tah. &
Dist. Akola.

...VERSUS...

- RESPONDENTS:** 1] State of Maharashtra, through its
Secretary, Cooperation and Textile
Department, Mantralay, Mumbai.
- 2] District Deputy Registrar/District
Cooperative Election Officer,
Akola, District Akola.
- 3] Akola Zilla Parishad Prathamik
Shikshak Sahakari Pat Sanstha
Maryadit, Akola, through its
Manager.

Shri R.D.Karode, Advocate for Petitioner
Shri Sagar Ashirgade, AGP for Respondent Nos. 1 & 2

CORAM : AVINASH G. GHAROTE, J.
DATE : 30/11/2021.

[Oral Judgment]

- 1] Heard Shri Karode, learned counsel for Petitioner and
Shri Ashirgade, learned AGP for Respondents Nos. 1 & 2. None for
Respondent No. 3

2] **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsels appearing for the parties.

3] Heard Mr.Karode, learned counsel for the petitioners. The challenge is raised to the order dated 12.11.2021, by which, upon an objection to the provisional Voters List published on 25.10.2021, which objection was raised on 1.11.2021 regarding the inclusion of the name of certain members therein, the Respondent No.2 held that under Rules 6 and 9 of the Maharashtra Co-Operative Societies (Election to Committee) Rules, 2014, the members who had deposited the arrears were entitled to be included in the final Voters List and those members who had superannuated from the service were liable to be deleted from the Voters' List.

4] Mr. Karode, learned counsel for the petitioners submits that the provisions of Rule 6 enjoins upon the Respondent No.2 to prepare a provisional Voters List and the claims and objections raised therein had to be decided in consonance with the Rules in a summary manner. He further submits that the provisional list has

been prepared in consonance with the requirement as contained in Rule 9(1) by inclusion of active members who have completed minimum 2 years as members from the date of their enrollment upto the date of expiry of the term of the existing Managing Committee. In the instant case, he submits that since as per the provisional Voters List as supplied by the society to the Respondent No. 2 on 25.10.2021, the cut-off date was 31.8.2021, all those persons who had cleared off their dues were liable to be included. He submits that all the petitioners whose names were included in the provisional Voters List had cleared off their dues and therefore were eligible to be included in the final Voters List and the deletion therefore by the impugned order is not justified. He further submits that the provisions of Section 27 (1-A) and specifically proviso as inserted by the amendment dated 16.7.2021 of the MCS Act indicates that the provision of sub-section 1-A would not be applicable to the elections of Societies to be conducted on or before 31st March 2022, as a result of which, the rigor of Section 27(1-A) of the MCS Act cannot be applied in the matter of preparation of Voters List, which would mean that sub-Section 1-A of Section 27 of the MCS Act which says that 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 bye-laws shall cease to be an active member and shall not be entitled to vote, cannot be taken into consideration by Election Officer while preparing the Voters List. He further places reliance upon Section 26 of the MCS Act and specifically upon the proviso inserted thereto by the amendment dated 16.7.2021, which provides that in respect of elections of the society to be conducted on or before 31 March 2022, all the members of the society shall be eligible for voting unless otherwise ineligible for voting, and therefore, it is his contention that the names of the petitioners which were included in the provisional Voters List as forwarded to Respondent No. 2 by the Respondent No.3/society could not have been deleted by Respondent No. 2. Further by relying upon Section 22 of the MCS Act, he submits that the eligibility of a person entitled to become a member is prescribed in Section 22 and once the name of such a member is entered in a register of members as required to be maintained under Section 38 of the MCS Act, the same cannot be deleted without following the requirement of Section 25A of the MCS Act. It is his contention that in the instant matter, this procedure as required under Section 25A

has not been followed and therefore Respondent No.2 was not entitled to delete the names of the petitioners from the provisional Voters List.

5] He also places reliance upon **Shree Vitthal Sahkari Sakhar Karkhana Ltd vrs. Wadikuroli Vividh Karyakari Sewa Society Ltd and ors; 2010 (5) Mh.L.J 376**, which holds that there cannot be an automatic cessation of membership and **Girdharilal Bhaulal Pardeshi vrs. State of Maharashtra and others; 1992 CTJ 175**, which holds that the bye-laws of the society do not have the force of law.

6] Mr. Ashirgade, learned AGP submits that though a provisional Voters List is sent by the society to the Respondent No.2, who is the Election Officer, he is not denuded of his powers to make additions and deletions therein. He places reliance upon Rule 14 of the MCS (Elections to Committee) Rules, 2014, which enjoins upon the Returning Officer to do all such acts and things as may be necessary for effectually conducting the election in the manner provided in the MCS (Elections to Committee) Rules, 2014 and bye-laws made by the society. He further relying upon Rule 10 of MCS Rules submits that the societies are grouped in different categories

and election to particular category will depend upon the nature of membership as specified in the bye-laws of the society. He therefore submits that since Respondent No.3/Society is classified as a Credit Resource Society, having sub-classification as Salary Earners Society, therefore, the membership shall be governed according to such classification and the bye-laws of the society. Placing reliance upon the bye-laws of the society, specifically bye-law No. D-1.1(1), he submits that for becoming a member of the Respondent No.3 society, the requirement is that such a person should be in employment as a primary teacher in the schools run by Zilla Parishad, Akola. He therefore submits that the requirement of preparation of the Voters List would naturally require the society as well as the Respondent No.2 to ensure that this basic requirement is conformed to. He therefore submits that since all the petitioners have retired and are no longer in service before the cut-off date of 31.08.2021, the impugned order cannot be faulted with.

