

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6180 OF 2022
WITH
INTERIM APPLICATION NO. 3288 OF 2022

Ashwini Sayaji Patil and Ors.

Petitioners /
.. Applicants

Versus

The State of Maharashtra and Ors.

.. Respondents

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- Dr. Uday P. Warunjikar a/w. G.B. Naik, Advocate for the Petitioners / Applicants
 - Mr. R.S. Pawar, AGP for the State
 - Mr. Narendra Bandiwadekar a/w. Mr. Utkarsh Desai i/by Mr. Prashant Bhavake, Advocates for Respondent Nos. 5 to 8
 - Mr. Deelip Patil Bankar, Chief Standing Counsel SCEA a/w. Ms. Pooja Deelip Patil, Advocates for Respondent No. 9
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CORAM : **MILIND N. JADHAV &
ABHAY AHUJA, JJ.**

RESERVED ON : **JUNE 01, 2022.**
PRONOUNCED ON : **JUNE 04, 2022.**
(IN CHAMBER)
(Vacation Court)

JUDGMENT (PER : MILIND N. JADHAV, J.)

1. Heard learned counsel appearing for the respective parties.

The Writ Petition is taken up for final hearing at the stage of admission. Pleadings are completed.

2. By the present Writ Petition, the Petitioners have prayed for the following reliefs:

- a) That this Hon'ble Court be pleased to call for the record and proceedings before Id. Asst. Registrar, co-operative societies, Taluka - Ajara, Dist-Kolhapur on 22.11.2021

outward No. order/367/2021 and appeal No. 244/2021 before Id. Divisional Joint Registrar, Kolhapur division, Kolhapur and Revision Application No. 72/2022 before the Hon'ble Minister - Co-operation.

- b) Upon perusing the record of the Respondent No. 1 to 3 this Hon'ble Court may be pleased to quash and set aside the order passed by the Id. Asst. Registrar, co-operative societies, Taluka - Ajara, Dist-Kolhapur on 22.11.2021, Id. Divisional Joint Registrar, Kolhapur division, Kolhapur on 12.01.2022 and order dated 07.03.2022 passed by the Hon'ble Minister, co-operation.
- b(i) That this Hon'ble Court be pleased to quash and set aside the order dated 13.04.2022 and 19.04.2022 passed by District Co-operative Election Officer and District Deputy Registrar, Co-operative Society, Kolhapur, disqualifying as member and deleting the names of the Petitioners from the final list of voter of respondent No. 4 society.
- b(ii) That this Hon'ble court be pleased to allow the Petitioners to participate in the forthcoming election of Respondent No. 4 society restoring their names in the final list of voters of Respondent No. 4 society and allow them to participate as candidate to contest election and to vote as member of Respondent No. 4 society."

3. One of the reason pleaded for urgency to hear the present petition is that the election program of the Respondent No. 4 - Society, voting is to be held on 05.06.2022. Being disqualified from the membership of the Society the names of the Petitioners do not appear in the final voting list of the Society. Hence the Petitioner have moved the Vacation Bench.

4. The Petitioners claim to be agriculturalist and residents of village Korivade and Harapvade, Taluka Ajara, District Kolhapur. It is claimed that they hold lands in the above villages. Purported proof of land holdings in the form of revenue records has been submitted

alongwith the Petition before the Court. Respondents' preliminary objection is that the purported record of land holdings in the above villages have been placed on record for the first time by the Petitioners in the present proceedings; that the Petitioners had never produced the same before the statutory authorities during the statutory proceedings. The second objection is that the Petitioners are not agriculturists.

5. Respondent Nos. 5 to 8 who are the original complainants, filed application under Sections 11 and 25 of the Maharashtra Co-operative Societies Act, 1960 (for short **"the said Act"**) before the Competent Authority i.e. Respondent No.2 seeking a declaration that the Petitioners being non-agriculturists and non-residents of the aforementioned two villages be disqualified from membership of the Respondent No. 4 Society. Respondent No. 3 heard the parties and allowed the application by order dated 22.11.2021 holding that Petitioner Nos.1 to 30 are not agriculturists and 31 to 77 are neither agriculturists nor are residents of the area of operation of the Society. On 22.11.2021, the Petitioners filed statutory appeal under Section 154 of the said Act before the Respondent No. 2. It was stated that the Respondent No. 3 did not give a fair opportunity to the Petitioners to place on record proof of the Petitioners' being agriculturists as also proof of their respective residence within the jurisdiction of the Society

and proceeded to pass the impugned order in violation of the principles of natural justice. Petitioners claim to have been admitted as members of the Respondent No. 4 Society in 1998 and 2008.

