IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3061 OF 2023

1. Gokuldas s/o Shriramji Raut,
   aged about 59 years, Occ. Retired,
   R/o at Post – Bhaipur, Post – Pala,
   Tq. Morshi, District – Amravati.

2. Ramdasji s/o Sheshraoji Kadu,
   aged about 59 years, Occ. Retired,
   R/o Surya Colony, Warud,
   Tq. Warud, District – Amravati – 444906.

3. Sambhaji s/o Shriramji Rewale,
   aged about 59 years, Occ. Retired,
   R/o No. 1131, Gajanan Township No.5,
   Kathora Road, Amravati,
   Tq. & District – Amravati – 444701.

PETITIONERS

.....VERSUS.....

1. State of Maharashtra,
   through its Secretary, Ministry of Co-operation,
   Mantralaya, Mumbai – 32.

2. State Co-operative Election Authority,
   Maharashtra State, Old Central Building,
   Ground Floor, 5, B.J. Road, Pune – 411001.

3. Divisional Joint Registrar,
   Co-operative Societies, Amravati Region, Amravati.

4. The Amravati Zilla Parishad Shikshak Sahakari Bank Ltd.,
   Regn. No. ATI/BNK/116, through its Chief Executive Officer,
   Congress Nagar Road, Near Railway Bridge,
   Amravati – 444601.

5. Prabhakar s/o Uttamrao Zod,
   aged about 48 years, Occ. Service,
   R/o 53, Gulmohar Colony, Devmali Post,
   Narayanpur, Tq. Achalpur,
   District – Amravati – 444806.

6. Sanjay s/o Tulshiram Nage,
aged about 48 years, Occ. Service,
R/o Gajanan Colony, Near Prabodhan School,
Sainagar, Daryapur, Tq. Daryapur, District – Amravati.

7. Mangesh s/o Arunrao Kherde,
aged about 50 years, Occ. Service,
R/o 1, "Asha", Suraj Colony, Tower Line Road,
V.M.V. Premises, Amravati – 444604.

8. Manoj s/o Ramchandrarao Chourpagar,
aged about 53 years, Occ. Service,
R/o "Leelai", Uttam Nagar, Benoda,
Amravati – 444606.

9. Gaurav s/o Damodarpant Kale,
aged about 36 years, Occ. Service,
R/o at Post – Ambada, Tq. Morshi,
District – Amravati – 444910.

RESPONDENTS

Shri R.L. Khapre, Senior Advocate with Shri S.N. Gattani, Advocate for the petitioners.
Ms S.S. Jachak, Assistant Government Pleader for respondent nos. 1 and 3.
Shri S.S. Ghate, Advocate for respondent no.2.
Shri A.M. Ghare, Advocate for respondent no.4.
Shri M.V. Samarth, Senior Advocate with Shri V.P. Ingle and Shri P.S. Tidke, Advocate for respondent nos. 5 to 9.

CORAM : A. S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

ARGUMENTS WERE HEARD ON : AUGUST 4, 2023

JUDGMENT IS PRONOUNCED ON : SEPTEMBER 25, 2023

JUDGMENT : (PER : A.S. CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned Counsel for the parties.

2] The challenge raised in the present Writ Petition is to the communication dated 27/4/2023 that has been issued by the Divisional Joint Registrar, Co-operative Societies, Amravati to the Manager, Amravati Zilla Parishad Shikshak Sahakari Bank Limited – respondent no.4 (for short "Co-operative Bank") wherein reference has been made to the provisions of Section 144-5A of the Maharashtra Co-operative Societies Act, 1960 (for short "Act of 1960") and it has been stated therein that since the petitioners have retired from service, they are not eligible to continue as general members of the Society. The Manager has been asked to take necessary steps in accordance with the said provisions as well as bye-laws of the Bank and report compliance of the same. In the light of this impugned communication, the petitioners who are elected as Directors of the Co-operative Bank have sought a declaration that the communication dated 10/2/2023 issued by the Secretary, State Co-operative Election Authority – respondent no.2 (for short "SCEA") is not applicable to the category of Societies that are registered as Bank under the Act of 1960.

