Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 562 OF 2022

Manoharji Dongre Dudha Uttpadak Sahakari Sanstha Maryadit Through Chairman …Petitioner

Versus

The District Coop Election Officer Through Divisional Joint Registrar & Ors …Respondents

WITH

WRIT PETITION NO. 563 OF 2022

Manoharji Dongre Dudha Uttpadak Sahakari Sanstha Maryadit Through Chairman …Petitioner

Versus

The District Coop Election Officer Through Divisional Joint Registrar & Ors …Respondents

WITH

WRIT PETITION NO. 564 OF 2022

Manoharji Dongre Dudha Uttpadak Sahakari Sanstha Maryadit Through Chairman …Petitioner

Versus

The District Coop Election Officer & Ors …Respondents

WITH

WRIT PETITION NO. 565 OF 2022

Manoharji Dongre Dudha Uttpadak Sahakari Sanstha Maryadit Through Chairman …Petitioner

Versus
The District Coop Election Officer & Ors ...Respondents

WITH

WRIT PETITION (ST) NO.1073 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit ...Petitioner
Versus
The District Coop Election Officer/The Divisional Joint Registrar, Coop Societies (Dairy) & Ors ...Respondents

WITH

WRIT PETITION (ST) NO. 1465 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary ...Petitioner
Versus
The District Coop Election Officer & Ors ...Respondents

WITH

WRIT PETITION (ST) NO. 1466 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary ...Petitioner
Versus
The District Coop Election Officer & Ors ...Respondents

WITH

WRIT PETITION (ST) NO. 1467 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary ...Petitioner

Versus

The District Coop Election Officer & Ors ...Respondents

WITH

WRIT PETITION (ST) NO. 1469 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary ...Petitioner

Versus

The District Coop Election Officer & Ors ...Respondents

WITH

WRIT PETITION (ST) NO. 1474 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary ...Petitioner

Versus

The District Coop Election Officer & Ors ...Respondents

WITH

WRIT PETITION (ST) NO. 1484 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary ...Petitioner

Versus

The District Coop Election Officer & Ors ...Respondents

WITH

WRIT PETITION (ST) NO. 1486 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary …Petitioner

Versus

The District Coop Election Officer & Ors …Respondents

WITH

WRIT PETITION (ST) NO. 1487 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary …Petitioner

Versus

The District Coop Election Officer & Ors …Respondents

WITH

WRIT PETITION (ST) NO. 1488 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary …Petitioner

Versus

The District Coop Election Officer & Ors …Respondents

WITH

WRIT PETITION (ST) NO. 1489 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary …Petitioner

Versus

The District Coop Election Officer & Ors …Respondents

WITH

WRIT PETITION (ST) NO. 1491 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary …Petitioner

Versus

The District Coop Election Officer & Ors …Respondents

WITH

WRIT PETITION (ST) NO. 1492 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary …Petitioner

Versus

The District Coop Election Officer & Ors …Respondents

WITH

WRIT PETITION (ST) NO. 1493 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary …Petitioner

Versus

The District Coop Election Officer & Ors …Respondents

WITH

WRIT PETITION (ST) NO. 1495 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary …Petitioner

Versus
The District Coop Election Officer & Ors ...Respondents

WITH

WRIT PETITION (ST) NO. 1496 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary ...Petitioner
Versus
The District Coop Election Officer & Ors ...Respondents

WITH

WRIT PETITION (ST) NO. 1498 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary ...Petitioner
Versus
The District Coop Election Officer & Ors ...Respondents

WITH

WRIT PETITION (ST) NO. 1499 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary ...Petitioner
Versus
The District Coop Election Officer & Ors ...Respondents

WITH

WRIT PETITION (ST) NO. 1500 OF 2022

The Secretary Of Rajkumari Mahila Dudha ...Petitioner

Uttpadak Sahakari Sanstha Maryadit Through
Secretary
Versus
The District Coop Election Officer & Ors ...Respondents

WITH

WRIT PETITION (ST) NO. 1501 OF 2022

The Secretary Of Rajkumari Mahila Dudha ...Petitioner
Uttpadak Sahakari Sanstha Maryadit Through
Secretary
Versus
The District Coop Election Officer & Ors ...Respondents

WITH

WRIT PETITION (ST) NO. 1502 OF 2022

The Secretary Of Rajkumari Mahila Dudha ...Petitioner
Uttpadak Sahakari Sanstha Maryadit Through
Secretary
Versus
The District Coop Election Officer & Ors ...Respondents

WITH

WRIT PETITION (ST) NO. 1503 OF 2022

The Secretary Of Rajkumari Mahila Dudha ...Petitioner
Uttpadak Sahakari Sanstha Maryadit Through
Secretary
Versus
The District Coop Election Officer & Ors ...Respondents

WITH

WRIT PETITION (ST) NO. 1504 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary …Petitioner

Versus

The District Coop Election Officer & Ors …Respondents

WITH

WRIT PETITION (ST) NO. 1509 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary …Petitioner

Versus

The District Coop Election Officer & Ors …Respondents

WITH

WRIT PETITION (ST) NO. 1511 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary …Petitioner

Versus

The District Coop Election Officer & Ors …Respondents

WITH

WRIT PETITION (ST) NO. 1512 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary …Petitioner

Versus

The District Coop Election Officer & Ors …Respondents

WITH

WRIT PETITION (ST) NO. 1513 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary …Petitioner