6. Petitioners claim that in terms of clause 5 of the Bye-Laws of the Society, any member residing within the jurisdiction of village Korivade and Harapvade could apply and become a member of the Society; further the Petitioners being borrowers of the Society claim that it entitles them to become a member of the Society in terms of the provisions of Section 91 read with Section 101 of the said Act, Petitioners claim to be agriculturists; they claim to possess certificates of being agriculturists issued by the Competent Authority i.e. the Tehsildar, Ajara, District Kolhapur. Petitioners assert that having satisfied the aforesaid conditions, they are eligible to become members of the Society. Petitioners submit that the complaint lodged by the private complainants i.e. Respondent Nos. 5 to 8 is solely based upon a certificate issued by the Talathi and Gramsevak describing the Petitioners as non-agriculturists on the basis of certain revenue documents. According to the Petitioners either their father, husband and/or any their ancestor is a land holder within the jurisdiction of the Society and as such the Petitioners qualify as being agriculturists and satisfy the mandatory condition required for eligibility.

7. Petitioners have averred that apart from residing within the

jurisdiction of village Korivade and Harapvade of Taluka Ajara, District Kolhapur, the only source of livelihood of the Petitioners is farming and agricultural activities; hence Petitioners are fully dependent upon the Society; if they stand disqualified they shall be deprived of developmental and other activities since the Society is engaged in many facilities pertaining to distribution of food grains to landless labourers and persons below the poverty line, benefits provided under the Antyodaya Yojna etc; that apart many beneficial Government schemes and are floated and/or implemented through the Society. Petitioners submit that the Respondent no.2 Society by the impugned order dated 12.01.2022 mechanically rejected the Petitioners' appeal without considering any of the aforesaid facts and no reasons are stated, the statutory appeal filed by the Petitioners was dismissed by the Respondent No. 2.

8. Being aggrieved, Petitioners filed Revision Application No.72 of 2022 alongwith the necessary documents before the Respondent No. 1 State; by order dated 07.03.2022 Respondent No. 1 rejected the Revision Application of the Petitioners and hence the Petitioners are before this Court.

9. Petitioners submit that by order dated 13.04.2022, Respondent No. 4 Society has taken cognizance of the filing of the

present Writ Petition in an order issued for deletion of the name of Smt. Tulsabai Pandurang Yelke from the final voters list. The said communication is at Exhibit 'K' at (page No. 306A) to the petition. Similar communications have been addressed to some of the Petitioners which are also annexed to the petition.

10. The election program is at page No. 341 of the Petition. It is seen that the election process has begun on 04.05.2022 and is to culminate on 05.06.2022. Petitioners have urged that taking advantage of the vacation in the court, the Society is carrying out the election program is detrimental to the Petitioners' right to vote in the election. Petitioners' names stand deleted from the final voters list in view of the orders dated 22.11.2021, 12.01.2022 and 07.03.2022.

11. Dr. Uday Warunjikar, learned counsel appearing for the Petitioners submits that the Respondents have erred in ignoring to take into consideration the applicable provisions of law, the bye-laws of the society and its effect on the Petitioners who are permanent residents of village Korivade and Harapvade and qualify as agriculturists and belong to the family of agriculturists which facts were considered by the Society at the time of admitting the Petitioners as the members of the Society in the year 1998 and 2008. He submits that this position is undisputed and since their admissions as

members, the Petitioners have functioned as members and abided by all terms, conditions and Bye-laws of the Society as its bonafide members and are largely dependant for their survival, aid and support from the Society.

11.1. He submits that the Respondents have failed and neglected to interpret the provisions of Section 11 of the said Act which state that when any question on the eligibility of a person as agriculturist arises 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 to 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 the sub section, then such questions shall be decided by the Registrar. He submits that the Respondents have failed to appreciate that the definition of “agriculturist” includes agricultural landholder, land tillers, tenant and/or any person carrying on business, profession or employment which includes agricultural labourers and/or persons directly and indirectly connected to agricultural business within the jurisdiction of the Society. He submits that the Respondent Nos. 2 and 3 have curtailed the meaning and definition of “agriculturist” in the case of the Petitioners.

