IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14305 OF 2019

1. Mr.Ashok Sakharam Ovhal,
Age : 53 years, Occupation : Service,
Resident of Near Maruti Mandir,
Nagardevale, Ahmednagar,
Camp, Ahmednagar,
A/P Nagerdevale, Tal. Nagar,
Dist. Ahmednagar.
Pin : 414002 (Maharashtra)
Having Aadhar No.884187695190.

2. Mr.Kailash @ Kailas Gorakh Bansode,
Age : 36 years, Occupation : Service,
Resident of, Prabhudha Nagar,
Alamgir, A/P Nagerdevale,
Tal. Nagar,
Dist. Ahmednagar.
Pin : 414002 (Maharashtra)
Having Aadhar No.878660630381.

3. Mr.Farhan Shoukatali Shaikh @
Shaikh Farhan Shaukat Ali,
Age : 30 years, Occupation : Service,
Resident of, Near Bombay Hospital,
House No.5, Dreamland Society
Main Road, Mukundnagar, Ahmednagar,
District Ahmednagar.
Pin : 414001 (Maharashtra)
Having Adhar No.495253076669 &
PAN No.DCQPS5127B.

4. Mr.Nandkumar Kashinath Kulthe,
Age : 43 years, Occupation : Service,
Resident of, Plot No.2, Sr.No.24/6,
Mathura Nagar, Wadarwadi,
Dairy Farm Road, Pathardi Road,
Bhingar, Ahmednagar,
District Ahmednagar.

Pin : 414001 (Maharashtra)
Mobile No.9762537538.
Having Adhar No.719218146242 &
PAN No.AIZPK8438R.

5. Mr.Shyam Asaram Kshirsagar,
Age : 43 years, Occupation : Service,
Resident of, P Aakansha Colony,
House No.3, Burhanagar,
Nagerdevale, Tal. Nagar,
Dist. Ahmednagar.
Pin : 414001 (Maharashtra)
Having Aadhar No.265004829986 &
PAN No.CLGPK2873J.

6. Mr.Ketan Manoj Gugale,
Age : 22 years, Occupation : Service,
Resident of, Aadarsh Residency,
Plot No.103, Near Old Still Bridge,
Station Road, Ahmednagar,
Pin : 414001 (Maharashtra)
Having Adhar No.952213446228 &
PAN No.BTXPG5905R.

...PETITIONERS

-VERSUS-

1. The Hon'ble Cooperative Minister,
Cooperative Ministry,
Mantralaya, Mumbai-400032.
Revisional & Appellate Authority
under the provisions of the Maharashtra
Cooperative Societies Act, 1960.

2. The Ahmednagar Merchant's Cooperative
Bank Ltd., Ahmednagar.
Head Office : Plot No.33, Market Yard,
Post Office Box No.64,
Station Road, Ahmednagar,
Pin : 414001 (Maharashtra).
Phone No.(0241) 2450649
Fax No.(0241) 2450136

Email : mrbank@sancharnet.in.
Through,
The Chief Executive Officer.

3. The Additional Registrar & Cooperative Commissioner, Office of the Registrar & Cooperative Commissioner, Central Building, Near Sasoon Hospital, Pune.

4. The State of Maharashtra. Through the Secretary, Cooperative Department, Government of Maharashtra, Mantralaya, Mumbai.

...RESPONDENTS

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Advocate for the Petitioners : Shri Abhaykumar D. Ostwal
AGP for Respondents 1, 3 and 4 : Shri Shri P.G. Borade
Advocate for Respondent 2 : Shri V. D. Hon, Senior Counsel h/f Shri Ashwin V. Hon.

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CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 15th February, 2022

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.

Heard the learned counsel for the petitioners and the learned Senior Counsel for Respondent No.2 Bank as well as the learned AGP for Respondent Nos.1, 3 and 4.

The learned counsel for the petitioners states that petitioner No.2 has been conferred with the membership and therefore, he does not press the petition qua petitioner No.2.

2. The controversy involved here is very short. The question that arises for determination is, whether, the petitioners are entitled to be admitted to the membership of Respondent No.2 Bank in the capacity as "ordinary members" or "active members".

3. In order to answer the aforesaid question that arises for determination, it is necessary to refer to the bye-laws of the Respondent No.2 bank framed under Section 13 of the Maharashtra Cooperative Societies Act, 1960 (for short "the MCS Act"). The copy of the bye-laws is placed on record at Exhibit L and these bye-laws are framed after following due procedure prescribed under the MCS Act and the Rules.

