

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 WRIT PETITION NO.10888 OF 2022

KHEMCHANDRA RAMKRUSHNA MAHAJAN
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS

...

Advocate for Petitioners : Ms. Mahajan Surekha P.
AGP for Respondent-State : Mr. D. R. Kale
Advocate for Respondent No.3 : Mr. S. K. Kadam
Advocate for Respondent No.10, 17 : Mr. M. S. Deshmukh
Advocate for Respondent Nos.14, 15, 8, 9 : Mr. V. P. Patil

...

CORAM : ARUN R. PEDNEKER, J.
DATE : 24th November, 2022

PER COURT :

1. By the present petition, the petitioner is challenging the rejection of his objection to the provisional voters list by the District Cooperative Election officer/respondent No.3. The petitioner challenges the rejection of his objections qua respondent Nos.6 to 18. The petitioner's objections are that the said respondents are not the residents of the local area of operation of their respective society and as such cannot be the members of the respondent No.5/Jalgaon District Cooperative Dairy Production Sangh Ltd. Jalgaon, and thus their names in the provisional voters list is liable to be removed.
2. The elections to the respondent No.5 was declared and its

preliminary voters list was published on 29/06/2022. The said preliminary list was objected to by the petitioner on 08/07/2022. The objection of the petitioner is that the respondent Nos.6 to 18 does not live in the work zone of their respective primary society and they have not supplied milk to the society. It is mandatory to submit the Aadhar Card and Ration Card of the members who wish to take the membership of respondent No.5. However, the respondent Nos.6 to 18 have only submitted the certificate of Gramsevak. Most of the respondents are neither director nor member of the concerned society and permanently obtained membership of the respective society.

3. Objections being raised by the petitioner, the respondent Nos.2 and 3 issued notices to the petitioner and the respondents on 08/07/2022 and hearing was kept on 14/07/2022. The Assistant Registrar, Cooperative Society, Jalgaon was directed to submit the report in view of the objections taken by the petitioners. After hearing the parties on 13/10/2022, respondent No.3 observed that respondent Nos.6 to 18 before him even if are not residing at the address given by the primary society and may be staying at other place, yet they are members of the Society and their membership

has not been cancelled by following the procedure available under the Maharashtra Co-operative Societies Act, 1960 and accordingly rejected the objection raised by the petitioner.

4. The petitioner has challenged the said order of respondent No.3 before this Court in the writ jurisdiction. At the outset and during the hearing of this writ petition, the petitioner was asked to approach the alternate forum to challenge the order of respondent No.3 by filing petition before the appropriate Court. However, the petitioner insisted that this Court should deal with the writ petition contending that going before alternate Court would not serve any purpose. The petitioner contend that this Court can interfere in the election process in the event of petent illegality.

5. The objectors can seek cancellation of the membership of the respondents under Section 11 and Section 35 of the Maharashtra Cooperative Societies Act 1960. Section 11 and Section 35 of the Act reads as under :-

"11. Power of Registrar to decide certain questions

When any question arises whether a person is an agriculturist or not, or whether any person resides in the area of operation of the society or not, or whether a person is or is not engaged in or carrying on any

profession, business or employment, or whether a person belongs or does not belong to such class of persons as declared under sub-section (1A) of section 22 and has or has not incurred a disqualification under that sub-section, such question shall be decided by the Registrar and his decision shall be final, but no decision adverse to any such person shall be given without giving him an opportunity of being heard.”

“35. Expulsion of members

(1) A society may, by resolution passed by a majority of not less than three-fourths of the members entitled to vote who are present at a general meeting held for the purpose expel a member for acts which are detrimental to the interest or proper working of the society:

Provided that, no resolution shall be valid, unless the member concerned is given an opportunity of representing his case to the general body, and no resolution shall be effective unless it is approved by the Registrar.

(2) No member of a society who has been expelled under the foregoing sub-section shall be eligible for re-admission as a member of that society, or for admission as a member of any other society, for a period of one year from the date of such expulsion.

Provided that, the Registrar may, on an application

by the society and in special circumstances, sanction the re-admission or admission, within the said period, of any such member as a member of the said society or of any other society, as the case may be.

The respondent No.3 in the impugned order also observed that the respondents are the members and administrators of their respective societies, and therefore, their membership of the Society is intact. Respondent No.3 also observed that the cancellation of a membership comes within the purview of Section 11 of the Maharashtra Cooperative Societies Act and the proceedings for the same lie before the competent authority. The respondent No.3 also observed that as incomplete documents are given by the petitioner and they have not adduced sufficient evidence and accordingly dismissed their objection.

6. The petitioner submits that the membership granted to the respondent in their respective societies is wrongly granted and as such the said respondents should not be eligible to vote in the respondent No.5 society. Since the petitioner is challenging the basic membership of the co-operative society, the same can only be cancelled by the authorities constituted under the Act of 1960 by following the due process under section 11.

7. The jurisdiction of the Election officer accepting and rejecting the nomination is summary in nature and he cannot cancel the membership of the members on the Society. The process for cancellation of membership is provided in Section 11 of the Maharashtra Co-operative Societies Act and also lies before a different authority. The respondent No.3 records that the objected voters are the members of the Society and in the event that if their membership has to be cancelled, an appropriate proceedings under the Act has to be taken and that the respondent No.3 cannot render a finding on the removal of their membership.

8. I do not find any error committed by the Returning Officer relying upon the existing membership of the respondents No.6 to 18 in their respective societies and refusing to delete their names in the final voters list. The petition is accordingly dismissed.

(ARUN R. PEDNEKER, J.)

vj gawade/-.