Versus

The District Coop Election Officer & Ors …Respondents

WITH

WRIT PETITION (ST) NO. 1514 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary …Petitioner

Versus

The District Coop Election Officer & Ors …Respondents

WITH

WRIT PETITION (ST) NO. 1515 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary …Petitioner

Versus

The District Coop Election Officer & Ors …Respondents

WITH

WRIT PETITION (ST) NO. 1516 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary …Petitioner

Versus

The District Coop Election Officer & Ors …Respondents

WITH

WRIT PETITION (ST) NO. 1517 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary …Petitioner

Versus

The District Coop Election Officer & Ors …Respondents

WITH

WRIT PETITION (ST) NO. 1518 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary …Petitioner

Versus

The District Coop Election Officer & Ors …Respondents

WITH

WRIT PETITION (ST) NO. 1519 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary …Petitioner

Versus

The District Coop Election Officer & Ors …Respondents

WITH

WRIT PETITION (ST) NO. 1521 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary …Petitioner

Versus
The District Coop Election Officer & Ors ...Respondents

WITH

WRIT PETITION (ST) NO. 1523 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary ...Petitioner
Versus
The District Coop Election Officer & Ors ...Respondents

WITH

WRIT PETITION (ST) NO. 1526 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary ...Petitioner
Versus
The District Coop Election Officer & Ors ...Respondents

WITH

WRIT PETITION (ST) NO. 1528 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary ...Petitioner
Versus
The District Coop Election Officer & Ors ...Respondents

WITH

WRIT PETITION (ST) NO. 1529 OF 2022

The Secretary Of Rajkumari Mahila Dudha ...Petitioner

Uttpadak Sahakari Sanstha Maryadit Through Secretary
Versus
The District Coop Election Officer & Ors ...Respondents

WITH

WRIT PETITION (ST) NO. 1531 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary ...Petitioner
Versus
The District Coop Election Officer & Ors ...Respondents

WITH

WRIT PETITION (ST) NO. 1532 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary ...Petitioner
Versus
The District Coop Election Officer & Ors ...Respondents

WITH

WRIT PETITION (ST) NO. 1533 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary ...Petitioner
Versus
The District Coop Election Officer & Ors ...Respondents

WITH

WRIT PETITION (ST) NO. 1534 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary …Petitioner

Versus

The District Coop Election Officer & Ors …Respondents

WITH

WRIT PETITION (ST) NO. 1536 OF 2022

The Secretary Of Rajkumari Mahila Dudha Uttpadak Sahakari Sanstha Maryadit Through Secretary …Petitioner

Versus

The District Coop Election Officer & Ors …Respondents

Mr Shailendra Kanetkar, *for the Petitioners in WP/562/2022, WP/563/2022, WP/564/2022 & WP/565/2022.*

Mr SS Patwardhan, *with Suhas Inamdar and Purushottam G Chavan, for Respondent No. 4, in WPL/ 562, 563, 564, 565, 1519, 1526, 1529, 1534, 1513, 1514, 1489, 1523, 1518, 1467, 1509, 1528, 1515, 1499, 1500, 1501, 1504, 1512, 1516, 1495, 1494, 1511, 1522, 1533, 1517 and 1073 of 2022.*

Mr Sarang Satish Aradhye, *for the Petitioner in all matters except in WP/562/2022, WP/563/2022, WP/564/2022 & WP/565/2022.*

Mr SS Panchpor, AGP, *for Respondent-State in all matters.*

Mr Dilip Bodke, *for Respondent No.1 in all Writ Petitions.*

CORAM G.S. Patel &
Madhav J. Jamdar, JJ.
DATED: 14th February 2022

PC:-

1. We will take the facts in Writ Petition (Stamp) No. 1073 of 2022 as representative in this entire group of matters. None have any objections to this.

2. The Writ Petition challenges an order of 5th January 2022 passed by the 1st Respondent, the District Cooperative Election Officer. By the impugned order, the 1st Respondent allowed an objection No. 76 raised by the 4th Respondent society for inclusion of its name in the final voter's list for the general elections of the 3rd Respondent federal society. The Petitioner and the 4th Respondent (through their respective office bearers) are both members of the 3rd Respondent.

3. The case in the Petition lies in a narrow campus. The Petitioner is a milk-producing cooperative society. It is an active member of the 3rd Respondent. This expression "active" has some significance, as we shall presently see. Recently, the State Cooperative Election Authority issued a notification setting in motion the elections of various cooperative societies, including that of the 3rd Respondent.

4. By orders of 18th June 2020 and 23rd October 2020, an interim order of liquidation was passed by the 2nd Respondent against some 362 milk producing cooperative societies inter alia under the provisions of Section 102 of the Maharashtra Cooperative Societies Act 1960 ("**MCS Act**").

5. It seems that at a higher level, those orders of interim liquidation were stayed.

6. The present Petitioner came to this Court in Writ Petition No. 6505 of 2021 assailing this interim stay (as against the 4th Respondent). By an order of 14th October 2021, a Division Bench of this Court set aside the impugned orders and required the Assistant Registrar to issue fresh notices to the affected societies and to pass interim orders. This was to be done within four weeks. The 2nd Respondent Assistant Registrar did so. He issued notices to some 904 societies calling for an explanation. A sample of one such notice is annexed. Some societies submitted explanations and appeared before the 2nd Respondent. Others did not. The 2nd Respondent passed an interim order of liquidation under Section 102 of the MCS Act in respect of more than 900 societies.