4. The bye-laws so framed provide for membership as per bye-law No.9 and encompasses the following categories of members:-

> *"The Bank shall have following categories of members:-*
> *a) Ordinary Members.*
> *i. Active Members.*
> *ii. Non Active Members*
> *b) Nominal Members*
> *c) Associate Members"*

5. Bye-law No.10 is a provision for ordinary member and it is stipulate that any person, who resides or is engaged in any business, profession or occupation within the area of operation of the Bank and if he shall have any type of account with the minimum credit balance of Rs.500/- and who genuinely needs the services provided by the Bank and

the Bank is capable and in a position to fulfill his needs and whose business, occupation does not conflict with that of the Bank, may be admitted as an ordinary member. The eligibility for being admitted as an ordinary member is set out in bye-law No.10.

6. Bye law No.11 sets out the condition for ordinary membership and it contemplate enrollment of a person as an ordinary member upon making an application in writing in the format prescribed by the Bank or in the format prescribed by the Registrar, if any and he has to pay admission fee of Rs.100/- or as may be stipulated by the Board of Directors from time to time and also has to pay at least value of two shares of bank worth Rs1000/-. Upon such application being preferred, the Board of Directors of the Bank would approve his application so as to admit him as a member.

7. Another category of membership, which is set out in the bye-laws is the category of "Active Member" as contemplated under bye-law No.14. For the purposes of bye-law No.14, "Active Member" means a person, who has been admitted as an 'Ordinary Member' under the bye-laws of the Bank and who comply following conditions:_

i) To attend at least one General Body Meeting in the previous five consecutive years,

ii) To utilize minimum level of services as provided in bye-law No.15.

Bye-law No.15 provide for minimum level of services for becoming active member, which reads thus:-

1. The minimum level of services to become active member are prescribed below :

i) he should hold minimum 2 shares of Rs.1000/- each i.e. Rs.2000/-

And

ii) he should deposit (in all types of accounts) of not lesss than Rs.7000/- (Rupees Seven Thousand)

Or

iii) he borrows loan Rs.1,00,000/-.

Proviso-I

Provided that a 'Depositor' means an ordinary member, who has been holding aggregate deposits (in all types of accounts) not less than the amount prescribed above in his name or in the name of the firm/ company/ society/ trust, to whom he is representing as a proprietor/ Director/ office bearer/ Trustee.

Proviso-II

Provided that a 'Borrower' means an ordinary member, who is enjoying any type of sanctioned and availed credit facility of the Bank."

8. As regards the rights of the ordinary member and the active member are adumbrated in bye-law No.12 and bye-law No.16, respectively, and the stark difference between the two categories of membership is that the active member has right to vote in the general election to the Board of Directors of the Bank and he can exercise all other rights of an ordinary member as mentioned in the bye-laws, which is not the case of ordinary member.

9. In the backdrop of aforesaid scheme of membership as contemplated in the bye-laws framed by the bank, the petitioners

preferred the application for being admitted to membership. The controversy arises on account of the fact that it is not clear, whether, they applied for being admitted as ordinary members or active members. But, on perusal of the application which they have preferred, it can be discerned that they prayed for being admitted to the membership of the Bank and for allottment of two shares Rs.1000/- each. They also offered admission fees of Rs.100/-. This application preferred by the petitioners came to rejected and they were informed that they have not complied with the requirement of Section 22 of the MCS Act and the bye-laws of the Bank. Another ground of rejection is, they have not obtained loan of more than Rs.1,00,000/- from the Bank.

10. This refusal constrained the petitioners to approach the Additional Registrar and Cooperative Commissioner, Pune by preferring an appeal under Section 23 the MCS Act on being denied the membership of the Respondent bank.

The appeal came to be allowed by order dated 07.10.2017 whereby, the decision of the Board of Directors of the Bank dated 17.03.2017 in the form of resolution of No.8, which was communicated to the petitioners vide the communication dated 20.03.2017, refusing them to admit to the membership of the bank, was set aside. The Cooperative Commissioner on his reasoning has deduced a conclusion, on the basis of the facts placed before him, that on an application being preferred in the prescribed format, which was accompanied with the pay order of Rs.2,100/-, they had complied with the requirement under bye-law No.13 and by paying an admission fees of Rs.100/- and by participating in shares of the Bank by purchasing two shares worth Rs.2000/- and therefore, since the application was found to be compliant and since they were not disqualified in terms of bye-law No.11(iii), their application was held to be wrongly rejected.

11. This order was subjected to challenge before the Hon'ble Minister of Cooperation by the Bank by filing the revision and this revision is allowed, thereby setting aside the order passed by the Additional Registrar and Cooperative Commissioner.

