



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5254 OF 2012

1. Rohit Industrial Co-operative Society Ltd.,
Latur, Tq. & Dist. Latur through its Chairman,
Shivajirao Patil Kavhekar,
Age. 54 years, Occu. Agri,
R/o. Kavha Road, Latur,
Tq. & Dist. Latur.

...PETITIONER

VERSUS

1. The District Collector, Latur / Returning Officer,
Latur District Central Co-operative Bank Ltd.,
Latur, Dist. Latur,
2. Divisional Joint Registrar,
Co-operative Societies, Latur.
3. District Deputy Registrar,
Co-operative Societies, Latur,
Dist. Latur.
4. Assistant Registrar,
Cooperative Societies, Latur,
Dist. Latur.
5. The Managing Director,
Latur District Central Co-operative Bank Ltd.,
Latur, Dist. Latur.

...RESPONDENTS

WITH
WRIT PETITION NO.5255 OF 2012

1. Shivaji Co-operative Housing society Ltd,
Kavha, Tq. & Dist. Latur through its Chairman,
Shivajirao Patil Kavhekar,
Age. 54 years, Occu. Agir,
R/o. Kavha Road, Latur,
Tq. & Dist. Latur.

...PETITIONER

VERSUS

1. The District Collector, Latur / Returning Officer,
Latur District Central Co-operative Bank Ltd.,
Latur, Dist. Latur,
2. Divisional Joint Registrar,
Co-operative Societies, Latur.
3. District Deputy Registrar,
Co-operative Societies, Latur,
Dist. Latur.
4. Assistant Registrar,
Cooperative Societies, Latur,
Dist. Latur.
5. The Managing Director,
Latur District Central Co-operative Bank Ltd.,
Latur, Dist. Latur.

...RESPONDENTS

Advocate for the petitioners : Mr. Sachin Deshmukh
AGP for Respondent Nos.1 to 4 : Ms. P. V. Diggikar
Advocate for Respondent No.5 : Mr. D. J. Choudhari

CORAM : PRAFULLA S. KHUBALKAR, J.
RESERVED ON : 3rd APRIL 2025
PRONOUNCED ON : 9th MAY 2025

JUDGMENT :-

1. Heard. Rule. Rule made returnable forthwith and heard finally by consent of parties.
2. The instant petitions take exception to the orders dated 27.04.2012 passed by respondent No.1-District Collector, Latur/Returning Officer, refusing the objections of the petitioners to the provisional voters list of the Latur District Central Co-operative Bank Ltd. (respondent No.5). The basis for rejection of the petitioners' objection is, their failure to deposit the increased Share Capital amount to the extent of Rs.10,000/- and resultant disqualification as Member of respondent No.5-Bank.
3. Heard Adv. Sachin Deshmukh, learned counsel for the petitioners as well as Adv. P. V. Diggikar, learned AGP for respondent Nos.1 to 4 and Adv. D. J. Choudhari, learned counsel for respondent No.5.
4. The controversy involved in the instant matters is about the challenge by the petitioner societies to the decision of respondent No.5-

Bank to exclude the petitioners' cooperative society from the list of voters only on account of their failure to deposit the increased amount of Share Capital. The primary contention of the petitioners' is that they were never put to any notice about increase in the amount of Share Capital, neither any demand was raised with them and therefore they had no occasion to deposit the increased amount. The petitioners' specific contention is that immediately after getting knowledge about requirement to deposit increased amount, they have submitted specific request to respondent No.5 vide representation dated 24.02.2012 requesting them to accept the increased amount which was not considered. The petitioners' grievance is that the resultant disqualification as Member deprives the petitioners of their statutory rights. The petitioners' challenge to the impugned orders dated 27.04.2012 passed by respondent No.1 is mainly based upon the non-compliance with Section 26 of the Maharashtra Co-operative Societies Act, 1960, which specifically provides that in case of increase in minimum contribution of member in Share Capital to exercise right of membership, the society shall give a due notice of demand to the

members and give reasonable period to comply with.

5. As against this, the respondents have supported the decision of the Collector by taking a stand that the notice regarding increase in the amount of Share Capital was published in daily newspaper dated 20.11.2011 namely 'Daily Lokmant' and Daily 'Ekmat' informing all the members to pay increased value of share on or before 05.12.2011. On failure of the member societies to pay the increased amount, their membership stood cancelled consequently. The respondents have also putforward a submission that apart from this public notice, individual notices were also sent through U.P.C. (Under Posting Certificate) to all the members and therefore no grievance can be raised in that regard.

6. As regards the controversy involved in the instant petitions, Adv. Sachin Deshmukh, learned counsel for the petitioners vehemently submits that similar issue arose in two other writ petitions, viz. ***Writ Petition No.5032 of 2012(Parvati Gruha Taran Co-operative Society Limited vs. The District Collector/Returning Officer, Latur)*** and ***Writ Petition No.5253 of 2012 (Indira Phalotpadan Prakriya Sanstha, Latur***

vs. The District Collector, Latur/Returning Officer, Latur and Ors.). He vehemently submits that the issue involved in the instant petitions is already decided and covered by the judgment dated 28.11.2014 in Writ Petition No.5032 of 2012. He submits that even the issue about service of notice of increased Share Capital through letter Under Posting Certificate was raised in the said petitions, however considering legal position laid down in the matter of *Rajan Dinkar Pharate and others v/s State of Maharashtra and others*, decided on 16.10.1996, petitioners' society was held eligible as a valid member.