7. On 15th December 2021, there came to be published a provisional voters' list of 263 societies for the elections to the managing committee/board of directors of the 3rd Respondent, Sangha, for the term 2022–2027. Some 54 objections were raised with the 1st Respondent authority by 54 different societies who complained that their names were excluded from the provisional voters list. The 4th Respondent was one of these objectors. Some of the other objectors are the 4th respondents in the companion petitions.

8. The Assistant Registrar on 27th December 2021 addressed a communication setting out a list of various societies' audit report statuses. It is alleged that the 4th Respondent had failed to make statutory compliance with the audit reports.

9. Ultimately, by the impugned order of 5th January 2022, the 1st Respondent allowed the 4th Respondent's Objection No. 76 and directed the inclusion of its name in the voters' list. This is what the Petitioners challenge.

10. The grounds of challenge are broadly three. The first ground is that the 4th Respondent has not completed an audit since before 2019. The second case pleaded is that because it has done no work for over five years, the 4th Respondent has become a non-active member of the 3rd Respondent. Thirdly, it is said that there is an interim order of liquidation. According to the Petitioners, therefore, for any one of these three reasons, and certainly for all three of them taken together, while the 4th Respondent may not lose its membership of the 3rd Respondent *per se*, it has rendered itself ineligible to vote.

11. The task before Counsel for the Petitioners is to demonstrate that, as a matter of law, and particularly as a matter of the MCS, which is a self-contained code, any one of these reasons specifically results in the disenfranchising of the 4th Respondent.

12. For this our attention is drawn firstly to Section 81 of the MCS Act which reads thus.

"**81. Audit**

(1) (a) The society shall cause to be audited its accounts at least once in each financial year and also cause it to be completed within a period of four months from the close of financial year to which such accounts relate by auditor or auditing firm, from a panel prepared by the Registrar and approved by the State Government or an authority authorised by it in this behalf, possessing required qualifications and experience as may be prescribed to be eligible for auditing accounts of societies, appointed by the general body of a society, as proved in sub-section (2A) of section 75 or by the Committee, as provided in sub-section (2B) thereof and shall lay such audit report before the annual general body meeting. In case of apex society, the audit report shall also be laid before both Houses of the State Legislature, in such manner, as may be prescribed:

Provided that, if the Registrar is satisfied that the society has failed to intimate and file the return as provided by sub-section (2A) of section 75 and sub-section (1B) of section 79, by order, for the reasons to be recorded in writing, he may cause its accounts to be audited, by an auditor from the panel of the auditors approved by the State Government or an authority authorised by it in this behalf:

Provided further that, no auditor shall accept audit of more than twenty societies for audit in a financial year excluding societies having paid up share capital of less than rupees one lakh:

Provided also that, the Registrar shall maintain a panel of auditors and auditing firms as approved by the State Government or an authority authorised by it in this behalf.

Provided also that, for the financial year 2019-2020, the society shall cause its audit to be completed within a period of nine months from the close of the financial year 2019-2020.

(b) The manner of preparation, declaration and maintenance of the panel of auditors and auditing firms by the Registrar shall be such as may be prescribed.

(c) The committee of every society shall ensure that the annual financial statements like the receipts and payments or income and expenditure, profit and loss and the balance-sheet along with such schedules and other statements are audited within, four months of the closure of the financial years.

(d) The Registrar shall submit the audit report of every apex co-operative society to the State Government annually for being laid before both the Houses of the State Legislature in the manner prescribed.

(e) The auditor's report shall have,—

(i) all particulars of the defects or the irregularities observed in audit and in case of financial irregularities and misappropriation or embezzlement of funds or fraud, the auditor or the auditing firm shall investigate and report the *modus operandi,* the entrustment and amount involved;

(ii) accounting irregularities and their implications on the financial statements to be indicated in detail in the report with the corresponding effects on the profit and loss;

(iii) the functioning of the committee and sub-committees of the societies be checked and if any irregularities or violations are observed or reported, duly fixing the responsibilities for such irregularities or violations.

(f) The remuneration of the auditor or auditing firm of a society shall be borne by the society and shall be at such rate as may be prescribed.

(g) The Registrar shall maintain the list of societies district-wise, the list of working societies, the list of societies whose accounts are audited, the list of societies whose accounts are not audited within the prescribed time and reasons therefore. The Registrar shall coordinate with the societies and the auditors or auditing firms and ensure the completion of audit of accounts of all the co-operative societies in time every year.

Explanation I.— For the purposes of this section, the expression, "possessing required qualifications" for being included in the panel duly approved by the State Government or an authority authorised by the State Government in this behalf, from time to time, shall mean and include—

(a) a person who is a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949, who has a fair knowledge of the functioning of the societies and an experience of at least one year in auditing of societies with a working knowledge of Marathi language;

(b) an auditing firm which is a firm of more than one Chartered Accountants within the meaning of the Chartered Accountants Act, 1949, who have a fair knowledge of the functioning of the societies with a working knowledge of Marathi language;

(b-1) a person who is Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959, who has a fair knowledge of the functioning of the societies and an experience of at least one year of auditing in societies with a working knowledge of Marathi language;

(b-2) an auditing firm, which is a firm of more than one Cost Accountants within the meaning of the Cost and Works Accountants Act, 1959, having a fair knowledge of the functioning of the societies with a working knowledge of Marathi language;

(c) a certified auditor who is a person holding a Degree from a recognized University and also has completed a Government Diploma in Co-operation and Accountancy and who has a fair knowledge of the functioning of the societies and an experience of at least three years in auditing of societies with a working knowledge of Marathi language.

