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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 6261 OF 2022**

Ankush Baburao Nangare and Ors.

....Petitioners

V/s

Sangli Zilla Prathmik Bank Shikshak  
Sahakari Bank Ltd  
Through its CEO – Balasaheb Bhupal Kole  
and Others.

....Respondents

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Mr. Umesh R. Mankapure for the Petitioners.  
Mr. Dilip B. Shinde for Respondent No.1.  
Mr. Dilip Bodake for Respondent No.2.  
Mr. Nagesh Y. Chavan for Respondent Nos. 3 and 4.

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**CORAM: NITIN W. SAMBRE, J.**

**DATE: JUNE 21, 2022**

P.C.:-

1] Heard.

2] Impugned in the Petition is an order dated 4/5/2022 passed in exercise of sub-rule 3 of Rule 11 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (For short “Election Rules”) whereby Respondent No.2 – Election Officer has issued

directions for deletion of such members like the Petitioners who have failed to deposit increased share capital. Said order was passed pursuant to the objection raised by Respondent Nos. 2 and 3 to the provisional voters list.

3] At the outset, Counsel for the Petitioners submits that in case if Petition is allowed and Petitioners are permitted to exercise their right to vote, they have no intention to disturb the election process/programme, thereby claiming that they are entitled to contest the election.

4] Said statement made on instructions is accepted as an undertaking.

5] Submissions of Mr. Mankapure, learned Counsel for the Petitioners are, Petitioners were duly enrolled as members of Respondent No.1-Society. Pursuant to the provisions of Section 38 of the Maharashtra Co-operative Societies Act (For short “the Act”), Respondent No.1-Society is maintaining the Register of contesting

members and the Petitioners are, even to day, shown to be the members of the Society and as such, by virtue of bye-laws, Petitioners' names were shown in the provisional voters list. He would urge that Petitioners have not incurred any disqualification so as to dismember them or to lose their right to continue as member of Respondent No.1 – Society. According to him, even if increased share capital is not paid, unless there is adjudication qua dismembering the Petitioners from Respondent No.1 – Society, Petitioners continued to be members and as such by virtue of such status are entitled to exercise their right to vote.

6] In this background, claim is, Respondent-Authority while exercising powers under Rule 8 of the Election Rules exceeded its jurisdiction thereby ordering deletion of the names of the Petitioners from the final voters list. He would further urge that since the Petitioners are not interfering with the election process and are only seeking inclusion of their names in final voters list which is based on statutory provisions referred supra, Petitioners are entitled to the relief based on the judgment of learned Single Judge of this Court delivered

at Nagpur Bench on 13/4/2022 in Writ Petition No.1686 of 2022 in the matter of *Ankushbhau S/o Jugal Baghele and Ors. vs. State of Maharashtra and Ors.* According to Mr. Mankapure, prayer of the Petitioners no way interferes with the election process and as such, needs to be considered and granted.

7] Mr. Shinde, learned Counsel for Respondent No.1 – Society in response to the Court’s query has not disputed the position that Petitioners are continued to be members of the Society and their names are very much reflected in the Register maintained by the Respondent No.1 – Society pursuant to the provisions of Section 38 of the Act. According to him, if persons like Petitioners are to be dismembered, the Act provides independent mechanism for the same.

8] Counsel for Respondent Nos. 2 and 3 so also Returning Officer would oppose the prayer. Drawing support from various judgments of the Apex Court, it is claimed that interference at this stage of the election process amounts to interfering with the election of Respondent No.1 – Society. My attention is specifically invited to the

stage at which election programme is advanced, as it is informed that today is the date for allotment of symbols and declaration of validly nominated candidates. Further submissions of the Counsel are, the provisions of bye-law No.69 read with bye-law No.11 would lead to only one inference that such persons who have failed to pay enhanced share capital are not entitled to continue as members and as such their names were rightly deleted from final voters list. Support is also drawn from the provisions of Section 26 of the Act so as to claim that names of the Petitioners were rightly deleted from the final voters list. Attention of this Court is also invited to the order dated 17/5/2022 passed by Division Bench of this Court to which I was a Member in Writ Petition No.6142/2022 in the matter of *Suresh Abaji Jagtap vs. The Divisional Joint Registrar, Co-op. Soc., Mumbai and Ors* so as to claim that this Court cannot interfere at the present stage of the election, as election programme is considerably advanced. Similarly, support is also drawn from the judgment of this Court delivered at Nagpur Bench on 18/12/2020 in Writ Petition No. 1062 of 2020 in the matter of *Pundlik S/o Kisan Wadhav and another vs. District Cooperative Election Officer and Ors.* with connected matters, wherein

by appreciating settled position of law that Court should not in exercise of powers under Article 227 interfere at advance stage of the election, the learned Single Judge has dismissed the said Writ Petitions.

9] I have considered the aforesaid rival submissions.

10] The fact that the Petitioners' status as that of members of Respondent No.1 – Society is continued and there are no independent proceedings taken out for the purpose of dismembering the Petitioners from Respondent No.1 – Society is required to be taken note of. This Court is required to be sensitive to the fact that Petitioners as on date continued to be members of Respondent No.1-Society and for non-payment of alleged difference in share capital, no steps or proceedings are initiated against the Petitioners so as to remove their names from Membership Register maintained under Section 38 of the Act. As a sequel, once the Petitioners continued to be members of Respondent No.1 – Society by virtue of bye-laws, Petitioners are entitled to exercise their right to vote being members of the Society.

