



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5352 OF 2024
WITH WRIT PETITION NO. 5353 OF 2024

Arjun Shivaji Patil

...Petitioner

VERSUS

The State Co-operative Election
Authority and Others

...Respondents

- Mr. K. J. Suryawanshi, Advocate for the Petitioner
- Mr. S. K. Kadam, Advocate for Respondent Nos. 1 and 2
- Mr. V. D. Salunke, Advocate for Respondent No. 4
- Mr. S. N. Kendre, Advocate for Respondents/State

CORAM : R.M. JOSHI, J

DATE : JANUARY 15, 2025

COMMON ORDER :

1. By consent of both sides, heard finally at stage of admission.

2. Petitioner in both these Petitions seeks to challenge the order dated 28.02.2024 passed by Respondent No. 2/District Co-operative Election Officer and District Deputy Registrar, Co-operative Societies, Dharashiv allowing objection raised by contesting Respondents and thereby including 99 persons in the voters list in one Petition and 23 persons in another Petition. The Election Officer has refused to include

the name of others.

3. Petitioner claim himself to be a member and voter of the Vividh Karyakari Seva Sahakari Society Limited, a society duly registered under the Maharashtra Co-operative Societies Act, 1960 (for short '**the Act**'). It is claimed that last election of the society was conducted in the year 2018 and term of the elected body had expired in the year 2023. Though the election was due in the year 2023 but pursuant to the order of the State Government, the said election is postponed from time to time. On 01.01.2024, State Co-operative Election Officer vide order dated 01.01.2024 fixed the cut off date as 01.01.2024 for preparation of the voters list for ensuing election of Respondent Society. According to the said order, the members were qualified as on 01.01.2024 are held eligible to vote. Respondent Society prepared provisional voter list as per said directions and the name of the members who were found to be eligible to vote as on 01.01.2024 were included in the provisional voters list. This list was published by the Election Officer. Contesting Respondents raised objection to the provisional list

seeking inclusion of name of 113 persons in Writ Petition No. 5352/2024 and 60 persons in Writ Petition No. 5353/2024. Society filed reply to the objection contending that the persons sought to be included in the final voters list did not pay entire share capital of the society and since, the same has been made good after the cut off date, they do not become valid voters. The Election Officer partly allowed the objection and passed order as recorded herein above.

4. At the outset, learned Counsel for contesting Respondent raised objection to the maintainability of the Petitions on the ground that the Petitioner was not a party to the proceedings before the Election Officer when objection was raised to the provisional voters list and hence, he has no locus standi to file Petitions.

This submission is resisted by the learned Counsel for the Petitioner by placing reliance on the judgment of this Court in Writ Petition No. 1203/2024 (Chandrakant Rajaram Pawar vs. State Co-operative Election Authority and Others).

5. The said judgment specifically deals with the

objection raised by the Counsel for contesting Respondent now. Having regard to the similarity of the facts involved in both cases, this Court finds no reason to take different view than the one taken by the Coordinate Bench in this judgment. As such, objection raised to the maintainability of the Petitions is rejected.

6. Learned Counsel for the Petitioner has referred to Section 26 of the Act in order to contend that no right of membership can be exercised till due payments are made in respect of membership. It is his submission that in view of the reply of the Society before the Election Officer, as on the cut off date contesting Respondent as well as other persons whose claim for inclusion in the voters list is accepted by the Election Officer, had not paid entire share capital and as such, order passed by the Election Officer is not sustainable in law. He also made grievance in respect of the said order being not reasoned one.

7. Learned Counsel for contesting Respondents, on the other hand, submits that as per the provisions of the Act and bye-laws applicable to the society, a

person in view of the bye-law no. 2(19)(2) becomes a member of the society once he pays share capital. It is his submission that there is no dispute about the fact that the contesting Respondents and other concerned have paid initial share capital. It is his submission that if it is the case of the society that there was any increase in the share capital, the same cannot be made applicable unless notice to that effect is issued. It is his submission that once the person is registered as a member and his name is included in I register, as contemplated by provisions of Section 19-A and Section 38(2) of the Act, there is no justification for not treating him to be eligible as voters. According to him, herein this case names of the concerned persons are not removed from I register. It is his submission that the Election Officer is not performing judicial or quasi judicial authority and, as such, it is not expected from him to pass any detailed order. It is his submission that the correctness of the order of the Election Officer needs to be considered on the basis of the material available on record.

8. There is no dispute about the fact that the

contesting Respondent and other concerned persons who are now held to be eligible as voters, their names appear in I register. Section 2(19)(a) defines member. A member as per the said definition means a person joining in an application for registration of Co-operative Society which is subsequently registered, or a person duly admitted to membership of a society after its registration. Section 38 of the Act mandates maintenance of register of members. As per the rules, said register is required to be maintained in I form as prescribed therein. According to sub-section 2 of Section 38, a register shall be *prima facie* evidence of the date on which any person was admitted to membership, and of the date on which he ceased to be a member. It is not the case of the Petitioner or society that names of concerned person are removed from the register or entry is made with regard to caseation of their membership. Thus, there is undisputed fact that contesting Respondent and concerned persons are members of the society.

9. Since there was dispute raised with regard to non payment of additional share capital by these

persons, a specific query was made to the learned Counsel for Society as to whether the original share capital was paid by the contesting Respondent and others. On instructions, a candid statement is made that the original share capital is duly paid by them. Since it is the case of the society before the Election Officer that as on the cut off date the entire dues i.e., entire share capital was not paid by the concerned persons, the Counsel for Respondent was called upon to show as to whether any notice was issued to the members about enhanced share capital, if any, and to call upon them to make the same good. He could only place reliance on the affidavit-in-reply filed contending that a notice was issued on 16.09.2022. A bare perusal of the said notice does not indicate that the same was intimated to the members about enhanced share capital. Thus, there is nothing on record to indicate that the enhanced share capital was brought to the notice of the concerned person and still they are in arrears.

10. It is also sought to be argued on behalf of the Petitioner that since admittedly the amounts

towards balance share capital was paid after the cut off date, the persons concerned cannot be held to be valid voters for the ensuing elections. This submission sans merit as in absence of any notice to the members about making the alleged enhanced share capital good, it cannot be held that the members were in arrears thereof. The embargo created by Section 26 of the Act for exercise of the rights of membership till due payments are made would not apply to instant case. In order to become the alleged enhanced share capital due, there ought to have been notice issued. For want of any such evidence placed before Election Officer or even before this Court, this Court is not inclined to accept the contention that in view of Section 26, the concerned members are not entitled to exercise their voting rights.

11. Finally, coming to the objection raised by the Petitioner about fault on the part of the Election Officer to record reasons for allowing the application is concerned, perusal of the order impugned clearly indicates that the hearing had taken place. Oral as well as written submissions were considered. It is not

the case that the Election Officer has mechanically accepted the contention of the objector i.e. contesting Respondent. The order indicates that the persons whose names are not found in I register, they were held to be not eligible to vote. It is thus clear that the order passed by the Election Officer is after due consideration of material on record.

12. As a result of above discussion, this Court finds that for want of any perversity in the order impugned, the same does not deserve any interference in exercise of writ jurisdiction. Hence, Petitions stand dismissed.

(R.M. JOSHI, J.)