(d) a Government Auditor who is an employee of the Co-operation Department of the State, possession the Higher Diploma in Co-operative Management or the Diploma in Co-operative Audit or Government Diploma in Co-operation and Accountancy with a working knowledge of Marathi language and who has completed the period of probation successfully;

Explanation II.— The terms and conditions for inclusion and retention of name as an auditor or auditing firm in the panel of auditors shall be subject to the terms and conditions, as may be prescribed.

(2) The audit under sub-section (1) shall be carried out as per the Auditing Standards notified by the State Government from time to time and shall also include examination or verification of the following items, namely:—

(i) overdues of debts, if any;

(ii) cash balance and securities and a valuation of the assets and liabilities of the society;

(iii) whether loan and advances and debts made by the society on the basis of security have been properly secured and the terms on which such loans and advances are made or debts are incurred are not prejudicial to the interest of the society and its members;

(iv) whether transactions of the society which are represented merely by book entries are not prejudicial to the interest of the society;

(v) whether loans and advances made by the society have been shown as deposits;

(vi) whether personal expenses have been charged to revenue account;

(vii) whether the society has incurred any expenditure in furtherance of its objects;

(viii) whether the society has properly utilised the financial assistance granted by Government or Government undertakings or financial institutions, for the purpose for which such assistance was granted;

(ix) whether the society is properly carrying-out its objects and obligations towards members.

(2A) Where, in the opinion of the State Government, it is necessary in the public interest or in the interest of the society to do so in relation to any society or class of societies for ensuring management thereof in accordance with sound business principles or prudent commercial practices, the State Government may, by order, direct that such society or class of societies shall prepare and maintain its accounts in the form determined by the State Government, from time to time and that cost audit or performance audit or both, of such society or class of societies, as may be specified in the order, shall be conducted.

(2B) Where any order is issued under sub-section (2A), the Society shall cause its audit to be conducted by a cost accountant, who is a member of the Institute of Cost and Works Accountants of India constituted under section 3 of the Cost and Works Accountants Act, 1959.

(3)(a) The Auditor shall, for the purpose of audit, at all time have access to all the books, accounts, documents, papers, securities, cash and other properties belonging to, or in the custody of, the society, and may summon any person in possession or responsible for the custody of any such books, accounts, documents, papers, securities, cash or other properties, to produce the same at any place at the headquarters of the society or any branch thereof.

(b) If the Registrar has reason to believe that there exists an element of fraud, misapplication of funds, manipulation of the accounts and the accounts of the society are likely to be tampered with, thereby causing loss to the society, he shall be competent to depute flying squad to society or societies for examination of books, records, accounts, and such other papers and for verification of cash balance. The report of the Flying Squad shall be treated as sufficient evidence for further action, if any.

(c) If it is brought to the notice of the Registrar that the audit report submitted by the auditor does not disclose the true and correct picture of the accounts, the Registrar or the authorised person may carry out or cause to be carried out a test audit of accounts of such society. The test audit shall include the examination of such items as may be prescribed and specified by the Registrar in such order.

(4) Every Person who is, or has at any time been, an officer or employee of the society, and every member and past member of the society, shall furnish such information in regard to the transaction and working of the society as the Registrar, or the person authorised by him, may require.

(5) The auditor appointed under sub-section (1) shall have the right to receive all notices and every communication relating to the annual general meeting of the society and to attend such meeting and to be heard thereat, in respect of any part of the business with which he is concerned as auditor.

(5A) If, during the course of audit of any society, the auditor is satisfied that some books of accounts or other documents contain any incriminatory evidence against past or present officer or employee of the society the auditor shall immediately report the matter to the Registrar and, with previous permission of the Registrar, may impound the books or documents and give a receipt thereof at the society.

(5B) The auditor shall submit his audit report within a period of one month from its completion and in any case before issuance of notice of the annual general body meeting to the society and to the Registrar in such form as may be specified by the Registrar, on the accounts examined by him and on the balance sheet and profit and loss account as on the date and for the period up to which the accounts have been audited, and shall state whether in his opinion and to the best of his information and according to the explanation given to him by the society the said accounts give all information required by or under this Act and present the true and fair view of the financial transaction of the society.

Provided that, where the auditor has come to a conclusion in his audit report that any person is guilty of any offence relating to the accounts or any other offences, he shall file a specific report to the Registrar within a period of fifteen days from the date of submission of his audit report. The Auditor concerned shall, after obtaining written permission of the Registrar, file a First Information Report of the offence. The auditor who fails to file First Information Report, shall be liable for disqualification and his name shall be liable to be removed from the panel of auditors and he shall also be liable to any other action as the Registrar may think fit:

Provided further that, when it is brought to the notice of the Registrar that, the Auditor has failed to initiate action as specified above, the Registrar shall cause a First Information Report to be filed by a person authorised by him in that behalf;

Provided also that, on conclusion of his audit, if the auditor finds that there are apparent instances of financial irregularities resulting into losses to the society caused by any member of the committee or officers of the society or by any other person, then he shall prepare a Special Report and submit the same to the Registrar along with his audit report. Failure to file such Special Report, would amount to negligence in the duties of the auditor and he shall be liable for disqualification for appointment as an auditor or any other action, as the Registrar may think fit.

