

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1154 of 2022

Vinay Kore Majur Sahkari Sanstha Ltd, thru Authorized Representative and ors	.. Petitioners
Versus	
The State of Maharashtra, thru its Principal Secretary and ors	.. Respondents

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Mr. Vijay Patil with Adv. Dhairyasheel V. Sutar for the petitioners.
 Smt. V.S. Nimbalkar, AGP for the State respondent nos.1 and 2.
 Mr.Deelip Patil Bankar, Chief Standing Counsel SCEA for respondent nos.3 and 4.
 Mr.Anand Patil for respondent no.5.

CORAM: RAVINDRA V. GHUGE, J.
DATED : 9th FEBRUARY, 2022

P.C:-

1 This matter has been extensively heard in the first session as well as in the second session.

2 The specific issue raised in this case is, whether the term “defaulter” would include the non-payment of 1% annual subscription (एक % वार्षिक वर्गणी) by a member/society.

3 The 25 petitioner Taluka Majoor Societies are aggrieved by their non-inclusion in the list of valid voters for the election of the District Federation. Grievance raised by the petitioners has been dealt with by respondent no.4 District Co-operative Election Officer or District Dy. Registrar, New Shahupuri, Kolhapur, by the impugned common order dated 17/1/2022, concluding that these petitioners are defaulters as they have not paid the 1% annual subscription to the Federation and hence, cannot be included in the final voters list.

4 The strenuous contentions of the petitioners are two-fold. Firstly, that the term 'defaulter' would mean and include only non-repayment of loan amounts. Non-payment of the 1% annual fees of the federation, would not be a component to be included in the term 'defaulter'. Secondly, that a defaulter cannot be precluded from being a valid voter. Such member may, at the most, incur a disqualification from continuing as an elected member.

5 Respondent no.4 District Co-operative Election Officer has contended that the record was made available to him for verification during the course of hearing on the objections raised by the petitioners on account of their exclusion from the voters list. He has followed an uniform approach and has

considered the default on the part of the petitioners under Section 73 CA of the MCS Act, 1960. He has also relied upon the by-law Nos.7, 7(3), 17, 28 and 49(2). The view taken by the learned Single Judge in Bajrang Majur (*supra*) would not be applicable to these cases as the issue raised in this petition was not addressed to the learned Single Judge. He has then referred to Section 91 read with Rule 78 of the MCS (Elections to Committee) Rules, 2014, to contend that the petitioners have a statutory remedy available.

6 Respondent no.4, Chairman of the Kolhapur District Labour Co-operative Society Federation Ltd, Kolhapur has entered an exhaustive affidavit-in-reply. In short, it is contended that the Federation has been providing business to the petitioner Mazoor Societies. This is strictly in accordance with by-law no.7. It is on account of the business provided by the Federation that these co-operative Societies receive income. Earlier, they were unorganized. It is on account of the creation of law that the District and State Federations have been established. As charges for the services provided which have been accepted by the petitioners, the annual subscription of 1% of the business earnings is to be paid to the Federation which is strictly provided by the by-laws. When these petitioners have enjoyed the entire benefits of the business provided by the Federation by unequivocally accepting the by-laws, they have also accepted the obligation provided by the by-laws that if they do not pay the

annual subscription of 1%, their nominee would not be entitled to vote. These petitioners have been consistently taking the business from the Federation and have also have been paying the annual fixed subscription. Once they have accepted the by-laws and enjoyed the benefits flowing therefrom, they now cannot contend that they are not defaulters. The District Federation does not have any independent source of income and it is only the payment of the annual fixed subscription of 1% from which it pays 5% to the Divisional Federation and 5% to the State Federation.

7 Section 26(1) and the relevant first proviso read as under :-

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.

8 Section 27(10) of the Maharashtra Co-operative Societies Act, 1960 provides as under :-

27(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 73CA have no right to vote in the affairs of the society.

dues, either in whole or in part, takes place at a later stage.

9 Section 73CA (1) reads as under:-

73CA **Disqualification of committee and its members:-**

(1) Without prejudice to the other provisions of this Act or the rules made thereunder in relation to the disqualification of being 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 -

(c) in the case of any society -

(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 failed 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;

10 A reading of Section 27(10) clearly indicates that a loan defaulter would have no right to vote. This is an impression carried by the petitioners as well. However, a constricted meaning to the language used in Section 27(10) is not permissible

if it has to co-exist with sub-clause (i)(c) and (ii) under Section 73CA. These provisions have to co-exist in harmony. The interpretation of both the provisions should be such that neither of them is rendered nugatory. A member defaulting on a loan taken from the Society is one contingency set out in Section 27(10).