The reasoning of the Hon'ble Minister in the impugned order if carefully perused, reveal that the application for membership is construed to be an application for active membership and the parameters prescribed under bye-law No.15 for minimum level of services of active member, have been applied.

12. The learned counsel for the petitioner is justified in advancing his submission that, if the requirement prescribed under bye-law No.15 is carefully perused, the condition prescribed vide the said clause is of holding minimum two shares of Rs.1000/- each and deposit of not less than of Rs.7000/- and the stipulation of borrowing the loan of Rs.1,00,000/- is in the alternative and this fact, the Hon'ble Minister has

specifically missed out this option, since there is misquoting of Bye-law No.15.

This fact is not disputed by learned senior counsel Mr.Hon, since on perusal of bye-laws, it can be discerned that it contemplate the condition of borrowing of loan of Rs.1 lac in the alternative to the condition of deposit of not less than Rs.7000/- in all types of accounts with the Bank.

13. In view of this, the Hon'ble Minister is not justified in upsetting the order passed by the Additional Registrar and Cooperative Commissioner on ground that the petitioners are not entitled for membership of the bank, since they have not borrowed the loan of Rs.1,00,000/- or more from the bank. The approach adopted by the Hon'ble Minister can only be said to be erroneous and this has occasioned on account of misreading of the provision of bye-law No.15.

14. However, on perusal of the entire controversy, it can be seen that the petitioners have not clearly set out in their application, whether, they are entitled for ordinary membership or active membership, though the learned counsel for the petitioners stake his claim for an active membership.

15. In my opinion, on plain reading of the bye-laws, the petitioners cannot be admitted as active members at the very outset since an active member is a person, who has been admitted as an ordinary

member under the bye-laws and who complies with the condition of attending at least one general body meeting in the previous five consecutive years. This necessarily means that on the first occasion, a person shall be admitted as an "ordinary member" and the manner in which, he shall be admitted to the membership is set out in bye-law No.11, which contemplates an application in writing with the requisite fees of Rs.100/- alongwith he must have paid at least value of shares of Rs.1000/- to the Bank. Upon complying with the aforesaid requisite conditions as prescribed in bye-law No.11(i), the board of directors of the bank shall approve his application to admit him as an ordinary member.

Upon being admitted as an 'ordinary member', only if he comply with stipulations of bye-law No.14 and bye-law No.15, he becomes eligible for being admitted as 'active member'.

Perusal of the application preferred by the petitioners, however, clearly projects a picture that for the first time, the petitioners have applied, by subscribing two shares of value of Rs.1000/- and payment of admission fees of Rs.100/-, which would make them eligible for being admitted as "ordinary member". They cannot directly jump over and stake their claim as "active members" unless they are admitted as "ordinary members", which would require the resolution from the Board of Directors of the bank approving their application as ordinary member. It is not the case of the petitioners that they have ever been admitted as ordinary members by the appropriate decision taken by the board of directors of the Bank.

16. In the wake of the above, the application preferred by the petitioners seeking membership of the bank, deserves to be granted in the capacity as ordinary members and it's rejection at the first instance by the decision of the board of directors on 17.03.2017 and communicated to the petitioners on 20.03.2017, which refused them membership on the ground that they have not obtained loan of more than Rs.1 lakh, cannot be sustained.

If the petitioners are found to be satisfying with the prescribed requirements of ordinary members in terms of bye-law No.11(i) and unless they are not found to be ineligible in terms bye-law No.11(iii), they shall be admitted as ordinary members. The impugned communication dated 20.03.2017 and the impugned order passed by the Hon'ble Minister are set aside with the direction being issued to the respondent No.2/Bank to take a decision on the application preferred by the petitioners, within six weeks from today and the decision taken shall be communicated to the petitioners.

On the aforesaid application being taken up for the consideration, the petitioners shall comply with requisite requirements of payment of admission fees and deposit of share amount as required by the bye-laws.

17. During the course of hearing, the learned senior counsel Mr.Hon invited my attention to the amendment in the MCS Act by virtue of which, there is substantial change in Section 27 of the MCS Act, pursuant to which, the “active member” category has been deleted. In furtherance of this amendment being effected by the Maharashtra Cooperative Societies (Third Amendment) Act, 2021, it will now be imperative to the respondent No.2/bank to amend it’s bye-laws in tune with the amended provision. As such, the decision as regards the active membership as sought by the petitioners on complying with the bye-laws and specifically bye-law No.14, will depend upon the bye-laws, which would be in force at the time when such application is made by the petitioners.

Rule made absolute in aforesaid terms.

kps **(SMT. BHARATI H. DANGRE, J.)**