

Dusane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2784 OF 2022**

Rekha Rajaram Kavade & Ors	...Petitioners
<i>Versus</i>	
The Divisional Joint Registrar Co-op Soc, Kolhapur & Ors	...Respondents

Mr Prashant Bhavake, for the Petitioners
Mr AI Patel, Additional GP for State-Respondent.
Mr Aditya Raktade, with Dnyanesh Patil for Respondent.

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.**
DATED: 29th March 2022

PC:-

1. The 70 Writ Petitioners assail an order and judgment dated 21st February 2022 by the Divisional Joint Registrar Cooperative Societies, Kolhapur Division, Kolhapur. That order and judgment was in an appeal filed by 111 members of the Shri Kedarling Vikas Seva Society Limited. These persons appealed against an order dated 15th December 2020 passed by the Assistant Registrar, Co-operative Societies under Section 11 of the Maharashtra Cooperative Societies Act, 1960. The order of the present 2nd Respondent, the Assistant Registrar, has merged with the appellate order, but in our view, neither can be sustained.

2. The present Respondents 4, 5, and 6 filed a complaint before the Assistant Registrar. This is in fact where the problem really starts. First they complained to the Tehsildar. A copy of that complaint is at page 96 of the petition paperbook. Then they complained to the Assistant Registrar. A certified copy of the complaint to the Assistant Registrar is tendered before us. Both complaints were about various misdeeds and wrongdoings of the society. The complainants said that they had been unfairly treated by the Society. The complaints to the Assistant Registrar also referred to certain unspecified wrongdoings and said that a written complaint was given earlier that the Chairman, Secretary and some officers, who, without taking complainants into confidence, acted in an inappropriate manner and accepted some bogus membership. A list of names of the allegedly bogus 95 names was annexed to the complaint. That is the whole of the complaint.

3. Now on this complaint really there was nothing that was required to be done in our view because merely making generalised allegations of bogus memberships is never sufficient. Indeed, none of these 95 people would ever have been able to 'meet the case against them' because there was no case specifically laid against them to begin with. There were no particulars of these so-called bogus memberships or why they were said to be bogus.

4. The Assistant Registrar decided the application on 2nd September 2020 and declared 111 persons not to be Khatedar Agriculturists of the village in question. That was a more than somewhat generous interpretation of the complaint on the face of it. Those 111 persons came up in appeal before the Divisional

Commissioner. Notices seem to have been served to Respondents 3 to 5. The impugned appellate order is at pages 150 to 152. The submissions of the appellants and of the complainants are noted. It was argued by the complainants that the agriculturists to be eligible for membership needed to hold 10R agricultural land and had to be residents of the relevant village, Aralgundi in District Kolhapur. The Divisional Commissioner observed that some of the appellants were residing in another village. Some appellants held some land and therefore they were Khatedars of the village. He therefore concluded that except for Appellants 61 and 66, the others were not agriculturists. He allowed the appeal only in respect of those two agriculturists.

5. We find it difficult to sustain this order. Section 11 of the Maharashtra Co-operative Societies Act reads thus:

“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.

(Emphasis added)

6. This is really not a question of whether there is or is not in the Registrar a suo motu power to decide the question set out in Section 11. There is a Division Bench judgment of this Court in *Karbhari Maruti Agawan & Ors v State of Maharashtra & Ors*¹ which says — without any detailed analysis — that the Registrar has all the powers to go into questions of qualifications and disqualifications of members even when the provisional list of voters was published, and that the Registrar can exercise his powers suo motu. But this judgment is well before the statute was amended, and, in any case, it also said that the Registrar would not allow parties to have fishing enquiries and will not allow withholding of elections. By the same token, the Registrar cannot himself go on a fishing enquiry. The judgment was in the context of using unfair means to hobble a voters' list. The judgement, with respect, does not consider the import of the crucial word in Section 11: “*arises*”. For an issue to “*arise*”, there has to be an occasion or circumstance for it, some context. It must *stem from* or *emanate from* something. Section 11 does not contemplate a situation where one of the questions under can be made to ‘*arise*’ by embarking on some roving expedition. For a question to arise, it must therefore be brought before the Registrar. There is no analysis of this aspect of Section 11 at all. Second, *Karbhari Maruti Agawan* was decided in the context of *when* a Section 11 power could be exercised, and whether there was an embargo on it being exercised after a provisional voters list was published. A precedent is only an authority for what it actually decides;² and *Karbhari Maruti Agawan* did not decide any interpretation of the word ‘*arises*’. Thus, we do not believe *Karbhari*

1 1994 SCC OnLine Bom 133 : (1994) Mh LJ 1527.