11 Sub-clause (i), Section 73CA(1) defines a defaulter. The explanation introduced by the legislature is not only for the sake of clarity, but is intended to clear all doubts about who would be termed as a defaulter. Sub-clause (c) (ii) thereunder provides the contingencies which need to be fulfilled by a member in order to steer clear of the definition of defaulter. Even non-payment of anamat amount or advance or the price of goods or commodities, would also be a defaulter. A Member Society which stands at par with the definition of member when it comes to being organized as a group of mazoor societies under the District Federation, is mandated to pay the charges for such services which are provided by the Federation to such society, as enlisted in by-law 7 (1 to 14). This interpretation is further reinforced by the services provided, by the by-law 28 which repeats at two places that a defaulter will not have the right to vote (underlined portion below by-law 28 reproduced in paragraph no.16 hereafter)

12 As such, the definition also includes the failure of a Society to pay such charges as are payable for any services availed from the Society by the Member. In the instant case, if the petitioner Societies become defaulters, they lose their single representative vote which is available to them after nominating their representative to represent the Society in the federation. As each of these petitioner Societies is treated as a Member, since it has a single vote, the word 'a Member' would mean and include such a petitioner Society which is treated as one member vote. This is an undisputed position as all such individual societies at the taluka levels, become members of the District Federation, which in turn becomes a member of the State Federation.

13 It calls for no debate that hundreds of Societies like these petitioners, which were unorganized earlier and could not function systematically, were brought under the umbrella of a District Federation. For the sake of the Kolhapur region, the model by-laws were created by the Kolhapur District Labour Co-operative Societies Federation Limited. These by-laws have undergone various amendments and which have been formulated under the Maharashtra Co-operative Societies Act, 1960 and the Maharashtra Co-operative Society Rules, 1961. It is undisputed that these petitioners have not challenged the legality and validity of the By-laws or the Rules. In fact, admittedly, all these petitioner societies have voluntarily joined the District Federation

and have been paying the annual subscription to the Federation for several years. They have been abiding by the by-laws and have been availing of the services offered by the Federation under by-law 7.

14 By-law 7 contains 14 types of services that are provided by the Federation to the Society members. It would be apposite to reproduce by-law 7 (1 to 14) as under :-

1. जिल्हा फेडरेशन मार्फत मजूर सहकारी संस्थांना तांत्रिक व प्रशासकीय सुविधा उपलब्ध करून देणे/ मार्गदर्शन करणे.
2. मजूर संस्थांचेकरिता किफायतशीर दरानेमशिनरी मिळवून देणे तसेच खडी, दगड, चुना वीट इ. उत्पादनाकरिता सहाय्य करणे व मदत करणे.
3. मजूर संस्थांची अंतर्गत व्यवस्था सुधारणेकरिता व प्रगतीवर राहणे करिता जिल्हा फेडरेशन मार्फत हिशेब, देखरेख, परिक्षण, प्रचार इ. बाबत मार्गदर्शन, नियंत्रण ठेवणे त्याचप्रमाणे मजूर संस्थांना आवश्यक त्या तांत्रिक प्रशिक्षणाची सोय उपलब्ध करून देणे.
4. मजूर संस्थांचे जिल्हा पातळवरील प्रत्यक्ष कामकाजातील अडचणी दूर करणेकरिता राज्य मजूर संघाच्या समन्वयाने / मार्गदर्शनानुसार प्रयत्न करणे.
5. मजूर सहकारी संस्थांना पुरेसा पत पुरवठा होणेकरिता प्रयत्न करणे. 6. काम देणा-या खात्याकडील चालू दर ठरविणेबाबत शासनाच्या निरनिराळ्या खात्यांशी संपर्क साधून योग्य ते दर ठरविण्यास सहाय्यभूत होणे व त्याबद्दल प्रयत्नशिल रहाणे.
7. मजूर सहकारी संस्थांची सर्वांगीण उन्नती होणेकरिता अद्यावत व आदर्श योजना ठरविणे व त्या राबविणेस सहकार्य करणे.
8. मजूर संस्थांना उपयुक्त होईल अशी माहिती जमविणे व ती प्रसिध्द करणे व पुरविणे.
9. मजूर संस्थांच्या कामकाजातून त्यासंबंधी निर्माण होणा-या प्रश्नांवर अथवा सभासदांनी उपस्थित केलेल्या प्रश्नांवर योग्य ती कारवाई करणेस मदत करणे.
10. मजूर संस्थांच्या गरजा लक्षात घेवून त्यांना कच्चा माल, बांधकाम साहित्य मिळवून देणेस मदत करणे.

