

(2016) 10 BOM CK 0161

In the Bombay High Court

Case No : Writ Petition No. 1013 of 2016

Babasaheb Gokul Shinde

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 15-10-2016

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 11, Section 25-A

Citation : (2017) 2 ALLMR 669 : (2017) 2 MhLJ 175

Hon'ble Judges : T.V. Nalawade, J.

Bench : Single Bench

Advocate : Mr. Deelip Bankar Patil, Advocate h/f Mr. S.M. Gunjal, Advocate, for the Petitioner in Writ Petition No. 1013 of 2016; Mr. S.N. Kendre, A.G.P, for the Respondent Nos. 1 to 3 and 21 in Writ Petition No. 1013 of 2016; Mr. A.D. Shinde, Advocate, for the Resp

Final Decision : Allowed

Judgement

T.V. Nalawade, J. - The first proceeding is filed to challenge the order made by the Returning Officer to include Respondent Nos. 5 to 20 in the final voters list and for direction to see that they are not allowed to vote in the elections to Respondent No.4 ? Cooperative Credit Society of Shenwadgaon, Tahsil Rahuri. Proceeding is filed also to challenge the decision given in Revision No. 7 of 2016 which was filed before the Divisional Joint Registrar, Cooperative Societies, Nashik by the present petitioners. The authority has held that the present petitioners stand disqualified and they cannot continue as members of respondent ? cooperative society. Both sides are heard. Hereinafter the Maharashtra Cooperative Societies Act, 1960 is referred to as "the Act".

2. Respondent No. 3 of the present proceeding had filed application under Section 11 read with Section 25A of the Act before the Assistant Registrar, Cooperative Societies for deleting the names of present petitioners from the list of members of the society. The application was filed on two grounds viz. (i) the present petitioners are not residing in the area for which the society is created

and (ii) they are not having 10R land within the limits of the area for which society is created. On the basis of the record like certificate issued by the revenue authority that petitioners are not having land, the Assistant Registrar made order to delete the names of the present petitioners from the membership register. In the revision, the Divisional Joint Registrar has considered other circumstance that there is no record to show that present petitioners are residents of village Shenwadgaon, the area for which the society is created, in addition to the aforesaid ground.

3. The learned Counsel for petitioners submitted that the authority has committed error in not considering the bylaws of the society. He submitted that when the petitioners were made members in the past, the authority ought to have presumed that they were eligible to continue as members of the society. He submitted that the amended provisions like necessity to hold 10R portion of agricultural land in the area of operation of the society cannot be made applicable against the present petitioners. He submitted that in view of the bylaw no. 6(3) the condition of holding 10R portion of agricultural land is not applicable to the persons mentioned in bylaw 4(14) and the petitioners could not have been deleted as they fall in that category. On the other hand, the learned Counsel for respondent who had filed application before the Assistant Registrar submitted that the petitioners could not produce any record to show that they are residents of the area for which the society is created and further they are not disputing that they are not having 10R portion of land in the area of operation of the society. He submitted that the petitioners were made members as agriculturist and they do not fall in the category mentioned in bylaw no. 4(14). He submitted that there is record to show that the present petitioners are residents of other village, even other tahasils and they themselves had mentioned in the proceedings filed by them their addresses from other places. He took this Court through the record like voters list prepared for general elections for different places like Pachegaon, Kerwadi, Kopergaon, etc. He showed this Court the names of these petitioners included in the voters list of those places. This Court went through the revenue record Pachegaon, Punadgaon, Ghari, Chandkasari, etc. also. The learned Counsel showed to this Court the record of resolution made by respondent ? cooperative society against the petitioner as they were not satisfying the eligibility conditions. He submitted that though such resolution was there, by joining hands with the petitioner, their names were continued in the voters list. He submitted that when the Divisional Joint Registrar, Nashik had given stay only for particular period, till 02nd February, 2016, by misusing this order, names of the petitioners were continued in the voters list and even this Court was misled to see that these petitioners are allowed to vote in the election.

4. There is force in the submission made by learned Counsel for the person who had filed proceeding under Section 11 read with 25A of the Act. Admittedly, these persons are not having 10R portion of agricultural land in the area of operation of respondent ? society. In one proceeding they had filed their

addresses of different places other than the place Shenwadgaon for which the society was created were mentioned and there is other record showing that they are exercising their right of vote at their places in general election. The record is sufficient to infer that they were made members as agriculturists and they are not the members under bylaw 4(14). This record is considered by both the authorities.

5. The proceeding under Section 11 read with 25A of the Act was started before declaration of program of election for the years 2016-21. The decision of the matter had also come out prior to declaration of program. It can be said that the society ought not to have shown the petitioners as the voters for the said election. The learned Counsel for petitioners from Writ Petition No. 1013 of 2016 placed reliance on the case reported as AIR 1994 Bombay 304 (Aurangabad Bench) (Karbhari Maruti Agawan and Others v. State of Maharashtra and Others) and submitted that this Court has power to intervene when the body in power has done some mischief and has included or has avoided to delete the names of disqualified members from voters list supplied to be authority. In this case, this Court has further laid down that the powers given to the Registrar under Section 11 of the Act can be exercised even when the election program is declared and the result given by the authority under Section 11 needs to be considered. There cannot be dispute over this proposition. He places reliance on Division Bench case of this Court reported as 1999(3) ALL MR 628 (Shivaji Marotrao Suryawanshi v. State of Maharashtra and Others). In that case it was held that when the non-borrower members were not residents of area of operation of society, their inclusion in voters list was illegal and the petition can be entertained to challenge such inclusion. It is further observed that such writ is not barred due to the circumstance that option of filing election petition is available. There cannot be dispute over this proposition also. Thus, if before the date of voting the decision is given under Section 11 read with Section 25A of the Act the returning officer must act in accordance with the said decision.

6. On the basis of the record, it can be said that the body in power did mischief and continued the petitioners of Writ Petition No. 5471 of 2016 as members of the society when they were already disqualified by competent authority and their names were shown illegally in the voters list supplied to the authority for election. For this act, costs needs to be imposed on the petitioners of Writ Petition No. 5471 of 2016. They have mislead this Court also and the declaration of the result was withheld due to submission made by these petitioners. This Court holds that the petitioners were not entitled to vote in the elections and so their votes need to be excluded and result needs to be declared accordingly.

7. In view of these circumstances, Writ Petition No. 5471 of 2016 is dismissed. The petitioners are to pay costs of Rs.50,000/(Rupees Fifty Thousands Only). The amount is to be deposited in the account of the society. Th votes of the petitioners are not to be counted. They are to be excluded and the result is to be declared. Learned Counsel for the petitioners requests for further protection. It is

refused.

8. Writ Petition No. 1013 of 2016 is allowed. The order dated 18th December, 2015 made by the Returning Officer by which the names of Respondent Nos.5 to 20 are included stands set aside. The learned A.G.P. to inform the orders. Authenticated copy is allowed.