2 *State of Orissa v Mohammed Illiyas*, (2006) 1 SCC 275.

Maruti Agawan to contain an authoritative interpretation of the word ‘arises’ in Section 11.

7. If we look at the complaint, no question under Section 11 properly arose because the only allegation made to the Assistant Registrar was that 95 memberships were “bogus”. There was nothing else stated in that application at all. We cannot understand how any of the noticees could have been expected to respond to such a complaint. The only response would have been to say, possibly, that the memberships were not bogus. On this, no question could fairly be said to “arise” touching any of the matters mentioned in Section 11.

8. In our view, both authorities materially misdirected themselves. Disqualification from membership of a society is a serious business and has very serious consequences. In the context of an agricultural society or an agricultural credit society, the consequences are even more serious because there is a direct impact on the ability to seek and obtain agricultural credit and loans, and, consequently, the ability to carry on business of agricultural. These are not matters that should be taken lightly. The requirement of having a particular land holding of 10R is, for example, one that was introduced by amendment in 2013. Now if the membership of the 95 persons pre-dated the 2013 amendment, it would necessarily have to receive some consideration as to whether that requirement of 2013 could be operated retrospectively or retroactively so as to disqualify those who became members before 2013. This aspect of the matter has not been considered at all in either of the orders. In fact there is

no analysis of who obtained membership on what date anywhere in the impugned orders.

9. Merely identifying villages is insufficient. The reasoning in both orders is inherently faulty and in fact is one that is not even plausible. The requirement of law under the Co-operative Societies Act for such societies is that an agriculturist must be a resident of the village in question. But the authorities seem to have presumed that there is another requirement, viz., that the member must then remained locked into that village for all time to come, in perpetuity, and through successive generations. We see no warrant or basis for this in law. Certain eligibility requirements of membership apply *at the time when membership is sought*. If a requirement of membership has to be maintained throughout the period of membership, then the statute or bye-law must say so specifically and this must be specifically referenced in any adjudicatory order. For instance, if a requirement under the bye-laws is that if a person moves out of a particular village or a vicinity, he automatically loses membership then that must be specifically set out. The assumption in these orders is that the appellants before the Divisional Commissioner except for were *never* residents of the village in question. But that required an investigation of where they were at the time when they took membership and could not have been decided on the basis of where they were at present. Similarly, it would have to be seen whether the 10-Are landholding requirement was only an eligibility criterion at the time of seeking membership, or whether this landholding had to be maintained in the name of each member in perpetuity, failing which membership would be lost. Prima facie, it appears to us that this is a requirement that operates

at the time of the initial entry into membership (apart from being operative only post-Amendment).

10. The entire basis of both impugned orders is that the Petitioners were not entitled to membership to begin with, i.e. that they were ineligible ab initio from the date when they first took membership of the society. This required a very careful examination of the facts relating to every single member. That has not been done. Both orders proceed entirely on conjecture, assumption and surmise. This is an unsound basis on which to assess anybody's membership.

11. The petition succeeds. Both orders are quashed and set aside. Rule is made absolute in terms of prayers (b) and (c) at page 29, which read thus:

“(b) By a suitable Writ, Order or direction, this Hon'ble Court be pleased to quash and set aside the impugned judgment and order dated 21-2-2022 passed by Respondent No.1- Divisional Joint Registrar in Appeal No.149 of 2020 and accordingly, be pleased to allow said Appeal No.149 of 2020 by setting aside the judgment and order dated 15-12-2020 passed by the Respondent No.3 under Section 11 of MCS Act, 1960, whereby it is held that the Petitioners are not agriculturists;

(c) By a suitable Writ, Order or direction, this Hon'ble Court be pleased to quash and set aside the impugned judgment and order dated 22-2-2022 passed by the Respondent No.2 being O.W. No. Sanibhu/Kedarling Vikas Aaralgundi/Section 22(1B)/2022, thereby removing the Petitioners from membership of the Respondent No.3-Society.”

12. It goes without saying that Respondent No. 1A the Election Authority will include the names of petitioners in the name of the final voters list.

13. No costs.

(Madhav J. Jamdar, J)

(G. S. Patel, J)