3] The facts relevant for considering the challenge as raised are that the petitioners were employed with Amravati Zilla Parishad. By virtue of their employment with the Zilla Parishad, they were eligible to contest elections of the Co-operative Bank. The petitioners were elected as Directors of the Co-operative Bank pursuant to the elections that were held on 3/7/2022. On attaining the age of superannuation, the petitioners retired on 28/2/2023, 31/3/2022 and 31/3/2023 respectively. In the light of the communication dated 27/4/2023 referred to hereinabove that was issued by the Divisional Joint Registrar, the petitioners are sought to be now treated as nominal members with a restriction on their right to vote. It is for this reason that a declaration with regard to non-applicability of the communication dated 10/2/2023 issued by the SCEA has been sought.

4] Shri R.L. Khapre, learned Senior Advocate for the petitioners invited attention to the bye-laws framed by the Bank and especially Clause 10 thereof. It was submitted that as per Clause 10A, Zilla Parishad teachers and employees who were discharging duties within the area of operation of the Bank at Amravati, Akola, Washim and Yavatmal having rendered service for the prescribed period were entitled to be general members of the Co-operative Bank. As per Clause 10A(3), after attaining the age of superannuation or having voluntarily retired from service, a member who had resigned from the membership was eligible to again seek membership of the Society. Based on the said provisions of the bye-laws, it was submitted that there was no prohibition for a member who had retired from service to continue as a member of the Society. It was clear that even on attaining the age of superannuation or seeking voluntary retirement, a member could resign from membership and thereafter he could be eligible to again become a member. The District Deputy Registrar without considering the approved bye-laws of the Co-operative Bank proceeded to issue the communication dated 27/4/2023. Thus, according to the learned Senior Advocate, even though the petitioners were eligible to continue as ordinary members of the Co-operative Bank despite having superannuated from service with the Zilla Parishad, a direction was issued by the Divisional Joint Registrar to treat them as nominal members without any right to vote. The Divisional Joint Registrar had considered the model bye-laws where in fact the Society was governed by its own approved bye-laws. Reference was made to the provisions of Section 2(10) of the Act of 1960 to urge that a Co-operative Bank such as the fourth respondent had been separately treated in the Act of 1960 and it could not be equated with a consumers Society as defined by Section 2(9) of the Act of 1960. Since the petitioners had not resigned from the membership of the Co-operative Bank after their superannuation and continued to hold shares of the Co-operative Bank, they could not be deprived of their rights by treating them as nominal members. The order passed by the SCEA on 10/2/2023 could not be made applicable to the Co-operative Bank in these facts. The learned Senior Advocate also referred to Rules 4, 8 and 10 of the Maharashtra Co-operative Societies Rules, 1961 (for short “Rules of 1961”) to submit that a Co-operative Bank had been classified as a distinct Society and it could not be equated with a salary earners co-operative Society. The interpretation undertaken by the SCEA was such that it deprived the petitioners from the rights that were conferred on them under the bye-laws of the Co-operative Bank. Since the members of the Co-operative Bank were affected as a whole, they ought to have been heard prior to taking such decision. No such hearing was granted and the petitioners have been deprived of their rights without following the due process of law. In support of the said submissions, the learned Senior Advocate placed reliance on the decisions in i) *Smt. Damyanti Naranga Vs. The Union of India And Others [1971(1) SCC 678];* ii) *Brahampal Alias Sammay And Another Vs. National Insurance Company [(2021) 6 SCC 512];* iii) *Bombay Anand Bhavan Restaurant Vs. Deputy Director, Employees' State Insurance Corporation And Another [(2009) 9 SCC 61];* iv) *H.L. Trehan and others Vs. Union of India and others [AIR 1989 SC 568];* v) *Khandelwal Trading Company and another Vs. State of Maharashtra and another [2004(4) Mh.L.J. 863];* vi) *Jagatchandra N. Vora and another Vs. The Province of Bombay and others [AIR 1950 Bombay 144];* vii) *Anant Sadashiv Vs. Ratnagiri Jilha (District) Local Board [AIR 1953 Bombay 71];* viii) *Margret Almedia And Others Vs. Bombay Catholic Cooperative Housing Society Limited And Others [(2012) 5 SCC 642];* and ix) *Goa Central Co-operative Consumers Vs. M/s. Bhagwant Narayan Tendulkar and others [AIR 1999 SC 846].*