11.2. He submits that the complaint filed by Respondent Nos. 5 to 8 is a general complaint without any specific allegation and without any cogent evidence and the authorities have allowed the complaint without looking into the merits of the case of each of the Petitioner.

11.3. He submits that in 2016 dispute application was filed being No. 1 of 2016 challenging the minutes of meeting in which membership of the some of the Petitioners stood rejected; the same was challenged before the Co-operative Court, Kolhapur wherein ad-interim reliefs were refused but the dispute is still pending before the Co-operative Court, Kolhapur; that the Respondent Nos. 5 to 8 have claimed the same reliefs in their present complaint before the Respondent No.2 and was decided by Respondent No.3 despite the issue being subjudice.

11.4. He submits that the impugned orders have come to the aforesaid conclusion without giving proper reasoning and cogent evidence declaring the Petitioners as non-agriculturists resultantly disqualifying them to be member of the Society.

11.5. He submits that the object of the co-operative movement and formation of the Society is for providing a helping hand to the last person in the village and their upliftment; that as per bye-laws clause 2 of the Bye-laws the object is to provide assistance for development in

the standard of living, business and production, financial assistance to skilled workers, landless laborers etc; that as per Clause 4 membership criteria is governed; that the Petitioners have been members of the Society in 1998 and 2008 and most of them have agricultural land holdings within the jurisdiction of the Society as stated and which is evident from the certificates issued by the Tehsildar, Ajara and the 7/12 extracts which are annexed at Exhibit 'C' and 'D' to the petition.

11.6. He therefore submits that the impugned order deserves to be set aside and Petitioners be admitted as members of the Society.

12. *PER CONTRA*, Mr. Bandiwadekar, learned counsel appearing for the Respondent Nos. 5 to 8 opposes the petition and submits that the Society in question falls in the category of Primary Agricultural Co-operative Credit Society (Type "B") under Rule 4(II) of the MCS Rules, 2014. He submits that the election program announced by the Society is in accordance with the due process of law. He submits that the amended Writ Petition also challenges two orders dated 13.04.2022 and 19.04.2022 apart from the larger challenge to the impugned orders passed by the Respondent Nos. 1 to 3 in the present petition. He has also referred to and relied upon Rule 78 read with Rule 91 of the MCS Rules, 2014 and contended that the election program / process cannot be challenged and the Writ Petition filed by the Petitioner is not maintainable in view of a catena of

decisions passed by this Court and the Supreme Court. He submits that admittedly the Petitioners stand disqualified as Petitioner Nos. 1 to 30 are non-agriculturists and the Petitioner Nos. 31 to 77 are neither agriculturists nor residents of the said villages. He submits that the impugned order dated 22.11.2021 passed by Respondent No. 3 was pursuant to a substantive hearing given to the Petitioners and the answering Respondents. In paragraph No. 9, Respondent Nos. 5 to 8 have specifically taken the stand that the Petitioners had never submitted the documentary evidence and proof of being agriculturists or residents of the said villages for asserting their eligibility. Mr. Bandiwadekar, in his oral submissions has reiterated before us that the documentary evidence produced by some of the Petitioners at Exhibits 'C' and 'D' collectively is produced by the Petitioners for the first time on record. He therefore submits that the present Writ Petition be dismissed with costs.

13. Mr. Deelip Patil Bankar, learned counsel for the Respondent No.9 submits that as per the election program of preparation of voters list, after considering the objections submitted to the provisional list by the concerned parties, the Respondent No. 9 has considered and decided the said objections vide the aforesaid orders dated 13.04.2022 and pursuant to which the final voters list dated 19.04.2022 has been published already; that the reasons mentioned in the said orders are

self speaking.

13.1. He submits that the further election program under Rule 18 of the MCS (Election to Committee) Rules, 2014 has been also published; that the election process is at the fag end as most of the stages of the election program are already completed and the polling is scheduled on 05.06.2022. Reliance is placed on the case of *Shaji K. Joseph Vs. V. Vishwanath and Ors.*¹ and *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Anr. Vs. State of Maharashtra and Ors.*² to contend that whenever process of election process starts, normally Court should not interfere with the election in view of the alternative statutory remedy available to the Petitioners under Section 78 read with Section 91 of the said Act; that the election should not be delayed or canceled once the election process starts and no interference is called for in respect of the reliefs prayed for by the Petitioners for challenging the present election program.