7. As regards the controversy involved in the matter, as to whether the membership of the petitioners' society can be discontinued only on account of failure to deposit the dues of amount of Share Capital. It is relevant to have look at provisions of Section 26(1) of Maharashtra Co-operative Societies Act, which is reproduced below :

“Rights and duties of members.

(1) A member shall be entitled to exercise such rights as provided in the Act, rules and by-laws:

Provided that, no member shall exercise the rights, until he has made such payment to the society in respect of membership, or acquired such interest in the society, as may be prescribed and specified under the by-laws of the society, from time to time:

Provided further that, in case of increase in minimum contribution of member in share capital to exercise right of membership, the society shall give a due notice of demand to the members and give reasonable period to comply with.”

As such, it is clear that a due notice of demand and reasonable period to comply, is required to be given to the members. The issue about interpretation of Section 26 of the Act fell for consideration before this Court and the same was decided vide judgment in the matter of ***Rajan Dinkar Pharate and others v/s State of Maharashtra and others*** (supra). Relying on the judgment of ***Rajan Dinkar Pharate*** (Supra), this Court has decided the connected writ petitions in the matter of ***Parvati Gruha Taran Co-operative Society Limited vs. The District Collector/Returning Officer, Latur*** (WP/5032/2012) by judgment dated 28.11.2014. It has to be noted that the judgment dated 28.11.2014 was subjected to review

and by order dated 31.03.2015, the review application was rejected. Thereafter, the decision in the matter of ***Parvati Gruha Taran Co-operative Society Limited*** (Supra) was not challenged further.

8. The other contention of learned counsel for respondents that the instant petitions have become infructuous in view of the elections being held during the pendency of the instant petitions, although appears attractive but the same need not be a hurdle to decide the right of the petitioners' society to remain as a member. It is pertinent to note that the consequences of petitioners' failure to pay the enhanced amount of Rs.10,000/- has resulted into cancellation of membership of the petitioners' society as reflected from the endorsements, affixed through stamp, on the Register of Members. It is to be noted that even this objection about petitions having become infructuous, is dealt with in the judgment of ***Parvati Gruha Taran Co-operative Society Limited*** (Supra) and ***Rajan Dinkar Pharate*** (Supra). The other contentions of the respondents that the notice demanding enhanced amount was sent to all the societies through letter Under Posting Certificate, also gets weakened

in view of the fact that similar notice was sent to Parvati Gruha Taran Co-operative, petitioner in WP/5032/2012 as that of petitioners' society and considering that aspect, the petition was allowed.

9. In support of his arguments, Adv. D. J. Choudhari, learned counsel for respondent No.5 has relied on several case laws. The position of law in the matter of *Amrutlal Weljibhai Rathod V/s. Vishwasrao Patil (MANU/MH/030.1989 1990 Mh.L.J79)*, *Suresh Rajaram Anulekar Vs. State of Goa (2016(4) Mh.L.J.)* on the issue of scope of writ petition in the wake of disputed questions of fact, is not disputed. In support of his submissions, he has cited several judgments including *Sujyoti India (P) Ltd. vs. Western Coalfields Ltd., Nagpur and others [2017(4) Mh.L.J.]* and *Prakash Bhanudas Kavade and Ors. vs. The Nashik District Central Co-operative Bank Limited and Ors.* dealing with Section 26 of the Maharashtra Cooperative Societies Act, however, in view of the direct decision of this Court in connected matter deciding the same controversy vide judgment in the matter of *Parvati Gruha Taran Co-operative Society Limited* (Supra), the judgments relied upon by the respondents cannot

be of any assistance. There is no dispute that the instant petitions were considered with *writ petition No.5032 of 2012* and *writ petition No.5253 of 2012* and as such judicial discipline demands similar decision in these petitions.

10. It is pertinent to note that respondent No.5 has based its submissions on the basis of affidavit in reply dated 16.01.2025, which mentioned in paragraph No.21 that the same reply be considered while deciding writ petition Nos.5254 of 2012 and 5255 of 2012. As such, it is clear that the stand taken by respondent No.5 in all these petitions is identical and after considering the contentions of respondent No.5-Bank, the writ petition No.5032 of 2012 (*Parvati Gruha Taran Co-operative Society Limited vs. The District Collector/Returning Officer, Latur*) was decided and thus the contentions of the respondents cannot be accepted.

11. In the light of above mentioned circumstances, I am of the considered view that the controversy involved in these petitions is covered by the judgment in the matter of *Parvati Gruha Taran Co-operative Society Limited* (Supra) and there is no need to take different

view. Hence, on the similar lines, the controversy involved in the instant petitions can be resolved by granting liberty to the petitioners to make difference of payment of Share Capital, i.e. Rs.9000/- per member, at the earliest. Upon making said payment, the petitioners would be entitled to the benefit of Section 26 of the Act in the capacity of a valid member.

12. In the result, the impugned orders passed by the Collector dated 27.04.2012 rejecting the objections of the petitioners are quashed and set aside. The respondent No.5 is directed to afford an opportunity to the petitioners to deposit the amount of difference of Share Capital in a reasonable period and on such deposit being made, the petitioners be held to be valid members.

13. Both the writ petitions are allowed.

14. Rule is made absolute in above terms.

[PRAFULLA S. KHUBALKAR, J.]