(6) If it appears to the Registrar, on an application by a society or otherwise, that it is necessary or expedient to re-audit any accounts of the society, the Registrar may by order provide for such re-audit and the provisions of this Act, applicable to audit of accounts of the society shall apply to such re-audit.

(7) Special audit of co-operative Bank if requested by the Reserve Bank of India shall be conducted and report thereof shall be submitted to the Reserve Bank of India under intimation to the Registrar along with the Special Audit Report.

13. We must then also look at the provisions of Section 73CA, Section 75 and Section 29. These, in turn, will have to be read with Section 26 and 27 of the MCS Act.

"73-CA Disqualification of committee and its members

(A-1) In the case of a society, which gives loans to members for purchasing machinery, implements, equipments, commodities or other goods, or which deals in such goods, no member, who or whose member of the family is a dealer in such goods or is a director of a company or a partner in a firm carrying on business in such goods, in the area of operation of the society shall be eligible for being elected or nominated as a member of the committee of such society;

Explanation.— For the purposes of this sub-section, the expression "family" shall have the same meaning as explained in the Explanation I, to sub-section (2) of Section 75.

(1) Without prejudice to the other provisions of this Act or the rules made thereunder in relation to the disqualification of being a member of a committee, **no person shall be eligible for being appointed, nominated,**

elected, co-opted or, for being a member of a committee, if he—

(i) is a defaulter of any society;

Explanation.— For the purposes of this clause, the term "defaulter" includes—

(a) in the case of a primary agricultural credit society, a member who defaults the repayment of the crop loan on the due date;

(b) in the case of term lending society, a member who defaults the payment of any instalment of the loan granted to him;

(c) in the case of any society,—

(i) a member who has taken anamat or advance; or

(ii) a member who has purchased any goods or commodities on credit or availed himself of any services from the society for which charges are payable; and fails to repay the full amount of such anamat or advance or pay the price of such goods or commodities or charges for such service, after receipt of notice of demand by him from the concerned society or within thirty days from the date of withdrawal of anamat or advance by him or from the date of delivery of goods to him or availing of services by him, whichever is earlier;

(d) in the case of non-agricultural credit societies, a member who defaults the payment of any instalment of the loan granted;

(e) in the case of housing societies, a member who defaults the payment of dues to the society within three months from the date of service of notice in writing served by post under certificate of posting demanding the payment of dues;

(f) in the case of District Central Cooperative Bank or of the State Cooperative Bank, a member, if he,—

(i) is a person who represents a society other than a primary agricultural credit cooperative society on the board of a District Central Cooperative Bank or the State Cooperative Bank, if the society to whom he represents has committed a default towards the payments of such Bank for a period exceeding ninety days;

(ii) is a person who is a defaulter of a primary agricultural credit cooperative society or is an office-bearer of a defaulting primary agricultural cooperative credit society;

(iii) is a person who represents a society whose Managing Committee is superseded.

(ii) has, in the opinion of the Registrar, deliberately committed breach of cooperative discipline with reference to linking up of credit with cooperative marketing or cooperative processing; or

(ii-a) has been classified as non-active member under sub-section (2) of Section 26; or

(iii) has been held responsible under Section 79 or Section 88 or has been held responsible for payment of costs of inquiry under Section 85; or

(iv) has incurred any disqualification under this Act or the rules made thereunder; or

(v) carries on business of the kind carried on by the society either in the area of operation of the society or in contravention of the provisions of clause (b) of sub-section (A-1); or

Explanation.— ******

(vi) is a salaried employee of any society (other than a society of employees themselves) or holds any office of profit under any society, except when he holds or is appointed to the office of a Managing Director or any other office declared by the State Government by general or special order not to disqualify its holder or is entitled to be or is nominated as functional director on the committee of a society under sub-section (2) of Section 73-AAA;

(vii) has more than two children:

Provided that, a person having more than two children on the date of commencement of the Maharashtra Cooperative Societies (Third Amendment) Act, 2001 (hereinafter in this clause referred to as "the date of such commencement"), shall not be disqualified under this clause so long as the number of children he had on the date of such commencement does not increase:

Provided further that, a child or more than one child born in a single delivery within the period of one year from the date of such commencement shall not be taken into consideration for the purpose of disqualification mentioned in this clause.

Explanation.— For the purposes of this clause,—

(a) where a couple has only one child on or after the date of such commencement, any number of children born out of a single subsequent delivery shall be deemed to be one entity;

(b) "child" does not include an adopted child or children.

(viii) is held guilty for any offence under Section 146 and convicted under Section 147; or

(ix) is convicted with imprisonment of not less than one year for an offence under the provisions of any law for the time being in force;

(2) A member who has incurred any disqualification under sub-section (1), shall cease to be a member of the committee and his seat shall thereupon be deemed to be vacant.

(3) A member of a committee who has ceased to be a member thereof, on account of having incurred disqualification under sub-section (A-1) and Clauses (i) to (ix) of sub-section (1) shall not be eligible to be re-elected, re-co-opted or renominated as a member of the committee till the expiry of the period of next term of five years of the committee from the date on which he has so ceased to be a member of the committee.