14. Petitioners have relied upon the following recent decision passed by a Co-ordinate bench of this Court in Writ Petition No. 2784 of 2022 in the case of *Rekha R. Kavade & Ors. Vs. The Divisional Joint Registrar Co-operative Societies, Kolhapur and Ors.* passed on

1 (2016) 4 SCC 429

2 (2001) 8 SCC 509

21.03.2022 to submit that the facts of the said case are identical to the facts of the present case wherein the statutory authorities had completely overlooked in the criteria for grant of membership of the Society and had passed the impugned orders therein which were set aside by this Court.

15. Both the warring parties have referred to and relied upon another decision of the Division Bench of this Court passed on 20.11.2021 in the case of *Dattatray Genaba Lole & Ors. Vs. Divisional Joint Registrar, Cooperative Societies & Ors.*³, to which one of us (Milind N. Jadhav, J.) was a party. Paragraph Nos. 31 and 41 of the said judgment are relevant and quoted thus:-

"31. Section 91 of the Act, which is of primary significance to the issue that arises for consideration, in its relevant part reads as follows:

"91. Disputes

(1) Notwithstanding [anything contained] in any other law for the time being in force, any dispute touching the constitution, [election of the committee or its officers] conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the society, [to a Co-operative Court], if both the parties thereto are one or other of the following:--

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society [or the Official Assignee of a de-registered society];

(b) a member, past member or a person claiming through a member, past member or a deceased member of a

3 2021 SCC Online Bom 4579 : (2022) 1 Bom CR 471

society, or a society which is a member of the society [or person who claims to be a member of the society];

(3) Save as otherwise provided under [sub-section (2) of section 93], no Court shall have jurisdiction to entertain any suit or other proceeding in respect of any dispute referred to in sub-section (1)."

41. Rule 78, which is significant to the determination of this Writ Petition, deals with election disputes. It states:

"78. No election shall be called in question, except by an election petition presented to the Co-operative Court as laid down in section 91."

16. As seen, admittedly the present dispute has emanated more than one year ago. Admittedly the 77 Petitioners have different facts in so far as their eligibility is concerned. The facts of each Petitioner shall be governed by the criteria for considering whether the said Petitioner is eligible to become the member of the Society so on to enable the member to have access to the benefits in accordance with law. It is also undisputed that the Petitioners are the erstwhile members of the Society. Some of them have been admitted as members in 1998, whereas some of them have been admitted as members in 2008. After their admission and right upto 09.02.2021 when the complaint of the private Respondents (Respondent Nos.5 to 8) was filed and decided on 22.11.2021, the Petitioners were enjoying all such benefits of the Society. From the date of the decision of the Competent Authority on 22.11.2021, the Petitioners have agitated their statutory remedy available to them in law and filed the statutory appeal before the first Appellate Authority. The first Appellate

Authority decided the appeal against the Petitioners on 12.01.2022.

17. The Petitioners hence approached the Respondent No. 1 State in its revisional jurisdiction; however on 07.03.2022, Respondent No. 1 State also upheld the orders dated 22.11.2021 and 12.11.2022, thus forcing the Petitioners to file the present petition. The present Writ Petition is filed on 15.03.2022. Some time in the end of March 2022, Respondent No. 4 Society decided to conduct the election of its Board of Directors of the Society as per directions received from the government. The process of conduct for the said election has been carried out by the statutory Respondents in accordance with law. As seen, in view of the aforementioned impugned orders, the names of the Petitioners have not appeared in the final voters list in respect of the election of the Board of Directors of the Society. The voting of the members is due on 05.06.2022 which shall culminate the election program. The election program has been discussed herein above.

18. On a careful perusal of the pleadings filed by the Petitioners, it is apparent that the Petitioners have approached this Court to challenge the orders dated 29.11.2021 and 12.01.2022 and 07.03.2022. The challenge to these orders are in the larger context as seen from the grounds pleaded in the petition. However incidental to

this is the ground pertaining to deletion of the names of the Petitioners from the final voters list of the Society in the election program. It is clearly understood from the pleadings and reliefs claimed that the challenge to the election of the Society is not the primary challenge of the Petitioners, though a prayer by amendment is now sought to be introduced. The submissions made by the learned counsel appearing on behalf of the Petitioners have been alluded herein above and those submissions speak for themselves.

