

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4647 OF 2021

Deepak Ananda Patil and Ors. ...Petitioners
V/s.
The State of Maharashtra and Ors. ...Respondents

**WITH
WRIT PETITION NO. 4609 OF 2021**

Vanita Sachin Gaikwad & Ors. ...Petitioners
V/s.
The State of Maharashtra and Ors. ...Respondents

**WITH
WRIT PETITION NO. 7742 OF 2021**

Kuber Gunda Bhatmare and Ors. ...Petitioners
V/s.
The State of Maharashtra and Ors. ...Respondents

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**WITH
WRIT PETITION NO. 7740 OF 2021**

Sou. Shakuntala Shivajirao Kadam & Ors. ...Petitioners
V/s.
The State of Maharashtra and Ors. ...Respondents

Mr. A. V. Anturkar, Senior Advocate a/w. Mr. Tanaji Mhatugade,
Mr. Akshay Pawar i/b. Mr. Kunal Bhanage, for the Petitioners in
all petitions.

Ms. V. S. Nimbalkar, AGP for the State / Respondent Nos.1 & 2.
Mr. R. M. Kadam, Senior Advocate a/w. Mr. Vaibhav Bhure i/b.
Mr. Kedar P. Lad, for the Respondent Nos.3 to 8 in
WP/4647/2021.

Mr. P. D. Dalvi i/b. Mr. Kedar P. Lad, for the Respondent Nos.3 to 8 in WP/7742/2021.

Mr. Kedar P. Lad for the Respondent Nos.3 to 8 in WP/7740/2021 and WP/4609/2021.

Mr. Suraj Kaushik, for the Respondent No.9.

Mr. Dilip Bodke, for the Respondent No.10.

CORAM : C.V. BHADANG, J.
RESERVED ON : 19 SEPTEMBER 2022
PRONOUNCED ON : 22 SEPTEMBER 2022

JUDGMENT :

1. The challenge, in these petitions, is to the order dated 18 February 2021, passed by the first Respondent, thereby dismissing the appeal filed by the Petitioners challenging the order dated 14 February 2020 passed by the second Respondent Regional Joint Director (Sugar), Kolhapur Region, Kolhapur. By the said order, the second Respondent has directed deletion of the names of the Petitioners as members of the *Chatrapati Rajaram Sahakari Sakhar Karkhana Limited, Kasba Bawda, Taluka Karvir, District Kolhapur*, under Section 11 of the Maharashtra Co-operative Societies Act, 1960 ('the said Act', for short). As the Petitions involve common questions, they are being disposed of by this common judgment. These petitions have been heard finally by consent of parties.

2. The brief facts necessary for the disposal of the petitions may be stated thus-

That on the basis of the complaints filed by the private Respondent Nos.3 to 8, proceedings were initiated under Section 11 of the said Act before the second Respondent. It was contended on behalf of the private Respondents – Complainants that the Petitioners who are members of the said *Karkhana* are not eligible for continuation as members for various reasons as set out in the complaints. It appears that a Committee headed by the Special Auditor (Class I) Co-operative Societies (Sugar) Kolhapur was constituted to verify and inquire into the allegations in the complaint and to verify the list of the members. It appears that the Special Auditor (Class I) submitted a report dated 1 January 2020 alongwith a list of 1899 members.

3. The second Respondent, after hearing the parties, by the impugned order, had directed deletion of the names of the Petitioners. For the present purpose, the challenge in these petitions is restricted to Clause 3, 4 and 5 of the Operative Order dated 14 February 2020 passed by the second Respondent, to which I propose to advert a little later.

4. The Petitioners feeling aggrieved, challenged the same, in separate appeals under Section 152 of the said Act, before the first Respondent which appeals have been dismissed on 18 February 2021. Hence, these petitions.

5. I have heard Mr. Anturkar, the learned Senior counsel for the Petitioners and Mr. Kadam, learned Senior counsel for the Respondent Nos.3 to 8. I have also heard learned AGP for the Respondent Nos.1 & 2. With the assistance of the learned counsel for the parties, I have gone through the record.

6. Mr. Anturkar, the learned Senior counsel for the Petitioners has made following submissions:

(i) That the applications / complaints, as framed and filed under Section 11 of the said Act, were not maintainable. It is submitted that Section 11 confers powers on the Registrar to decide “certain questions”. In the submission of the learned Senior counsel, Section 11 which falls in Chapter 2 entitled “Registration”, only envisages the necessary inquiry at the inception of registration of the Co-operative Society. He submits that thus the Registrar was not competent to look into the question about deletion of the members which was much after the registration of the concerned Karkhana and the conferral of the membership on the Petitioners.