(3-A) In case of an insured Co-operative Bank, if an order for supersession of its Committee, as per the requisition of the Reserve Bank of India, is made under Section 110-A, at any time within the period of ten years before the date of commencement of the Maharashtra Cooperative Societies (Amendment) Act, 2016 or at any time after such commencement, then no member of such Committee shall be eligible for being reappointed, re-nominated, re-elected or re-co-opted on the Committee of such bank or, for being a member, or for being appointed, nominated, elected or co-opted, as a member of Committee of such bank or any other bank, for a period of two terms of the Committee from the date of order of supersession of the Committee.

(4) A member of a committee who has ceased to be a member thereof, on account of having incurred any disqualification other than disqualifications, referred to in subsection (3) shall, unless otherwise specifically provided in this Act, be eligible to be renominated, re-co-opted or re-elected as a member of the committee as soon as such disqualification ceases to exist.

75. Annual general body meeting.

(1) Every society shall, within a period of four months after the close of the financial year, get its books of accounts audited and within six months after the close of financial year to transact its business as may be provided in this Act, call the annual general body meeting of its members.

Provided that, for the financial year 2019-2020 and year 2020-2021, the society may get its books of accounts audited within nine months from the close of its financial year and call the annual general body meeting within twelve months from the close of its financial year.

Provided further that, where such meeting is not called by the society, the Registrar or any officer authorised by him may call such meeting in the manner prescribed and that meeting shall be deemed to be a general body meeting duly called by the society and the Registrar may order that the expenditure incurred in calling such a meeting shall be paid out of the funds of the society or by such person or persons who, in the opinion of the Registrar, were responsible for the refusal or failure to convene the general meeting.

(2) At every annual general body meeting of a society, the committee shall lay before the society,—

(i) a statement showing the details of the loans, if any, given to any of the member, including a society or firm or company of which such member or members of his family is a member, partner or director, as the case may be; the details of repayment of loan made during the preceding year and the amount outstanding and overdue at the end of that year;

(ii) annual report of its activities;

(iii) plan for disposal of surplus;

(iv) list of amendments of the by-laws of the society, if any;

(v) declaration regarding date and conduct of its election of its committee, when due;

(vi) audit report of the preceding financial year;

(vii) rectification report of earlier audit;

(viii) annual budget for next year;

(ix) any other information required by the Registrar in pursuance of any of the provisions of the Act and rules; and

(x) such other business, will be transacted as may be laid down in the by-laws and of which due notice has been given.

Explanation I.— For the purposes of this sub-section, the expression "family" means a wife, husband, father, mother, brother, sister, son, daughter, son-in-law or daughter -in-law;

Explanation II.— In the case of a society not carrying on business for profit, an audited income and expenditure account shall be placed before the society at the annual general body meeting instead of audited profit and loss account, and all reference to audited profit and loss account, and to "profit" or "loss" in this Act, shall be construed in relation to such society as references respectively to the "excess of income over expenditure", and "excess of expenditure over income".

(2A) Every society shall, appoint an auditor or auditing firm from a panel approved by the State Government in this behalf in its annual general body meeting having such minimum qualifications and experience as laid down in Section 81, for the current financial year and shall also file in the form of return to the Registrar, the name of the auditor appointed and his written consent for auditing the accounts of the society within a period of thirty days from the date of the annual general body meeting:

Provided that, the same auditor shall not be appointed for more than three consecutive years by the annual general body meeting of the same society.

(2B) The Committee shall, in the financial year 2020-2021 and year 2021-2022 have the power to decide on the disposal of surplus and annual budget for the next year and to appoint an auditor or auditing firm from a panel approved by the State Government in this behalf having such minimum qualifications and experience as laid down in section 81. The decisions of the Committee in respect of the above matters shall be laid in the annual general body meeting of a society held thereafter for ratification.

(3) There shall be attached to every balance sheet laid before the society in general meeting, a report by its committee, with respect to (a) the state of the society's affairs; (b) the amounts, if any, which it proposes to carry to any reserve either in such balance sheet, or any specific balance sheet; and (c) the amounts, if any, which it recommends, should be paid by way of dividend, bonus, or honoraria to honorary workers. The committee's report shall also deal with any changes, which have occurred during the year for which the accounts made up, in the nature of the society's business. The committee's report shall be signed by its chairman, or any other member authorised to sign on behalf of the committee.

(4) At every annual general body meeting the audited balance sheet, the audited profit and loss account, audit report of the preceding financial year submitted by the auditor appointed under Section 81, rectification report of earlier audit and the committee's report shall be placed for adoption and such other business will be transacted as may be laid down in the by-laws, and of which due notice has been given.

(5) If default is made, in calling a general body meeting within the period prescribed under sub-section (1), or in complying with sub-section (2), (2-A), (3) or Section (4), the Registrar may by order declare any officer or member of the committee whose duty it was to call such a meeting or comply with sub-section (2), (2-A),] (3) or (4), and who without reasonable excuse failed to comply with any of the aforesaid sub-sections disqualified for being elected and for being an officer or member of the committee for such period not exceeding five years, as he may specify in such an order and, if the officer is a servant of the society, impose a

penalty on him to pay an amount not exceeding five thousand rupees. Before making an order under this sub-section, the Registrar shall give, or cause to be given, a reasonable opportunity to the person concerned of showing cause against the action proposed to be taken in regard to him.

(6) Any penalty imposed under sub-section (5) or under Section 76, may be recovered in the manner provided by the Code of Criminal Procedure, 1973, for the recovery of fines imposed by a Magistrate, as if such fine was imposed by the Magistrate himself.