11. काम देणा-या खात्याकडील सर्व कामे जिल्हा फेडरेशनकडूनच वाटप केली जाऊन वेळेत पूर्ण होतात किंवा नाही याकडे लक्ष ठेवून ती पूर्ण करून घेणे.
12. सभासदांना लागणारी यंत्रसामुग्री व तिचे सुटे भाग आणि इतर कच्चा माल पुरविणेस योग्य ते सहाय्य करणे.
13. वरील उद्देशात काहिहि नमूद केले असले तरी, मजूर सहकारी संस्थांचे कार्य प्रगतीवर रहाणेकरिता जे जे करता येण्यासारखे आहे ते वेळोवेळी करणे.
14. संस्थेच्या सभासदांना, संचालकांना, तसेच कर्मचा-यांना सहकार प्रशिक्षण देणे व त्यासाठी स्वतंत्र आर्थिक तरतूद करणे.

15 By-law 17 provides a mandate to these Societies to pay fixed supervision charges which are, in a sense, fees charged by the Federation @ 1% of the total business that the petitioner Societies have made in a financial year. By-law 28 refers to Section 27 of the Act and Rule 60 of the Rules for the purpose of holding elections. The petitioner Society is treated as a Member and the person nominated by the Society is the voter who votes in the Elections as a representative of his society. The eligible society is considered to be an active member and such active member Society should be attending at least one Annual General Body Meeting in 5 consecutive years and should not be a defaulter in paying 1% fixed annual subscription of the Federation in each of these five financial years. It is then provided under by-law 28 that a defaulter member of the Federation will not have a right to vote.

16 For the sake of clarity, it would be apposite to reproduce by-law 28 hereunder :-

“28 कलम 27 व नियम 60 मधील तरतूदीनुसार अधिमंडळ बैठकीत मतदान केले जाईल. सभेस हजर असणा-या प्रत्येक सभासदाला एकच मत देण्याचा अधिकार राहिल. परंतु थकबाकीदार व क्रियाशील नसलेल्या सभासदांस मतदानाचा अधिकार असणार नाही. अध्यक्षास इतर पात्र सभासदाप्रमाणे एक मत असेल. परंतु एखाद्या ठरावावर मतदान सारखेच विभागले गेल्यास मात्र अध्यक्षास जादा एक निर्णायक मत असेल. एखाद्या ठरावावर (मतैक्य न झाल्याने) सभासद विभागले गेले असतील तेव्हा, मतदान करणा-या कोणाही सभासदास मतदान (पोल) करण्याची मागणी करता येईल. त्यानंतर अध्यक्षाने ती मंजूर केली पाहिजे,

क्रियाशील सभासद म्हणजे ज्या सभासद संस्थेने मागील सलग पाच वर्षांत किमान एका अधिमंडळाच्या वार्षिक बैठकीत उपस्थिती व मागील सलग पाच वर्षातील केलेल्या कामांपोटी 1% वर्गणी जिल्हा मजूर सहकारी संघास वार्षिक हिशोबासहित दिली असली पाहिजे.

अशा क्रियाशील सभासदांची नोंद संस्थेने सहकार आयुक्त व निबंधक, सहकारी संस्था यांनी सूचित केलेल्या विहित नमून्यात ठेवावयाची आहे.

केवळ क्रियाशील सभासदासच संस्थेच्या संचालक मंडळ निवडणुकीमध्ये मतदानाचा अधिकार राहिल. (कलम 27) तसेच क्रियाशील सभासदच संस्थेचा संचालक म्हणून निवडून येण्यास पात्र राहिल. उपरोक्त प्रमाणे क्रियाशील सभासदत्वाच्या अटी पूर्ण न करणारे सभासदाचे नावे अक्रियाशील सभासद नोंदवहीत राहिल. संस्थेने सभासदांचे अक्रियाशील सभासद असे वर्गीकरण केल्यास त्यास आर्थिक वर्ष संपल्याचे दिनांकापासून 30 दिवसात कळविले पाहिजे. तथापि क्रियाशील व अक्रियाशील सभासदांचे वर्गीकरण बाबत वाद उदभवल्यास असे वर्गीकरण केल्याचे दिनांकापासून 60 दिवसाचे आत निबंधकाकडे अपिल करता येईल.

