

VRJ

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

WRIT PETITION NO.535 OF 2020

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Suresh Appa Kolekar & Ors. ... Petitioners

V/s.

Vithal Sahakari Kukkutpalan Andi
Kharedi Vikri Prakriya Sangh Ltd.

Through Secretary & Ors. ... Respondents

Mr. Umesh R. Mankapure for the petitioners.

Mr. Pralhad Paranjape with Mr. Manish Kelkar for
respondent No.1.

Mr. Y. D. Patil, AGP for the State/respondent Nos.2 to 5
& 7.

Mr. Gajanan M. Savagave for respondent Nos.8 to 15.

Mr. A. Y. Sakhare, Senior Advocate with Mr. Dilip
Bodake for respondent Nos.16 & 17.

Ms. M. S. Srivastava, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 26, 2024

P.C.:

1. The challenge in this writ petition is to the order dated 24th December 2019 passed by the Minister-respondent No.4 granting stay to the order dated 22nd November 2019 passed by the Divisional Joint Registrar..

2. The petitioners are the members of respondent No.1-Society. On 15th April 2010, respondent No.1-Society passed a resolution

admitting 143 persons as members of respondent No.1-Society. Some members challenged the action of respondent No.1 admitting 143 persons as member of respondent No.1-Society by filing dispute No.5 of 2015 before the Cooperative Court under section 91 of the Maharashtra Cooperative Societies Act, 1960. The dispute is pending, however, interim relief was refused.

3. On 15th March 2019, members of respondent No.1-Society filed a complaint before the District Registrar under section 11 read with 25A of the Maharashtra Cooperative Societies Act, 1960 for holding an inquiry into qualifications of 143 members admitted on 15th April 2010.

4. On 9th September 2019, the Assistant Registrar Cooperative Societies passed an order under section 11 read with section 25A of the Maharashtra Cooperative Societies Act, 1960 holding 143 persons as ineligible for being members of respondent No.1-Society.

5. On 22nd November 2019, the petitioners filed Appeal No.7 of 2019 before the Divisional Joint Registrar. The Divisional Joint Registrar, by order dated 22nd November 2019, granted stay to order dated 9th September 2019.

6. In the meantime, election program for period 2019 to 2024 was published by the Returning Officer.

7. On 9th December 2019, based on stay granted by the Divisional Joint Registrar, the Election Officer included names of 143 members in the voters list.

8. One of the members of respondent No.1-Society approached the Joint Registrar Cooperative Societies, however, by order dated 24th December 2019, the Joint Registrar refused to grant stay. The member, therefore, approached respondent No.4-Minister.

9. By impugned order dated 24th December 2019, the Minister granted stay to the order dated 22nd November 2019 passed by the Divisional Joint Registrar. Immediately on the next date, the Election Officer deleted names of 143 persons and declared the election result. The petitioners have, therefore, filed present writ petition.

10. The issue relating to maintainability of second revision under section 154 of the Maharashtra Cooperative Societies Act, 1960, is no longer res integra in view of full bench judgment of this Court in **Shireen Sami Gadiali & Anr. vs. Spenta Co.op. Hsg. Soc. Ltd. & Ors.** reported in 2011 (3) Mah.L.J. 486. Therefore, respondent No.2 could not have entertained second revision application. Hence, I am satisfied that second revision was not maintainable. In the result, order dated 24th December 2019 cannot be sustained. Hence, following order:

- a) Impugned order dated 24th December 2019 passed by respondent No.4-Minister is quashed and set aside.
- b) The Divisional Joint Registrar is directed to decide Appeal No.7 of 2019 within eight weeks from the date of appearance of the parties.
- c) The parties shall appear before the Divisional Joint Registrar Cooperative Societies (Milk), Pune on 4th March

2024 at 10:30 a.m.

11. In view of aforesaid order, no fresh notice are required to be issued to the parties to the appeal. The writ petition stands disposed of in above terms. No costs.

12. It is made clear that the Divisional Joint Registrar shall decide the petitioners' appeal on its own merits uninfluenced by the observations made in the impugned order or by the Joint Registrar Cooperative Societies (Milk), Pune.

(AMIT BORKAR, J.)