29. Restrictions on transfer or charge of share or interest

(1) Subject to the provisions of the last preceding Section as to the maximum holding of shares and to any rules made in this behalf, a transfer of, or charge on, the share or interest of a member in the share capital of a society shall be subject to such conditions as may be prescribed.

(2) A member shall not transfer any share held by him or his interest in the capital or property of any society, or any part thereof, unless—

> (a) he has held such share or interest for not less than one year;
>
> (b) the transfer is made to a member of the society or to a person whose application for membership has been accepted by the society, or to a person whose appeal under Section 23 of the Act has been allowed by the Registrar; or to a person who is deemed to be a member under sub-section (1A) of Section 23.

(3) Notwithstanding anything contained in sub-sections (1) and (2), where a member is allowed to resign, or is

expelled, or ceases to be a member on account of his being disqualified by this Act or by the rules made thereunder or by the by-laws of the society, the society may acquire the share or interest of such member in the share capital by paying for it at the value determined in the manner prescribed, provided that the total payment of share capital of a society in any financial year for such purposes does not exceed ten per cent of the paid-up share capital of the society on the last day of the financial year immediately preceding.

Explanation I.— The right to forfeit the share or interest of any expelled member in the share capital by virtue of any by-laws of the society, shall not be affected by the aforesaid provision.

Explanation II.— In this Section, the expression "financial year" means the year ending on the 31st day of March or, in the case of any society or class of societies the accounts of which are with the previous sanction of the Registrar balanced on any other day, the year ending on such day.

(4) Where the State Government is a member of a society, the restrictions contained in this Section shall not apply to any transfer made by it of its share or interest in the capital of the society; and that Government may, notwithstanding anything in this Act, withdraw from the society its share capital at any time, after giving to the society notice thereof of not less than three months.

26. Rights and duties of members

(1) A member shall be entitled to exercise such rights as provided in the Act, rules and by-laws:

Provided that, no member shall exercise the rights, until he has made such payment to the society in respect of membership, or acquired such interest in the society, as may be prescribed and specified under the by-laws of the society, from time to time:

Provided further that, in case of increase in minimum contribution of member in share capital to exercise right of membership, the society shall give a due notice of demand to the members and give reasonable period to comply with.

(2) It shall be the duty of every member of a society,—

(a) to attend at least, one general body meeting within a consecutive period of five years:

Provided that, nothing in this clause shall apply to the member whose absence has been condoned by the general body of the society;

(b) to utilise minimum level of services at least once in a period of five consecutive years as specified in the by-laws of the society:

Provided that, a member who does not attend at least one meeting of the general body as above and does not utilise minimum level of services at least once in a period of five consecutive years, as specified in the by-laws of such society shall be classified as non-active member:

Provided further that, when a society classifies a member as a non-active member, the society shall, in the prescribed manner communicate such classification, to the concerned member within thirty days from the date of close of the financial year:

Provided also that, a non-active member who does not attend at least one meeting of the general body and does not utilise minimum level of services as specified in the by-laws, in next five

years from the date of classification as a non-active member, shall be liable for expulsion under Section 35:

Provided also that, a member classified as non-active member shall, on fulfilment of the eligibility criteria as provided in this sub-section be entitled to be re-classified as an active member:

Provided also that, if a question of a member being active or non-active member arises, an appeal shall lie to the Registrar within a period of sixty days from the date of communication of classification:

<u>Provided also that, in the respect of elections of societies to be conducted on or before the 31st March 2022, all the members of the society shall be eligible for voting, unless otherwise ineligible for voting.</u>

27. Voting powers of members

(1) Save as otherwise provided in sub-sections (2) to (7), both inclusive, no member of any society shall have more than one vote in its affairs; and every right to vote shall be exercised personally, and not by proxy:

Provided that, in the case of an equality of votes the Chairman shall have a casting vote.

Explanation.— For the purposes of this sub-section, "votes to more than one candidate from the panel" shall be treated as one vote.

(1-A) Notwithstanding anything contained in sub-section (1), an active member who subsequently fails to participate in the affairs of the society and to use the services up to the minimum level as specified, from time to time, in the by-laws, shall cease to be an active member and shall not be entitled to vote:

Provided that, the provisions of this sub-section shall not be applicable in respect of elections of societies to be conducted on or before the 31st March 2022.

(2) Where a share of a society is held jointly by more than one person, the person whose name stands first in the share certificate, if present, shall have the right to vote. But in his absence the person whose name stands second, and in the absence of both, the person whose name stands next, and likewise, in the absence of the preceding persons the person whose name is next on the share certificate, who is present and who is not a minor, shall have the right to vote.

(3) A society, which has invested any part of its funds in the shares of any federal society, may appoint one of its [active] members to vote on its behalf in the affairs of that federal society; and accordingly such member shall have the right to vote on behalf of the society:

Provided that, any new member society of a federal society shall be eligible to vote in the affairs of that federal society only after the completion of the period of three years from the date of its investing any part of its fund in the shares of such federal society:

Provided further that, where the election is to a reserved seat under Section 73-B, no person shall have more than one vote.

(3-A) An individual member of a society shall not be eligible for voting in the affairs of that society for a period of two years from the date of his enrolment as a member of such society:

Provided that, nothing in this sub-section shall apply in respect of a cooperative housing society and a cooperative premises society.

