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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 16134 OF 2023**

Uday Ganesh Govilkar
Age 69, Occupation – Business
R/o At – Gimhavane,
Post – Dapoli Taluka – Dapoli,
Dist – Ratnagiri

.....Petitioner

Vs.

1. State of Maharashtra
(At the instance of order passed by
District Co-Operative Election
Officer @ District Deputy Registrar,
Co-Operative Societies,
Ratnagiri)

2. State Co-Operative Election
Authority Maharashtra State
Having its office at Pune.

3. Assistant Registrar, Co-Operative
Societies, Dapoli, Tal. Dapoli
District – Ratnagiri.

4. Chief Executive Officer,
Brahaman Hitwardhini Gramin
Bigarsheti Sahakari Patsanstha
Maryadit Dapoli
Having office at – Lokmanya Tilak
Smarak Compound, Dapoli,
Harne Road, Taluka – Dapoli,
District – Ratnagiri
Mr. Rakesh Bhatkar for the petitioner

.....Respondents

Mr. Dilip Bodake for respondent nos. 1 and 2
Mr. Pankaj J. Das for respondent no. 4
Mr. P. V. Nelson Rajan, AGP for the State

CORAM : GAURI GODSE, J.
DATE : 11th JANUARY 2024.

ORAL JUDGMENT:

1. Heard. By order dated 4th January 2024, a notice for final disposal at the admission stage was issued. Hence, the petition is heard for final disposal at the admission stage.
2. By this petition, the petitioner who is a member of a credit cooperative society represented by respondent no. 4 has challenged the order dated 14th December 2023 passed by the District Co-operative Election Officer, Co-operative Societies, Ratnagiri rejecting the petitioner's objection under Rule 11(3) of The Maharashtra Co-Operative Societies (Election to Committee) Rules 2014 ("the said Rules").
3. By the impugned order, the petitioner's objection against the non-inclusion of his name in the provisional voter's list is rejected on the ground that the petitioner, being a guarantor to the loan advanced to the other member of the society is a defaulter in terms of bye-law no. 17

read with Section 27(10) of the Maharashtra Cooperative Societies Act 1960 ("the said Act").

4. Learned counsel for the petitioner submitted that on 3rd October 2023, the State Co-operative Election Authority passed an order declaring the dates for preparing the provisional voters list with a cut-off date of 1st October 2023. He submitted that the said declaration was made on 3rd October 2023 by publishing a cut-off date as 1st October 2023 and hence, the petitioner was not given any opportunity to comply with any defects. He submitted that after 3rd October 2023, outstanding dues with respect to the loan for which the petitioner had stood guarantor were repaid. He submitted that the outstanding dues were paid before the provisional list was published on 1st December 2023. Hence, the petitioner cannot be held as a defaulter. He submitted that the only requirement for exercising the right to vote is that the member has to complete his tenure for a period of two weeks as a member, which the petitioner has completed. He therefore submitted that on the ground of default, the petitioner's right to vote cannot be taken away. He therefore submitted that the order dated 14th December 2023 be

quashed and set aside and the petitioner's name be directed to be added to the final voters list.

5. Learned counsel for respondent no. 1 i.e. election officer submitted that on 26th December 2023, the final voters list was already published and on 8th January 2023, the election program was also declared. He therefore submitted that no interference be made in the election program which is already been declared. Even otherwise, he submitted that the outstanding dues were admittedly not paid before the cut-off date of 1st October 2023, and hence, the non-inclusion of the petitioner's name in the provisional voters list is correct and there is no illegality in the impugned order.

6. So far as the petitioner's argument that the order declaring cut off date was issued after the notified cut-off date of 1st October 2023 is concerned, learned counsel for respondent no. 1 submitted that since the voter's list was already prepared and the revised voter's list was to be published pursuant to the orders passed by this Court in Writ Petition No. 9547 of 2023, there is no substance in the argument made on behalf of the petitioner with respect to the same.

7. I have perused the papers. There is no dispute that cut off date was declared as 1st October 2023 and prior to the cut-off date, outstanding dues were not paid. Order dated 3rd October 2023 declaring the cut off date is not under challenge. So far as the definition of defaulter under bye-law no. 17 relied upon in the impugned order is concerned, the same is also not under challenge. A perusal of the said bye-law shows that a defaulter is defined to mean that if a borrower has defaulted for a continuous period of ninety days, the borrower and the guarantor are a defaulter. It is not the submission of the petitioner that the said bye-law is not applicable. The reliance of the learned counsel for the petitioner that only Sub Rule 2 of Rule 6 of the Maharashtra Co-Operative Societies (Election to Committee) Rules is applicable and that the petitioner's right to vote cannot be taken away on the ground of defaulter is concerned, I do not find any merit in the said submission. Section 27 of the said Act deals with the voting rights of the members and as per Sub-Section 10 of Section 27, a member is not entitled to vote in the affairs of the society, if he is a defaulter. Bye-law 17 clearly defines the word 'defaulter'. Hence, I do not find that there is any breach of any Rule by the Election Officer

while publishing the provisional voters list and not including the petitioner's name in the provisional voters list on the ground that the petitioner is a defaulter.

8. The Hon'ble Supreme Court in the case of ***Shri Sant Sadguru Janardan Swami Sahakari Dugdha Utpadak Sanstha and another Vs State of Maharashtra and others***¹, held that preparation of the electoral roll is an intermediary stage in the process of election of the managing committee of the society and if there was a breach of the rule in the preparation of the voters list, it could be called in question in an election petition after the election is over. It was thus, held that when the election process has been set in motion, the election process should continue even if there is certain irregularity. The Hon'ble Supreme Court in the decision of ***Ahmednagar Zilla S.D.V. & P Sangh Ltd. Vs State of Maharashtra***², held that where voters list had been prepared based on non-existent rules, it would be illegal and the Court could interfere under Article 226 of the Constitution. The Hon'ble Supreme Court in the decision

1 (2001) 8 SCC 509

2 AIR 2004 SC 1329

of *Pundlik Vs. State of Maharashtra and Ors*³ relied upon the three Judge bench decision in the case of *Ahmednagar Zilla S.D.V. & P Sangh Ltd.* and held that in the facts of the said case the action of the Collector in not effecting change was in clear violation of the Rules and thus could be challenged by filing a petition under Article 226 of the Constitution.

9. Thus, once the election program is declared, there cannot be any interference in the election process, unless there is any breach of any rule committed in preparation of the voters list. In the present case, I do not see any breach of any Rule committed in preparation of the provisional voters list. If the action is in accordance with law, no interference is warranted to exercise powers under Article 227 of the Constitution of India.

10. Thus, in view of the principles of law laid down in the aforesaid decisions I do not see any ground to interfere in the impugned order. Hence, for the reasons recorded above, I decline to interfere in the impugned order. The petition is dismissed.

[GAURI GODSE, J.]

³ AIR 2005 SC 3746