(ii) It is next submitted that Section 11 only contemplates decision on questions whether the person is an agriculturist or whether any person resides in the area of operation of the society and whether he belongs to such class of persons as declared under sub-section 1(A) of Section 22 of the said Act and has not incurred disqualification. In short, it is submitted that the

question whether the concerned member was holding the minimum land as required under the bye-laws and whether he is cultivating the land under a lease or otherwise, are not within the competence of the Registrar under Section 11 of the said Act. It is submitted that there is a distinct section namely Section 35 for such contingency for expulsion of members.

(iii) It is submitted that the contention about applicability, scope and ambit of the powers under Section 11 of the Registrar was raised before the Appellate Authority. He submitted that the Appellate Authority has failed to consider the same. The learned counsel was at pains to point out that the first Respondent being the Appellate Authority under Section 152 of the Act, was duty bound to consider the matter afresh. He submitted that unlike a revision, the Appellate Authority derives wide powers which the Respondent No.1 has failed to exercise. He therefore submitted that the appeals may be remitted back to the first Respondent for deciding them afresh, in accordance with law.

7. On behalf of the Petitioners, reliance is placed on the decision of this Court in *Kumbhargaoon Vividh Karyakari Sahakari Seva Society Ltd. Vs. Assistant Registrar, Co-operative Societies and Ors.*¹ and in *Alka D/o. Ramkisan Narke and Ors. Vs. The Divisional Joint Registrar Co. Operative Societies, Aurangabad & Ors.*². Except these, there are no other

¹1993 Mh.L.J. 178

²in Writ Petition No.7024/2010 decided on 17 December 2013.

contentions raised.

8. Mr. Kadam, the learned Senior counsel for the Respondent Nos.3 to 8 has supported the impugned order. It is submitted that Section 11 of the said Act was amended by Act No.20 of 1986 by which the words “for the purpose of formation or registration or continuance, of a society” were deleted, which would indicate that the powers under Section 11 need not necessarily be exercised at the inception of the registration of the co-operative society and can be exercised at any subsequent stage. It is submitted that powers under Section 11 are wide and would include an inquiry whether the membership is granted against the bye-laws of the society. The learned Senior counsel has pointed out bye-law No.17-A which pertains to a ‘producer member’ setting out the minimum agricultural land required to be held by the member for being eligible as a member of the *Karkhana*. It is pointed out that the bye-law No.17-A(2) also requires that the name of the concerned member is recorded as an owner of the land in 7/12 extracts. It is submitted that a Committee was constituted which has verified the allegations and submitted report to the second Respondent on the basis of which the impugned order was passed. It is submitted that reliance placed on the decision in *Kumbhargaoon Vividh Karyakari Sahakari Seva Society Ltd.* and *Alka D/o. Ramkisan Narke*, is misplaced as those cases turned on their own facts. It is submitted that the first Appellate Authority after placing reliance on the decision of this

Court in *Karbhari Maruti Agawan and Ors. Vs. State of Maharashtra and Ors.*³ has rightly refused to interfere with the order passed by the second Respondent. Reliance is also placed on the decision of this Court in *Babasaheb Gokul Shinde Vs. State of Maharashtra and Ors.*⁴. He therefore submitted that this is not a case where there is non consideration of the grounds raised before the first Appellate Authority. He therefore submitted that the petitions be dismissed.

9. The learned Additional Government Pleader has also supported the impugned orders on similar grounds.

10. I have carefully considered the rival circumstances and the submissions made.

11. As noticed earlier, the present petitions involve challenge to Clause 3, 4 and 5 of the impugned order by which the deletion of the members has been directed on following grounds / reasons.

(i) *That 59 members as set out in Schedule B are not holding the minimum agricultural land as required in the bye-laws of the Karkhana (Clause 3 of the impugned order).*

(ii) *That 709 members as set out in Schedule B-1 are not holding the agricultural land within the territorial jurisdiction of the Karkhana and those*

³1994 Mh.L.J. 1527

⁴2017 (2) ALL MR 669

who are made members on the basis of consent letters without any evidence of revenue entries in their favour (Clause 4 of the impugned order).

(iii) That 205 members as set out in Schedule B-2 are holding land on the basis of Usufructuary mortgage without any revenue entries of cultivation of sugarcane (Clause 5 of the impugned order).

12. I have considered the rival circumstances and the submissions made.

13. At the outset, it is necessary to note that there is no challenge on behalf of the Petitioners to the factual aspects as noted in the aforesaid clauses. The contention that under Section 11 of the said Act, the Registrar can look into the question only at the inception / formation / registration of the society, to my mind, cannot be accepted. It is significant to note that in the year 1986, the words “for the purpose of the formation or registration or continuance, of a society” were deleted which would clearly indicate the intention of the legislature that the power of the Registrar under Section 11 is not restricted or limited to look into any such question only at the stage of formation or registration of the society. It would clearly indicate that the Registrar can look into any such question even at a later stage i.e. after the formation / registration of the Co-operative society.