थकबाकीदार सभासदास मतदानाचा अधिकार राहाणार नाही.”

17 By-law 49 defines the responsibilities of the petitioner societies and clause 2 mandates the payment of 1% Annual subscription to the District Federation. A default in such payment would entitle the Federation to initiate recovery proceedings. By-law 49(3) prescribes that such Federation should pay 10% membership subscription from the 1% subscription received by it, to the State Federation.

18 A list of defaulter Societies is placed on record which includes the names of these petitioners. As these petitioners were not included in the list of eligible societies so as to cast one membership vote per society, they had approached respondent no.4, who rejected their application with a reasoned order which is impugned in this petition.

19 Respondent no.5 which had indicated the default on the part of the petitioners, has placed copies of the notices issued by the Federation to all these petitioners indicating outstanding dues ranging from Rs.15,000/- to Rs.3,04,000/-. This includes large unpaid amounts towards advances taken by these petitioners as well as the unpaid subscriptions @ 1% of the business per financial year. Respondent no.5 has also placed on record, by way of an example, two notices issued by the Addl. Commissioner and Special Registrar Co-operative Societies, State of Maharashtra dated 6/4/2002 and 9/4/2002 to indicate the *modus operandi* of

such member societies in creating different bank accounts for diverting business proceeds so as to camouflage the annual earning for which 1% subscription had to be paid to the Federation which actually provides business to such societies.

20 It is a matter of record and undisputed as well that every major society, including the petitioners, have been paying this annual fixed subscription for several years. It is not the case or the stand of these petitioners that the by-laws do not apply to them or that they do not have the force of law or that they are not binding on them.

21 The learned Advocate for the petitioners has placed heavy reliance upon a judgment dated 29/4/2015 delivered by the learned Single Judge at Nagpur in WP No.2113/2015 filed by Bajrang Majur Kamgar Sahakari Sanstha and 2 ors vs. The District Co-operative Election Officer and ors. He submits that the issue of 1% contribution has been dealt with in the said judgment and non-payment of 1% contribution to the Federation would not make a Society a defaulter. I am afraid that this was neither an issue before the Court, nor was such a view taken in the said judgment. In fact, it has been specifically observed in paragraph no.8 by the learned Judge that “*there is no provision contained in the said Act, said Rules or by-laws of the Federation brought to my notice requiring the member Societies to submit*

the 'No dues' certificate in respect of 1% supervision charges as on 31/3/2015 so as to become eligible to include the names of the representatives of the member – societies in the provisional or final list of voters. Section 26 of the said Act does not speak of any such requirement.

22 It is obvious from the judgment delivered in Bajrang Majur (supra), that the learned Single Judge was dealing only with the issue as to whether a 'No dues' certificate is mandatorily required to be presented by a member Society so as to be included in the final voters list. The learned Judge concluded that no provisions are cited before him, setting forth the requirement of a 'No dues' certificate to be produced. He further held that though the petitioners have raised a dispute about supervision charges, such a dispute can be resolved in an appropriate forum as it has nothing to do with the membership subscription.

23 Per contra, the issue raised in this case is with regard to non-payment of 1% subscription which can be said to be covered by Section 73 (CA)(1)(i)(c)(ii), leading to the ineligibility of the petitioners for being included in the final voters list. Neither was this provision cited in the Bajrang Majur case (supra), nor were the by-laws pertaining to the payment of annual subscription by the member society and forfeiture of right to vote due to non-payment, cited. Clause (ii) reproduced above

indicates that a Member can be a defaulter if he has availed of services from the Society for which charges are payable. By-law 28 provides for forfeiture of the right to vote being a defaulter. This was not brought to the notice of my esteemed brother who dealt with the Bajrang Majur case (supra). Moreover, this issue was not raised before him as the issue that was brought up for adjudication was whether a 'no dues' certificate is mandatorily to be produced.

24 In view of the above, I find that the ground taken by respondent no.4 in declaring the petitioners to be defaulters, is sustainable as non-payment of the 1% annual subscription to the Federation to be a valid member, would indicate that the non-payment of such subscription would fall within the meaning of defaulter as is explained below Section 73(CA)(1)(i)(c)(ii) reproduced above. I therefore, hold that such non-payment of annual subscription fee as charges to the Federation would be covered by the definition of defaulter and the petitioners have therefore, been rightly held to be defaulters.

25 Hence, this Petition fails and the same is therefore, dismissed.

RAVINDRA V. GHUGE, J