(4) A company or any other body corporate constituted under any law for the time being in force which has invested

any part of its funds in the shares of a society may appoint any one of its directors or officers to vote on its behalf in the affairs of such society; and accordingly such director or officer shall have the right to vote on behalf of the company or body corporate.

(5) Where a firm has invested any part of its funds in the shares of a society, any one of its partners appointed by the firm shall be entitled to vote in the affairs of the society on behalf of the firm.

(6) A local authority or public trust which has invested any part of its funds in the shares of a society, may appoint any of its members or trustees, to vote on its behalf in the affairs of that society; and accordingly such persons shall have the right to vote on behalf of the local authority or the public trust, as the case may be.

(7) In the case of a federal society, the voting rights of individual members thereof shall be such as may be regulated by the rules made under this Act and by the by-laws of the society.

(8) No nominal member shall have the right to vote, and no such member shall be eligible to be a member of a committee or for appointment as a representative of the society on any other society.

(9) No nominee of the Government or any financing bank on the committee of any society shall be entitled to vote at any election of officers of such committee such as, the President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or any other officer by whatsoever designation called, who holds the office by virtue of his election to that office.

(10) If a member has taken a loan from the society, such member shall, whenever he is a defaulter, as provided in the

> Explanation to Clause (i) of sub-section (1) of Section 73-CA, have no right to vote in the affairs of the society:
>
> **Provided** that, a member shall not be deemed to be a defaulter, if he has discharged his obligation to deliver his marketable produce to the marketing or processing society and the value of such produce is not less than the amount of his dues, even if the actual settlement of his dues, either in whole or in part, takes place at a later stage.
>
> (11) The agricultural credit society may issue suitable orders for the purpose of carrying out the provisions of sub-section (10).

(*Emphasis added*)

14. The first proviso to Section 81 is the first clue. It provides the first reason not to accept the Petitioners' submissions. A failure to carry out an audit report does not in and of itself result in an voting ineligibility. All that happens is that there is a compulsory audit that is forced upon the society by virtue of the first proviso.

15. We then look at Section 73CA and Section 79 to see if there is any provision there resulting in a voting ineligibility. Section 73CA speaks of a disqualification of a committee and its members. While it is true that 73CA(ii-a) speaks of a person being classified as non-active member under Section 26(2) earning a disqualification, the question is what is that disqualification?

16. The answer to this lies in the five or six words in Section 73CA(i). A disqualified member such as a non-active member is not eligible for "being appointed, nominated, elected, co-opted or for being a member of the committee". Conspicuous by its absence is any mention of ineligibility from exercising a vote. If therefore, the Petitioners are correct, the 4th Respondent cannot be appointed, nominated, elected, co-opted or become a member of the committee of the 3rd Respondent.

17. Section 27 as amended must be read with Section 26. Now Section 26 sets out the rights and duties of members. It is the duty, for instance, of every member of the society to inter alia attend at least one meeting, to utilise minimum levels of service and so on. But Section 27 deals with the voting powers of members. If, there is, therefore, to be a restraint from the exercise of voting powers. It should be found here in Section 27. But Section 27 does not itself contain an express rendering of ineligibility.

18. We turn to the last proviso of Section 26(2) which speaks of the duties of the member of a society. After a recent amendment of 2021 with effect from 16th July 2021, this proviso says that in respect of election of societies to be conducted on or before 31st March 2022, all members of the society shall be eligible for voting *unless otherwise ineligible for voting*. Before its amendment, the proviso said that in any election conducted immediately after the date of commencement of the 2013 amendment, all existing members of the society would be eligible for voting unless otherwise ineligible to vote.

19. With this we return to Section 27(1-A). This has been extracted above. It opens with the non-obstante clause. Section 27(1-A) says that "an active member who subsequently fails to participate in the affairs of the society and to use the services up to the minimum level as specified, from time to time, in the by-laws, shall cease to be an active member *and shall not be entitled to vote*". But this is does not happen automatically on the making of an allegation. It requires an examination of individual by-laws, the conduct of the member in question over a period of time and so on; and this requires a notice, a hearing, a determination etc. Merely alleging that a member is non-active does not result in a voting ineligibility. Importantly, this does not terminate the membership. It merely says that such a member ceases to be an *active* member. But the proviso to this says that this disqualification is wholly inapplicable in respect of elections of societies to be conduced on or before 31st March 2022. This proviso was also introduced by the 2021 amendment.

20. Notably, in none of these Petitions is there a challenge to the 2021 amendment by which these exemptions are granted.

21. In any case, whether a member of society is or is not eligible or is or is active or inactive is not a determination that is ever to be done by a Returning Officer. It can only be done by an authority under the MCS Act, viz., a Registrar. It also requires a certain procedure to be followed for that determination, for the noticee must be given an opportunity of showing that it is in fact an active member or satisfies such criteria as justify its continuance as an active member. A Petitioner alleging that a particular society has done no business is not a determination in and of itself. It is certainly not a determination that a Writ Court is either equipped or permitted to make. We do not see how on this presentation of the facts, we will be able to draw the necessary conclusion that because the Petitioners so allege, therefore the 4th Respondent is an inactive member of the 3rd Respondent and is, despite the 2021 amendments and saving clauses, rendered ineligible to vote.

22. We see no merit in these Petitions. They are rejected. In the facts and circumstances of the case there will be no order as to costs.

23. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J) **(G. S. Patel, J)**