

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
WRIT PETITION NO. 8436 OF 2022**

Mohan S/o Laxmanrao Adhau,
Aged about 45 years,
Occ. Agriculturist,
R/o Udkhed, Taluka Morshi, Dist.
Amravati

...Petitioner

// VERSUS //

1. The Divisional Joint Registrar of Co-operative Societies, Amravati Division, Amravati
2. Assistant Registrar of Co-operative Societies, Morshi Taluka Morshi, District Amravati
3. Seva Sahakari Sanstha Ltd.,
Udkhed R.No.950,
R/o Udkhed, Taluka Morshi, Dist.
Amravati
4. Ashok S/o Pundlik Thakre,
R/o Udkhed, Taluka : Morshi, District
Amravati

... Respondents

Smt. S.W.Deshpande, Advocate for the petitioner.
Shri Deepak Thakare, Addl.Government Pleader for the respondent nos. 1 and 2.
Shri K.B.Ambitwade, Advocate for the respondent no. 4.

**CORAM : ANIL S. KILOR, J.
DATED : 25th JANUARY, 2023.**

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith by consent of the parties.

2. In this writ petition, the challenge is raised to the order dated 12th September, 2022 passed by the respondent no.2 and the order dated 22nd December, 2022 passed by the respondent no.1 in appeal No.40 of 2022, removing the name of the petitioner as a Member of the respondent no.3 Society on an objection filed by the respondent no.4, under Section 11 of the Maharashtra Co-operative Societies Act, 1960 (in short "Act, 1960").

3. The petitioner claims to be member of respondent no.3 society and admittedly, his name was recorded as voter in the final list published on 15th January, 2015 and thereafter the election was held on 15th May, 2022 wherein he got elected and presently he is Director of the Society. Thereafter on 23rd May, 2022 the objection was raised under Section 11 of the Act, 1960 on the ground that he was elected from the category of agriculturist and because he does not own any agricultural land, he cannot be treated as an agriculturist. The said objection was upheld by the Assistant Registered Co-operative Society vide order dated 12th September, 2022 which was challenged by way of an appeal under Section 152 of the Act, 1960 and vide impugned judgment and order dated 22nd December, 2022, the order of the Assistant Registrar was upheld.

4. In the above referred facts and circumstances, the only argument made in the present petition is to the jurisdiction of the Assistant Registrar to entertain the application under Section 11 of the Act, 1960, once the final voter list was published and after the elections

were held. In this regard the Co-ordinate Bench of this Court in the case of Ramkishan Bhanudas Shinde Vs. State of Maharashtra¹ has held thus:

10. Section 11 of the Maharashtra Co-operative Societies Act reads:

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.

If a Co-operative Society is established for the benefit of a particular class of individual who are engaged in a specific profession, business or are in such employment, bye-laws normally provide that a member shall be engaged in the said profession, business or employment. If a Co-operative Society has got an area of operation under the bye-laws, then residential qualification is laid down in the bye-laws. A dispute may arise as to whether a person is engaged in a particular profession, business or employment or is normally resident of a particular area and Section 11 of the Act gives power to the Registrar to decide such question. If an objection is taken for inclusion of a member in the voters' list or a claim is made by a person who is not included in such list, aforesaid question may arise for the determination of the Registrar under section 11 of the Act. Section 11 is an enabling provision and will have to be read along with other provisions of the laws. It cannot be read to mean that the power under section 11 can be invoked any time and even after finalisation of the list of voters. Elections of the Co-operative Societies are to be conducted as per the scheme laid down by the Act, Rules and bye-laws. If the Rules provide for a specific machinery and a specific time limit for consideration of the objections and claims, power under section 11 will have to be exercised

1 1115 Mah.L.J.1994

during that period only, if the election process is in progress. Registrar has no power to alter final list of voters published under the rules and bye-laws.

5. The Co-ordinate Bench of this Court has categorically held that the provision under Section 11 cannot be invoked after final list of voter is published. It is further held that voter list cannot be altered under Section 11 when the list has been published finally. It is also held that finality attached to the list of voters should remain intact till the election results are declared and whether a person is qualified to be a voter or not has to be determined on the date of publication of the list of voters.

6. In the circumstances, there is no doubt that both the impugned orders are without jurisdiction and therefore liable to be quashed and set aside. Accordingly, I pass the following order.

- i. The writ petition is allowed;
- ii. The order dated 22nd December, 2022 passed by the respondent no.1 in appeal No.40 of 2022 and the order dated 12th September, 2022 passed by the respondent no.2, are hereby quashed and set aside;
- iii. It is made clear that the result of the present petition will not come in the way of respondent no.3 in case of filing of election petition.

[ANIL S. KILOR, J.]

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