7] No doubt that Section 22 of the MCS Act prescribes who can be a member of the society and Section 38 requires a register of members to be maintained and the deletion from the membership

register has to be in consonance with the procedure as provided in Section 25A of the MCS Act, however, there is no provision in the entire statute which automatically makes the register of members as maintained under Section 38 of the MCS Act as the provisional Voters List for the elections to be held for the society. This is naturally so for the reason that the said list, always has to be constantly upgraded considering the basic requirement of the bye-laws of the society which prescribes as to who can be a member, as it is the requirement contained in the bye-laws which would form the basis for determining who is and is not a member, thereby entitling such person who is declared to be a member, as being a person having right to vote in the election of the society. This is further fortified by the proviso to Section 26 as inserted by the amendment dated 16.7.2021 which by using the expression “unless otherwise ineligible for voting”, indicates that the election has to be conducted only as per a list which includes persons eligible to vote and not otherwise.

8] The contention of Mr. Karode, learned counsel for the petitioner that the amendment to Section 27(1-A) on 16.7.2021 by

the Maharashtra Act No. 11 of 2021 by insertion of the proviso would mean that the list sent by the Respondent No.3/society to the Respondent No. 2 has to be accepted as it is, cannot be accepted for the reason as indicated above that the provisions of the MCS Act do not provide that the list of members as maintained under Section 38 of the MCS Act becomes the provisional Voters List. Considering the language of the proviso as inserted by the amendment of 16.7.2021 in Section 26, it would always be permissible for the Election Officer to examine the provisional list and ensure that the persons who are not eligible to become members as per the bye-laws of the society, are deleted from the provisional Voters List. Any other interpretation on this, would lead to a consequence which would mean that even if a person was not eligible to be a member of the society as per the bye-laws, however, since the name of such a person finds place in the register of members as maintained under Section 38 of the MCS Act would be entitled to not only vote but also to contest in the election, even if he is superannuated and no longer fulfills the basic requirement of remaining the member of the society, which is a situation impermissible in law. This is further fortified by the language of Rule 14 of the MCS (Election to

Committee) Rules, which enjoins the Returning Officer to conduct the election in the manner as provided, apart from the 2014 Rules, also as per the bye-laws of the society which would indicate that the final Voters List should also be of persons who are eligible to vote as per the bye-laws of the society.

9] No doubt, that it has been held in **Girdharilal Pardeshi (supra)**, that the bye-laws of a Co-operative Society do not have force of law, however, considering the specific provision as contained in Rule 14 of the MCS (Election to Committees) Rules, 2014, it would not be permissible for the Returning Officer to conduct the elections by ignoring the basic requirement of membership of a society being fulfilled by a person who claims himself to be eligible to vote or contest in the election which is contained in the bye-laws of the society. **Shree Vitthal Sahkari Sakhar Karkhana** (supra) relied upon by Mr. Karode, learned counsel for the petitioner was a case in which there was a claim that breach of the bye-laws was committed by the members and therefore, it was contended that there would an automatic cessation of the membership and considering Section 25 of the MSC Act and Rules 28 and 29 of the MCS Rules, it was held

that such cessation is not automatic, but the procedure as required for removal of a person from the membership of the society was required to be followed, however, in the instant case, we are not dealing with the issue of removal from membership of the society, but an issue, as to who is eligible to be included in the final Voters List of the Respondent No.3 society and therefore, **Shree Vitthal Sahkari Sakhar Karkhana (supra)** is of no assistance to the argument advanced for the reasons as already stated above, that the register of members does not automatically become the final Voters List and it is always permissible for Respondent No.2 to ensure that the persons who are members of the society as per the bye-laws of the society are alone entitled to participate in the election process and be included in the Voters List.

10] Reverting back to the facts of the instant matter, all the petitioners except petitioner No. 17 have retired from their employment as Assistant Teacher in the Schools run by Zilla Parishad, Akola, on or before the cut-off date of 31.8.2021 and therefore were ineligible to be included in the final Voters List as the bye-laws necessarily require that a member of the society would be a

person who was in employment of the schools run by Akola Zilla Parishad as an Assistant Teacher. This is so even for a member, who wants to contest from the one seat reserved in the Managing Committee or the representative for depositors, for which the additional requirement is for a deposit being available before the cut-off date.

11] The above being the position, I do not see any infirmity in the impugned order in so far as it relates to Petitioner Nos. 1 to 16 are concerned. In so far as Petitioner No. 17 is concerned, he has superannuated on 10.11.2021, which is not before the cut-off date. The very purpose of a cut-off date is to create a demarcating line for the purpose of preparing the final Voters List and it may so happen in a case that a person till the time the election is completed may have superannuated, but was eligible on the cut-off date and therefore, even if this creates an anomaly, considering the nature and purpose of the cut-off date, it will be necessary to hold that such a person would have right to vote otherwise there would be no finality to the cut-off date at all, since the process of superannuation is continuous one depending upon the completion of the period of employment of

employee, considering which the petition is party allowed. The impugned order in so far it relates to Petitioner Nos. 1 to 16 is maintained. In so far as Petitioner No. 17 is concerned, the same is quashed and set aside and Respondent No.2 is directed to include his name in the Voters List in view of the cut-off date of 31.8.2021.

JUDGE

Rvjalit