5] Referring to the judgment of the learned Single Judge in *Laxman Dattatray Jadhav & Ors. Vs. Taluka Co-operative Election Officer and the Assistant Registrar Co-operative Societies & Ors. [Writ Petition No. 11351/2022* decided on *22/11/2022]* at the Aurangabad Bench, it was submitted that the facts therein clearly indicated that the dispute pertained to a salary earners credit co-operative Society. It was in that context that the learned Single Judge proceeded to hold that after retirement, a retired employee ceased to earn salary and would therefore not be an active member of such salary earners Society. The order passed by the Election Officer and Assistant Registrar, Co-operative Societies, Parbhani directing deletion of the names of such retired employees from the voters list was upheld. It was urged that the ratio of this decision was not applicable to the facts of the present case. It was further submitted that the ratio of the judgment of the Division Bench in *Nashik Zilla Sarkari & Parishad Karmachari Sahakari Bank Niyamit Ltd. & Ors. Vs. The State of Maharashtra & Ors. [Writ Petition No. 6199/2023* decided on *21/6/2023]* was also not applicable to the facts of the present case. It was pointed out that the Division Bench specifically observed that the question with regard to continuation of retired employees as members of the Society under the bye-laws framed was not being determined by it. On this count, it was submitted that the ratio of the decision in *Nashik Zilla Sarkari & Parishad Karmachari Sahakari Bank Niyamit Ltd. & Ors. (supra)* was not applicable to the facts of the present case inasmuch as the petitioners were relying upon bye-law 10A(3) to urge that they were entitled to continue as members of the Co-operative Bank despite their retirement from service. Referring to the stand taken by the Divisional Joint Registrar that by communication dated 8/5/2023 the Co-operative Bank had been called for hearing, it was submitted that such post-decisional hearing was of no consequence as the said Authority had made up its mind on 27/4/2023 itself. It was thus submitted that the challenge as raised by the petitioners ought to be accepted.

6] Shri S.S. Ghate, learned Counsel appearing for the SCEA opposed the aforesaid submissions and justified the order dated 10/2/2023 issued by it. According to the learned Counsel, in view of the judgment of the Division Bench in *Nashik Zilla Sahakari & Parishad Karmachari Sahakari Bank Niyamit Ltd. & Ors. (supra)*, the Authority of the SCEA to issue such directions had been recognized and the order dated 10/2/2023 did not call for any interference. It was urged that insofar as constitution of the Managing Committee was concerned, the affairs of the Co-operative Bank were governed by the provisions of the Act of 1960. Insofar as its banking activities were concerned, the same were governed by the provisions of the Banking Regulation Act, 1949 (for short "Act of 1949"). The learned Counsel also referred to the powers of the SCEA as indicated in Rule 3(v) of the Maharashtra Specified

Co-operative Societies Rules, 2014. The impugned communication having been issued under the said provisions, there was no reason to interfere with the same.

7] Shir M.V. Samarth, learned Senior Advocate for respondent nos. 5 to 9 on whose complaint the Divisional Joint Registrar issued the impugned communication dated 27/4/2023 also opposed the Writ Petition. It was submitted that the Co-operative Bank having been registered as a salary earners co-operative Society, the order dated 10/2/2023 issued by SCEA was binding on it. In view of Clause 18 of the bye-laws, the petitioners after their retirement from the Zilla Parishad could only continue as nominal members and there was a prohibition for contesting elections and also for exercising voting rights. Reliance was placed on the judgment in *Greater Bombay Coop. Bank Ltd. Vs. United Yarn Tex (P) Ltd. And Others [(2007) 6 SCC 236]* to urge that a banking company as defined by Section 5(c) of the Act of 1949 did not include a Co-operative Bank. For this reason, the fourth respondent could not claim that the order dated 10/2/2023 was not applicable to it. Reference was also made to the annual report of the Co-operative Bank for the year 2022-23 to indicate that it continued to be a co-operative society under the Act of 1960. Since the validity of the order dated 10/2/2023 issued by the SCEA had been upheld by the learned Single Judge in *Laxman Dattatray Jadhav & Ors. (supra)* as well as by the Division Bench in

Nashik Zilla Sarkari & Parishad Karmachari Sahakari Bank Niyamit Ltd. & Ors. (supra), the challenge raised by the petitioners was not liable to be upheld. The provisions of Section 144-5A of the Act of 1960 were applicable to the Co-operative Bank which was a salary earners credit co-operative Society and the impugned communication dated 27/4/2023 rightly directed that the petitioners could only continue as nominal members. The Writ Petition was thus liable to be dismissed.