14. The decision in *Kumbhargaoon* cannot come to the aid of the Petitioners for the reason that it nowhere holds that the power under Section 11 can only be exercised at the inception / formation / registration of the society and not thereafter. In that case, the Assistant Registrar had granted registration to a proposed multipurpose co-operative society on the basis of directives from the Government. It was in this context, held that officer of State who has been invested with administrative / quasi-judicial functions, has to discharge them independently, on the basis of the material placed on record and after giving an opportunity of hearing to the parties likely to be affected by his order.

15. In *Alka Narke*, the names of the Petitioners were included in the provisional voters list in the category of non borrowing members but their names did not figure in the final voters list. This Court found that a ground was raised before the Authorities that they had acted under the political pressure of local MLA which was not considered. It was also found that the Assistant Registrar of Co-operative Societies had not followed prescribed procedure either under the relevant Rules or Bye-laws. It was in these circumstances, this Court had found that the order under Section 11 of the said Act was liable to be set aside.

16. The contention based on Section 35 of the said Act also to my mind cannot be accepted as it provides for an altogether

distinct contingency about 'expulsion of members'. It is trite that an action for expulsion of members can be taken by the society against members whose acts are found to be detrimental to the interest or proper working of the society. In the present case, the deletion of the members is directed on account of the fact that the same is against applicable bye-laws about holding of the agricultural lands.

17. This takes me to the second ground about scope of the powers under Section 11 which reads as under-

Section 11. Power of Registrar to decide certain questions.

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

It can thus be seen that under said section, the Registrar can

decide “certain questions” namely (i) whether person is agriculturist or not, (ii) whether he resides in the area of operation of the society, (iii) whether he is or is not engaged in or carrying on any profession, business or employment, or (iv) whether he belongs to such class of persons as declared under sub-section (1A) of section 22 and lastly (v) whether he has or has not incurred a disqualification under said sub-section.

18. The power of the Registrar under Section 11 is well defined and the same is to be exercised in the context of the bye-laws of the concerned society. It is significant to note that the power specifically includes the question whether the persons reside in the area of operation of the society as also whether he is or is not engaged in or carrying on any profession, business or employment which would necessarily has to be examined in the context of applicable provisions including the bye-laws.

19. This takes me to the next ground about the alleged non consideration by the first Respondent of the grounds as raised by the Petitioners, while deciding the appeals. The contention that the first Respondent has not considered the grounds raised particularly about the scope and ambit of Section 11, also to my mind, cannot be accepted. The first Respondent on internal page 8 of the impugned judgment, has adverted to the said ground and has refused to accept the same in view of decision of this Court in *Karbhari Maruti Agawan (supra)*. In that case, the Petitioners

were members of the Respondent No.5 Co-operative Sugar Factory, which was a 'specified society', within the meaning of Section 144-A(2)(c) of the Maharashtra Co-operative Societies Act, 1960. The Collector Ahmednagar had published provisional list of voters inviting objections. The Petitioners had raised objections in respect of some of the persons included in the provisional list of voters which objections were sent to the Regional Joint Director (Sugar), Ahmednagar, who had powers of the Registrar, in respect of the said Karkhana. The Regional Joint Director however did not make any report and the Collector rejected all the objections which order was subject matter of challenge before this Court.

20. A perusal of para 6 of the judgment would reveal that there were five points set out by this Court which fell for consideration, which included point No.4 about the powers of Registrar or any Officers subordinate to him, exercising the powers of the Registrar, to go into the question of qualification of a member after the provisional list of voters was published. Incidentally, the question was also about the nature and scope of the inquiry to be made in such a case. The Division Bench in para 20 had held that the Registrar has all the powers to go into the question of qualification and disqualification of the members, even when the provisional list of voters was published. It is true that the said decision arose in the context of the objections raised to the provisional list of voters. However, the Division Bench has

considered the provisions relating to the powers exercisable by the Registrar and has come to the conclusion that the Registrar has all such powers to go into the question of qualification and disqualification of the members, even after the publication of the list of voters.

21. I have already found that the power under Section 11 would take into its sweep, the consideration of the grounds as raised in the complaint filed by the private Respondents. At any rate, the contention that this ground has not been considered by the first Respondent as a Appellate Authority, cannot be accepted.

22. The petitions are without any merit and are accordingly dismissed, with no order as to costs.

C.V. BHADANG, J.