11] Though Counsel for the Respondents have relied upon very language of sub-rule (1) of Rule 8 of the Election Rules, however, this Court is required to be sensitive to the Division Bench Judgment of this court in the matter of *Dhondiba Parshuram Kakade vs. Shri Someshwar Sahakari Sakhar Karkhana Limited* reported in **1974 SCC Online Bom 154** in which it is observed that nature of inquiry contemplated under sub-rule (1) of Rule 8 is restricted only to the extent of finding whether there exists any omission or error in the names of the members.

12] With the assistance of the respective Counsels, I have carefully considered the provisions of sub-rule (1) of Rule 8 of the Rules which are considered in the matter of Dhondiba cited supra so also present Election Rules. Comparative reading of the same has convinced this Court to form an opinion that they are *pari materia*. In the aforesaid backdrop, the fact remains that the Petitioners continued to be the members of the Respondent No.1 – Society. However, only on the ground of objection raised by Respondent Nos. 3 and 4, their names are deleted that too without any legal basis.

On the one hand, Petitioners continued to be members of Respondent No.1 – Society by virtue of which status they are claiming their right to vote in the election of Respondent No.1 – Society and on the other hand, Respondent/Returning Officer has ordered their deletion on irrelevant ground of non-payment of difference in share capital.

Apart from above, having gone through the provisions of the bye-laws which Respondents are relying upon, I hardly see any statutory embargo on the right of the Petitioner to seek relief of continuation of their status as that of voters of Respondent No.1-Society as neither bye-laws nor statutory provisions provide for their deletion from the voters list or an embargo on their right to continue as voters of Respondent No.1 – Society.

13] Deletion of names of the Petitioners as members/voters is qua their status as members of the Society for non-payment of the additional share capital. Neither bye-laws nor the Act provides for dismembering of the Petitioners as members of the Respondent No.1 – Society by virtue of their failure to pay the difference in share capital. I have also referred to above that no independent proceedings are

taken out against the Petitioners so as to cancel their membership.

14] Similar issue came up for consideration at Nagpur Bench of this court in the matter of *Ankushbhau* cited supra. This Court though having noticed that election programme was progressed at the stage of acceptance of nomination forms, has stayed the election and interfered in the matter of declaration of final voters' list. This Court is required to be sensitive to certain observations in the said order, which reads as under:-

‘7. The illegality is not of minor or technical nature and the writ Court cannot turn a blind eye and be a mute spectator on the jurisprudential logic that the election process has commenced and the writ Court ought to be loathe to interfere. The ‘Laxman Rekha’ as I have observed supra, can be crossed, as long as the writ Court treads cautiously and with extreme circumspection.”

15] In the aforesaid backdrop, even if contention raised by the Respondents that election programme is at an advanced stage and this

Court should be slow in interfering with election process is appreciated, this Court is required to be sensitive to the fact that Court is not stalling the election process but rather has come to the aid of the Petitioner so as to have transparent election process. Removal of names of the Petitioners from final voters list is without any lawful basis which prompted this Court to step-in and exercise powers under Article 227 of the Constitution of India. Though Counsel for Respondents relied on Division Bench judgment of this Court cited supra, this Court is required to be sensitive to the fact that in the said matter neither the issue as regards interpretation of Section 38 of the Act or Rule 8 of the Election Rules and the stage of election was involved nor judgment of this court in the matter of *Ankushbhau* cited supra was brought to the notice of the Court. In any case, it was never the contention of the Petitioners before the Division Bench that Petitioners were not intending to participate in the election as candidates. In this backdrop, even if election programme is at an advance stage, case for showing indulgence in extraordinary jurisdiction is made out.

16] This Court is also required to be sensitive to the principle of law *actus curiae neminem gravabit* i.e. act of the Court shall prejudice none. The order impugned was questioned by the Petitioners before this Court within three days from the date of passing of the impugned order. Procedure before this Court as regards issuance of notice and adjournment of hearing of the Petition at the behest of Respondents has resulted in advancement of the election programme. Though election programme has advanced, Court has appreciated merits of the matter having regard to the fact that Petitioners are not seeking any right to contest the election but only intending to exercise their right to vote and such right is not going to interfere in any way with the election process. Keeping in mind that Petitioners have approached this Court well within time and procedure that was required to be adopted for the purpose of deciding the issue has resulted in certain delay, Court is showing indulgence in interfering with the order impugned.

17] That being so, order impugned dated 4/5/2022 to the extent of ordering deletion of the names of the Petitioners from the voters list is

hereby quashed and set aside. Respondent No.2 is directed to forthwith include names of the Petitioners in the voters list, so that they will be entitled to exercise their lawful right of voting.

18] Petition is allowed in the above terms.

19] After the judgment is dictated in the open court, Counsel for respondent Nos. 3 and 4 i.e. objectors has sought stay to the execution of this order. Aforesaid prayer is opposed by the Counsel for the Petitioners.

20] Having regard to the fact that the order impugned is not only without jurisdiction but also has taken away statutory right of the Petitioners to vote, I do not see any reason which warrants consideration of the prayer. As such, prayer for stay to the execution of this order stands rejected.

( NITIN W. SAMBRE, J. )