8] Shri A.M. Ghare, learned Counsel appearing for the Co-operative Bank invited attention to the Certificate of Registration dated 18/8/1975 and submitted that it had been sub-classified under Section 12(1) of the Act of 1960 read with Rule 10(1) of the Rules of 1961 as “other banks”. It was also granted license by the Reserve Bank of India on 23/11/1987 to carry on banking business under Section 22(1) read with Section 56(o) of the Act of 1949. The learned Counsel also referred to Chapter XI-1A of the Act of 1960 to indicate that a salary earners co-operative Society had a distinct identity from other co-operative Societies and the fourth respondent could not be equated with the same. It was further submitted that the Division Bench in *Nashik Zilla Sarkari & Parishad Karmachari Sahakari Bank Niyamit Ltd. & Ors. (supra)* had specifically observed in paragraph 25 of its judgment that the question as to whether the bye-laws of the Bank therein were in tune with the provisions of Section 144-5A of the Act of 1960 had not been gone into. Attention was also invited to Section 22(1A) of the Act of 1960 and it was urged that Section 144-5A cannot be made applicable to the Co-operative Bank in the present case. There was no Notification issued by the State Government under Section 22(1A) of the Act of 1960. Moreover, unless a member resigned after attaining the age of superannuation or voluntarily, his membership would not come to an end. It was further pointed out that the Co-operative Bank had total membership of 10181 out of which 1064 members would have the status of retired employees. If such interpretation as put by the Divisional Joint Registrar was adopted, the Co-operative Bank would be put to serious financial loss. It was thus submitted that the relief sought by the petitioners ought to be granted.

9] We have heard the learned Counsel for the parties at length and with their assistance, we have perused the documents placed on record.

10] By the communication dated 27/4/2023, the Divisional Joint Registrar, Co-operative Societies, Amravati has directed the Co-operative Bank to take necessary action in accordance with Clauses 10-A and 18(3) of the bye-laws. By referring to the provisions of Sections 144-5A and 27(8) of the Act of 1960, it is indicated that since the petitioners have retired from their service with the Zilla Parishad, they are not entitled to continue as ordinary members of the Co-operative Bank.

On the contrary, by virtue of such retirement, they would be entitled to be treated as nominal members. This direction has been issued in view of a grievance raised by respondent nos. 5 to 9 dated 19/4/2023. It is not in dispute that the said action has been taken without granting any opportunity of explanation or hearing to the petitioners. By virtue of the said communication, the rights of the petitioners as ordinary members of the Co-operative Bank are under a cloud and it is the case of the petitioners that in view of this communication, their rights as ordinary members are being jeopardised.

11] In this regard, it would be necessary at the outset to consider whether the Divisional Joint Registrar ought to have heard the petitioners before issuing the impugned communication dated 27/4/2023 and while taking cognizance of the complaint made by respondent nos. 5 to 9 on 19/4/2023. It is to be noted that the bye-laws of the Co-operative Bank have been duly registered and approved in accordance with the provisions of the Act of 1960 and the Rules of 1961. This is as required by Section 2(5) read with Section 9(1) of the Act of 1960. The petitioners are the ordinary members of the Co-operative Bank and being duly qualified, they are entitled to the benefit of Section 23 of the Act of 1960. By virtue thereof, they are also entitled to the right of voting under Section 27(1). If the petitioners are treated as nominal members, the provisions of Section 27(8) would be attracted and they would not have any right of voting. Clause 9 of the bye-laws of the Co-operative Bank indicates that there are three categories of members namely ordinary members, active members and nominal members. Clause 10 of the bye-laws indicates the manner in which an employee of the Zilla Parishad engaged in the profession of teaching can become an ordinary member. Clause 10-A3 thereof indicates that after attaining the age of superannuation or after obtaining voluntary retirement from service, if a member resigns from his membership, he can again become a member. Since this Clause finds place in Clause 10 that deals with rights of an ordinary member, it will have to be considered that after superannuating from service and resigning from membership, such person can again become an ordinary member of the Society. It can thus be seen that by virtue of Clause 10 of the bye-laws, an ordinary member has been clothed with various rights including the right to again become an ordinary member after having resigned from membership due to superannuation. It is not in dispute that the membership of the petitioners has not been extinguished in terms of Clause 23 of the bye-laws. The petitioners thus continue as ordinary members of the Co-operative Bank and the contingency indicated by Clause 10-A3 has not yet occurred.