19. As stated above the incidental submission is with respect to the preparation of the final voters list. We have perused the judgments cited at the bar by both the respective counsel. As far as the issue relating to the maintainability of challenge to the election program is concerned, we differ from the submissions advanced by the learned counsel appearing for the Petitioners with a caveat. Learned counsel for the Petitioners has submitted before us that the decision in Dattatraya Geneba Lole' case (*supra*), does apply to the facts and circumstances in the present case in view of the exceptions carved out by this Court in the said judgment. He submits that on reading the said decision with the decision passed in Rekha Rajaram Kavade' case (*supra*), the Petitioners' grievance needs redressal in so far as considering their eligibility is concerned. It is also an admitted position that the Petitioners have for the first time during the entire

length of the proceedings before the statutory / Competent Authority, the first Appellate Authority and Revisional Authority have produced on record the data, *inter alia*, pertaining to the Petitioners being agriculturists as well as the proof of residents of the Petitioners / their family members / ancestors in the jurisdiction of Respondent No. 4 Society. Though we have seen the annexures to the petition *prima facie* the said annexures are incomplete and do not cover all 77 Petitioners.

20. As stated there are 77 Petitioners before this Court; the facts governing each Petitioner would stand on a different footing in so far as their proof of being agriculturist is concerned as also their proof of residence within the jurisdiction of the Society. There is no doubt that the Petitioners have annexed to the petition and placed on record certain revenue documents and record, *inter alia*, pertaining to the some of the Petitioners. However this Court cannot be a fact finding Court of the first instance.

21. On perusal of the aforementioned three impugned orders, it is also clearly seen that the issue before the statutory authorities in the present proceedings has never touched upon and/or dealt with the decision with respect to determination of the eligibility of each of the 77 Petitioners in accordance with law and on the basis of specific proof submitted by each of them. As noted, the Petitioners have never

submitted the proof of their being agriculturists and/or their proof of residence before the statutory authorities at any point of time and have only now sought to have done so in the present petition.

22. We have seen the complaint and the three impugned orders passed by the statutory authorities. The complaint as well as the three impugned orders admittedly do not discuss the details qua each of the 77 Petitioners for arriving at the conclusion to debar the Petitioners from the membership of the Society. If the Respondents are right in their contention that the Petitioners do not qualify as eligible members of the Society, then there has to be a specific finding qua each Petitioner with respect to the twin questions pertaining to their being agriculturists and residents of the said villages. Admittedly on perusal of the impugned orders, it is evident that this aspect has not been considered by the Respondent Nos. 3 while passing the first order dated 22.11.2021 and by the Respondent No. 2 while passing the Appellate order dated 12.01.2022. The Revisional Authority i.e. Respondent No. 1 has also not considered the above aspect. We find that the reasoning given in the orders is not supportive of the aforesaid finding. Hence, the three impugned orders stated above are not sustainable in the present case. Hence, we set aside the three impugned orders dated 22.11.2021, 12.01.2022 and 07.03.2022, however with the following directions.

23. In view of the above discussion and findings, we are of the considered opinion that in accordance with the decision of this Court in the case of Dattatraya Geneba Lole (*supra*), this Court shall not interfere with the election program. However with respect to the issue of eligibility of each of the Petitioners, we direct the Petitioners to approach the Respondent No. 3 individually alongwith documentation pertaining to each of the Petitioner separately and not together as a bunch. Each Petitioner is permitted to file an individual representation before the Respondent No. 3 alongwith all the necessary proof, data, revenue record and any other such document which they seek to rely upon for being determined / classified / eligible as agriculturists as also proof of their residence within the jurisdiction of the Society in accordance with law. If such application is filed by each of the Petitioners individually within a period of two weeks from today, Respondent No. 3 shall accord a hearing to such Petitioners individually.

24. The private Respondents i.e. Respondent Nos. 5 to 8 as well as the Society shall also be permitted to appear before the Respondent No. 3 for considering and taking a decision with respect to the eligibility of the individual Petitioners in accordance with law. After giving hearing to the parties Respondent No. 3 shall pass a speaking

order in respect of each of the Petitioners individually in accordance with law within a period of 4 weeks thereafter. Such order shall be conveyed to each Petitioner individually by the Respondent No. 3.

25. With the above directions Writ Petition stands disposed of. However, there shall be no order as to costs. Interim Application No. 3288 of 2022 accordingly stands disposed of.

[ABHAY AHUJA, J.]

[MILIND N. JADHAV, J.]