12] The Hon'ble Supreme Court in *Zoroastrian Cooperative Housing Society Ltd. And Another Vs. District Registrar, Cooperative Societies (Urban) And Others* [*(2005) 5 SCC 632]* while examining the provisions of the Gujarat Co-operative Societies Act, 1961 has held in clear terms that on becoming a member of a co-operative society, such member is entitled to rights conferred by the Statute, Rules and the bye-laws of the Society. If these rights and privileges are to be taken away, the same would have to be done in accordance with law. It has also been held that the Authorities under the Statute cannot direct the co-operative society to act in a manner contrary to its own bye-laws. Further, an approved bye-law cannot be ignored by an authority under the statute itself.

From the aforesaid, it is clear that by virtue of being ordinary members of the Co-operative Bank, the petitioners have acquired rights as conferred by the Act of 1960, Rules of 1961 and its bye-laws. Thus, if anything contrary to the same is to be done, the petitioners ought to have been heard in the matter before seeking to place them in a position not in consonance with the bye-laws. The impugned communication dated 27/4/2023 therefore could not have been issued without hearing the petitioners and especially when in the complaint made by respondent nos. 5 to 9, it was specifically the grievance of the said respondents that the petitioners having retired from service, they were not qualified to continue as ordinary members. Since the status of the petitioners as ordinary members was sought to be changed to nominal members which would result in depriving them of their right to vote, the petitioners ought to have been heard in the matter. On this count, we find that the impugned communication dated 27/4/2023 which in effect directs the Co-operative Bank to act in accordance with what has been stated therein prejudicially affects the petitioners and the same is therefore liable to be quashed since the petitioners have not been heard in the matter. Though the said communication has been issued to the Co-operative Bank, nevertheless it is a case of *fait accompli* for the petitioners.

13] The petitioners have also sought a declaration that the communication dated 10/2/2023 issued by the SCEA be declared as not applicable to the Co-operative Bank. We find that it is not necessary at this stage to consider this prayer since we propose to direct the Divisional Joint Registrar to first hear the petitioners as well as the Co-operative Bank before issuing any direction in the light of the complaint dated 19/4/2023 that has been moved by respondent nos. 5 to 9. Instead, the petitioners as well as the Co-operative Bank can be permitted to raise this issue before the Divisional Joint Registrar who can then consider the same in accordance with law. For this reason, we have not examined the applicability of the ratio of the decisions in *Laxman Dattatray Jadhav & Ors. (supra)* and *Nashik Zilla Sarkari & Parishad Karmachari Sahakari Bank Niyamit Ltd. & Ors. (supra)* to the facts of the present case. We may however note that the Division Bench in *Nashik Zilla Sarkari & Parishad Karmachari Sahakari Bank Niyamit Ltd. & Ors. (supra)* in paragraph 25 has observed that it had not gone into the issue with regard to applicability of the bye-laws of the society therein to the petitioners in the context of the provisions of Section 144-5A of the Act of 1960. We therefore keep this issue open for being raised before the Divisional Joint Registrar, if so advised. For the very same reason, we have not made specific reference to the decisions relied upon by the learned Senior Advocate for the petitioners as well as the learned Senior Advocate for respondent nos. 5 to 9. Suffice it to observe that the decision in *Greater Bombay Co-operative Bank* (supra) stands overruled by the decision in *Pandurang Ganpati Chaugule Versus Vishwasrao Patil Murgud Sahakari Bank Limited* [**(2020) 9 SCC 215**] as pointed out by the learned Senior Advocate for the petitioners.

14] In the light of the aforesaid discussion, the following order would serve the ends of justice :

ORDER

The communication dated 27/4/2023 issued by the Divisional Joint Registrar on the complaint dated 19/4/2023 as made by respondent nos. 5 to 9 is set aside. The Divisional Joint Registrar shall re-consider the complaint dated 19/4/2023 as made by respondent nos. 5 to 9 after giving due opportunity of hearing to the petitioners as well as the Co-operative Bank. It would be open for the parties to raise all permissible grounds for consideration before the Divisional Joint Registrar who shall consider the same in accordance with law. The points raised in that regard are kept expressly open.

15] Rule is made absolute in the aforesaid terms with no order as to costs. Pending civil application is also disposed of.

(**MRS. VRUSHALI V. JOSHI, J.**) (**A.S. CHANDURKAR, J.**)

Sumit